IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/86810/13-Mum

(Arising out of Order-in-Appeal No. BC/514/M-III/2012-13 dated 22.1.2013 passed by Commissioner of Central Excise (Appeals), CBD Belapur)

Desmi Equipments Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Mumbai-III **Respondent**

Appearance:

None for appellant
Shri N.N. Prabhudesai, Superintendent (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Date of Hearing: 20.2.2018
Date of Decision: 20.2.2018

ORDER No. A/85310/2018

When the appeal was called out, none appeared on behalf of the appellant.

2. Shri N.N. Prabhudesai, learned Superintendent (AR) appearing on behalf of Revenue, submits that this appeal was earlier dismissed vide order No.A/88239/17/SMB dated 29.6.2017. Subsequently, the appellant filed an application for restoration of appeal which was registered as E/ROA/92742/17-Mum which was considered by the Bench of this Tribunal and the MA was allowed vide order No.

M/90431/17/SMB dated 27.10.2017, according to which the matter stands remanded to the adjudicating authority.

3. I have carefully considered the submissions made by learned AR and perused the records. I find that this Tribunal in the miscellaneous order dated 27.10.2017, allowed the MA(ROA) of the appellant, wherein the following order was passed:-

> *"Advocate for appellant says that in his absence, the appeal was dismissed since attention of Tribunal could not be drawn to page 21 exhibiting the courier Bill of Entry of DHL appearing therein. Had that been brought to the notice of Tribunal, appellant's case could have been considered.*
>
> *2. Verification of record reveals that proposition of the learned Advocate is correct. This is further evident from para 5(a) of order of learned Commissioner (Appeals). That shows that the same evidence was in dispute.*
>
> *3. The Courier appears to have charged basic duty of 7.5% from appellant in terms of that Bill of Entry, which may be within the knowledge of Customs.*
>
> *4. To resolve the dispute, learned Adjudicating Authority shall make verification of the record of this Bill of Entry from Customs including payment of tax which is forming part of the said Bill of Entry and reach to his conclusion once the genuineness of the document at page 21 is proved and the money has gone into the Treasury. Appellant should get due consideration in the process of readjudication.*
>
> *5. In view of the materials as above borne by record and there is no fresh document introduced as well as there*

> *is apparent mistake from record, the order passed on 29.6.2017 is modified accordingly.*
>
> *6. In the result, MA(ROA) is allowed with above consequence."*

3.1 From the above order, it is observed that the matter has been remanded to the adjudicating authority by modifying the order dated 29.6.2017. However, in the order dated 27.10.2017, the operative portion only disposed of MA(ROA). However, the appeal was not disposed of. This is only a technical error. Considering this position, I dispose of the appeal by way of remand to the adjudicating authority to decide afresh as per the observation made by this Tribunal in the order dated 27.10.2017.

(Pronounced in court)

(Ramesh Nair)
Member (Judicial)

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