CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86898 OF 2015

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/102 to 174/15-16 dated 27th May 2015 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 … **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/86690/2015	C/86861/2015	C/86862/2015	C/86863/2015
C/86864/2015	C/86865/2015	C/86866/2015	C/86867/2015
C/86868/2015	C/86869/2015	C/86870/2015	C/86871/2015
C/86872/2015	C/86873/2015	C/86874/2015	C/86875/2015
C/86876/2015	C/86877/2015	C/86878/2015	C/86879/2015
C/86880/2015	C/86881/2015	C/86882/2015	C/86883/2015
C/86884/2015	C/86885/2015	C/86886/2015	C/86887/2015
C/86888/2015	C/86889/2015	C/86890/2015	C/86891/2015
C/86892/2015	C/86893/2015	C/86894/2015	C/86895/2015
C/86896/2015	C/86897/2015	C/86899/2015	C/86900/2015
C/86901/2015	C/86902/2015	C/86903/2015	C/86904/2015
C/86905/2015	C/86906/2015	C/86907/2015	C/86908/2015
C/86909/2015	C/86910/2015	C/86911/2015	C/86912/2015
C/86913/2015	C/86914/2015	C/86915/2015	C/86916/2015
C/86917/2015	C/86918/2015	C/86919/2015	C/86920/2015
C/86921/2015	C/86922/2015	C/86923/2015	C/86924/2015
C/86925/2015	C/86926/2015	C/86927/2015	C/86928/2015
C/86929/2015	C/86930/2015	C/86931/2015	C/86932/2015

AND

CUSTOMS APPEAL NO: 87016 OF 2015

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/274 to 332/15-16 dated 25th August 2015 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli … **Appellant**

Dist: Wardhan - 442101

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/86966/2015	C/86967/2015	C/86968/2015	C/86969/2015
C/86970/2015	C/86971/2015	C/86972/2015	C/86973/2015
C/86974/2015	C/86975/2015	C/86976/2015	C/86977/2015
C/86978/2015	C/86979/2015	C/86980/2015	C/86981/2015
C/86982/2015	C/86983/2015	C/86984/2015	C/86985/2015
C/86986/2015	C/86987/2015	C/86988/2015	C/86989/2015
C/86990/2015	C/86991/2015	C/86992/2015	C/86993/2015
C/86994/2015	C/86995/2015	C/86996/2015	C/86997/2015
C/86998/2015	C/86999/2015	C/87000/2015	C/87001/2015
C/87002/2015	C/87003/2015	C/87004/2015	C/87005/2015
C/87007/2015	C/87008/2015	C/87009/2015	C/87010/2015
C/87011/2015	C/87012/2015	C/87013/2015	C/87014/2015
C/87015/2015	C/87017/2015	C/87018/2015	C/87019/2015
C/87020/2015	C/87021/2015	C/87022/2015	C/87023/2015
C/87024/2015			

AND

CUSTOMS APPEAL NO: 85807 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/474 to 558/15-16 dated 15th December 2015 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 … **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/85723/2016	C/85724/2016	C/85725/2016	C/85726/2016
C/85727/2016	C/85728/2016	C/85729/2016	C/85730/2016
C/85731/2016	C/85732/2016	C/85733/2016	C/85734/2016
C/85735/2016	C/85736/2016	C/85737/2016	C/85738/2016
C/85739/2016	C/85740/2016	C/85741/2016	C/85742/2016
C/85743/2016	C/85744/2016	C/85745/2016	C/85746/2016
C/85747/2016	C/85748/2016	C/85749/2016	C/85750/2016
C/85751/2016	C/85752/2016	C/85753/2016	C/85754/2016
C/85755/2016	C/85756/2016	C/85757/2016	C/85758/2016
C/85759/2016	C/85760/2016	C/85761/2016	C/85762/2016
C/85763/2016	C/85764/2016	C/85765/2016	C/85766/2016

C/85767/2016	C/85768/2016	C/85769/2016	C/85770/2016
C/85771/2016	C/85772/2016	C/85773/2016	C/85774/2016
C/85775/2016	C/85776/2016	C/85777/2016	C/85778/2016
C/85779/2016	C/85780/2016	C/85781/2016	C/85782/2016
C/85783/2016	C/85784/2016	C/85785/2016	C/85786/2016
C/85787/2016	C/85788/2016	C/85789/2016	C/85790/2016
C/85791/2016	C/85792/2016	C/85793/2016	C/85794/2016
C/85795/2016	C/85796/2016	C/85797/2016	C/85798/2016
C/85799/2016	C/85800/2016	C/85801/2016	C/85802/2016
C/85803/2016	C/85804/2016	C/85805/2016	C/85806/2016

AND

CUSTOMS APPEAL NO: 86474 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/981 to 1048/2015 dated 30th March 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 … **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/86458/2016	C/86459/2016	C/86460/2016	C/86461/2016
C/86462/2016	C/86463/2016	C/86464/2016	C/86465/2016
C/86466/2016	C/86467/2016	C/86468/2016	C/86469/2016
C/86470/2016	C/86471/2016	C/86472/2016	C/86473/2016
C/86475/2016	C/86476/2016	C/86477/2016	C/86478/2016
C/86479/2016	C/86480/2016	C/86481/2016	C/86482/2016
C/86483/2016	C/86484/2016	C/86485/2016	C/86486/2016
C/86487/2016	C/86488/2016	C/86490/2016	C/86491/2016
C/86492/2016	C/86493/2016	C/86494/2016	C/86495/2016
C/86496/2016	C/86497/2016	C/86498/2016	C/86499/2016
C/86500/2016	C/86501/2016	C/86502/2016	C/86503/2016
C/86504/2016	C/86505/2016	C/86506/2016	C/86507/2016
C/86508/2016	C/86509/2016	C/86510/2016	C/86511/2016
C/86512/2016	C/86513/2016	C/86514/2016	C/86515/2016
C/86516/2016	C/86517/2016	C/86518/2016	C/86519/2016
C/86520/2016	C/86521/2016	C/86522/2016	C/86523/2016
C/86524/2016	C/86525/2016	C/86526/2016	

AND

CUSTOMS APPEAL NO: 86641 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/021 -81/16-17 dated 27th April 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 … **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/86589/2016	C/86590/2016	C/86591/2016	C/86592/2016
C/86593/2016	C/86594/2016	C/86595/2016	C/86596/2016
C/86597/2016	C/86598/2016	C/86599/2016	C/86600/2016
C/86601/2016	C/86602/2016	C/86603/2016	C/86604/2016
C/86605/2016	C/86606/2016	C/86607/2016	C/86608/2016
C/86609/2016	C/86610/2016	C/86611/2016	C/86612/2016
C/86613/2016	C/86614/2016	C/86615/2016	C/86616/2016
C/86617/2016	C/86618/2016	C/86619/2016	C/86620/2016
C/86621/2016	C/86622/2016	C/86623/2016	C/86624/2016
C/86625/2016	C/86626/2016	C/86627/2016	C/86628/2016
C/86629/2016	C/86630/2016	C/86631/2016	C/86632/2016
C/86633/2016	C/86634/2016	C/86635/2016	C/86636/2016
C/86637/2016	C/86638/2016	C/86639/2016	C/86640/2016
C/86642/2016	C/86643/2016	C/86644/2016	C/86645/2016
C/86646/2016	C/86647/2016	C/86648/2016	C/86649/2016

AND

CUSTOMS APPEAL NO: 87602 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/118/16-17 dated 13th July 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 … **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/87787/2016	C/87593/2016	C/87594/2016	C/87595/2016
C/87596/2016	C/87597/2016	C/87598/2016	C/87599/2016
C/87600/2016	C/87601/2016	C/87603/2016	C/87604/2016

C/87605/2016 C/87606/2016 C/87607/2016 C/87608/2016

AND

CUSTOMS APPEAL NO: 87609 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/129-149/16-17 dated 25th July 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 … **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/87610/2016 C/875611/2016

