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

APPEAL No.- C/57732/2013-CU[DB]

(Arising out of Order-in-Appeal No.34-Cus/GZB/2013 dated 28/02/2013 passed by Commissioner of Customs(Appeals) Customs & Central Excise, Ghaziabad)

M/s Millennium Overseas **Appellant**

Vs.

Commissioner of Customs, Ghaziabad **Respondent**

Appearance:

Shri Mohd Faraz Anees (Advocate) for Appellant
Shri Rajeev Ranjan Additional Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 18/06/2018
Date of Decision : 18/06/2018

FINAL ORDER NO.71134/2018

Per: Archana Wadhwa

After hearing both the sides we find that the appellant imported old and used tyres of various sizes and of mixed brands under the cover of invoice of the foreign supplier and declared the value of the same based upon the value reflected in the invoice. Being doubtful about the value declared by the appellant, Revenue got the consignment examined from one Chartered Engineer, who opined that the value of the tyres should have been on the higher side.

Based upon the same Revenue proposed to enhance the value.

As the importer of old and used tyres require a license, which was not produced by the appellant, the Revenue entertained the view that goods are liable to confiscation on the said ground also and penalty is required to be imposed.

2. On the above two grounds, proceedings were initiated against the appellant proposing enhancement of the value as also confiscation of the goods and imposition of penalty. The Original Adjudicating Authority enhanced the value from Rs.31,68,002/-, as declared by the appellant to Rs.72,86,562.48/-. In terms of the provisions of Rule 9 of the 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.14 lakh penalty of Rs. 7.50 lakh was also imposed under Section 112(a) of the customs Act.

3. On appeal against the above order the appellant authority upheld the charge of undervaluation as also of non-production of license but reduced the redemption fine from Rs.14 lakh to Rs.13 lakh and from Rs. 7.50 lakh to Rs. 7 lakh. The said order of Commissioner (Appeals) is impugned before the Tribunal.

4. Learned Advocate appearing for the appellant fairly agree that the import was required to be made against a license, which the appellant could not procure and produce before the Customs Authority as they were not aware of the said legal formalities.

As regards the charge of undervaluation, he submits that the Revenue has proceeded only on the basis of Chartered Engineer's opinion without their being any other legal corroborative evidence to show that they have paid more consideration to the foreign supplier. The invoice raised by the foreign supplier has not been challenged by the Revenue, in which case the same becomes correct assessable value, being the transaction value. Accordingly he prays for setting aside the enhancement.

5. After considering the submissions made by learned AR and after going through the impugned order we note that the imported tyres are old and used tyres as also of different mixed brands. The value of old and used tyres would depend upon the factors of use of years and residual life. Each second hand item carry different values and exporter and importer may decide upon a particular value of such type of goods. Admittedly the foreign supplier has raised the invoices for the goods in question which invoice has not been rebutted by the Revenue by producing any evidence on record. As such in our views to enhance the

value of such goods depending upon the opinion of the Chartered Engineer is not justifiable. Accordingly, we set aside the enhancement of the assessable value.

6. Inasmuch as the appellant have admittedly not produced the license to import the goods. The confiscability of the goods and imposition of penalty is upheld. However, keeping in view that the enhancement of the value has already been set aside. We reduce the redemption fine to 15% of the assessable value of the goods and penalty to 10% of the value of the goods, by adopting the principle enunciated in the previous decision in the case of M/s Jibran Overseas V/s C.C.E & S.T., Ghaziabad reported at 08.04.2015 as upheld by the Hon'ble Allahabad High Court in Commissioner of Customs Noida V/s M/s Jibran Overseas reported at 20.12.2016.

7. The appeal is disposed in above terms.

(Dictated & Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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