CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Customs Appeal No. 86531 of 2013

(Arising out of Order-in-Appeal No. 23(GR.IV)/2013 (JNCH)/IMP-22 dated 30.01.2013 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

M/s. Faiz & Company **Appellant**
75, Abdul Rehman Street,
Mumbai 400 003.

Vs.

Commissioner of Cus. (Imp.), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad, Sheva 400 707.

WITH

Customs Appeal No. 86532 of 2013

(Arising out of Order-in-Appeal No. 22(GR.IV)/2013 (JNCH)/IMP-21 dated 30.01.2013 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

M/s. Faiz & Company **Appellant**
75, Abdul Rehman Street,
Mumbai 400 003.

Vs.

Commissioner of Cus. (Imp.), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad, Sheva 400 707.

Appearance:

Shri J.H. Motwani, Advocate, for the Appellant
Ms. Trupti Chavan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/**87270-87271/2019**

Date of Hearing: 03.10.2019
Date of Decision: 03.10.2019

PER: SANJIV SRIVASTAVA

These appeals are directed against order in appeal No 22(GR. IV)/2013 (JNCH)/IMP-22 dated 30.01.2013 & 23(GR. IV)/2013 (JNCH)/IMP-22 dated 30.01.2013 of the Commissioner (Appeals), Mumbai II, JNCH, Nhava Sheva. By the impugned orders, the Commissioner (Appeals) has held as follows:

"I modify the order of assessment in the impugned Bill of Entry No 6555239 dated 16.04.201 and order for auditing under section 17(6) by the proper officer, as per procedure prescribed. The appeal no F. No S/41-203/2012-Misc JNCH (F. No S/41-635/2012-Misc JNCH) filed by the appellant is disposed of in the above terms."

2.1 Appellants filed a

- Bill of Entry No 5482886 dated 16.12.2011 for clearance of High Speed Solid/ Copper Wire Scrap; &
- Bill o Entry No 6555239 dated 16.04.2012 for clearance of High Speed Steel Grinding Dust.

2.2 The declared value was not accepted by assessing officer and was enhanced. The said enhancement was done without issuance of an speaking order as required by the assessing officer.

2.3 Against the assessment order, enhancing the declared value, appellants preferred an appeal before the Commissioner (Appeal).

2.4 The appeals was disposed by the Commissioner (Appeals) as per impugned order referred in para 1, supra. Aggrieved by the order of Commissioner (Appeals), Appellants have filed this appeal.

3.1 We have heard Shri J H Motwani, Advocate for the Appellant and Ms Trupti Chavan, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellants, learned Counsel admitted that the issue has not been considered by the Assessing/Adjudicating

Authority or the Commissioner (Appeals) on merits. While the assessing authority has enhanced the value without a speaking order, Commissioner (Appeals), has directed the matter back to proper officer for the audit of assessment made.

3.3 Arguing for the Revenue, learned Authorized Representative reiterated the findings recorded in the impugned order.

4.1 We have considered the impugned order with submissions made in appeal and during the course of arguments.

4.2 Section 17 of The Customs Act, 1962 reads as follows:

"SECTION 17. Assessment of duty. –

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such assessment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter

regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re- assessment, 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.

Explanation.- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

4.3 From the scheme of Section 17 ibid it is quite evident that Assessing Officer, on re-assessment was required to pass a speaking order, in terms of sub-section (5) specifying the grounds for such reassessment. In the present case Commissioner (Appeal) has while setting aside the order of reassessment directed the audit as per Section 17(6) ibid. In our view Commissioner (Appeal) could not have directed such an audit in terms of sub section (6) because audit as contemplated is the internal function of the revenue, for purpose of safeguarding the revenue, in case where re-assessment has been done by way of speaking order or otherwise. In appeal Commissioner (Appeal) could have remanded the matter for a speaking order to be passed in terms of sub section (5) by the assessing officer.

4.4 Without going into the merits of the issues raised in the appeals, we remand the matter to the assessing officer for re-consideration and disposing of the matter with a speaking order as per sub-section (5) of Section 17 of Customs Act, 1962.

5.1 In view of above, appeals are allowed and matter remanded to the Adjudicating/Assessing Officer for passing a speaking order under Section 17(5) of the Customs Act, 1962. Needless to say that Adjudicating/Assessing officer shall dispose of the matter within six months of receipts of this order after allowing opportunity of hearing to the appellants.

(Order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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