Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10893 of 2019-DB
(Arising out of OIA-AHD-CUSTM-000-APP-204-18-19 Dated- 14/02/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

C.C.-Ahmedabad **........Appellant**
Custom House, Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

Chandan Exports **........Respondent**
2 Rinkoo Apartment Vallabhbhai Road Vile Parle
W Mumbai, Mumbai, Maharashtra

APPEARANCE:
Shri. R.K. Agarwal, Superintendent (AR) for the Appellant
Shri. Prashant Patankar, Consultant for the Respondent

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

Final Order No. A/ 10800 /2023

DATE OF HEARING: 09.01.2023
DATE OF DECISION:05.04.2023

RAMESH NAIR

Revenue is in appeal against the Order –In-Appeal No. AHD-CUSTM-000-APP-204-18-19 dated 14.02.2019 where under the Commissioner (Appeals) have accepted the assessee's contention of classification of the imported goods under heading 76061190 by rejecting the Revenue's stand of classification under Heading 76109090

2. Briefly stated, the facts of the case are that the respondent had filed the Bill of entry for clearance of Aluminum Plate of various thickness classifying the goods under CTH 76061190. On the basis of enquiry conducted by the department and on examination of the goods, the imported goods were found to be both side coated aluminum Composite Plate of 3mm and 4 mm thickness marked on some sheet as 'Timex Strong' and some sheets as 'Timex Bond'. From the inquiry conducted by the Mumbai Customs it appeared that the Polyethylene core plate is the main constituents of imported goods and therefore the goods to be are classifiable under CTH 39209999. Further enquiry conducted by the office of the

Customs Marine & Preventive Wing, Mumbai revealed that trade mark 'Timex Brand' affixed on the goods belongs M/s Cee Gee Ind. Pvt. Ltd. having the same address of the importer. M/s Cee Gee Ind. Pvt. Ltd. is engaged in dealing with building materials as per their customer's requirement and introduced Aluminum Composite Panels under the brand name "Timex Bond' in the market. It has been further observed that the product is described as 'Aluminum Composite Panel' in the advertising materials but imported as 'Aluminum Plate (Composite). Further, on scrutiny of invoice No. VMC/08138 dated 14.01.2008, pertaining to subject import, it appeared that the invoice price is on the lower side than the contemporaneous import of like/similar goods imported from same country of origin i.e. China. Previously, similar goods imported by the importer under Bill of Entry No. 00495 dated 20.12.2007 was assessed as per the valuation data sourced from Directorate of Valuation site and goods were cleared by the importer after paying duty as per loaded value i.e @ US $ 4.40/Sq. Mtr. For Aluminum Plate (Composite) 3MM thickness, Grade -3, @ US $ 6.00/ Sq. Mtr. For 4 MM thickness, Grade 3 and @ US $ 6.50/Sq. Mtr for 4MM thickness, Grade 2.

3. In view of above a show cause notice dtd. 27.07.2008 was issued to the respondent proposing to classify the product, Aluminum Plates (Composite and both side coated) of different thickness under CTH 3920 99 99 or under CTH 7610 90 90 for the purpose of assessment and further to load the value as per Customs Valuation (Determination of Value of Imported Goods), Rules, 2007. The Deputy Commissioner, Customs, ICD Valvada vide Order –In-Original No. 06/07-08 dated 07.03.2008 held that the subject goods of different thickness merits classification under CTH 7610 9090 of the Customs Tariff Act and assessed accordingly under Rule 4 of the Customs Valuation Rules, 2007 and the total duty amounting to Rs. 30,94,237/- is to be paid by the importer. Being aggrieved with the aforesaid OIO, the respondent filed appeal before the Commissioner (Appeals), Ahmedabad. The appellate authority vide Order-In-Appeal dated 30.12.2008 held that goods in dispute fall for classification under CTH 7606 11 90 of the Customs Tariff Act and enhancement of value in OIO was not is accordance with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Thus, by setting aside the OIO appellate authority allowed the appeal filed by the respondent. Aggrieved by the impugned order-in-appeal dated 30.12.2008 department had preferred the appeal in CESTAT. The CESTAT vide Order No. A/10917/2017 dated 08.05.2007 remanded the matter back to Commissioner (Appeals) for fresh decision. On considering of the direction by Hon'ble CESTAT, Learned Commissioner

(Appeals) vide impugned order –in-appeal dated 14.02.2019 decided the matter in favour of importer – respondent. Hence the present appeal by the department against theimpugned Order-In-Appeal.

