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

APPEAL No.C/128/12

(Arising out of Review Order No.09-R/2011 dated 05/01/2012 passed by the Committee of Chief Commissioner of Customs, Mumbai Zone I & II)
(Order-in-Original No.71/2011/CAC/CCF(I)/SHH/Gr.VA dated 19/10/2011)

Commissioner of Customs (Imports) : **Appellant**

VS

M B Patil Construction Ltd., : **Respondent**

Appearance

Ms.P.V. Sekhar, Jt. Comm. (AR) for Appellant
None for respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Date of hearing : 16/07/2018
Date of pronouncement : 16/07/2018

ORDER NO.87207/2018

Per : **C.J. Mathew**

Revenue is in appeal against order-in-original no.71/2011/CAC/ CC(I)/SHH/Gr.VA dated 19/10/2011 of Commissioner of Customs (Imports), Mumbai, which has confirmed differential duty demanded in the show-cause notice under section 28A of Customs Act, 1962 besides confiscating the imported goods and imposing penalty on the respondent. The grievance of Revenue is that the amount paid by respondent earlier had not been appropriated in the impugned order.

2. None appeared for the respondent.

3. We have perused the record of appeal seeking modification of the impugned order and heard the submissions of Learned Authorized Representative

4. From the facts of the case, it appears that Rs.35,00,000/- had been paid by the respondents on 10th May 2010 and 12th April 2010 which, though referred to in the impugned order, did not find mention in the operative portion. The respondent has not sought return of said amount and consequence of an adjudication order that has not been appealed against is the recovery of the confirmed amount but for such as already recovered. The need for a separate order of appropriation, as presesented by the competent reviewing authority, is not necessary as the differential duty has been confirmed in full and part of amount so confirmed has already been paid towards the deferential duty *sans* any appeal. The relief sought is infructuous. For this reason, we dismiss the appeal.

(Pronounced and dictated in Court)

(Anil Choudhary)
Member (Judicial)

(C.J Mathew)
Member (Technical)

PJ