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

APPEAL NO: C/85762/2013

[Arising out of Order-in-Appeal No: 680 (Gr.VA) 2012 MISCH/ JNCH/IMP-577 dated 15th November 2012 passed by the Commissioner of Customs (Appeals), Nhava Sheva, 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

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Saimehar Industries … ***Appellant***

versus

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

Appearance:

Ms Pooja Reddy, Advocate for appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

CORAM:

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

Date of hearing:	**14/03/2019**
Date of decision:	**14/03/2019**

ORDER NO: A/85527 / 2019

Per: C J Mathew

This appeal lies against order-in-appeal no. 680 (Gr.VA) 2012 MISCH/ JNCH/IMP-577 dated 15th November 2012 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II which itself is an appeal filed against the assessment in bill of entry no. 882700/05.05.2009 for clearance of 'outdoor unit of split air conditioner' with a declared value of ₹ 8,39,130/-. The appellant had, *vide* letter dated 21st May 2009, sought for issue of order-in-assessment which has not been responded to. In the meanwhile, an appeal had been preferred before the first appellate authority which was rejected for failing to comply with the statutory prescription of filing within sixty days from the date of receipt of order. Upon appeal before the Tribunal, the matter was remanded back to the first appellate authority to decide the issue on merits. The impugned order has merely found that the duty liability had been discharged by the appellant without any protest and, therefore, enhancement of value could not be disputed before the appellate authority.

2. We have heard Learned Counsel for appellant and Learned Authorised Representative.

3. It is on record that the original authority did not issue the order of assessment prescribed in section 17 of Customs Act, 1962 despite the letter dated 21st May 2009. In the absence of this statutory compliance, the first appellate authority could not have decided the appeal on merits. That authority should, therefore, have appropriately granted relief of directing the original authority to issue an order-in-assessment. That was the implied direction in the order of the Tribunal during the first round.

4. As the merit of the issue cannot be decided in the absence of any justification offered by the original authority for enhancement of value in accordance with section 14 of Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, we set aside impugned order and direct the original authority to discharge this obligation by issue of appropriate order-in-assessment justifying the enhancement of value.

5. The appeal is accordingly allowed.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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