CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO. 86031 OF 2023

(Arising out of Order-in-Appeal No: PUN-CT-APP II(RKD)-227 TO 232-2022-23 dated 16th March 2023 passed by the Commissioner of Central Tax (Appeals), Pune)

Mahle Anand Thermal Systems Pvt Ltd **.....Appellant**
29 Milestone, Pune-Nashik Highway, Kuruli
Taluka Khed, Pune

versus

Commissioner of Customs **.....Respondent**
GST Bhawan, 41/A Sassoon Road, Pune - 411001

WITH

C/86032/2023	**C/86033/2023**	**C/86034/2023**	**C/86035/2023**
C/86036/2023	**C/86037/2023**	**C/86038/2023**	**C/86039/2023**
C/86040/2023	**C/86041/2023**	**C/86042/2023**	**C/86043/2023**
C/86044/2023	**C/86045/2023**	**C/86046/2023**	**C/86047/2023**
C/86048/2023	**C/86049/2023**	**C/86050/2023**	**C/86051/2023**
C/86052/2023	**C/86053/2023**	**C/86054/2023**	**C/86055/2023**
C/86056/2023	**C/86057/2023**	**C/86058/2023**	**C/86059/2023**
C/86060/2023	**C/86061/2023**	**C/86062/2023**	**C/86063/2023**
C/86064/2023	**C/86065/2023**	**C/86066/2023**	**C/86067/2023**
C/86068/2023	**C/86069/2023**	**C/86070/2023**	**C/86071/2023**
C/86072/2023	**C/86073/2023**	**C/86074/2023**	**C/86075/2023**
C/86076/2023	**C/86077/2023**	**C/86078/2023**	**C/86079/2023**
C/86080/2023	**C/86081/2023**	**C/86082/2023**	**C/86083/2023**
C/86084/2023	**C/86085/2023**	**C/86086/2023**	**C/86087/2023**
C/86088/2023	**C/86089/2023**	**C/86090/2023**	**C/86091/2023**
C/86092/2023	**C/86093/2023**	**C/86094/2023**	**C/86095/2023**
C/86096/2023	**C/86097/2023**	**C/86098/2023**	**C/86099/2023**
C/86100/2023	**C/86101/2023**	**C/86102/2023**	**C/86103/2023**
C/86104/2023	**C/86105/2023**	**C/86106/2023**	**C/86107/2023**
C/86108/2023	**C/86109/2023**	**C/86110/2023**	**C/86111/2023**
C/86112/2023	**C/86113/2023**	**C/86114/2023**	**C/86115/2023**
C/86116/2023	**C/86117/2023**	**C/86118/2023**	**C/86119/2023**
C/86120/2023	**C/86121/2023**	**C/86122/2023**	**C/86123/2023**
C/86124/2023	**C/86125/2023**	**C/86126/2023**	**C/86127/2023**
C/86128/2023	**C/86129/2023**	**C/86130/2023**	**C/86131/2023**
C/86132/2023	**C/86133/2023**	**C/86134/2023**	**C/86135/2023**
C/86136/2023	**C/86137/2023**	**C/86138/2023**	**C/86139/2023**
C/86140/2023	**C/86141/2023**	**C/86142/2023**	**C/86143/2023**
C/86144/2023	**C/86145/2023**	**C/86146/2023**	**C/86147/2023**
C/86148/2023	**C/86149/2023**	**C/86150/2023**	**C/86151/2023**
C/86152/2023	**C/86153/2023**	**C/86154/2023**	**C/86155/2023**
C/86156/2023	**C/86157/2023**	**C/86158/2023**	**C/86159/2023**
C/86160/2023	**C/86161/2023**	**C/86162/2023**	**C/86163/2023**
C/86164/2023	**C/86165/2023**	**C/86166/2023**	**C/86167/2023**
C/86168/2023	**C/86169/2023**	**C/86170/2023**	**C/86171/2023**
C/86172/2023	**C/86173/2023**	**C/86174/2023**	**C/86175/2023**

C/86176/2023	**C/86177/2023**	**C/86178/2023**	**C/86179/2023**
C/86180/2023	**C/86181/2023**	**C/86182/2023**	**C/86183/2023**
C/86184/2023	**C/86185/2023**	**C/86186/2023**	**C/86187/2023**
C/86188/2023	**C/86189/2023**	**C/86190/2023**	**C/86191/2023**
C/86192/2023	**C/86193/2023**	**C/86194/2023**	**C/86195/2023**
C/86196/2023	**C/86197/2023**	**C/86198/2023**	**C/86199/2023**
C/86200/2023	**C/86201/2023**	**C/86202/2023**	**C/86203/2023**
C/86204/2023	**C/86206/2023**	**C/86207/2023**	**C/86208/2023**
C/86209/2023	**C/86210/2023**	**C/86211/2023**	**C/86212/2023**
C/86213/2023	**C/86214/2023**	**C/86215/2023**	**C/86216/2023**
C/86217/2023	**C/86218/2023**	**C/86219/2023**	**C/86230/2023**
AND	**C/86231/2023**		

APPEARANCE:

Shri T Vishwanthan, Shri Akhilesh Kangsia and Ms. Madhura Khandekar and Shri Siddharth Sen, Advocates for the Appellant

Shri Priyesh Bheda, Joint Commissioner (AR) for the Respondent

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

DATE OF HEARING: 25.10.2024
DATE OF DECISION: 02.12.2024

FINAL ORDER NO's: 87218-87407/2024

PER: C.J. MATHEW:

M/s Mahle Anand Thermal Systems Pvt Ltd[1], aggrieved by affirmation of charging of 'anti-dumping duty (ADD)' under section 9A of Customs Tariff Act, 1975[2] on 'aluminium strip (use in evaporator) (for automotive heat exchanger)' imported by them against 188 bills of entry between 14th December 2021 and 10th October 2022 and assessed to rate of duty – both 'basic customs duty (BCD)' and 'integrated tax (IGST)' – corresponding, according to threshold of thickness, to tariff item 7606 1200 and tariff item 7607 1991 of First Schedule to Customs Tariff Act is

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1. **the appellant**
2. **the Customs Tariff Act**

before us impugning order[3] of Commissioner of Central Excise (Appeals - II), Pune which disposed off six appeals on merit without the benefit of reasoning that prompted the 'proper officer' to burden them with duties that were not intended by law. The appellant herein had filed three appeals[4] against the assessment in as many bills of entry[5] and three appeals[6] against 63, 34 and 88 bills of entry respectively before the first appellate authority who, upon examination of notification no. 68/2021-Cus (ADD) dated 6th December 2021, dismissed their plea of non-leviability after concluding that absence of 'speaking order' was inconsequential to the scope of the dispute inasmuch as

> "8.1. I find that the appellants have not contested any error in the assessment of the said Bills of Entry, leading to any inference that excess amount of duties were charged and recovered from them, but they have challenged-The validity of said Notification No, 68/2021-Cus. (ADD) dated 06-12-2021, by virtue of which anti-dumping duty has been levied on the said imported goods, viz. Aluminium strip of stated specification. They have also submitted detailed analysis of the circumstances existing in the past by venturing into the "First investigation", "Second investigation" & "Third investigation" followed by the latest investigation leading to Final Findings vide Notification F. No. 6/27/2020 - DGTR dated 07.09,2021 by Designated Authority and subsequent issue of said Notification No. 68/2021-Cus. (ADD) dated 06-12-2021.
>
> I find that the grounds of appeals pertain to challenging the powers of the Central Government to examine the grounds and circumstances in deciding the levy of anti-

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3. Order-in-appeal no. PUN-CT-APPII-RKD-000-227 to 232-22-33 dated 16th March 2023
4. Cus-18/2022-23, Cus-19/2022-23 and Cus-118/2022-23
5. no. 6685551/15.12.2021, no. 6762194/20.12.2021 and no. 2121701/23.08.2022
6. Cus-30/92/2022-23, Cus-121/2022-23 and Cus-131/2022-23

> dumping duty in respect of certain goods imported from 'designated countries based on the Final Findings of Designated Authority, Directorate General of Anti-Dumping and Allied Duties. The grounds of appeal are beyond the jurisdiction of Commissioner (Appeals) and the appellant is advised to approach the proper authority for seeking suitable remedy. The appellant have also informed that they have separately filed an appeal before the Hon'ble Tribunal, New Delhi for challenging the validity of the Notification No. 68/2021 vide which the anti-dumping duty has been imposed on the impugned goods. That is an independent action of the appellant. I restrict my decision in respect of the present appeals to examine if levy of anti-dumping duty in respect of goods imported & assessed in the 188 nos. of Bills of Entry by the respondent Customs authority is correct or not. In this context, 1 do not find any error apparent in the assessment of impugned goods and there is no ambiguity in the applicability of the said Notification No. 68/2021-Customs (ADD) dated 06-12-2021."

and limiting the findings to validity of the impugned notification.

2. Learned Counsel for appellant submitted that, in the absence of 'speaking order' mandated by section 17(5) of Customs Act, 1962[7], the relief sought by them be granted for which reliance was placed on the decision of the Tribunal in **Commissioner of Customs (Preventive), Jodhpur** vs. **Shiv Ganesh Exim Pvt Ltd**[8]. It was further submitted that the finding in the impugned order of clearance of the goods, proceeding from circumstances of having taken a commercial decision, notwithstanding burden of disputed duty, owing to pressing need, without contest was incorrect inasmuch as the 'protest' lodged at the time of discharge of duty liability was noted by the first appellate authority and

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7. the Customs Act
8. 2024-TIOL-854-CESTAT-DEL

that statutory mandate required each such re-assessment to be justified on every occasion. Reliance was placed on the decision of the Tribunal in **Harman International India Pvt Ltd** vs. **Commissioner of Customs (Import), Air Cargo Complex, Mumbai**[9], in **Carestream Health India Pvt Ltd** vs. **Commissioner of Customs (Import), Air Cargo Complex, Mumbai**[10] and in **Balaji International** vs. **Commissioner of Customs (Mulund CFS & General), Mumbai**[11] in support thereof.

3. Learned Counsel argued too that the finding on merit was made on presumption of reasoning, and without means of ascertainment, that may have actuated the re-assessment of bills of entry. He further submitted that the issue of chargeability of 'anti-dumping duty (ADD)' on the impugned goods stood settled by decision[12] of the Tribunal in their own case and, while conceding that the operation of the order was stayed by the Hon'ble High Court of Delhi, urged that, with the Tribunal having relied upon the judgement[13] of the Hon'ble High Court of Bombay in **Mahle Anand Thermal Systems** vs. **Union of India**, the interim order should not come in the way of application of binding precedent. It was also pointed that Commissioner of Customs (Appeals), Nhava Sheva had, in order[14] disposing off their own appeal against similar re-assessment, relied upon the disposal by the Tribunal to find in their favour.

4. Learned Authorized Representative pointed out that the appeals rested upon non-applicability of notification no. 68/2011-Cus (ADD) dated 6th December 2021 which had been elaborately dealt with in the impugned

9. Customs Appeal No's. 87345-87538 of 2022 decided on 12.10.2023
10. Customs Appeal No. 86064 of 2019 decided on 22.09.2021
11. 2024 (9) TMI 123 – CESTAT MUMBAI
12. Customs Appeal No. 51485 of 2022 decided on 13.04.2023
13. Writ Petition no. 605 of 2021 decided on 10.08.2022
14. Order-in-appeal no. 548-587 (Gr IVA)/2023(JNCH)/Appeals dated 24th May 2023

order.

5. It is on record that the 'proper officer' did not go beyond re-assessment and, yet, the first appellate authority, notwithstanding the silence thereafter, took it upon itself to offer reasons for adoption of the revised classification which may, or may not, have occurred to the 'proper officer' when the liability to 'anti-dumping duty (ADD)' was brought to bear. This was undertaken without pre-requisite, in terms of second proviso to section 128A(3) of Customs Act of notice to importer and more especially warranted in circumstances of neither notice preceding the commencement of the dispute nor such proposal on record by way of appeal of Revenue. The first appellate authority was as bereft, as we continue to be, of any material on record, to determine that the exercise of re-assessment conformed to the framework of the notification issued under section 9A of Customs Tariff Act. And just as it would be inappropriate for us to adjudge 'free floating' attempt at determination on the part of the first appellate authority, it was no less so for the first appellate authority to venture upon a decision on merit of assessment by the original authority.

6. That the appellant herein had, in the bills of entry, preferred claim for assessment solely to 'basic customs duty (BCD)' and 'integrated tax (IGST)' is not in dispute; such entered in the 'check list', upon discharge of duty liability, is transformed as assessed bill of entry for clearance from customs control under section 47 of Customs Act. From a comparison of some of the sets of documents, it is seen that the revision occurred between filing of bill of entry and the conclusion of assessment under section 17 of Customs Act and all this while, except by foregoing, albeit

temporarily, release of goods, the importer is under the absolute power of 'proper officer' which appears to have caused them to acquiesce in the determination of additional duty burden. This is not in conformity with

> "(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-assessment the duty, if any, leviable on such goods."

of section 17 of Customs Act with option afforded to 'proper officer' in terms of

> "(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."

therein for discard of self-assessed liability. Such misdirection of 'self-assessment' is inappropriate exercise of statutory authority and it is but right that superior authorities be made cognizant of circumventing of law by field formations. A copy of this order may, therefore, be placed before Chairman, Central Board of Indirect Taxes & Customs (CBIC) for his attention.

7. The first appellate authority was not unaware of the circumstances in which the appeal came to be filed and that justification for revision, as required by

> "(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 the 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."

in section 17 of Customs Act was not in existence. There is a finding, such as it is and without scrutiny of the entry made under section 46 of Customs Act that there was no dissonance with the assessment. That the assessment which emerged was not the claim preferred in the entry and that consent of the importer had not been obtained for such alteration should have been cause for alarm in the first appellate authority. Affirmation of re-assessment without any material to go by invalidates it ab initio. The lack thereof should have prompted the first appellate authority to enforce compliance with consequence of revision. Not having done so invalidates the impugned order.

8. Accordingly, we set aside the impugned orders and restore the bills of entry before the original authority for disposal in the manner set out in section 17 of Customs Act. These appeals are allowed by way of remand.

(Order pronounced on **02.12.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C J MATHEW)
MEMBER (TECHNICAL)

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