IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.C/55274 & 55258/2013-CU[DB]

(Arising out of Orders-in-Appeal Nos. 186 & 187-CUS/GZB/2012 dated 29/10/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad)

M/s Vaan Sales India Pvt. Ltd. **Appellant (s)**

Vs.

Commissioner of Customs, Ghaziabad **Respondent (s)**

Appearance:

Request for Adjournment, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 19/06/2018
Date of Decision : 19/06/2018

FINAL ORDER NO-**71232-71233 / 2018**

Per: Anil G. Shakkarwar

The present appeals are arising out of Orders-in-Appeal Nos. 186 & 187-CUS/GZB/2012 dated 29/10/2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad.

2. On matter being called, appellants submitted request for adjournment. We have rejected the request for adjournment and heard the learned A.R. for revenue and perused the records.

3. We find that the appellant imported old and used tyres of various sizes having a minimum residual life of about 40% of new tyres under the cover of invoices issued by foreign supplier and declared the value of the same based upon the value reflected in the invoice dated 22.03.2012 and filed the Bill of Entry No.6774927 dated 09.05.2012. Being doubtful about the value of the goods declared by the appellant, revenue got the consignment examined through Chartered Engineer who opined that the value of the tyres should have been on higher side. Based on the said opinion dated 29.05.2012 Revenue proposed to enhance the value. Further, the import of old and used tyres required a license which was not produced by the appellant. Revenue entertained a view that the said goods were liable for confiscation on said grounds also and penalty was required to be imposed.

4. On the above two grounds proceedings were initiated against the appellant proposing enhancement of value as also confiscation of goods and imposition of penalty. The Original Adjudicating Authority enhanced the value from Rs.14,13,672.53/- as declared by the appellant to Rs.30,10,329/- in terms of provisions of Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. He also confiscated the goods with an option to the appellant to redeem the same on payment of redemption fine of Rs.6

lakhs. Further, he has imposed penalty of Rs.3,03,000/- under Section 112 (a) of Customs Act, 1962.

5. On appeal against the above order, the Appellate Authority upheld the charge of under valuation and also of non production of license but reduced the redemption fine from Rs.6 lakhs to Rs.4.50 lakhs and penalty from Rs.3,03,000/- to Rs.1,51,000/-. Aggrieved by the said order, appellant is before this Tribunal in Appeal No.C/55258/2013.

6. Appeal No.C/55274/2013 was filed under similar circumstances. In the said appeal the proceeding started with filing of Bill of Entry No.6774922 dated 09.05.2012, the concerned invoice was dated 22.03.2012. The discription of goods was same as in the case of Bill of Entry stated in forgoing paragraph. Through Order-in-Original dated 27.07.2012 declared assessable value of Rs.17,65,870.40/- was enhanced to Rs.37,36,800/-. The redemption fine was imposed to the tune of Rs.7,48,000/- and penalty imposed was Rs.3,74,000/-. Through the impugned Order-in-Appeal there was no interference by the Learned Commissioner (Appeals) in value determined. However, the redemption fine was reduced from Rs.7,48,000/- to Rs.5,60,000/- and penalty was reduced from Rs.3,74,000/- to Rs.1,87,000/-. Aggrieved by the said order of learned Commissioner (Appeals), appellant is before this Tribunal.

7. The record reflects that the import was required to be made with a license which could not be produced by the

appellant before the Customs Authorities. As regards the charge of under valuation, we find that the same was ordered on the basis of opinion given by Chartered Engineer and the same was adopted by the lower authorities without there being any other legal corroborative evidence to show that they have paid more consideration to the foreign suppliers. The invoices raised by the foreign suppliers had not been challenged by Revenue in which case, the same becomes correct assessable value, being the transaction value. Since the invoice has not been rebutted by producing any evidence on record, we hold that the values declared by the appellant in the said Bills of Entry are correct assessable values and the same cannot be changed merely on the opinion of the Chartered Engineer. Inasmuch as, the appellant has admittedly not produced required license, confiscation of goods and imposition of penalty is upheld. However, we reduce the redemption fine to 15% of the assessable value of the goods and penalty to 10% of the value of goods, by adopting the principle enunciated in the previous decision in the case of M/s Jibran Overseas Vs Commissioner of Customs, Ghaziabad dated 08.04.2015 passed by this Tribunal and upheld by the Hon'ble Allahabad High Court in the case of Commissioner of Customs, Noida Vs M/s Jibran Overseas in Customs Appeal No.278 of 2015 pronounced on 20th December, 2016.

8. In above terms, the appeals filed by the appellant are partially allowed.

(Pronounced in Court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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