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

APPEAL NO.C/86455/2013

(Arising out of Order-in-Original/ Appeal No.783/(GR.IV)2012 (JNCH)/2012-IMP-648 dated 28.12.2012 passed by the Commissioner of Customs (Appeals), JNPT, Nhava Sheva)

CC (IMPORT) NHAVA SHEVA : **Appellant**
Jawaharlal Nehru Custom House,
Post Uran, District Raigad,
Sheva – 400 707

VS

I-TECH CORPORATION : **Respondent**
Yogeshwar Angan Shop No.2,
Bldg. No.26,
Vichumbe, Panvel – 410 206

Appearance

Shri Dharmendra Singh, Supdt. AC(AR) for Appellant

None for Respondent

CORAM:

Hon'ble P. Anjani Kumar (Technical)
Hon'ble Ajay Sharma, Member (judicial)

FINAL ORDER NO. A/86395/2019

Date of hearing : 15.04.2019
Date of decision : 15.04.2019

Per : **Shri P. Anjani Kumar (Technical)**

This Appeal is by Revenue. Briefly stated the facts of the case are that M/s Hi-tech Corporation has imported a consignment of 19200 Kg of HSS Drills at the rate of 2 pound/Kg. The assessing authority did not accept the value declared and have enhanced the value declared. Being aggrieved by the assessment dated 24.12.2011 in respect of Bill of Entry No.5500405 dated 19.12.2011, the importer filed an appeal before Commissioner (Appeals). Commissioner (Appeals) vide his order dated 28.12.2012 has remanded the case back to the original authority ordering audit under Section 17(6) of the Customs Act, 1962.

2. Revenue has filed the present appeal against OIA on the following grounds :

i) Section 17(6) is envisaged to cope up with a situation arising due to the self-assessment plus OSPCA, which apply to the importer under the accredited client programme (ACP).

ii) If the direction of the Commissioner of Customs (Appeals) is complied with it will lead to pass a new order, by an authority of the same rank on an issue decided by an equivalent officer.

iii) As per the provisions of Section 17 (5) of Customs Act, 1962, in such cases where re-assessment is contrary to the self-assessment, except where the importer confirms his acceptance in writing, the proper office is mandated to pass a speaking order within 15 days.

iv) On an appeal filed by the Appellants consequent to the loading of the value by the Assessing Officer, Commissioner Appeals should have passed an order on merits of the case.

3. None for the Appellant. Learned A.R. for the department reiterated the grounds of the appeal.

4. Heard the Learned AR and perused the records of the case. On going through the records of the case, it is seen that the value of the goods imported vide Bill of Entry No. 5500405 dated 19/12/2011 has been increased and the Respondents have cleared the goods by paying duty of Rs.8,59,459. However, it is not clear as to whether the Respondent have contested the loading of the value or whether duty has been paid under protest. Further, it is not coming forth by records whether the provisions of Section 17(5) of the Customs Act, 1962 have been complied with or otherwise. We see that Section 17(6) reads as "*where reassessment has not been done or a speaking order has not been passed on reassessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed*".

5. From a plain reading of the provisions of Section 17(6) give an understanding that the same would be necessitated when reassessment has not been done or when a speaking order has not been passed on reassessment. There is certainly a change in the value initially declared and the value on which duty was paid and goods were given out of charge. However, it appears that as the respondent is not satisfied with the value adopted, they filed an appeal. Understandably, if the value has been changed by the respondents themselves, there would be no cause for an appeal which would have been against their own assessment as the self-assessment regime is under place. It can only be inferred that that department has gone in to the value of the imported goods and has enhanced the same. Therefore, it can be deemed that there was a reassessment, understandably, without following the procedure.

6. Under the circumstances, conducting audit would not serve any purpose and would result in absurd situation as contended by Revenue. We find that the situation envisaged under Section 17(6) is not applicable to such circumstances. Understandably the Section provides for post clearance audit, whereas in the instant case re-assessment appears to have been done by the department. The Respondent has accepted the loading and cleared the goods on payment of duty. It is not forthcoming from the records whether the Respondents have accepted the re-assessment or asked for a speaking order before the clearance of the goods. Therefore, the only re-course available for the Respondent under the circumstances was to prefer an appeal before the Commissioner Appeals which has been duly done. Under the circumstances Learned Commissioner Appeals should have decided the issue on merits instead of directing the Assessing Officer to take recourse to audit. As contended by the department such an action would have let to absurd situation of auditing a Bill of Entry which has been understandably re-assessed. Therefore, we find that the Learned Commissioner Appeals has erred in giving such a direction. The impugned order is not sustainable to that extent.

7. In view of the above, the appeal filed by the department is allowed by way of remand to the Commissioner Appeals with a direction to decide the issue on merits.

(Dictated & pronounced in open Court)

(Ajay Sharma) **Member (Judicial)**	**(P. Anjani Kumar)** **Member (Technical)**

HM