

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL, KOLKATA  
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

**Customs Miscellaneous Application No.77306 of 2018 (Stay)**  
(On behalf of Appellant)

**And**

**Customs Appeal No.78763 of 2018**

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/1300/2018 dated 06.07.2018  
passed by Commissioner(Appeals) of Customs, Kolkata.)

**Commissioner of Customs (Port), Kolkata**  
(15/1, Strand Road, Custom House, Kolkata-700001.)

**...Appellant**

*VERSUS*

**M/s. VOS Technologies (India) Private Limited**

**.....Respondent**

(44, Nishant Kunj, Pitam Pura, Delhi-110034.)

**APPEARANCE**

Shri S.Chakraborty & Shri Tariq Suleman, both Authorized Representatives  
for the Revenue  
Shri S.C. Ratho, Consultant for the Respondent (s)

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)  
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

**MISCELLANEOUS ORDER NO. 75516/2023**  
**FINAL ORDER NO. 76589/2023**

DATE OF HEARING : 6 September 2023  
DATE OF DECISION : 6 September 2023

**Per : P.K. CHOUDHARY :**

Revenue is in appeal against 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 Id.Commissioner (Appeals), The Ld.Commissioner(Appeals) held that neither any 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 giving reason of enhancement and rejection of declared value. Therefore, the enhancement of declared value is not sustainable. The Revenue has filed the present appeal before the Tribunal.

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

4. Heard both sides and perused the appeal 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 sustained.

8. The appeal filed by the Revenue is dismissed. Stay Petition also gets disposed of.

(Operative part of the order was pronounced in the open Court.)

Sd/  
**(P.K. CHOUDHARY)**  
**MEMBER (JUDICIAL)**

Sd/  
**(RAJEEV TANDON)**  
**MEMBER (TECHNICAL)**

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