AND

CUSTOMS APPEAL NO: 87566 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/166-176/16-17 dated 1st September 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 **... Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/87567/2016 C/87568/2016 C/87569/2016

AND

CUSTOMS APPEAL NO: 87570 OF 2016

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APPL/189-201/16-17 dated 6th September 2016 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Mahalaxmi TMT Pvt Ltd
C-2 MIDC Deoli Growth Centre, Deoli
Dist: Wardhan - 442101 ... **Appellant**

versus

Commissioner of Customs
Telangkhedi Road, Civil Line, Nagpur - 440001 **...Respondent**

WITH

C/87571/2016 C/87572/2016 C/87565/2016

APPEARANCE:

Shri Prasannan Namboodiri, Ms Pratibha Namboodiri and Ms Pallavi Dabak, Advocates for the appellant

Shri D S Maan, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NOS: 86254-86627/2024

DATE OF HEARING/DECISION: 24/10/2024

PER: JUSTICE DILIP GUPTA

These appeals are directed against the orders passed by the Commissioner (Appeals), Central Excise and Customs, Nagpur[1] by which the assessment done by the proper officer on the Bills of Entry have been set aside and the Bills of Entry have been re-assessed.

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[1] **the Commissioner (Appeals)**

2. It transpires from the records that Bills of Entries had been filed for import of heavy melting scrap/light melting scrap from various countries.

3. Section 17 of the Customs Act, 1962[2] deals with assessment of duty and reads as

> "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 entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
>
> Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.
>
> (3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained 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

[2] **the Customs Act**

> 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 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.
>
> 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. It transpires from a perusal of the sub-sections (1) and (2) of section 17 of the Customs Act that an importer entering any imported goods under section 46 has to self-assess the duty, if any, leviable for such goods and the proper officer may verify the entries made under section 46 and the self-assessment of goods, and for this purpose, the proper officer can examine or test any imported goods as may be necessary. It also transpires that for the purpose of verification, the proper officer may require the importer or any other person to produce any documents or information. Sub-section (4) of section 17 further provides that 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 the Customs Act, re-assess the duty leviable on such goods. Sub-section (5) of section 17 of the Customs Act provides that where any re-assessment under sub-section (4) is contrary to the self-assessment done by the importer and in case other than those where the importer confirms 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 assessment of the Bill of Entry.

5. In the instant case, the Commissioner (Appeals) has recorded a finding that even though the importer had not given any consent in writing accepting the re-assessment, the proper officer still did not proceed to pass a speaking order as is required under section 17(5) of the Customs Act.

6. In such a situation, if the Commissioner (Appeals) was satisfied that a speaking order had not been passed even when the importer had not given any consent in writing to the re-assessment, the Commissioner (Appeals) should have remanded the matter to the proper officer for proceeding in accordance with the provisions of section 17, but what transpires from the order is that the Commissioner (Appeals) proceeded to examine the issue on merits and re-determined the value.

7. Thus, without examining whether the value was properly re-determined by the Commissioner (Appeals), the order passed by the

Commissioner (Appeals) would have to be set aside for the sole reason that instead of remanding the matter to the proper officer, the Commissioner (Appeals) himself proceeded to examine the matter. It also needs to be noted that the importer has been denied an opportunity of contesting the matter before the proper officer.

8. Learned counsel for the appellant also submitted that the speaking order had to be passed within 15 days from the date of reassessment. This issue can be examined by the proper officer.

9. Such being the position, the orders passed by the Commissioner (Appeals) deserve to be set aside and are set aside. The matters are remanded to the proper officer for passing orders strictly in accordance with the provisions of section 17 of the Customs Act. It will be open to the appellant to raise the issue about passing of the speaking orders within 15 days from the date of reassessment before the proper officer. The appeals are, accordingly, allowed to the extent indicated above.

(Dictated and Pronounced in Open Court)

(JUSTICE DILIP GUPTA)
President

(C J MATHEW)
Member (Technical)

**/as*