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

REGIONAL BENCH : COURT NO - 3

Customs Appeal No. 10030of 2019

(Arising out of OIO No. MUN-CUSTM-000-APP-171-180-18-19 dated 30/08/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

Kesar Fabric Impex Appellant

34/8, Rizak Ram Park, Rani Khera,
NEW DELHI,

-VERSUS-

C.C.-Mundra- Respondent

Office of the Principle Commissionerate of Customs, Port User Buld.
Custom House Mundra, Mundra
Kutch
Gujarat
370421

WITH

(i)Customs Appeal no. C/10805/2016 (C.C., Mundra), (ii) Customs Appeal no. C/10806/2016 (C.C.E, Kutch), (iii) Customs Appeal no. C/10807/2016 (C.C., Mundra),(iv) Customs Appeal no. C/10808/2016 (C.C., Mundra),(v) Customs Appeal no. C/10809/2016 (C.C., Mundra),(vi) Customs Appeal no. C/10810/2016 (C.C., Mundra),(vii) Customs Appeal no. C/10811/2016 (C.C., Mundra),(viii) Customs Appeal no. C/10812/2016 (C.C., Mundra), (ix) Customs Appeal no. C/10813/2016 (C.C., Mundra),(x) Customs Appeal no. C/12926/2018(Sedna Impex India Pvt. Ltd), (xi) Customs Appeal no. C/12930/2018 (Sedna Impex India Pvt. Ltd), (xii) Customs Appeal no. C/12967/2018(Universal Texofabs), (xiii) Customs Appeal no. C/12968/2018(Imperial Fibres Pvt. Ltd.), (xiv) Customs Appeal no. C/13014/2018(Niraj Silk Mills), (xv) Customs Appeal no. C/13064/2018(AR fabrics Pvt. Ltd.), (xvi) Customs Appeal no. C/13169/2018(Hanuman Prasad & Sons), (xvii) Customs Appeal no. C/13180/2018(Maruti Fabric Impex)

Present For the Appellant : Shri Prem Ranjan Kumar, Adv

Present For the Respondent : Shri Sameer Chitkara, Asst. Commr. (AR)

CORAM:

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

FINAL ORDER NO. A/ 11484-11501/2019

Date of Hearing: 24/04/2019

Date of Decision: 06/08/2019

RAMESH NAIR

Brief facts of the case are that the appellants are engaged in business of import and trading of mixed lot of 100% polyester knitted fabric (Rolls of Assorted Colour and Weight) from China. The appellant after negotiation with other suppliers entered into various sales contract for purchase of the above such fabric with their respective supplier at the rate of USD 1.3/kg to USD 1.8/kg. They filed bills of entry during the period 18.06.2015- 17.10.2016 for clearances of above said fabric declaring the assessable value as per the negotiated value. The goods were examined and found as per declaration. However, as per the assessing authority, the declared price was lower than the contemporaneous import price of similar goods and the goods were provisionally assessed with 100% bond and 50% bank guarantee of differential duty. The Adjudicating Authority finalized the provisional assessment, rejected the declared value and finalized the bills of entry taking allegedly the lowest value found in NIDB data as Rs. 150/kg to Rs. 151/kg. (USD 2.2/kg). The appellants filed appeal before the Ld. First appellate authority who vide a common order in appeal no. MUN-CUSTM-000-APP-171-180-18-19 dated 31/08/2018 rejected the appeals holding that the Ld. Adjudicating Authority has rightly rejected the declared value and has rightly reassessed the same applying Rule 5 of the Custom Valuation Rules, 2007 on the basis of NIDB data for similar goods. On the absolutely identical issue in one set of appeals, the Commr. A) vide order in appeal dated 25/01/2016 allowed the appeals of the assessees. Against the said order, Revenue also filed 9 appeals. Since the assessee's appeals as well as Revenue's appeals involved a common issue, i.e. valuation of imported goods, we are taking up all the appeals together.

2. Shri Prem Ranjan Kumar, Ld. Counsel appearing on behalf of the assessee submits that the value was enhanced arbitrarily only relying upon the contemporaneous import price. However, for the rejection of declared value, no reason was given. He submits that for rejection of the transaction value under Rule 12, there has to be a reasonable ground and it cannot be rejected merely on the ground that similar goods have been imported at higher value without examining the applicability of Rule 5 of Customs Valuation Rules, 2007. He further submits that transaction value can be rejected only on the basis of evidence and only thereafter same has to be reassessed based on the evidence. In the present case, the only reason given is that contemporaneous import price on the basis of selected NIDB data relying on 4 bills of entry, being bill of entry no 5903304 dated 07.07.2016, 818826 dated 03/02/2015, 4627778 dated 18.03.2016, 4914245 dated 15.04.2016 and ignoring the large quantity of around 5500 mt covering 215 bills of entry under import. In these Bills of entry which has been relied upon either the goods are different or the quantity declared are meager as compared to huge quantities imported by the appellants. He submits that Ld. Commissioner (A) in case of assessee's appeals in the impugned order assumed that the appellants ought to have explained the reasons for difference in the alleged value shown in the NIBD data and ought to have provided additional information to justify the detailed value which is contrary to the law. He submits that merely going by the description given in the NIDB data was erroneous as Rule 5 of Customs Valuation Rules, 2007 based on the criteria of similar goods for comparison of the value. In the definition for similar goods, emphasis is laid on like characteristics. The like

characteristics and like components which enable them to perform the same function and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark. It further provides that the goods in a sale, for comparison must be at the same commercial level and in substantially the same quantity, and if it is not possible then adjustments are to be made on demonstrated evidence. No such comparison has been elaborated either in the Order in appeal or in the order in original and merely the bill of entry data has been mentioned. He submits that by application of Rules 3 of Customs Valuation Rules, 2007, the present import price cannot be rejected. He submits that the appellate authority has on his own held that since there is no data of contemporaneous import of identical goods was available, recourse to Rule 5 was justified holding that the value of similar comparable goods with characteristics, components and application was taken as reference for re-determining the value of the imported goods by the proper officer. He submits that the Adjudicating Authority as well as the appellate authority has not supported any evidence as no exercise has been made as to on what basis the Ld. Assessing officer came to the conclusion that the imported goods with which the comparison is being made are comparable in characteristics, components and applications without bringing on record any such data on record. The value declared by the appellant should not have been rejected. He submits that while relying upon alleged contemporaneous import data, the Ld. Adjudicating Authority very conveniently left out the bills of entry which were filed at other ports like Chennai and Kolkata during the same period wherein the declared value was either less than the value by the present assessee or was also similar. He also submits that the appellate authority's contention that the Original Authority has correctly taken recourse to the similar goods without any evidence as no comparison has been established on the basis of any evidence. He submits that under the Customs Act, in terms of section 14 (1), the Custom duty is chargeable on goods on the assessable value which is the transaction value of the goods that is to say the price actually paid or payable for the goods were sold and exported to India for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is a sole consideration for the same subject to such other conditions as may be specified in the Rules. In the present case, the price towards the sale of the goods paid or payable is not under dispute. Therefore, in terms of section 14(1), classification of enhancing such price does not apply. In support of his submission he placed reliance on the following judgments:

1. A.D. Jayaveerapandia Nadar & Sons. Vs. Commr. of Cus. Chennai- 2002 (148) E.L.T. 1190 (Tri- Chennai)
2. Eicher Tractors Ltd. v/s Commr. of Cus., Mumbai- 2000 (122) ELT 321 (SC)
3. CCE & ST vs. Sanjivni Non-Ferrous Trading Pvt. Ltd.- 2019 (365) ELT 3 (3)

4. Iron Master India Pvt. Ltd. Vs. Commr. of Customs, New Delhi- 2002 (149) ELT 145 (Tri.- Chennai)
5. Mark Auto Industries vs. Commr. of Cus., New Delhi- 2003 (162) ELT 261 (Tri.- Del.)
6. Bayer India Ltd. Vs. Commr. of Cus., Mumbai- 2006 (198) ELT 240 (Tri-Mumbai)
7. Pushpanjali Silk Pvt. Ltd. vs. Commr. of Cus., Chennai 2009 (238) ELT 135 (Tri.-Chennai)
8. Sarda Energy & Minerals Ltd. vs. Commr. of Central Excise Raipur- 2017 (348) ELT 489 (Tri.-Kolkata)

3. Shri Sameer Chitkara, Ld. Asst. Commr. (AR) reiterates the findings of the impugned order which is against the assessee and reiterates the ground of appeal in case of Revenue's appeal. He also placed reliance on following judgments:

1. Rajkumar Knitting Mills (P) Ltd. 1998 (98) E.L.T. 292 (S.C.)
2. Gira Enterprises Vs. Commr. of Cus. , Ahmedabad- 2006 (194) E.L.T. 92 (Tri-Mumbai)
3. Punjab processors Pvt. Ltd. vs. Collector of Customs- 2003 (157) E.L.T. 625 (S.C).

4. We have carefully considered the submission made by both sides and perused the records. We find that the issue involved in the present case is that whether the value declared by the Appellant in the bill of entry in respect of Polyster knitted fabric is legal and correct or it is substantially lower. The enhancement of the value done by the Custom department is only on the basis of value of contemporaneous imports. The appellants mainly submitted the Bills of entry relied upon in respect of contemporaneous import do not reveal that the goods of said bills of entry is identical to the goods imported by the assessee in respect of quality, quantity, etc. We find that the relevant provisions for valuation under Customs Act are reproduced below:

Customs Valuation (Determination of value of imported goods) Rules, 2007.

<u>Rule 12-Explanation 1(iii)</u>

The Proper Officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include-

(a) The significantly higher value at which identical or similar goods imports at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

<u>Rule 5-Transaction of value of Similar goods:-</u>

(1)Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued :

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

From the above provisions, it is clear that if there is any doubt about the transaction value declared by the assessee, then if at all the value of contemporaneous import needs to be applied, the value of identical goods or similar goods should be applied. However, in the present case though the Bills of entry of contemporaneous import were relied upon, the adjudication authority failed to ascertain that whether the goods of contemporaneous imports is identical or similar to the goods of the assessee in the present case. In the Revenue's appeal also, the ld. Commissioner (Appeal) contended that there is no evidence that the goods of contemporaneous imports are identical to the goods in the present case. Accordingly, the enhancement of the value was dropped. This shows that no effort was made by the adjudicating authority to ascertain quality, quantity, characteristics of the goods of contemporaneous import. In the present import without carrying out any test to the fact that goods of contemporaneous import and the goods in question in present case are identical or similar, enhancement of the value is not legal and correct. It is also observed that other than Bills of entry of contemporaneous import, there is no other evidence to show that the assessee have suppressed the value. Therefore, it is incumbent on the adjudicating authority to first ascertain the parameters of quality, quantity, characteristics of both the imports, i.e. contemporaneous imports and goods imported in the present case. Accordingly, we are of the view that entire matter needs to be relooked and, hence, We set aside all the impugned orders and remand the matter to the adjudicating authority for passing a fresh order by taking our observations made herein above. Appeals are disposed of by way of remand to Adjudicating authority.

(pronounced in the open court on 06/08/2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha