IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
STAY Application Nos. C/Stay/70182-70183/2018
APPEAL Nos. C/70412-70413/2018-CU[DB]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-1658 to 1661-17-18 & Order-in-Appeal No. NOI-CUSTM-000-APP-1652 to 1657-17-18 dated 16/01/2018 passed by Commissioner of Central Tax (Appeals), Noida)

Commissioner of Customs, Noida **Appellants**

Vs.

M/s VSM Impex Pvt. Ltd. **Respondents**

Appearance:

Shri Gyanendra Kumar Tripathi (Asstt. Commr.) AR for Appellant
Absent for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 26/06/2018
Date of Decision : 26/06/2018

FINAL ORDER NOs. - **71323-71324/2018**

Per: Archana Wadhwa

After rejecting the request of the Revenue to stay the operation of the impugned order of Commissioner (Appeals), we proceed to decide the appeal itself inasmuch as a short issue is involved. Accordingly, we have heard the learned A.R. appearing for the Revenue. Nobody appeared for respondents.

2. As per the facts on record, the respondents filed Bills of Entry for import of 100% None Textured Polyester PA/PV coated fabric falling under Chapter 59 at the declared value. Revenue enhanced the value of the said goods on the basis of NIDB data and DRI alert dated 09/05/2011. The said assessed Bills of Entry at the enhanced value, were appealed against by the respondents before Commissioner (Appeals), who set aside the said enhancement by observing that the transaction value has not been doubted by the Revenue and has not been proved to be incorrect value by any evidence. Mere reference to NIDB data and DRI alert cannot be adopted for enhancement of the value without first rejecting the transaction value. Reference was made to various decisions of the Hon'ble Supreme Court including the decision in the case of Eicher Tractors Ltd. – 2000 (122) E.L.T. 321 (S.C.) and Agarwal Industries Ltd. 2011 (272) E.L.T. 641 (S.C.) as also to the latest decision of the Tribunal in the case of Agarwal Marbles India (P) Ltd., Jaipur 2017 (350) E.L.T. 262 (Tr.-Del.). He accordingly observed that Adjudicating Authority has not referred to any tangible evidence on records to show that the transaction value was not correct. The Commissioner (Appeals) also made reference to various other orders of

Commissioner (Appeals) wherein the enhancement done by the Revenue, in similar circumstances was set aside.

3. Apart from reiterating the fact that enhancement was correctly done based upon NIDB data and DRI alert, Revenue has not either rebutted the findings of Commissioner (Appeals) nor has produced any evidence to substantiate their arguments. It is well settled law that NIDB data or DRI alert/reference issued by the Revenue cannot be made the basis for enhancing the transaction value, unless there are sufficient reasons and evidences for such enhancement. In the absence of the same, we find no infirmity in the impugned order of Commissioner (Appeals). Accordingly Revenue's appeal is rejected. Stay petition also gets disposed of.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks