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

Appeal No. C/228/2010

(Arising out of Order-in-Appeal No. 526 to 529 (Gr.IV)/2009(JNCH)/IMP-155 to 158(w.e.f 01.07.2009) dated 30.09.2009 passed by Commissioner of Customs (Appeals), Nhava Sheva, Raigad)

Commissioner of Customs JNCH, Nhava Sheva	**Appellant**

Vs.

Nico Extrusions Pvt. Ltd.	**Respondent**

Appearance:

Shri C. Singh Asst. Commr (AR)	for appellant
Shri Bharat Raichandani, Advocate	for respondent

CORAM:

Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing/Decision: 08.08.2018

FINAL ORDER NO. **A/88268 / 2018**

Per: S.K.Mohanty

Revenue is in appeal against the impugned order dated 30.09.2009 passed by the Commissioner of Customs (Appeals), Raigad.

2. Brief facts of the case are that the respondent had filed various Bills of Entry for clearance of imported consignments of

"Aluminium Scrap" of different grades under DEEC Scheme, claiming duty exemption provided under Notification No.93/2004 dated 10.09.2004. The said goods were examined on First Check basis and it was observed by department that the declared unit price is too low and accordingly, the declared value was rejected and the value was enhanced as per the available data. Feeling aggrieved by the assessed Bills of Entry, the respondent had filed appeals before the learned Commissioner (Appeals), which were disposed of vide impugned order, holding that since the respondent was importing huge quantity of same kind of goods from the same supplier, the negotiated contract price declared for the purpose of assessment should be considered as the correct value. It has further been held that in support of enhancement of the declared value, no speaking order was passed by the proper officer. With the said observations, the assessment made on the Bills of Entry were set aside.

3. Revenue has contended that since no speaking order was passed, the matter should have been remanded by the learned Commissioner (Appeals) to the assessing officer. Thus, setting aside the assessment is not proper and justified. It has further been stated in the grounds of appeal that the impugned order is not sustainable inasmuch as the respondent's representative / CHA was shown the contemporaneous import and value was

enhanced with its consent; thus, setting aside the assessment orders is not legally sustainable.

4. Learned D.R. appearing for Revenue reiterated the submissions made in the grounds of appeal.

5. On the other hand, learned Advocate appearing for the respondent supported the findings recorded in the impugned order and further submitted that since no speaking order was passed by the proper officer in terms of Section 17(5) of the Customs Act, 1962 in re-determining the transaction value, setting aside the assessment orders by the learned Commissioner (Appeals) is sustainable. He further submitted that in the case of the respondent, this Tribunal vide orders No. S/585/2012 dated 05.03.2012, S/1186/12/CSTB/C-I and A/85470-85471/2018 dated 08.03.2018, has dismissed the appeal filed by Revenue on the ground that no speaking orders were passed in enhancing the declared value.

6. Heard both sides and perused the records.

7. It is an admitted fact on record that the assessing authority had enhanced the declared value, without considering the facts such as, huge quantity of same goods imported by the respondent under contract and no contemporaneous import of

the higher values were brought on record. Further, while enhancing the value, no speaking order was passed by the authorities. Therefore, direction for reassessing the Bills of Entry by the learned Commissioner (Appeals) is legally sustainable under such circumstances. Setting aside the assessment orders passed on the Bills of Entry is proper and justified. We also find that this Tribunal, in the above referred cases has dismissed the stay applications as well as the appeals filed by Revenue, holding that the requirement of Section 17(5) of the Act have not been complied with in re-determining of the transaction value.

8. Therefore, we do not find any infirmity in the impugned order passed by the learned Commissioner (Appeals). Accordingly, appeal filed by Revenue is dismissed.

(operative part pronounced in Court)

(C.J. Mathew)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

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