IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. C/87932/17

(Arising out of Order-in-Appeal no.599 (CRC-IB)/ 2017(JNCH)/Appeal-II dated 31.08.2017 passed by Commissioner of Customs (Appeals-II), Mumbai-II

M/s. Prism Engineering Pvt. Ltd. **Appellant**
Vs.

Commissioner of Customs (Appeals-II) **Respondent**
Nhava Sheva, Raigad

Appearance:

Shri Vinay Ansurkar, Advocate for appellant
Ms Trupti Chavan, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision: 30.05.2018

FINAL ORDER NO A/86900/2018

Per: S.K. Mohanty

This appeal is directed against impugned order dated 31.08.2017 passed by the Commissioner of Customs, Mumbai.

2. Brief facts of the case are that the appellant herein, had filed the bill of entry in respect of the imported goods i.e. "Stock Lot of Unused Hand Tools", by declaring the value of 493.58 USD/MT. However, the department did not accept such declared value and enhanced the value to 900 USD/MT. For

enhancement of such value, no speaking order was passed by the department as contemplated under sub-section (5) of Section 17 of the Customs Act, 1962. Subsequently, the appellant also imported part of the same goods imported earlier and filed the bill of entry on 23/03/2015 before the Customs Authorities for assessment. In respect of the said subsequent bill of entry, the declared value was rejected and the value was enhanced to 900 USD/MT, in terms of earlier bill of entry dated 23.12.2014. However, in respect of the bill of entry dated 23.03.2015, the department had passed speaking order in terms of sub-section (5) of Section 17 *ibid*. On appeal against the assessment order dated 29.05.2015, the learned Commissioner (Appeals) vide order dated 30.10.2015 had allowed the appeal in favour of the appellant, holding that the declared value cannot be enhanced by the department. As a consequence of the said order passed by the Commissioner (Appeals), the appellant herein, had filed refund application before the jurisdictional customs authorities, claiming refund of Rs.30,31,228/-. Out of the total refund claimed amount, the refund sanctioning authority has allowed the refund of Rs.15,72,885/- and rejected the balance claimed amount of Rs.14,58,343/- on the ground that the appellant did not file any appeal against the assessed bill of entry dated 23.12.2014. Being aggrieved, the appellant had filed appeal before the Commissioner (Appeals). The appeal was rejected vide the impugned order, in upholding the stand taken in the adjudication order. The operative portion of the impugned order are extracted herein below:

> **“**9.2. It is on record that appellant never filed any appeal against the above said decision of enhancing the value by the assessing officer in Bill of Entry No. 7787561 dated 23.12.2014. The appeal filed by the appellant before Commissioner (Appeals) was against adjudication order rejecting the assessable value declared by the appellant in their another Bill of Entry no. 8686502 dated 23.03.2015.
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> 9.3 Appellant did not choose to exercise the statutory right of appeal against assessment order of Bill of Entry No. 7787561 dated 23.12.2014. Therefore it is not open to the Appellant to question the correctness of the reassessment subsequently by filing a claim for refund on the ground that assessing officer had committed an error in enhancing the value of goods.
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> 9.4 It has also been observed by the Apex Court in the case of M/s Priya Blue Industries Ltd. vs Commissioner of Customs-2004(172) ELT 145(SC) that once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands, and refund contrary to assessment order is not maintainable. To the same effect is Hon’ble Supreme Court decision in case of Flock (India) Pvt. Ltd. – 2000(120) ELT 285(SC). Hence I hold that the original authority has rightly rejected the refund claim.**”**

3. The Learned Advocate appearing for the appellant submits that the request made by the appellant regarding passing of speaking order in terms of sub-section (5) of Section 17 of the Act has not been adhered to by the department and as such, rejection of refund claim by the authorities below on the sole ground that the bill of entry dated 23.12.2014 has not been appealed against, cannot be sustained. He further submits that

since the specific request of the appellant regarding the speaking order in respect of enhancement of the declared value as per bill of entry No. 7787561 dated 23.12.2014 has so far not been considered, the matter should go back to the original authority for passing of speaking order in respect of the said bill of entry.

4. On the other hand, the Learned D.R. appearing for revenue reiterates the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. In this case, the appellant had declared the value of 493.58 USD/MT in respect of the goods imported by him for the purpose of assessment of duty liability. The value declared in the bill of entry no. 7787561 dated 23.12.2014 was enhanced by the assessing authority, without considering the mandates of sub-section (5) of Section 17 *ibid*, which provides that where re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer, then the proper officer shall pass a speaking order on the re-assessment within the stipulated timeframe. It is an undisputed fact that in respect of enhancement of the declared value, the proper officer had not passed any speaking order in respect of the bill of entry dated 23.12.2014. Since the Customs statute specifically mandates for passing of a speaking order by proper officer, which admittedly

has not been done in this case, I am of the view that before addressing the issue, whether refund claim is maintainable, the matter should go back to the original authority, in the interest of justice, for passing of a detailed speaking order, indicating the reason/ground for rejection of the declared value.

7. The ratio of the judgments relied upon by the learned Commissioner (Appeals) in the impugned order is entirely on different set of facts, inasmuch as, in those decided cases, there were final assessment orders, which were not appealed against by the parties; and instead, refund applications were preferred. Whereas, contrary is the situation in the case in hand, inasmuch as, the statutory provisions contained in sub-section (5) of Section 17 *ibid* has not been complied with by the proper officer of Customs in passing the speaking order.

8. In view of the foregoing discussions and analysis, after setting aside the impugned order, the appeal is allowed by way of remand to the original authority. The Original authority should pass the speaking order in terms of sub-section (5) of section 17 *ibid*, preferably within a period of 3 months from the date of receipt of this order. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

9. In the result, the appeal is allowed by way of remand.

(Order dictated in Court)

(S.K.Mohanty)
Member (Judicial)

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