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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.76301 of 2017
(On behalf of Appellant)

(Arising out of Order-in-Original No.Kol/Cus/Airport/AA/391/2017 dated 13.04.2017 passed by Commissioner (Appeals) of Customs, Kolkata)

M/s Samsung India Electronics Private Limited
2nd, 3rd & 4th Floor, Tower C,Vipul Tech Square,Golf Course Road, Sector 43, Gurgaon, Haryana-122022

Appellant

VERSUS

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

Respondent

APPERANCE :
Shri Rahul Dhanuka, Advocate for the Appellant
Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO…77563/2023

DATE OF HEARING : 30.11.2023
DATE OF DECISION : 30.11.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order rejecting their refund claim on the ground that as the appellant has not challenged the assessment of Bill of Entry and they are not entitled to claim the refund claim.

2. Heard both sides and perused the records.

3. We find that the appellant filed Bill of Entry claiming to classification of imported goods under CTH 85176290 whereas the classification was done under CTH 91021900 by the assessing authorities without assigning any reason under Section 17 (4) of the Customs Act, 1962, but no speaking order under Section 17 (5) of the

Customs Act, 1962, was passed, which was mandatory for the adjudicating authority to pass speaking order within 15 days of the assessment of Bill of Entry. The appellant registered protest for classification of the imported goods and on that protest also, no order was passed by the adjudicating authority in terms of Section 17 (5) of the Customs Act, 1962, but the appellant claimed refund of excess duty paid.

4. In that circumstances, we hold that it is violation of principles of natural justice. Therefore, we set aside the assessment of Bills of Entry and direct the adjudicating authority to pass a speaking order under Section 17 (5) of the Customs Act, 1962 within 15 days from the date of receipt of this order and thereafter, to entertain their refund claim filed by the appellant in terms of law.

5. The appeal is disposed off by way of remand.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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