IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

C/1/2011 & C/2/2011 (DB)

Arising out of O/A No.208-209-Cus/APPL/Noida/2010 dated 23.7.2010 passed by Commissioner of Customs(Appeals), Noida.

Vardman Sales Agency

…APPELLANT(S)

VERSUS

CCE, Noida

RESPONDENT (S)

APPEARANCE

Shri Jitin Singhal (Advocate) & Ms.Stuti Saggi (Advocate) for the Appellant
Shri Pradeep Kumar Dubey (Supdt.)(A.R.) for the Revenue

CORAM:
MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 10.01.2018

FINAL ORDER NO.70439-70440/2018

Per Shri ANIL G. SHAKKARWAR :

The above stated two appeals are having similar facts related to the same appellant. Therefore, they are taken together for decision.

2. Briefly stated facts of the case are that appellant on 15.12.2009 filed Bill of Entry with ICD Dadri describing the goods imported as "aluminium scrap as ISRI 'TABLET'". The quantity declared was 21.240 MTs and CIF value was USD 34,108.80. Along with the said Bill of Entry important documents such as ISRI, invoice, packing list, Bill of Lading, pre-shipment inspection certificate issued by authorized agency were filed. On examination of goods it was found that the entire lot was not that of scrap, but it also contained Aluminium lithographic sheets. It appeared to Revenue that said Aluminium lithographic sheets were prime in nature. The importer through letter dated 11.01.2010 gave an option to the assessing officer that they were ready to mutilate the said Aluminium lithographic sheets at their own cost before clearance. However, Revenue engaged M/s.Technova Imaging Systems Pvt.Ltd., New Delhi for examination of said consignment. The said business concern gave a report which was forwarded to the importer. The importer vide their letter dated 01.02.2010 submitted that report of M/s.Technova Imaging Systems Pvt. Ltd. was baseless as said company was not producing goods of same thickness as well as they were not used in India. Revenue went ahead with the proceedings and ordered classification of Aluminium lithographic sheets under tariff item No.76061190 whereas the classification claimed in the said Bill of Entry filed on 15.12.2009 was claimed under tariff item No.76020010. Further Revenue enhanced value of Aluminium lithographic sheets on the basis of NIDB data. Further the goods were confiscated and redemption fine of Rs.2.00 Lakhs was imposed through order-in-original dated 16.03.2010. Appellant preferred appeal before

Commissioner(Appeals) which was decided through impugned Order-in-Appeal No.208-209/2010 dated 23.7.2010. The ld.Commissioner(Appeals) reduced the redemption fine to Rs.50,000/- and Rs.1,35,000/- and penalty of Rs.10,000/- and Rs.5,000/- respectively in two appeals decided by him simultaneously. Aggrieved by the said order appellant preferred appeal which is bearing No.C/2/2011.

In the similar manner appellant filed Bill of Entry on 22.12.2009 with ICD Dadri with same description of goods and along with similar documents as stated above. In this case the quantity was 19.72 MT and declared assessable value was Rs.31,946.40. The consignment also was subject to the same procedure. In the consignment Aluminium lithographic sheet found were once again classified by Revenue in the similar manner and value was enhanced on the basis of NIDB data. Further CIF value of remaining quantity of imported scrap was also enhanced. Redemption fine of Rs.1.00 Lakh was imposed and penalty of Rs.25,000/- was imposed through Order-in-Original dated 16.03.2010. Aggrieved by the said order, appellant preferred appeal before Commissioner(Appeals) which was decided through common order as stated above i.e. Order-in-Appeal no.208-209/2010 dated 23.7.2010. Aggrieved by the said order appellant preferred present appeal bearing No.C/1/2011.

3. Both the appeals are taken up for decision together. Heard the ld.Counsel for appellant. The ld.Counsel has submitted that importer on the basis of information available in the documents before him received from the overseas supplier filed Bill of Entry and the description in the documents and description stated in the Bill of Entry did not differ. Further importer did not accept the report or opinion given by M/s.Technova Imaging System Pvt.Ltd., New Delhi for the reason that said company was not producing sheets of same thickness. Further the importer also undertook to mutilate the said Aluminium lithographic sheets at own cost before clearance of the goods. Therefore importer neither mis-declared description nor the goods were liable for confiscation. The goods which appeared to be prime quality to Revenue were treated as scrap in the country from where the goods were imported. Ld.Counsel further submitted that the value was enhanced on the basis of NIDB data and further relied on this Tribunal's decision in the case of Sanjivani Non-Ferrous Trading Pvt.Ltd. v. CCE & ST, Noida reported at 2017 (7) GSTL 82 (Tri.-All.) and submitted that the adjudicating authority has not followed the requirement of section 14 of Customs Act, 1962 and therefore as held in the said case of Sanjivani Non-Ferrous Trading Pvt.Ltd. the value of the goods declared in the Bills of entry should be accepted.

4. Heard the ld.AR who supported the impugned Order-in-Appeal.

5. Having considered the rival contentions and perusal of records we find that the submissions made by the ld.Counsel for appellant are reflected in the Order-in-Original to the extent that the description of the goods declared in the Bills of entry were as per the documents received from the foreign supplier and therefore in so far as declarations are concerned we do not find any mis-declaration in the present case. We, further, do not find any intention of the appellant to mis-declare the goods for the reason that the appellant under-took to mutilate the goods which were objected to be of prime nature by Revenue. We further find that this Tribunal in the case of Sanjivani Non-Ferrous Trading Pvt.Ltd. has held that it was provided under section 14 of Customs Act that the assessable value has to be arrived at on the basis of price which is actually paid and in a case the price is not sold consideration and if the buyers and sellers are related person then after establishing that the price is not sole consideration, the transaction value can be rejected and taking other evidences into consideration, the assessable value can be arrived at. We do not find any such exercise being undertaken in the present case for enhancement of value. We therefore set aside the impugned order and restore the description and

value declared in the said two Bills of Entry. The appellant shall be entitled for consequential relief.
(Operative part of the order was pronounced in the open Court)

(ARCHANA WADHWA) MEMBER (JUDICIAL)

(ANIL G. SHAKKARWAR) MEMBER(TECHNICAL)

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