

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV**

APPEAL NO. C/172/09

(Arising out of Order-in-Appeal No. 37/2009/MCH/DC/Gr.-III/08-09 dated 03.02.2009 passed by the Commissioner of Customs (Appeals), Mumbai-I.)

CC (Import) Mumbai

Appellant

Vs.

M/s Mahalaxmi Silk House

Respondent

Appearance:

Shri S.R. Nair, E.O. (A.R.)
Shri D.H. Nadkarni, Advocate

for Appellant
for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 30.01.2018

Date of Decision: 30.01.2018

ORDER NO. **A/86449 / 2018**

Per: Ramesh Nair:

This appeal is directed against Order-in-Appeal passed by the Commissioner of Customs (Appeals), Mumbai-I, whereby he passed the following order-

"I have gone through the records of the case. Without going into the merits of the case, I set aside the impugned order. It is directed that the matter may be decided afresh after following principle of natural justice and giving the appellants opportunity to be heard in persons taking into account all the points raised by the appellants and after due verification about the serving of the Order-in-Original as per point no. 6 above, as per date of issue mentioned on the Order-in-Original."

2. Being aggrieved by the Order-in-Appeal, Revenue filed the present appeal on the ground that the Learned Commissioner (Appeals) has no power to remand the matter.

3. Shri S.R. Nair, Learned E.O. (A.R.) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. Shri D.H. Nadkarni, Learned Counsel appearing on behalf of the respondent submits that as per the fact and circumstances of the case, there was no option for the Commissioner (Appeals) to remand the matter to the original Adjudicating Authority for passing afresh order after following the principles of natural justice.

5. On careful consideration of the submissions made by both sides, we find that since the Adjudicating Authority has not complied with the principle of natural justice. Learned Commissioner has no option except to direct the Adjudicating Authority for passing afresh order after following the principle of natural justice. We therefore do not see any infirmity in the direction given by the Learned Commissioner. Accordingly, we disposed of the appeal by way of remand to the Adjudicating Authority for passing a fresh order after taking observation from the order of the Commissioner (Appeals).

(Operative portion of the order pronounced in open Court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)