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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10115 of 2022- DB

(Arising out of OIA-AHD-CUSTM-000-APP-1068-1069-21-22 dated 26/11/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

MOMENTUM SOLUTIONS PVT LTD ....Appellant
Gala 7 F Wing Zakarta Industrial Estate
Marol Maroshi Road Andheri E
Mumbai, Maharashtra

VERSUS

COMMISSIONER OF C.-AHMEDABAD ......Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

CUSTOMS Appeal No. 10116 of 2022- DB

(Arising out of OIA-AHD-CUSTM-000-APP-1068-1069-21-22 dated 26/11/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

SHRI VISHAL H KHANNA ....Appellant
Director Of Ms Momentum Solutions Pvt Ltd
Gala 7 F Wing Zakarta Industrial Estate
Marol Maroshi Road Andheri E
Mumbai, Maharashtra

VERSUS

COMMISSIONER OF C.-AHMEDABAD ......Respondent
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri J C Patel & Shri Anil Balani Advocate for the Appellant
Shri A R Kanani, Superintendent (AR) for the Respondent

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

Final Order No. 10872-10873/2024

DATE OF HEARING: 14.12.2023
DATE OF DECISION: 15.04.2024

RAMESH NAIR

The following principal issues arise in the present appeal:

i) Whether the transaction value of the goods imported by the Appellant is liable to be rejected and enhanced under Rule 5 of the Customs Valuation Rules, 2007,on the basis of a price quote appearing on the internet website www.alibaba.com, when admittedly there are no contemporary imports of identical or similar goods at that price.

ii) Whether the imported goods are liable to confiscation under Section 111 (m) of the Customs Act, 1962 on account of mis-match colour, batch number and batch quantity, which occurred on account of mistake on the part of the foreign supplier, when admittedly the total quantity declared is correct and the mis-match in colour has no bearing on the value of the goods or their eligibility to import.

iii) Whether the imported goods are liable to confiscation under Section 111 (d) of the Customs Act, 1962 merely on account of one batch number being omitted to be mentioned by mistake in the Test Certificate of the Testing Laboratory submitted for the purpose of DGFT Notification No 26/2015-20 dated 01.09.2017, when on pointing out such mistake , the Laboratory corrected the mistake in the Test Certificate.

2. Shri J C Patel, Learned Counsel with Shri Anil Balani, Learned Advocate appearing on behalf of the appellant submits that the rejection of the transaction value and enhancement of the same under Rule 5 Customs Valuation Rules, 2017 based on price quote appearing on website www.alibaba.com despite there being no contemporaneous imports at that price is totally bad in law. It is his submission that to apply rule 5 it is

mandatory that the price of good which have been imported into India can only be taken as comparable price. In the present case the department did not bring any detail of imported goods on record and merely on the basis of quote appearing on website was taken as comparable price which is contrary to the provisions of Rule 5.

2.1 He further submits that the price quote on the alibaba website is with reference to a very minuscule quantity of 11,111 Pcs whereas the appellant have imported total 6,75,000 Pcs, for this reason also the price on the basis of the quote appearing on the website is not relevant. In support he placed reliance on the following judgments:-

- Kuber India vs. CC – 2016 (340) ELT 404
- B.C Trading Co vs. CC – 2006 (202) ELT 619
- CC vs. B.C Trading Co.- 2008 (223) ELT A133 (SC)
- CC vs. P.J Network – 2012(277) ELT 104
- Suyog Extrusions vs. CC – 2007 (213) ELT 524
- Commissioner vs. Suyog Extrusions – 2008 (228) ELT (SC)

2.2 As regard the confiscation of goods under Section 111 (m) of the Customs Act, 1962 on account of mis- match in colour, Batch Number and Batch quantity he submits that it occurred only due to supplier's mistake and which has not resulted into any revenue loss. Therefore, for this reason confiscation of goods is not tenable in law. He placed reliance on the following judgments:-

- Shree Ganesh International vs. CC – 2004 (174) ELT 171
- Kirti Sales Corpn vs. CC – 2008 (232) ELT 151

- Makali Metals P. Ltd vs. CC – 2001 (138) ELT 607
- Gitanjali Gems Ltd vs. CC – 2011 (264) ELT 574

2.3 He submits that the confiscation of goods was also ordered only on the basis of mistake of one batch number in test certificate produced for the purpose of DGFT Notification No. 26/2015-20 dated 01.09.2017. He submits that it is only a typographical error which was later rectified by the test laboratory, thereafter, there was no reason for confiscation of the goods. He submits that the impugned order does not sustain on all the 3 issues. Hence, the same may be set aside and appeal may be allowed.

3. Shri A R Kanani, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that as regard the enhancement of the value of the goods from US $ 0.11 per piece to US $ 0.36 per piece, the sole reliance for enhancing the value was made on quote appearing on website www.alibaba.com. We find that merely on the basis of the quote available on particular website it is not sufficient to enhance the value of the imported goods. at the same time the value appearing on website is abnormally high i.e. 0.36 per piece therefore the matter needs to be reconsidered on the basis of other material, if any. It is also observed that for applying the value of contemporaneous import it will also be important to see various factor such as similar goods, same quality, country of the export and the time of import. Therefore, we are of the prima facie view

merely on the basis of the quote available on the website value cannot be enhanced.

4.1 As regard the confiscation of the goods on the basis mis-match of colour, batch number and batch quantity the appellant submitted that the mistake has occurred in the part of the supplier which has subsequently been clarified by the supplier. We prima facie find that because of this error it does not conclusively lead to any mala fide on the part of the appellant. The Adjudicating authority must reconsider the clarification given by the supplier and also to see that whether there is any intention to evade/ short paid the custom duty. It is also the submission of the appellant that even though this mistake has occurred the total quantity of the goods is matching. This aspect also needs to be re-looked into by the adjudicating authority.

4.2 As regard the allegation that in test certificate one batch number is mentioned wrongly. We find that it was a typographical error and the testing laboratory has rectified the error. Once the typographical error has been rectified, the mistake dose not remains and after rectification only for the mere typographical error goods cannot be confiscated. Therefore the adjudicating authority has to reconsider this matter accepting the rectification of the error done by the concerned laboratory.

5. In view of the forgoing observations, we are of the view that the entire matter needs to be reconsidered therefore the impugned order is set aside. The appeals are allowed by way of remand to the adjudicating

authority for passing a fresh order. Needless to say that the appellant shall be given sufficient opportunity of hearing.

(Pronounced in the open court on 15.04.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha