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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 10043 of 2022–DB

(Arising out of OIA-AHD-CUSTM-000-APP-922-21-22 dated 22/09/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

COVESTRO INDIA PVT LTD ....**Appellant**
Plot No 3501 To 3515 6301 To 6313 And 16 Mtr Road / B2 Gidc
Ankleshwar, Gujarat

VERSUS

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

APPEARANCE:
Shri Vinay Kansara, Advocate for the Appellant
Shri Prashant Tripathi, Superintendent (AR) for the Respondent

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

Final Order No. 12466/2024

DATE OF HEARING: 16.10.2024
DATE OF DECISION: 16.10.2024

RAMESH NAIR

The brief facts of the case are that the appellant regularly import their one of the inputs namely Desmodur T80 (Toluene Di Iso Cynate) to utilize the same in the manufacture of the finished goods namely Desmoudur L75. The appellant had filed two bills of entry to import said input from Covestro DAG, Germany (parent company) and declared the price of the input at INR 110.10 per Kg on CIF basis in terms of the purchase order. The Custom authority noticed that in respect of the earlier import Vide BOE No. 7474948 dated 18.04.2020, the unit rate was declared as INR 163.95 per Kg. Accordingly, it was concluded that unit rate declared in the said two bills of entry appear not fair, thereafter, after inquiry enhanced the price based on the contemporaneous price as mentioned in the bill of entry No. 7474948 dated 18.04.2020 and its relevant invoice No. 8020015241 dated 06.02.2020 and the assessing authority passed the speaking order dated 29.05.2020 whereby the declared value of Rs. 110.10 was rejected and ordered to reassess the bills or entry by enhancing the value. Being aggrieved by the said Order-In-Original, the appellant filed the appeal before the Commissioner (Appeals) who has rejected the appeal. Therefore, the present appeal filed by the appellant.

2. Shri Vinay Kansara Learned Counsel appearing on behalf of the appellant at the outset submits that the purchase order was given by the appellant for declaring the unit rate of Rs. 110.10 per kg. However, due to system glitch the supplier has declared price 163.95 per kg in the invoice corresponding to bill of entry 7474948 dated 18.04.2020. The said system glitch was rectified subsequently and for the differential value a credit note was also issued by the supplier. Thus the price of Rs. 163.95 is not correct and genuine price and the same could not be taken as contemporaneous price. On the query from the bench, he submits that all these documents and subsequent credit note given by the supplier were not considered by the lower authorities. In support he placed reliance on the following judgments:-

- UOI V/s Mahindra & Mahindra 1995 (76) ELT 481 (SC)
- Mirah Exports Pvt. Ltd. V/s CC - 1998 (98) ELT 3 (SC)
- Impex Steel & Bearing Co. V/s CC-2014(302)464 (T)
- Reiter India Pvt. Ltd. Vs. CC, Nhava Sheva 2014 (309) ELT 277 (T)
- CC, Chennai Vs. Volvo India Pvt. Ltd. -2019 (365) ELT 802 (Mad.).

3. Shri Prashant Tripathi Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that the Revenue has enhanced the value of the import only on the basis of the previous of bill of entry wherein price was declared as Rs. 163.95 per kg. However, we find force in the submission of the appellant that Rs. 163.95 is not the correct and genuine price as the same was mistakenly mentioned in the invoice of the supply due to system glitch. The appellant has also submitted that the said error made by the supplier has been later on corrected and by giving effect the supplier has issued a credit note also. We also find force in the submission of the appellant that the Purchase Order shown the corrected price i.e. Rs. 110.10 per kg however, it is observed that the adjudicating authority as well as commissioner (Appeals) have not considered all these submission and the documents submitted before them.

5. Therefore in our considered view, the matter should go back to the adjudicating authority. Hence, impugned order is set aside. Appeal is allowed by way of remand to the Adjudicating Authority.

(Operative portion dictated in open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha