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

Appeals No. C/997, 998, 999/2010 & 50/2011

(Arising out of Order-in-Appeal No. 270 & 273 (Gr. – IV)/2010 (JNCH)/IMP-253 & 256 dated 28.09.2010 passed by Commissioner of Customs (Appeals), JNCH, Raigad)

Commissioner of Customs(Import) **Appellant**
JNCH, Nhava Sheva, Raigad

Vs.

Respondent

M/s ABB Ltd.

<u>Appearance:</u>

Shri R. Kumar, Asst. Commr (AR) for appellant
Shri T. Vishwanathan, Advocate for respondent

<u>CORAM:</u>

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/88264-88267/2018**

Per: S.K.Mohanty

Revenue has preferred these appeals before this Tribunal against the impugned orders dated 28.09.2010 passed by the Commissioner of Customs (Appeals), Mumbai II.

2. Brief facts of the case are that the respondent herein had filed four Bills of Entry for clearance of imported consignment namely "Cold Rolled Grain Oriented Electrical Steel Sheet, Grade

M-4 and Grade M-5". The declared transaction values were discarded and goods were assessed @ US $ 3400 PMT on the basis of contemporaneous imports. In respect of one of the Bills of Entry No. 654345 dated 29.08.2009, the department issued a query memo, calling upon the respondent to justify the value declared in the Bill of Entry vis-à-vis the value of similar goods imported from the same shipper at a higher value. Pursuant to such memo, the respondent had explained that the products in question imported by it are major raw material; that the goods were supplied at the negotiated price and the quantity imported was comparatively higher than those imported by other importers. However, the explanation furnished by the respondent was not accepted by the department and the goods were assessed on the basis of contemporaneous imports. The respondent had paid the assessed duty and cleared the consignment. Similarly in respect of other Bills of Entry Nos.654345 dated 29.08.2009, 652326 dated 28.08.2009 were assessed @ USD 3400 PMT and Bill of Entry No.698599 dated 29.08.2009 was assessed @ USD 3100 PMT. Feeling aggrieved with the assessment done on the above four Bills of Entry, the respondent had preferred appeals before the learned Commissioner (Appeals), which were disposed of vide common impugned order dated 28.09.2010, holding that though the assessing officer is empowered to raise doubt on the truth or accuracy of the declared value under Rule 12 of the Customs

Valuation Rules, 2007, but in absence of a written consent from the respondent for assessment atenhanced value, the assessing officer was required to pass speaking officer within 15 days from the date of such assessment. Since no speaking order was passed under Section 17(5) of the Act and the basis of enhancement of the value has not been declared, enhancing the value of the goods assessed under the subject Bills of Entry were set aside and the appeals were allowed in favour of the respondent by the learned Commissioner (Appeals). Revenue has assailed the impugned order on the ground that since the importer had paid the enhanced duty without any protest before taking delivery of the goods, there was no need for issuance of any speaking order under Section 17(5) of the Act. It has also been contended that similar/identical goods were imported through JNCH, Nhava Sheva by M/s A.K. Steel, which were imported from USA and the supplier of the goods was also the same. Thus, Revenue contended that the value was properly enhanced on the basis of contemporaneous imports.

3. Heard both sides and perused the records.

4. On perusal of the case records, we find that the submissions made by respondent, pursuant to the query memo dated 29.08.2009, justifying the declared value of the imported goods was not considered and the Bills of Entry were assessed

on the basis of contemporaneous imports. It is evident from the available records that no consent letter was given by the respondent for assessment of the subject Bills of Entry at enhanced value. Thus, under such circumstances, the proper assessing officer was under statutory obligation to pass of speaking order on the reassessment done, which is contrary to the self assessment done by the importer. Admittedly, in this case, the provisions of Section 17(5) have not been complied with by the department and thus, the declared value cannot be enhanced arbitrarily. Hence, we do not find any infirmity in the impugned orders, so far as enhancement of value in the assessed Bills of Entry were set aside by the learned Commissioner (Appeals).

4. In view of the above, we do not find any merits in the appeals filed by Revenue. Accordingly, the same are dismissed.

(operative part pronounced in Court)

(C.J. Mathew)
Member (Technical)

(S.K.Mohanty)
Member (Judicial)

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