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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11423 of 2017 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-003-006-17-18 dated 17/04/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Valiant Overseas ....**Appellant**
314, Silver Chambers, Tagore Road,
Rajkot, Gujarat

VERSUS

C.C.-Mundra ......**Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat-370421

APPEARANCE:
Shri Vikash Mehta, Consultant for the Appellant
Shri R R Kurup, Superintendent (AR) for the Respondent

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

Final Order No. 12633/2023

DATE OF HEARING: 17.11.2023
DATE OF DECISION: 21.11.2023

RAMESH NAIR

This appeal is directed from the order in Appeal No. MUN-CUSTM-000 – APP-003 To 006-17-18 dated 17.04.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad, whereby the learned Commissioner (Appeals) dismissed the appeal filed by the appellant and upheld the Order-in- Original. In the Order-in- Original the declared value of the goods imported by the appellant was rejected and the same was enhanced on the basis of NIDB data. Being aggrieved by the Order-in- Original the present appeal is filed by the appellant.

2. Shri Vikas Mehta, learned Consultant appearing on behalf of the appellant submits that value was enhanced on the basis of NIDB data which was retrieved from as many as 108 bills of entry in the order in original and left it up to the importer to pick and choose comparable bill of entry to digest the rejection of declared value and enhancement on the basis of any one out of bills of entry which is incorrect and illegal.

2.1 He submits that the reliance placed on different bills of entry is completely misplaced for the reason that the important aspect such as same quality of goods, quantity and other factors are not verified. It is his submission that the goods imported by the appellant are different from the goods which was relied upon for NIDB data in enhancement the value. Therefore, the entire evidence relied upon for enhancing the value is not relevant and correct. In support he placed reliance of following Judgment. :-

- Sedna Impex India P Ltd, Garg Impex and Soir International V/S. C.C. Mundra- 2023(3) TMI 1080 – CESTAT Ahmedabad.
- Italik Metalware Pvt Ltd V/s. C.C.Mundra vide final order No. a/11464-11469/2023 dated 07.07.2023 passed by this Tribunal.

3. On the other hand Shri R.R. Kurup learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal on record, we find that the appellant had waived show cause notice as well as the hearing therefore, the Adjudicating Authority has passed an order relying on NIDB data which is based on various bills of entry through which as per the department identical goods are imported. The appellant before the Commissioner (Appeals) as well as before this tribunal seriously objected the reliance placed by the department on various bills of entry. The appellant also disputed that the goods are not identical. This factual aspects was not agitated before the adjudicating authority. Therefore, in our considered view, the appellant should be given opportunity to make their defense before the adjudicating authority. Accordingly matter needs to be reconsidered by the adjudicating authority.

5. Therefore, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order after considering the submission to be made by the appellant and also an opportunity of personal hearing be given to the appellant. Appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 21.11.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha