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

REGIONAL BENCH- COURT NO.3
Customs Appeal No.10347 of 2021
(Arising out of OIA-JMN-CUSTM-000-APP-069-20-21 dated 30/03/2021 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV)

NENO CRYSTAL **......Appellant**
Shop No 3 Sant Kabir Road Near Ganesh Hardware 12 Shree Ranchho Nagar
Rajkot, Rajkot
Gujarat

VERSUS

C.C.-JAMNAGAR(PREV) **.........Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

APPEARANCE:
Shri. Nirav Shah, Advocate For the Appellant
Shri. J. A. Patel, Superintendent (AR) for the Respondent

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

Final Order No. A/ 12438 /2021

DATE OF HEARING:17.09.2021
DATE OF DECISION:11.10.2021

RAJU

This appeal has been filed by NENO CRYSTAL for enhancement of the assessable value of importers made by the appellant.

2. Shri. Nirav Shah Learned Counsel for the appellant pointed that they had imported Glass Chaton of various varieties. The Original Adjudicating Authority relying on the contemporaneous import price of goods of same description the declared assessable value was rejected and loaded in terms of contemporaneous imported price of goods. When the said order was challenged before the Commissioner (Appeals) it was partly upheld and partly remanded. In the cases where the document relied upon for rejecting the declared value involved the lesser (or comparable) quantity of Glass Chaton the enhancement was accepted by the Commissioner (Appeals). However where the document relied upon for rejecting declared value involved higher quality of Chatons the declared value was accepted.

2.1 The said order of Commissioner (Appeals) was challenged by appellants and it was set aside by the Tribunal vide Final order No. A/10195-10197/2019 dated 17.01.2019 with following observation:-

> *Considering the submission made by both sides, we find that though the value of the imported goods was enhanced on the basis of NIDB data but without providing documents relating to NIDB data which amounts to violation of natural justice. Accordingly, the matter needs to be remitted back to the Adjudicating Authority. The Adjudicating*

> *Authority shall provide the necessary documents of the imports, relating to NIDB data and thereafter the matter may be decided afresh, after giving reasonable opportunity of personal hearing.*

2.2 The matter was again taken up for adjudication again. The original Adjudicating Authority accepted the declared assessable value on various grounds. The revenue challenged the said order before Commissioner (Appeals). The Commissioner (Appeals) set aside the order dated 13.11.2019 and once again remanded the matter back to Original Adjudicating Authority for a fresh order by observing as follows.

> *I have gone through the appeal carefully. Enhancement of value of glass chatons imported by the appellant at Pipavav port, on the basis of NIDB data, is the issue involved. In the impugned order, the adjudicating authority has decided the issue pertaining to three Bes (BE No. 4047335/28.01.2016 for which speaking order was passed on 22.02.2016 and two subsequent Bes. No. 4384388 and 43844389, both dated 25.02.2016 involving the same issue) in favour of the respondent, mainly on the ground that the quantities imported under these three Bes were much more than the quantities imported in the relied upon Bes. The comparison of the subject Bes with the relied upon Bes has been presented in Table-1in para 13 of the impugned order. As discussed in para 15 of the impugned order, the adjudicating authority found that the quantity imported at Pipavav port is about/ or more than double the quantity imported at other ports; that import at Pipavav port was FCL (full container load) whereas import at ICD Khodiyar and Air Cargo Complex was LCL (less container cargo); that it is quite reasonable and established business practice that wherever large quantity is purchased, the seller offers the goods at cheaper price; that this principle is also upheld in the Commissioner (Appeals)'s order dated 13.06.2016.*
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> *The appellant department's one of the arguments is that the adjudicating authority has not considered the Commissioner (Appeals)'s order dated 13.06.2016 and that the adjudicating authority has ordered for re-assessment for the entire quantity covered in all there Bes as per transaction value declared by the respondent. Now, it is on the record that in the Commissioner (Appeals)'s order dated 13.06.2016, which pertained to assessment of glass chatons of different sizes and grades imported vide BE dated 28.01.2016, the rejection of declared value and redetermination of value using comparable data for some of the items and varieties was upheld, whereas, for the remaining items, the comparison was not proper as the quantity imported in the relied upon Bes was less than the quantity imported in the subject BE. Thus, the adjudicating authority seems to have proceeded on the established principle that for comparing the contemporaneous import data, comparable quantity of the items has to be considered, however, there is a gross error in comparing the aggregated quantity of glass chatons of different sizes, grades or varieties and the arriving at a conclusion that the import quantity in the subject Bes was not comparable with the import quantity in the relied upon Bes. So that principle applied may be a correct principle, its application is faulty. Glass chatons imported are in different sizes/ varieties and the price charged is different depending on size/ grade/variety of the item. Thus, glass chatons of a particular size/grade/ variety deserves to be assessed differently depending on the comparable data on contemporaneous import of that particular size/ grade/ variety.*

