CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL AHMEDABAD

REGIONAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 10265 OF 2022

[Arising out of OIA-AHD-CUSTM-000-APP-1507-21-22 dated 16/02/2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

INTERNATIONAL COMMODITIES **Appellant**
210 Signature-1, Near Adani Gas Petrol Pump,
S G Highway Makarba
Ahmedabad,
Gujarat

Vs.

COMMISSIONER OF CUSTOMS-AHMEDABAD **Respondent**
Custom House,
Near All India Radio, Navrangpura,
Ahmedabad,
Gujarat

Appearance:
Shri Manish Jain, Advocate for the Appellant
Shri Anand Kumar, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 11016/2024

Date of Hearing: 23.02.2024
Date of Decision: 09.05.2024

RAJU

This appeal has been filed by M/s. International Commodities against confirmation of demand of customs duty and confiscation of goods imported by the appellant and imposition of penalties under section 112A and 114AA of the Customs Act, 1962.

2. Learned Counsel pointed out that the bill of entry was self assessed by the importer classifying the goods under tariff item 90031900 with BCD at the rate of 10% social welfare Cers at the rate of 10% and IGST rate under Notification No.1/2017 schedule 2 Sr. no. 215. The goods were classified as assorted spectacle frames and were valued at USD 1.25 per piece. The total value of consignment was declared as USD 1320. The importer was subsequently asked to produce the catalogue of the goods that they had imported and on verification of catalogue, it was found that the imported assorted spectacle frames were branded frames having brand name like 'OSIRIS'. The revenue checked the prices of the frames of brand OSIRIS and

it was found that the price declared in the internet of some of the frames imported were in the range of USD 199 to US Dollar 249 per piece.

2.1 Consequently, the consignment was opened in the presence of independent witnesses, authorized representative of CHA and authorized representative of custodian to ascertain the quantity and exact description of goods actually imported. On examination it was found that they were 1075 pieces of assorted spectacle frames as against declared quality of 1056. Apart from brand OSIRIS they were other international brand like 'ECO' and 'EPI'. As a quantity declare was incorrect the goods were seized on 09.03.2018 under section 110 of the Customs Act, 1962.

2.2 Learned Counsel pointed out that the importer had produced the evidence in the shape of letter dated 03.04.2018 from the supplier confirming the exact nature of goods. It was stated the said letter that the goods are shop returns (which referred to goods that have not been sold in the shop and have been connected to be sold at a fraction of the price to export clients). He pointed out that the value of such shop returns is extremely low and the statement of the importer namely Sajjad Hussain Dosani was recorded. He was confronted with the data recovered from internet of these brands. Confronted with the vide difference in the prices on the internet and in the invoice, he stated that the goods were returned from the shops and are older models for clearance in stock lot and that is a reason the said goods were sold at USD 1.25. He further pointed out that no payment had been made and it was agreed that the payment would be made to the supplier within 90 days. He further stated that the value of such shop returns in usually less than 10% of the whole sale value. He further stated that he did not know why there was a difference in the quantity stated the invoice and the actual quantity found by 19 pieces.

2.3 Learned Counsel pointed out that the revenue is seeking to adopt the retail price of the said goods in India for the purpose of section 14 of the Customs Act, 1962. He argued that retail price cannot be straightway adopted for valuation and no rule of Custom Valuation rule, 2007 supports this method for the purpose of valuation. He argued that, if value cannot be determined under any of the rules 4 to 9 of the said Customs Valuation rules 2007 then the declared value should be accepted as transaction value. He further argued that rule 9 does not provide for adoption of retail prices. He further argued that there is no evidence of import of identical and similar goods and stock lots or even fresh goods at the time of import from 2018 to 2020. He further pointed out that the goods imported were already out dated and older models.

2.4 Learned Counsel pointed out that when show cause notice dated 05.09.2018 was issued the appellant submitted a defense reply dated 17.10.2018. A personal hearing was fixed on 26.02.2019 which was attended by the appellant and the adjudicating authority disposed the impugned SCN without parsing any adverse appealable order but by directing the lower authority only to the assess the bill of entry as requested by the appellant in their letter dated 17.10.2018.

2.5 Learned Counsel pointed out that the revenue has relied on Chartered Engineer certificate issued by Shri D P Jani on 30.09.2020 to arrive at the value of goods. The chartered engineer came to the conclusion that the marker value of the bunch of frames would be approximately Rs. 11,43,420/- in the year 2019. Learned counsel pointed out that the said report is baseless and without any substance. He further pointed out that the order of Commissioner (Appeals) is silent in respect of the customs valuation rules applicable to the instant case and the straightaway comes to rule 9.

3. Learned AR relied on the impugned order.

4. We have considered rival submission we find that it is not in dispute that the goods imported by the appellant were mis-declared in quantity. As against declared quantity of 1056 frames, the actual quantity found was 1075 frames. It is also a fact that the brand imported by the appellant are OSIRIS, ECO and EPI which are very expensive brands with pricing of finish glasses ranging upwards of 180 dollars per piece. In these circumstances, the declared price of USD 1.25 per piece is obviously incorrect. The order in original clearly records that no contemporaneous import data of identical or similar goods was available and therefore adoption of rule 4 or 5 of the customs valuation rules was not possible. The order also records that the show cause notice proposes the deductive value method in terms of rule 7 of the said rules. However, there was issue with respect to said method as well as the market price of complete glasses were available but separate prices of mere frames were not available. In those circumstances, the revenue took assistance of chartered engineer. The appellant was kept in loop after

appointment of chartered engineer and the chartered engineer after due study came to conclusion that the value of goods was Rs.11,43,420/-. In the instant case it is a fact that there was a mis-declaration of quantity and therefore goods are as it is liable to confiscation under 111 (m) and of the Customs Act, 1962. We find that in this circumstances the imposition of redemption fine of Rs. 1,00,000/- and penalty under section 112 A of Rs.75,000/- and under 114 AA of Rs. 1,00,00/- is not excessive or unreasonable.

5. In these circumstances, we do not find any merit in the appeal the same is dismissed.

(Dictated and pronounced in the open Court on 09.05.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Dharmi