CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 86302 of 2013

(Arising out of Order-in-Appeal No. 775 (Gr.VI)/2012 (JNCH)/IMP-640 dated 28.12.2012 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s. Mattel Toys (India) Pvt Ltd **…..Appellant**
Pheonix Hour, B-Wing,
4th floor, 462, Senapati Bapat Marg,
Lower Parel, Mumbai

Vs.

Commissioner of Customs(I), Nhava Sheva **…..Respondent**
Jawaharlal Nehru Customs House, Nhava Sheva,
Taluka-Uran, Dist. Raigad

APPEARANCE:

Shri Rajan Mishra, Advocate for the appellant
Shri AP Kothari, Addl.Comm (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER No: A/85976 / 2019

DATE OF HEARING : 17.05.2019
DATE OF DECISION : 17.05.2019

PER: C J MATHEW

This appeal arises from order-in-appeal no. 775 (Gr.VI)/2012 (JNCH)/IMP-640 dated 28th December 2012 of Commissioner of Central Excise (Appeals), Jawaharlal Nehru Customs House, Nhava

Sheva by which the order of original authority was directed comply with the procedure prescribed in section 17(6) of Customs Act, 1962.

2. Learned Counsel informs us that appellant had filed bill of entry no. 4623011/13.9.2011 for clearance of a consignment of ‘toy rocker’ seeking classification under heading no. 95030090 of First Schedule to the Customs Tariff Act, 1975. Not content with this claim, the assessing officer reclassified the goods under 94038900 of First Schedule to the Customs Tariff Act, 1975 and consequent differential duty. According to him, the goods are miniature version of furniture that was intended for use as such but only for amusement despite which the lower authorities were convinced that the size would not have an impact on the classification of the goods.

3. We find from the impugned order that, despite the change in classification, the original authority had failed to issue a speaking order envisaged in section 17 of Customs Act, 1962 within the stipulated time. We also take note that the classification of such goods has been determined by Hon'ble Supreme Court in *OK Play (India) Ltd v. Commissioner of Central Excise, Delhi III, Gurgaon 2005 (180) ELT 300 (SC).*

4. We have heard Learned Authorised Representative.

5. It is seen from the bill of entry that despite alteration of classification by the assessing officer, the description of the goods remained unaltered as ‘plastic toys.’ Therefore, there can be no doubt that the goods in question were toys and intended for use as toys for amusement of infants. Had it been otherwise, a separate description should have been entered by the proper officer of customs. In the absence of such, we conclude that the miniature version of the goods are toys. The failure to issue a speaking order is also inconsistent with the statutory obligation that devolves on the assessing officer. In these circumstances, the direction of the first appellate authority to subject the assessment to proceedings under section 17(6) of Customs Act, 1962 is not legal and proper for being tantamount to approval the breach of law by the assessing officer. Considering the above, we set aside the impugned order and allow the appeal with consequential relief.

(Operative part pronounced in Court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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