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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10703 of 2021-DB

[Arising out of Order-in-Original/Appeal No AHD-CUSTM-000-396-20-21 dated 27.10.2020 passed by Commissioner of CUSTOMS-AHMEDABAD]

VINOD MEDICAL SYSTEMS PVT LIMITED .... **Appellant**
Omkar The Summit Business Bay1st Floor, B.L. Bajaj Road, Prakashvadi, Near W.E.H Metro Station, Andheri East, Mumbai, Maharashtra-400093

VERSUS

Commissioner of Customs, Ahmedabad .... **Respondent**
Custom House, Near All India Radio Navrangpura, Ahmedabad, Gujarat

APPEARANCE :

Dr. J. Arthur Prem, Consultant for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 04.09.2023
DATE OF DECISION: 08.09.2023

FINAL ORDER NO. 11892/2023

SOMESH ARORA :

Briefly stated, the facts of the case are that the appellant had filed several Bills of Entry for clearance of imported goods namely various types of VNS Professional Refill Ink purchased from Hong Kong. During the assessment of the Bills of Entry it was observed that the value declared by the importer was not found to be acceptable on the ground of contemporaneous import value of similar goods by the department. On query raised in terms of Rule 12(1) of the Customs Valuation Rules, 2007 for clarification of declared value by submitting documentary evidence, it is stated by the importer vide letter dated 09.10.2018 and 22.10.2018 replied that they accept the price under protest and stated that they were ready to pay the provisional duty on enhanced value as similar issue awaiting finality at Jawaharlal Nehru Customs House (JNCH) and they will abide by the final outcome. Assessing authority rejected the declared value under Rule 12 read with Rule 3 of Customs Valuation Rules, 2007 and the Bills of Entry were provisionally assessed by enhancing the declared value. On appeal, vide order-in-appeal dated 02.07.2019, the case was remanded to the original adjudicating authority for fresh adjudication. On such remand, the value was re-determined to $4.96 per liter under Rule 5 of Customs Valuation Rules, 2007. Aggrieved by such order of remand, the appellant filed appeal before the appellate authority on the ground that Adjudicating Authority is not taking proper action for ascertaining the facts for higher unit price of the contemporaneous import nor the details of NIDB data relied upon by the department is brought on record even in the impugned order by the department. Before the Commissioner (Appeals) the appellant pleaded that the original adjudicating authority should have firstly given its findings as to whether the goods imported by them is water based printing ink or solvent based printing ink as this fact has a direct bearing on the value. The NIDB data relied upon was not clearly coming out from the impugned order in details making it difficult to know as to which NIDB data is used by the department for comparison of imports. Noting the discrepancy the Commissioner (Appeals) directed for denovo decision vide his order dated 27.10.2020.

2. Aggrieved by this order-in-appeal, again remanding the matter, the appellant has preferred the present appeal, inter-alia, on grounds emphasizing that there was no assessment order within 15 days as is required under Section 17(5) of the Customs Act, 1962 in case declared value was not acceptable to the department. That, despite order requiring so, department has not given any NIDB data indicating any details of their goods and goods under NIDB data being comparable. No order is made under Section 17(5) and has therefore not been provided to them and also the value has been reduced without even rejecting by a reasoned order, the value declared by them as well as the material supplied by them. Such rejection therefore is unreasoned and cannot allow department to go any further than the transaction value in the peculiar facts of the case.

3. Learned AR reiterates the findings of the Commissioner (Appeals) and justifies the order.

4. Considering the submissions, we find that this is case of repeated remands therefore it seems that the original authority has not purposely followed the directions of the appellate authority leading to unnecessary

litigation to the party. We find that no order of the proper officer has been passed within 15 days of assessing the Bills of Entry as the same was not accepted by the party and the release of goods procured under protest. Also, there is no order on record indicating the Rule 12 of Customs Valuation Rules, 2007 has been applied after rejecting the transaction value on the basis of enquiry and a reasoned order indicating that the materials were rejectable and on what ground alone the appeal is liable to succeed.

5. We find that in identical facts, various benches of this Tribunal have ordered the same proposition in the case *Italik Metalware Pvt. Limited vs. CC, Mundra – 2023 (8) TMI 1157 – CESTAT AHMEDABAD and in the case of M/s. Sarda Energy and Minerals Limited vs. CCE, Raipur – 2017 (9) TMI 1142 CESTAT DELHI* of firstly there being requirement of rejecting transaction value after inquiry and order.

6. Therefore, in the absence of following such statutory requirement the show cause notice becomes unsustainable. The appellant therefore becomes eligible to relief. We therefore, set-aside the remand order passed second time by the learned Commissioner (Appeals) and set-aside the whole proceedings with consequential relief to the party.

(Pronounced in the open court on ________________)

(Somesh Arora)
Member (Judicial)

(C L Mahar)
Member (Technical)

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