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

APPEAL NOS: C/113 & 114/2011

[Arising out of Order-in-Appeal No: 17 & 18 (Gr. VA)/2011 (JNCH)/Imp-10 & 11 dated 18th of January 2011 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

Ramesh Bearing Enterprise … ***Appellant***

versus

Commissioner of Customs (Import)
Nhava Sheva …***Respondent***

<u>*Appearance*</u>*:*

Shri CM Sharma, Consultant for appellant

Ms Trupti Chauhan, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 11/07/2018
Date of decision: 11/07/2018

ORDER NO: A/ 87781-87782/2018

Per: C J Mathew

The resolution of the dispute of M/s Ramesh Bearing Enterprise in these two appeals against order-in-appeal no. 17 & 18 (Gr. VA)/2011 (JNCH)/Imp-10 & 11 dated 18th of January 2011 of Commissioner of Customs (Appeals), Nhava Sheva lies within the narrow compass of compliance with the statutory prescription in section 129A(3) of Customs Act, 1962 as their appeals before the first appellate authority has been dismissed without going into the merits merely on the ground of jurisdiction.

2. It is, therefore, unnecessary for us to record the submissions made by Learned Consultant on behalf of the appellant and by the Learned Authorised Representative.

3. The impugned order has found that the appeals had been filed against the duty liability determined in bill of entry no. 747370/04.11.2009 and no. 770237/19.11.2009 after a lapse of more

than 90 days following the assessment and, hence, beyond his legal competence to entertain. It is settled law that an assessed bill of entry can be appealed against. However, the relevant date, in the context of amendment to section 17 of Customs Act, 1962, by Act 8 of 2011 in section 38 with effect from 8th April 2011 mandating that

> *'(5) Where any re--assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any no notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.'*

could no longer be the date of assessment as prevailing till then and applied by the first appellate authority.

4. Unlike the scheme of assessment prevailing till then, re-assessment, when self-assessment is disagreed with by the proper officer, would be completed only with the issue of a speaking order. It was incumbent upon the proper officer to issue the mandatory speaking order which, combined with the re-assessment in the bill of entry, constitutes the cause of action or appealable order. The failure on the part of the proper officer to comply with the legal provisions cannot be held to the detriment of the importer.

5. Moreover, even assuming a determined obduracy on the part of the proper officer to defy this legal requirement, the period stipulated for issue of such speaking order is fifteen days from the date of re-assessment. It has been noted by the first appellate authority that the appeals were filed on the 91st and 105th day from the date of assessment which, in the present instance, is re-assessment. The appeals would certainly be within the period permitted for doing so if the relevant date is construed as date on which the re-assessment is deemed to be completed with the expiry of the period stipulated for issue of speaking order.

6. Even by such construing, the first appellate authority would continue to be bereft of the wisdom that prompted the 'proper officer' to discard self-assessment and to re-assess the imported goods. Hence, a remand to the first appellate authority to proceed with disposal on merits would serve no purpose but would also be tantamount to abetting in deliberate defiance of the legal mandate on the part of the original authority. Such casual disregard of the legal obligations, often prompted by intent to shirk responsibility, should not be encouraged, at least, by this appellate authority.

7. Accordingly, we set aside the impugned order as well as the assessments in the bills of entry and remand the matter back to the original authority to rectify the breach of law and issue a speaking

order justifying the decision to re-assess the goods within fifteen days of receipt of this order.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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