

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85593 of 2020

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1351 to 1362-2019/2020 dated 12.03.2020 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

V. K. Impex

.... Appellant

Flat No.335A, Janta DDA Flats, Ground Floor,
Gazipur Near Kamal Hotel, Gazipur, Delhi-110096.

Versus

**Commissioner of Customs Import, ...Respondent
Mumbai (Air Cargo Import)**

Air Cargo Complex, Sahar, Andheri (E),
Mumbai-400009.

WITH

(i) Customs Appeal No. 87178 of 2021 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-670 to 686-2019/2020 dated 29.11.2019 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

(ii) Customs Appeal No. 87195 of 2021 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-375 to 388-2020/2021 dated 18.09.2020 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

(iii) Customs Appeal No. 87233 of 2021 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1101 to 1124-2019/2020 dated 15.01.2020 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

(iv) Customs Appeal No. 85594 of 2020 (V.K. Impex);

(v) Customs Appeal No. 85595 of 2020 (V.K. Impex);

(vi) Customs Appeal No. 85596 of 2020 (V.K. Impex);

(vii) Customs Appeal No. 85597 of 2020 (V.K. Impex);

(viii) Customs Appeal No. 85598 of 2020 (V.K. Impex);

(ix) Customs Appeal No. 85599 of 2020 (V.K. Impex);

(x) Customs Appeal No. 85600 of 2020 (V.K. Impex);

(xi) Customs Appeal No. 85601 of 2020 (V.K. Impex);

(xii) Customs Appeal No. 85602 of 2020 (V.K. Impex);

(xiii) Customs Appeal No. 85603 of 2020 (V.K. Impex);

(xiv) Customs Appeal No. 85604 of 2020 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1351 to 1362-2019/2020 dated 12.03.2020 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

(xv) Customs Appeal No. 87179 of 2021 (V.K. Impex);

(xvi) Customs Appeal No. 87180 of 2021 (V.K. Impex);

(xvii) Customs Appeal No. 87181 of 2021 (V.K. Impex);

(xviii) Customs Appeal No. 87182 of 2021 (V.K. Impex);

(xix) Customs Appeal No. 87183 of 2021 (V.K. Impex);

(xx) Customs Appeal No. 87184 of 2021 (V.K. Impex);

(xxi) Customs Appeal No. 87185 of 2021 (V.K. Impex);

(xxii) Customs in Appeal No. 87186 of 2021 (V.K. Impex);

(xxiii) Customs Appeal No. 87187 of 2021 (V.K. Impex);

(xxiv) Customs Appeal No. 87188 of 2021 (V.K. Impex);

(xxv) Customs Appeal No. 87189 of 2021 (V.K. Impex);

(xxvi) Customs Appeal No. 87190 of 2021 (V.K. Impex);

(xxvii) Customs Appeal No. 87191 of 2021 (V.K. Impex);

(xxviii) Customs Appeal No. 87192 of 2021 (V.K. Impex);

(xxix) Customs Appeal No. 87193 of 2021 (V.K. Impex);

(xxx) Customs Appeal No. 87194 of 2021 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-670 to 686-2019/2020 dated 29.11.2019 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

(xxxi) Customs Appeal No. 87196 of 2021 (V.K. Impex);

(xxxii) Customs Appeal No. 87197 of 2021 (V.K. Impex);

(xxxiii) Customs Appeal No. 87198 of 2021 (V.K. Impex);

(xxxiv) Customs Appeal No. 87199 of 2021 (V.K. Impex);

(xxxv) Customs Appeal No. 87200 of 2021 (V.K. Impex);

(xxxvi) Customs Appeal No. 87201 of 2021 (V.K. Impex);

(xxxvii) Customs Appeal No. 87202 of 2021 (V.K. Impex);

(xxxviii) Customs Appeal No. 87203 of 2021 (V.K. Impex);

(xxxix) Customs Appeal No. 87204 of 2021 (V.K. Impex);

(xxxx) Customs Appeal No. 87205 of 2021 (V.K. Impex);

(xxxxi) Customs Appeal No. 87206 of 2021 (V.K. Impex);

(xxxxii) Customs Appeal No. 87207 of 2021 (V.K. Impex);

(xxxxiii) Customs Appeal No. 87208 of 2021 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-375 to 388-2020/2021 dated 18.09.2020 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

(xxxxiv) Customs Appeal No. 87212 of 2021 (V.K. Impex);

(xxxxv) Customs Appeal No. 87213 of 2021 (V.K. Impex);

(xxxxvi) Customs Appeal No. 87214 of 2021 (V.K. Impex);

(xxxxvii) Customs Appeal No. 87215 of 2021 (V.K. Impex);

(xxxxviii) Customs Appeal No. 87216 of 2021 (V.K. Impex);

(xxxxix) Customs Appeal No. 87217 of 2021 (V.K. Impex);

(xxxxx) Customs Appeal No. 87218 of 2021 (V.K. Impex);

(xxxxxi) Customs Appeal No. 87220 of 2021 (V.K. Impex);

(xxxxxii Customs Appeal No. 87221 of 2021 (V.K. Impex);

(xxxxxiii) Customs Appeal No. 87222 of 2021 (V.K. Impex);

(xxxxxii) Customs Appeal No. 87223 of 2021 (V.K. Impex);

(xxxxxiii) Customs Appeal No. 87224 of 2021 (V.K. Impex);

(xxxxxiv) Customs Appeal No. 87225 of 2021 (V.K. Impex);

(xxxxxv) Customs Appeal No. 87226 of 2021 (V.K. Impex);

(xxxxxvi) Customs Appeal No. 87227 of 2021 (V.K. Impex);

(xxxxxvii) Customs Appeal No. 87228 of 2021 (V.K. Impex);

(xxxxxviii) Customs Appeal No. 87229 of 2021 (V.K. Impex);

(xxxxxix) Customs Appeal No. 87230 of 2021 (V.K. Impex);

(xxxxxxx) Customs Appeal No. 87231 of 2021 (V.K. Impex);

(xxxxxxxi) Customs Appeal No. 87232 of 2021 (V.K. Impex);

(xxxxxxxii) Customs Appeal No. 87233 of 2021 (V.K. Impex);

(xxxxxxxiii) Customs Appeal No. 87234 of 2021 (V.K. Impex);

(xxxxxxxiv) Customs Appeal No. 87235 of 2021 (V.K. Impex);

(xxxxxxxv) Customs Appeal No. 87236 of 2021 (V.K. Impex);

(Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-1101 to 1124-2019/2020 dated 15.01.2020 passed by the Commissioner of Customs (Appeals) Import, ACC, Mumbai)

Appearance:

Shri Ashok Singh, Advocate for the Appellants

Shri Manoj Kumar, AC, Auth. Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85738-85804/2022

Date of Hearing: 12.07.2022

Date of Decision: 12.07.2022

Per: S.K. MOHANTY

The issue involved in all these appeals is identical and accordingly, with the consent of both sides, these appeals are taken up for hearing together and a common order is being passed.

2. Briefly stated the facts of the case are that the appellants M/s V.K. Impex had imported Cut Orchid Flowers (Dendrobium Hybrid) in various varieties and colours mainly from Thailand through Air Cargo Complex, Sahar, Andheri (E), Mumbai and filed Bills of Entry before the jurisdictional

Customs authorities, for release of the same. On perusal of the import documents, the Department entertained a view that the flowers were undervalued. Since the fresh flowers were perishable in nature, the appellant had deposited the extra duty demanded by the Department and cleared the consignment. In this case, the proper officer did not pass any speaking order in respect of the clearance of the consignments in terms of Section 17 of the Customs Act, 1962. Upon payment of the duty on the basis of Kachcha Bills of Entry, the appellants had filed the appeals before the learned Commissioner (Appeals). The appeals filed by the appellants were disposed off vide the impugned orders, where the learned Commissioner (Appeals) has held that the Department had sufficient reason to reject the declared value, however, vide the impugned orders, the cases of the appellants were remanded to the adjudicating authority for observing the principles of natural justice.

3. The appellants have filed appeals against the impugned order contending inter alia that no consent has been given by the appellants in writing accepting their liability for payment of differential duty on account of valuation of the imported flowers; no market survey report was provided by the Department to the appellants; the Commissioner (Appeals) could not have relied upon any submissions of the Revenue behind back of the appellant for furnishing copy of such relied upon evidence. Accordingly, the appellants prayed for deletion/modification of paragraph in the impugned order, in these appeals, insofar as, it has recorded the findings on

merits of the case and that the direction for remand should not be limited to the specific issue but should be the open one keeping all issues open for consideration by the lower authority. Appellants have relied upon the decision of this Tribunal in their own case decided vide Final Order No. A/85745-85763/2022 dated 08.09.2020 on identical set of facts. It has been contended that vide the said order, the Tribunal has accepted the submissions of the appellants that the original authority should decide the issue without being influenced by the order passed by the Commissioner (Appeals).

4. Heard both sides and perused the records.

5. We find that there is force in the submissions of the appellants that the learned Commissioner (Appeals) cannot take two views for deciding the issue arising out of the adjudication order inasmuch as since he has remanded the matter to the original authority for fresh adjudication, the scope of deciding the issue on merits by him is not proper and justified. Thus, we are of the considered view that the paragraph 11 in the impugned orders, wherein the learned Commissioner (Appeals) has decided the merits of the case should be set aside. Since the matter has been remanded by the learned Commissioner (Appeals) to the adjudicating authority for deciding certain issues afresh, we are also of the view that while considering the overall merits of the case, the original authority should also examine the issue dealt with by the learned Commissioner (Appeals) in the impugned orders.

Therefore, instead of remanding the matter, limited to specific issue, it is an open remand for deciding all the issues involved in these appeals. For the said purpose, the original authority should examine the final order dated 08.09.2020 (supra) passed by this Tribunal in the case of appellant itself. Needless to say that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh by him.

6. In the result, all the appeals are allowed by way of remand to the original authority.

(Operative portion of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha