IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
STAY Application No. C/Stay/70118/2018
APPEAL No. C/70212/2018-CU[DB]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-1326 to 1328-17-18 dated 25/10/2017 passed by Commissioner (Appeals), Customs & Central Excise, Noida)

Commissioner of Customs, Noida Customs Commissionerate **Appellant**

Vs.

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

Appearance:

Shri Mohd. Altaf (Asstt. Commr.) AR for Appellant
Request for Adjournment for Respondent

CORAM:

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

Date of Hearing : 22/05/2018
Date of Decision : 22/05/2018

FINAL ORDER NO.- 70976/2018

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals), vide which he has set aside the enhancement of the value of imported fabric, Revenue has filed the present appeal along with the Stay Petition. As the impugned order of Commissioner (Appeals) is non executable, we find no reason to stay the operation of the same. As such after rejecting Stay Petition, we proceed to decide the appeal itself as the issue lies in a narrow compass.

2. As per the facts on records respondent filed Bill of Entry for clearance of 'Non Textured Polyester PA Coated Fabric'. The assessing officer rejected the declared value on the Bill of Entry itself and re-determined the value under Rule 9 of the Customs Valuation (Determination of value on Imported Goods) Rules, 2007. Being aggrieved with such enhancement, the importer filed an appeal before Commissioner (Appeals), who set aside the enhancement by observing that there is virtually no evidence to show that transaction value was not the correct value. As such by referring to various decisions including the Hon'ble Supreme Court decisions in the case of Eicher Tractor Ltd. 2000 (122) E.L.T. 321 (S.C.), he observed that unless the price actually paid for the particular transaction fall within the exceptions provided under Rule 4(2), the Customs Authorities are bound to assess the duty on the basis of the declared transaction value. He further held that inasmuch as in the present case the circumstances were not covered by Rule 4(2) exception, the assessment has to be done on the transaction value.

3. The Revenue has again reiterated their stand that in the absence of specifications of the product, the value cannot be determined under Sub-rule 1 of Rule 3. Identical goods showing the necessary specification and comparable quantity of the imported goods were not notice by the Commissioner (Appeals) and as such have submitted that the value enhancement was correct. They have relied upon the

Supreme Court decision in the case of M/s Padia Sales Corporation to impress upon their stand that the price ordinarily prevalent in the international market should be adopted for the purpose of valuation.

4. We find that the legal issue is no more *res-integra*. The transaction value is the basis for assessment unless proved to be wrong or affected by extraneous considerations. The Revenue has not rejected the transaction value first. The Appellate Authority has referred to precedent decisions holding to that effect. As such we fully agree with Commissioner (Appeals) that in the absence of rejection of the transaction value, Revenue cannot proceed ahead to re-determine the value in terms of the subsequent rules of Customs Valuation Rules. No infirmity is found in the impugned order of the Appellate Authority, requiring any interference. Accordingly, Revenue's appeal is rejected. Stay Petition also gets disposed of.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks