

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI
REGIONAL BENCH
COURT NO.1**

Customs Appeal No. 86333 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.

12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Appellant

Versus

Commissioner of Customs (Import), Nhava Sheva

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

Respondent

WITH

Customs Appeal No. 86334 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.

12th Floor, Building No.9, Tower A,
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Gurgaon 122 002, Haryana.

Appellant

Versus

Commissioner of Customs (Import), Nhava Sheva

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

Respondent

WITH

Customs Appeal No. 86335 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.

12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Appellant

Versus

Commissioner of Customs (Import), Nhava Sheva

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

Respondent

WITH

Customs Appeal No. 86336 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. **Appellant**
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

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

WITH

Customs Appeal No. 86337 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. **Appellant**
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

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

WITH

Customs Appeal No. 86338 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. **Appellant**
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

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

WITH

Customs Appeal No. 86339 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. **Appellant**
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86340 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. Appellant
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86341 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. Appellant
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86342 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd. Appellant
12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86343 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.**Appellant**

12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

*Versus***Commissioner of Customs (Import), Nhava Sheva****Respondent**

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86344 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.**Appellant**

12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

*Versus***Commissioner of Customs (Import), Nhava Sheva****Respondent**

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86345 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.**Appellant**

12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

*Versus***Commissioner of Customs (Import), Nhava Sheva****Respondent**

Jawaharlal Nehru Custom House, Post Uran, Dist. Raigad 400 707.

WITH

Customs Appeal No. 86346 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.**Appellant**

12th Floor, Building No.9, Tower A,

DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

AND

Customs Appeal No. 86347 of 2014

(Arising out of Order-in-Appeal No. MUM-CUSTOM-000-APP-22-38-13-14 dated 10.01.2014 passed by the Commissioner of Customs, JNCH, Nhava Sheva, Mumbai-II)

Daikin Airconditioning India Pvt. Ltd.

Appellant

12th Floor, Building No.9, Tower A,
DLF Cyber City, DLF Phase-III,
Gurgaon 122 002, Haryana.

Versus

Commissioner of Customs (Import), Nhava Sheva Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad 400 707.

Appearance:

Shri Akhilesh Kangsia with Ms. Apoorva Parihar, Advocates, for the Appellants
Shri J.K. Jain, Authorised Representative for the Respondent

CORAM:

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

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

Date of Hearing: 01.12.2025

Date of Decision: 01.12.2025

FINAL ORDER No. 86874-86888/2025

PER: S.K. MOHANTY

Heard both sides and examined the case records.

2. Classification of various models of split air-conditioners is the subject matter of present dispute. In these cases, the appellants had self-assessed the Bills of Entry, declaring the classification of the imported goods under CTH 8415 1010; whereas, the department had claimed the classification under CTH 8415 8210 and accordingly, re-assessed the Bills of Entry, filed by the appellants. Since the requirement of sub-section (5) of Section 17 of the Customs Act, 1962 was not complied with by the proper officer of customs, the appellants had filed appeals before learned Commissioner of Customs (Appeals)

against the re-assessed Bills of Entry in changing the classification of subject goods. In response to the appeals filed by the appellants, the learned Commissioner (Appeals) has held that the duty attributable to the change in classification of the goods under CTH 8415 8210 was not paid under protest and thus, the claim of the appellants for passing of a speaking order cannot be adhered to. He has also considered the merits of the case to deny the benefit available to the subject goods under CTH 8415 1010. Feeling aggrieved with the impugned order dated 10.01.2014 passed by learned Commissioner of Customs (Appeals), the appellants have preferred these appeals before the Tribunal.

3. It is an admitted fact on record that the Bills of Entry filed by the appellants were self-assessed under sub-section (1) of Section 17 of the Act of 1962 and in support of change in classification of the goods from CTH 8415 1010 to CTH 8415 8210, the department had re-assessed the already self-assessed Bills of Entry filed by the appellants. Insofar as, re-assessment of the Bill of Entry is concerned, Section 17 of the Act of 1962, through various sub-sections provided therein, has sequentially considered various aspects, which should be fulfilled by the proper officer of customs, for re-assessment of the duty leviable on the imported goods. For the purpose of carrying out the provisions of assessment of duty by the proper officer, sub-section (2) provides for verification of the entries made in the self-assessment and for examination or test of any imported goods; for the purpose of said sub-section (2), the proper officer under sub-section (3) may call for any document or information from the importer concerned; and that, if on such verification, examination or testing, the proper officer finds that the self-assessment is not done correctly, then as per the provisions of sub-section (4), he 'may' re-assess the duty leviable on the imported goods. It has been mandated in sub-section (5) of Section 17 of the Act of 1962 that where any re-assessment is done under sub-section (4) is contrary to the self-assessment done by the importer, then the proper officer 'shall' pass a speaking order on the re-assessment within the stipulated time frame provided therein. An exception has been provided in sub-section (5) for non-passing of a speaking order, in the eventuality, where the importer confirms his acceptance of the said re-assessment in writing.

4. On careful reading of various sub-sections provided under Section 17 of the Act of 1962, it would transpire that a discretion has been provided to the proper officer of customs either to re-assess the duty liability or to accept the duty self-assessed by the importer. Such fact is evident from the usage of the phrase 'may' in sub-section (4). Whereas, if the proper officer considers for re-assessing the duty liability, which is contrary to the claim made by the importer under self-assessment, then it is incumbent on the part of the proper officer for passing of a speaking order, inasmuch as the phrase 'shall' is specifically finding place in sub-section (5) of Section 17 of the Act of 1962. However, the proper officer may not pass a speaking order, where any re-assessment done by him has been accepted by the importer specifically through written confirmation.

5. The facts are not in dispute that the self-assessed Bills of Entry were verified and not accepted by the department and as a result, the same were re-assessed. But for such re-assessment, the appellants had never furnished any communication, in confirming their acceptance of such re-assessment in writing. Thus, under such circumstances, the proper officer of customs was duty bound to pass a speaking order within fifteen days from the date of re-assessment of the Bills of Entry, which admittedly had not been done in the present case. We find that the learned Commissioner (Appeals) has rejected the appeals filed by the appellants, holding that no protest letter was filed by them in support of the change in the classification/rate of duty. However, on reading of the statutory provisions referred supra, it emerges that such requirement of non-filing of protest letter is not a condition precedent for adherence to the provisions of passing of the speaking order as per the mandates provided under sub-section (5) of Section 17 *ibid*.

6. In view of the fact that the authorities below have not specifically recorded any findings that the appellants had confirmed their acceptance of the re-assessment in writing, mere payment of duty without protest will not stand the judicial scrutiny, in respect of not issuing of the speaking order as contemplated in sub-section (5) of Section 17 of the Act of 1962. Therefore, we are of the view that the matter is required to be remanded to the original adjudicating authority for compliance with the provisions of sub-section (5) of Section 17 *ibid* in a time bound manner.

7. Learned Advocate appearing for the appellants submitted that the issue of classification involved in the present dispute is no more open for any debate in view of the order passed by the Tribunal in the case of *Daikin Air-conditioning India P. Ltd. vs. Principal Commissioner of Customs (NS-I), Nhava Sheva* [2020 (374) ELT 768 (Tri.-Mumbai)] and *International Aircon Pvt. Ltd. vs. Commissioner of Custwoms (NS-V), Nhava Sheva* [2020-TIOL-1536-CESTAT-MUM]. Since we are not discussing the merits of the case and simply remanding the matter back to the original authority/proper officer for compliance of the requirement of sub-section (5) of Section 17 of the Act of 1962, such legal position as claimed by the appellants cannot be addressed to at this juncture, and the same should be examined at the original stage while passing a speaking order.

8. In view of the foregoing discussions, the impugned order is set aside and the appeals are allowed by way of remand to the original authority for passing of *de novo* adjudication order(s), in line with the observations made herein above. Needless to say that opportunity of personal hearing should be granted to the appellants before passing of the speaking order(s).

9. In the result, the appeals are allowed by way of remand.

(Order dictated in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)