4. Shri. R.K. Agarwal, Learned Authorized Representative appearing for the Revenue Department justified the order of the review authority and submits that Ld. Commissioner (Appeals) following the Final Order No. 441647/2018 dtd. 24.05.2018 of Hon'ble CESTAT, SZB, Chennai in the matter of ICP India Pvt. Ltd. classified the impugned goods 'Composite Aluminum Panels' under CTH 7606 11 90 of the Customs Tariff. However the said CESTAT order has been reviewed by the Chennai Commissionerate and appeal was preferred before Hon'ble Supreme Court. The Hon'ble Supreme Court of India in its order dtd. 22.02.2019 considering the amount of revenue involved i.eRs. 5,48,579/- declined to entertain the said appeal whilst keeping the question of law open.

4.1. He also submits that Commissioner (Appeals) has erred in appreciating the factual legal position of the issue. The appellate authority has further erred in classifying the imported goods Aluminum Composite Plate under CHT 7606 11 90 and adopting invoice price for the purpose of assesement. The chapter heading 76061190 covers Aluminium plates, sheet and strips of thickness exceeding 0.2 mm. Thus, the said heading covers plates , sheets or strips which are bare in nature and not containing any other material inside or outer side. As per test report, the imported goods is aluminum sheets in both sides and containing layer ie. Fillers of inorganic substance. The produce is composite material having both side aluminum and polyethylene between two sheets and known as Aluminum Composite panels/ plates" in trade parlance. Therefore, they are plates/ sheet or strips and hence cannot be classifiable under CTH 76.06

4.2 He further submits that although explanation of CTH 73.08 may not have a direct relevance with the description of the imported goods in this case, applying explanation to CTH 76.10 would give sufficient indication as to the meaning of expression and term 'prepared' used in Chapter Heading 76.10. In the present case, it has not been alleged or established that at the time of filing of Bill of Entry. The imported aluminum plates (Composite both side coated) were prepared in the manner above so as to include them either as structures or as parts of structures covered under Chapter heading 76.10 of the Customs Tariff. On other hand, chapter heading 76.06 covers

'Aluminium Plates', sheets and strips of the thickness exceeding 0.2 mm. The imported goods have been declared by the importer as Aluminum plates and was held by the adjudicating authority in the order to be Aluminium Plates of thickness of 3 mm and above. The imported aluminum Composite plate were also not 'prepared' for use in Aluminum Structures. Having ruled out the classification under Chapter heading No. 76.10 held that the goods in dispute in the present appeal fall for classification under Heading 76061190. From the above contention, it reveals that the appellate authority mainly emphasized on the word ' prepared' and allegation made that the department has not adduced any argument to explain as to how in ways other than drilled, bent or notched were the Composite Aluminum Panels at the time of import had attained the state of 'prepared' so as to fall within the realm of 'prepared' as per the explanatory notes to the HSN for CTH 73.08 applicable mutatis mutandis to CTH 76.10, to merit classification under CTH 76.10 is not correct as also that Aluminum Composite Panels/ Plates itself are aluminum plates bonded together by polyethylene for use in structural applications which are suitable for building exterior curtain walls, decoration reformation storey addition for old building, decoration of interior walls etc. As seen from the usage of the product, the said goods are prepared form of aluminum essentially for use in such structures such as external facades, walls, storey addition for old building ceiling etc., As CTH 76.10 is for aluminum plates, prepared for use in structures the Aluminum Composite plates are rightly classifiable under CTH 7610 90 90 .

5. Regarding the valuation aspect, he submits that appellate authority held that the enhancement of value in the OIO was not in accordance of with Customs Valuation Rules, 2007. This view is not correct. In OIO it has been discussed in length that there is sufficient doubt regarding the truth and accuracy of the value declared by the importer and thus the value of the imported goods cannot be determined under the provisions of sub Rule 1 and Rule 3 of Valuation Rules, 2007. Therefore, as per sub Rule (4) of Rule 3 of the said Rules, the adjudicating authority looking at the evidence available applied Rule 4 of the said Rules, as the goods in question are identical to the one imported vide BE No. 495 dtd. 20.12.2007, in the sense that the supplier importer, description of goods, country of origin and invoice price etc. are absolutely same. Since, there was sufficient evidence to determine the value of the goods as per Rule 4 of the Valuation Rules by keeping the price at the level of the identical goods imported under BE No. 495 dated 20.12.2007, it would not be correct to hold that the enhancement of value of

the goods in OIO was not is accordance with Customs Valuation Rules, 2007. The relied upon case law is not squarely applicable in the instant case.

6. Shri. Prashant Patankar, Learned Consultant for the respondent supported the impugned order. He placed reliance on the following judgments.

- CC(Import), Chennai Vs. ICP India Pvt. Ltd. – 2019(370)ELT 740 (Tri. Chennai)
- Aludecor Lamination Pvt. Ltd. – 2022 (66)GSTL 245 (A.A.R- GST-Mah.)
- LaxmiColour lab vs. CC – 1992 (62) ELT 613 (Tribunal)
- Sushil Kumar KayanVs. Assistant Commissioner of Customs – 1993 (68) ELT 337 (Cal.)
- Dunlop India Ltd. and Madaras Rubber Factory Ltd. Vs. Union of India - 1983(13)ELT 1566 (S.C.)
- CC, Mumbai Vs. D.J. Orgochem Ltd. – 2008(226)ELT 9(SC)
- Eicher Tractors Ltd. Vs. CC, Mumbai -2000(122)ELT 321(SC)
- SaiImpexVs CC 1992 (62) ELT 616 (Tribunal)

7. We have considered the submissions made by both sides. The primary dispute covered in the present matter pertain to classification of the imported goods viz., 'Aluminum Composite Plates'. Ld. Commissioner (Appeals) in the present matter confirmed the classification of imported goods under CTH 76061190 of Customs Tariff Act. On other hand department is of the view that 'Aluminium Composite Plate' are classifiable under CTH 76109090 of the Custom Tariff Act. We have examined the position and important portion of said tariff entry is reproduced as under:

7606		**Aluminium plates, sheets, and strips , of a thickness exceeding 0.2 mm.**
		- Rectangular (including square) :
760611	--	*Of aluminium, not alloyed :*
76061110	---	Electrolytic plates or sheets
76061190	---	Other
76061200	---	Of aluminium Alloys
		- Other
760691	--	*Of aluminium, not alloyed :*
76069110	---	Circles
76069120	---	Electrolytic plates or sheets
76069190	---	Other
760692	--	*Of aluminium alloys*
76069210	---	Circles
76069290	---	Other

From the above entry it is seen that this heading covers aluminium articles such as plates, sheets, strip, etc., so long as they are of a thickness exceeding 0.2 mm.

The heading under CTH 7610 is reproduced below for ease of reference.

7610	**Aluminium Structures (Excluding prefabricated building of heading 9406) and parts of structures (For example, Bridges and Bridge Sections, Towers, Lattice Masts, Roofs, Roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures.**
76101000 -	Doors, windows and their frames and thresholds for doors.
761090 -	*Other :*
76109010 ---	Structures
76109020 ---	Parts of structures, not elsewhere specified
76109030 ---	Aluminium plates, rods, profiles, tubes and the like, prepared for use in structures
76109090 ---	Parts

It is seen that Heading 7610 covers Aluminium structures and its parts.

8. In view of above tariff entry it is clear that parts of structures illustrated in the tariff heading 7610 includes bridge and bridge –sections, towers, lattice masts, roof, roofing frameworks, door, windows and their frames and thresholds for doors, balustrades, pillars and columns. The list includes in said tariff entry includes only the structural elements and not the material used in making such structural elements. Further 'parts of structures' as the aluminium plates, rod, profiles tubes and the like fall under the tariff heading 7610 only if 'prepared for use in structures'. In the present matter neither the show cause notice nor impugned order-in-original indicate that the imported 'Aluminium Composite Plate' was prepared in any manner for use in structures. Therefore Ld. Commissioner (Appeals) in the present matter correctly held that the imported goods cannot be considered as 'prepared for use in structures' and therefore falls out of the scope of heading 7610.

9. As regard the valuation aspect, we find that in the present case department pointed out that B/E No. 495 dated 20.12.2007, where identical

goods were imported by the same supplier and was assessed at a higher value and subsequently cleared by the respondent after paying duty at the higher assessed value. Whereas respondent has contended that loading of value for goods imported vide earlier Bill of entry No. 495 dtd. 20.12.2007, based on NIDB data was not contested due to the reason that they wanted to clear the goods expeditiously. Thus, we find that the Commissioner has rightly held that there are no reasons to reject the price declared by the respondents. There is merit in the contention of the respondent that the earlier assessment does not preclude them from protesting the enhancement of value on the same lines for subsequent imports. We also find that in the present matter there are no reasons recorded by the revenue for rejection of transaction value before taking the exercise of revaluation and enhancement of transaction value. In the case of *Modern Manufacturers* 2018 (363) E.L.T. 1020 (Tri. - Del.)(supra) the Tribunal held that enhancement of value of importedgoods based on NIDB data and circular issued by DGOV without rejecting declared value under Rule 12 of Customs Valuation Rules, 2007 is not proper. Redetermination of value based on NIDB data and DGOV circular is not sustainable. In the present case, no exercise of rejecting the declared value under Rule 12 and process of applying Valuation Rules sequentially were followed. Therefore, the value declared by the respondent has to be accepted.

10. In the light of the above discussion and considering the facts and circumstances of the case and finding of impugned order, we do not find any reason to interfere with the impugned order and the same is sustained.

11. In the result, appeal filed by the Department is dismissed.

(Pronounced in the open court on 05.04.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

PRACHI