> *The adjudicating authority has, therefore, erred in comparing the import data by taking the aggregate/ consolidated quantity of glass chatons rather than taking the quantity of a particular item. I, therefore, deem it proper to remit the matter back to the adjudicating authority to re-examine the issue by comparing each of the items imported under the said three Bes with that in the relied upon Bes, and not the total quantity involved in the Bes.*

2.3 Aggrieved by the said order the appellants are before this Tribunal. The argument of the appellant is that Commissioner (Appeals) has relied on the earlier order of Commissioner (Appeals) dated 13.06.2016 which has already been set aside by Tribunal Vide order dated 17.01.2019. The appellant has argued that the departmental appeal relies on an earlier order of Commissioner (Appeals) which has already been set aside by Tribunal and said cannot be relied for any purpose. It has been argued that if revenue does not agree with the order of Tribunal then it should have filed appeal against the order of Tribunal. It has been argued that there is no evidence on record to reject the transaction value. It has been argued that Commissioner (Appeals) has failed to appreciate that revenue has not furnished any evidence to reject the declared assessable value. There is no evidence of extra consideration flowing produce by the revenue.

2.4 In view of above, it was argued that the order of Commissioner (Appeals) needs to be set aside. It has also been argued that reliance on NIDB data is not sustainable. It has been argued that the NIDB data is based on reassessment and not based on actual invoice value. It has been argued that there is nothing on record to demonstrate that NIDB data relates to the supplies from the same supplier or manufacturer or at the or around same time of import or quantity and commercial level is comparable.

3. Shri. J.A. Patel Learned Superintendent (Authorized Representative) relied on the impugned order.

4. We have considered rival submissions. It is seen from the impugned order that it heavily relies on the findings of the earlier order of Commissioner (Appeals) dated 13.06.2016. There are no independent findings in so far as the rejection of declared assessable value is concerned. The impugned order rightly observes in para 5.2 as follows:-

> *The adjudicating authority has, therefore, erred in comparing the import data by taking the aggregate/ consolidated quantity of glass chatons rather than taking the quantity of a particular item. I, therefore, deem it proper to remit the matter back to the adjudicating authority to re-examine the issue by comparing each of the items imported under the said three Bes with that in the relied upon Bes, and not the total quantity involved in the Bes.*

However before reaching this decision, the grounds of rejecting the declared assessable value needs to be stated. Moreover revenue reliance on Commissioner (Appeals) order dated 13.06.2016 in their grounds of appeal is misplaced. In the appeal before Commissioner (Appeals) the revenue has argued that the adjudicating authority while passing the impugned order has not considered the OIA No. JMN-CUSTM-000-APP-31-16-17 dated – 13.06.2016 of the Commissioner (A), Ahmedabad, wherein the enhancement of transaction value has been upheld. The said order has already been set aside and no reliance can be placed on the said order. The Order In Original gives specific grounds why the declared value cannot be rejected. The impugned order does not give any findings on why the said order is incorrect except to rely on the earlier order of Commissioner (Appeals) which has already been set aside by Tribunal.

5. In view of above we do not find any merit in the impugned order. The same is set aside and matter once again is remanded to Commissioner (Appeals) for fresh order without relying on the earlier order of Commissioner (Appeals) and limiting himself to the grounds of appeal before the Commissioner (Appeals)

(Pronounced in the open court on)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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