

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO. 1

CUSTOMS MISCELLANEOUS APPLICATION NO. 10217 of 2023
in

CUSTOMS Appeal No. 13084 of 2018-DB

(Arising out of OIA-MUN-CUSTM-000-APP-181-18-19 dated 11.09.2018 passed by
Commissioner of Customs -AHMEDABAD)

GEETANJALI WOOLENS PVT LTD.

VILLAGE RAMESARA, TALUKA HALOL
PANCHMAHAL-GUJARAT

.....Appellant

VERSUS

COMMISSIONER OF CUSTOMS - MUNDRA

OFFICE OF THE PRINCIPAL COMMISSIONERATE OF CUSTOMS,
PORT USER BULD., CUSTOM HOUSE MUNDRA,
KUTCH, GUJARAT-370421

.....Respondent

APPEARANCE:

Shri Amal Dave, Advocate appeared for the Appellant
Shri H.P Shrimali, Superintendent (Authorized Representative) for the
Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA (JUDICIAL)

Final Order No. A/ 11462 /2023

DATE OF HEARING:06.07.2023
DATE OF DECISION:06.07.2023

SOMESH ARORA

The Learned Advocate takes us to the miscellaneous application listed for today and brings on record a Certificate of Ministry of Environment and Forest which allows them to import old and used clothing for the purpose of reclaiming fiber for exports in their unit which is a 100% EOU. The same was not considered by the authorities below, due to non-availability to appellant at the relevant time, as the same was still to be given by the DGFT / Development Commissioner's Office. The same being produced now is taken on record after allowing Miscellaneous application. Further he also stated that apart from issue of licensing, relating to import which was decided against them due to non-availability of this particular license at the time of importation, another aspect was valuation. Which has been decided against them purely on the basis of NIDB data of the product which was stated to be similar to their import and which were imports at other ports. The learned Advocate points out that he had produced number of sheets of NIDB data before the

Commissioner (Appeals) as well as the original authority which have not been considered and which clearly indicate that their transaction was certainly higher in number of cases, though lower in some other cases. He also relied upon the decision in the matter of the appellant itself passed vide OIA No. 222 (100% EOU/GR.VII U) 2008 (JNCH) dated 29.05.2008 which gave benefit under similar circumstances for imports earlier made by them, and the decision has attained finality. It was therefore, his submission that reliance upon selective NIDB data of other ports by the Commissioner (Appeals) in his order is totally misplaced and the order also suffers from infirmity, of non consideration of data given by them. Further, he also submits that it is for the department to indicate that the goods were either identical or similar in nature to other transactions of NIDB data, before adopting other value.

2. Learned Authorized Representative submits that from the license submitted, it is not clear whether it pertains to the impugned consignment and the same will need to be correlated by the party through the underlying correspondence and also reiterates the order as far as valuation aspect is concerned.

3. Considered.

4. It is a trite law that NIDB data alone cannot be the basis for subversion of transaction value. There have been counter claims by both sides that department by picking some selective transactions from the NIDB data as the basis for the enhancement of value has made its demand, whereas the one produced by the appellant was not considered. We find that order cannot be sustained with the infirmities pointed out by the Learned Advocate. Similarly, to rely on NIDB data for its purpose, appellants have also to show that goods were similar. We are therefore, inclined to remand the matter and while doing so, direct that the

Commissioner (Appeals) will examine not only the NIDB data given by the party if contemporaneous and for identical or similar goods but also of the department if in terms of Valuation Rules. The transaction value has to be accepted/rejected on cogent basis. Further, it will also examine that the certificate now produced before us which grants permission to them, allows to import the impugned consignment which is the subject matter of this proceeding. Opportunity to correlate shall be allowed to the party. On these terms, the appeal is allowed by way of remand for redetermination of both issues by the Commissioner (Appeals). Miscellaneous application is also disposed of, accordingly.

(Dictated and Pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha