CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Customs Appeal No. 166 of 2011

[Arising out of OIA-118/2011/CUS/COMMR-A-/KDL passed by Commissioner of CUSTOMS-KANDLA]

M/s Mesrs Bgh Exim Limited **.....Appellant**
Dbz-S-140, Ward 12a,
Opp. Bank Of Baroda, Gandhidham,
KUTCH, GUJARAT.

VERSUS

C.C.,-Kandla **.....Respondent**
Custom House,Near Balaji Temple,
Kandala, Gujarat

APPEARANCE:
Sh. Amal Dave, Advocate for the Appellant
Sh. S.K. Shukla, Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A/ 11016 /2019

DATE OF HEARING: 19.06.2019
DATE OF DECISION: 19.06.2019

PER: RAMESH NAIR

The issue involved in the present case is that whether the goods namely "Base Oil SN-500" imported by the appellant from Iran should be valued at declared price of US $ 400 PMT as against the departments claim of US $ 450 PMT as per NIDB data.

2. Sh. Amal Dave, Ld. Counsel appearing on behalf of the appellant submits that the contemporaneous bill of entry relied upon by the Revenue is of 500 Mts whereas the appellant has imported 4000 Mts, therefore, the contemporaneous price of said quantity cannot be applied. He further submits that the appellant have submitted the quality parameters to the adjudicating authority which has not been considered properly. Therefore, the price of NIDB data cannot be applied in the appellants case. In support of the submission, he placed reliance on the following judgments:-

- Charmi Enterprises-2017 (248) ELT 539 (Tri. Mumbai)

- Prasad Enterprises-2013 (289) ELT 307 (Tri.-Del)
- Shah and Shantibhai-2004 (175) ELT 718 (Tri.-Del.)
- Yem Yes & Co.-2007 (210) ELT 148 (Tri.-Bang.)
- Gupta Exports-2002 (146) ELT 361 (Tri.- Chennai)
- Spices Trading Corporation- 1998 (104) ELT 665 (Tribunal)
- Saudagar Exports-2002 (145) ELT 543 (Tri.-Del.)

Whereby, he submits for applying the NIDB data, quantity and quality should be same.

3. Sh. S.K. Shukla, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He also placed reliance on the following judgments:

- Punjab Processors P Ltd-2003 (157) ELT 625 (SC)
- S C Shah & Co (India)-2004 (178) ELT 904 (Tri-MUM)
- Rajkumar Knitting Mills P Ltd-1998 (98) ELT 292 (SC)
- South India Television P Ltd-2007 (214) ELT 3 (SC)
- Rajasthan Glass House-2019 (365) ELT159 (Tri-Kol)

4. We have heard both the sides and perused the records. We find that there is no dispute on the fact that the appellant have imported 4000 MTs of base oil and the price on the basis of NIDB data applied is for not more than 500 MTs. It is also observed that the lower authority have not gone into the quality parameter of the goods imported by the appellant and the goods involved in the contemporaneous bill of entry, therefore, due to the higher quantity imported by the appellant, the NIDB data of meagre quantity cannot be applied. This has been considered by the Tribunal's special Bench judgment in the case of Shah and Shantibhai (Supra) wherein the Tribunal has held as under:-

> ***"13.*** *A reading of Rule 5 makes it clear that in applying the said rule the transaction value of identical goods in sale at the same time and in a sale at the same commercial level and in substantially the same quantity should be taken. As pointed out earlier the quantity imported by the appellants and the quantity imported under the invoices cannot be said to be substantially the same quantity. Therefore, the Collector is not*

justified in applying Rule 5 of the Customs Valuation Rules, 1988. We have also pointed out that the invoices are subsequent to the impugned imports and therefore, they are not relevant for the reasons mentioned above. Therefore, I set aside the order of the Collector and direct them to accept the invoice price."

5. On the basis of the decision, it is clear that for applying the NIDB data quantity of the import should be same. Considering the facts and above judgment we are of the view that on the basis of contemporaneous import the value cannot be enhanced in the present case. Accordingly, the impugned order is set aside appeal is allowed.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi