CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87687 TO 87736 OF 2024

[Arising out of Order-in-Appeal No: 915 to 964 (Gr.VA)/2024(JNCH)/Appeals dated 16th July 2024 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

SMR Automative Systems India Limited
Gat No. 56/2/A, Near GKS Ltd, Off. Chakan Shikrpur Road
Shirur, Maharashtra – 400 055 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri T Viswanathan and Shri Akhilesh Kangsia, Advocate for the appellant

Shri Jithesh Jain, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86621-86670/2025

DATE OF HEARING: 15/04/2025
DATE OF DECISION: 09/10/2025

PER: C J MATHEW

Under challenge in these fifty appeals of M/s SMR Automotive Systems India Limited, corresponding to as many bills of entry filed by them for assessment of ‘power fold/micro motor’ imported between 18th August 2022 and 5th April 2024 at Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, is the denial of benefit of concessional rate of ‘basic customs duty (BCD)’ at 105 instead of 15% *vide* notification[1], issued under the authority of section 25 of Customs Act, 1962, available for all goods conforming to description corresponding, *inter alia*, to sub-heading 8501 10 of First Schedule to Customs Tariff Act, 1975 that was affirmed in order[2] of Commissioner of Customs (Appeals), Mumbai-II impugned here.

2. The first appellate authority had before it 50 appeals with all but one, *viz*., pertaining to order-in-original[3] of Joint Commissioner of Customs, Gr.VA directing re-assessment of duty in bill of entry no. 2057670/18.08.2022 that, in addition, also confiscated the goods under section 111(m) and 111(o) of Customs Act, 1962 with option of redemption under section 125 of Customs Act, 1962 on payment of fine of ₹ 4,00,000/- and imposed penalty of ₹ 50,000/-, assailed self-assessment undertaken in accordance with section 17(7) of Customs Act, 1962 and it was on the back of want of any ‘speaking order’ envisaged in section 17(5) of Customs Act, 1962 that these came to be rejected. It may be noted that the impugned order had ordered such rejection in 48 appeals with one other dismissed at threshold for having

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[1] [notification no. 50/2017-Customs dated 30th June 2017 (at serial no. 485A)]
[2] [order-in-appeal no. 915 to 964 (Gr.VA)/2024(JNCH)/Appeals dated 16th July 2024]
[3] [order-in-original no. 674/2022-23/JC/Gr.VA, NS-V/CAC/JNCH dated 14th October 2022]

been filed beyond the condonable period of 90 days in section 128 of Customs Act, 1962 but, on re-consideration of submission preferred, Commissioner of Customs (Appeals), by *corrigendum*[4], attached appeal pertaining to bill of entry no. 5362297/04.04/2023 to the other 48 appeals held as dismissed.

3. Before taking up the appeal disposed off on merit for consideration of submissions by Learned Counsel for appellant and Learned Authorized Representative, it would in the fitness of circumstances to tarry awhile on the finding that

> *'17. Now, I take up the issue involved in the remaining 48 Appeals as tabulated above. The Appellants have submitted that vide the above 48 Bills of Entry they have imported the impugned goods "DC Miniature Motors" availing the concessional rate of duty in terms of Sr. No. 485A of Notification No. 50/2017 dated 30.06.2017 (as amended) and the Customs Department denied the concessional rate of duty benefit and re-assessed the said Bills of Entry. The Appellant have raised the same grounds of appeal in these 48 Appeals as raised in Appeal No 1250/2022 with reference to the applicability of concessional rate of BCD under Sr. No. 485A of Notification No. 50/2017-Cus dated 30.06.2017(as amended) for the import of the impugned goods imported vide the said 48 Bills of Entry. The Appellant have further submitted that the department ought to have passed a Speaking Order as required under section 17(5) of the Customs Act, 1962 pursuant to the re-assessment of the said Bills of Entry. In this regard, I note that the contention of the Appellant that the*

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4 [corrigendum dated 16th July 2024]

> *Customs Department has denied the concessional rate of duty benefit and re-assessed the said Bill of Entry not to be true as it is from the ICES System it has been found out that there was no re-assessment carried out by the department in the said 48 Bills of Entry. The said Bills of Entry were self-assessed by the Appellant in which they have not claimed the benefit of the said Notification. I note that once the Bill of Entry is not reassessed, there is no question of issuing a Speaking Order as provided under section 17(5) of the Customs Act, 1962. Further, the issue of applicability of the concessional rate of duty under Sr. No. 485A of Notification No. 50/2017-Cus dated 30.06.2017(as amended) has been decided as above. In view of this, I find no merit in the grounds of Appeal as raised by the Appellant for the above said 48 Appeals. As such, I have no other option but to reject the said 48 Appeals in above terms.'*

from which it may be inferred that the first appellate authority was influenced by the absence of re-assessment in the ICES system and implied filing of the bills of entry without staking claim to concessional rate of duty but, not stopping with such disposal at the threshold, went on also to hold that the claim for concessional duty did not have merit in the light of the finding in the other lone appeal *supra*. Having decided on merit, for whatever reason, it may be gainsaid that such affirmation of assessment, whether by self or on intervention, without reference to an order intended in section 128 of Customs Act, 1962 and discarding the communication of importer for 'speaking order', is questionable disposal of appeal by condonation of breach of obligation on the part of the 'proper officer' to comply with section 17(5) of Customs Act, 1962.

4. It is seen from the records that the information obtained from ICES was not made available to the appellant herein by the first appellate authority despite intent to deploy the contents therein to their detriment. This is gross violation of principles of natural justice. The appellant claims that their protest against the re-assessment had, but for seven, had been filed along with the appeal and, from the records, it would appear that these were not just discarded but ignored.

5. Furthermore, in the appeals, appellant had intimated the circumstances in which duty liability had been discharged even though the self-assessment was revised to their detriment. That is a serious allegation which should have been looked into by the first appellate authority: that either the importer was compelled to revise the declarations in the bill of entry or that the system is amenable to revision by ‘proper officer’ without any acceptance obtained for such. That option would render the law and intent of law in section 17(4) and section 17(5) of Customs Act, 1962 to absurdity. It was incumbent upon the first appellate authority to not only have appellant placed on notice of contents in the ICES system but also to afford opportunity for production of ‘check list’ to ascertain the facts and breach, if any, by ‘proper officer’ from the letter of the law. In the circumstances, it was first necessary to determine, other than by access to the ICES system which we confess to not be vested with and requiring ascertainment from those suitably authorized, if re-assessment did take place either

directly or indirectly for further compliance with the assessment procedure, if warranted.

6. Doubtlessly, the original authority did, in one of the disputed bills, render a revision on merit but it needs noting that the said official was not a normal assessing authority but appropriated the empowerment as incidental to adjudicating confiscation under section 111 of Customs Act, 1962 and imposition of penalty under section 112 of Customs Act, 1962. We are unable to fathom the recourse to section 111(o) of Customs Act, 1962 in the absence of any reference to conditions of exemption that could have been breached when goods were yet to be cleared for home consumption. The impugned order also failed to consider the precedent in the decision of the Hon'ble Supreme Court in *Northern Plastic Ltd v. Collector of Customs & Central Excise [1998 (101) ELT 549 (SC)]*, that the Tribunal had relied upon in a number of disputes, cited by the appellant for not taking recourse to confiscation merely from wrongful claim for exemption. It may also be noted that the records are not clear about the notice of intent to confiscate and impose penalty as obliged under section 124 of Customs Act, 1962.

7. Considering the jeopardy to the outcome in which the primary jurisdiction of the Joint Commissioner of Customs was exercised, it is moot if the order justifying re-assessment should have been issued

together considering its binding effect on subordinate officers even as 'proper officer' required to apply their mind independently. The impugned order, by foraying into the merit of revision despite absence of 'speaking order' in 49 appeals, has, in effect, held that the single order-in-original applies to the other imports, too. This is inappropriate exercise of appellate jurisdiction.

8. Though both Learned Counsel for appellant and Learned Authorized Representative did argue at length on their respective claims, in the circumstances, narrated *supra,* of inappropriate disposal of 49 appeals, we may, by deciding on merit, bind the 'proper officer' or influence the revisit of the appeals by first appellate authority. In these circumstances, we set aside the impugned order and restore all the 50 appeals before the first appellate authority to reconsider those on merit and maintainability.

(Order pronounced in the open court on 09/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*