IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.76399 of 2018

(Arising out of Order-in-Appeal No.Kol/Cus.(Port)/AA/266-270/2018 dated 24.01.2018 passed by Commissioner (Appeals) of Customs, Kolkata)

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Appellant

VERSUS

M/s R.A.Electricals
1, Beaparitola Lane, Kolkata-700072

Respondent

APPERANCE :

Shri M.P.Toppo, Authorized Representative for the Appellant
Shri S.C.Ratho, Consultant for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…75559/2023

DATE OF HEARING : 01 .06.2023
DATE OF DECISION : 01 .06.2023

Per Ashok Jindal :

Revenue is in appeal against the the impugned order.

2. The facts of the case are that the respondent filed Bills of Entry for clearance of Flower Lights, LED Lights etc. from China. These Bills of Entry were assessed for enhancing the unit price of the impugned goods. Due to festival session, the respondent took delivery of the goods after paying duty on the enhanced value under protest to comply with their market commitment. No reason for enhancing the value was given and no order under Section 17 (5) of the Customs Act, 1962 was passed by the Adjudicating Authority.

2.1 Therefore, the appellant challenged the assessed Bills of Entry before the ld.Commissioner (Appeals), who held that as neither the basis for enhancement of price has been given nor any detailed order under Section 17 (5) of the Act was passed by the Adjudicating Authority for reason of enhancement and rejection of declared value. Therefore, the enhancement of declared value is not sustainable.

2.2 Against the said order, the Revenue is before us.

3. The ld.A.R. for the Revenue submits that at the time of clearance of goods, the respondent accepted the enhancement value. In that circumstances, the order under Section 17 (5) was not required. Therefore, the ld.Commissioner (Appeals) fell in error by setting aside the enhanced assessed value of the impugned goods.

4. Heard the ld.A.R. for the Revenue and perused the records.

5. We find that the respondent cleared the goods after paying the duty of enhanced value under protest. Therefore, the Adjudicating Authority was required to pass an order under Section 17 (5) of the Act within 15 days. The provision of Section 17 (5) of the Customs Act, 1962, is extracted below :

> "*(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of the goods, classification, exemption on concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the*

proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

6. Admittedly, as no speaking order has been passed under Section 17 (5) of the Act, therefore, the enhancement of declared value is not sustainable.

7. In view of the above, we do not find any infirmity in the impugned order and the same is upheld.

8. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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