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

APPEAL No.C/51304 & 51303/2014-CU[DB]

(Arising out of Order-in-Appeal No.MRT-EXCUS-002-APP-185-186/13-14 dated 27/11/2013 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Merrut -II)

Commissioner, Customs, Central Excise &

Service Tax, Merrut-II **Appellants**

Vs.

Shri Varun Anand
(*In Appeal No.51304/2014)*

M/s Radha Enterprises, **Respondents**
(In Appeal No.51303/2014)

Appearance:

Shri Pawan Kumar Singh (Superintendent) 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	:	18/06/2018
Date of Decision	:	18/06/2018

FINAL ORDER NO.71145-71146/2018

Per: Archana Wadhwa

Being aggrieved with the order passed by the Commissioner (Appeals) Revenue has filed the present appeal. We have heard Shri Rajeev Ranjan (Additional Commissioner) AR and Shri Pawan Kumar Singh (Superintendant) AR for the Revenue. Nobody appeared for the respondent.

2. The issue involved in the present appeal is that Commissioner (Appeals) has set aside the charge of undervaluation of the imported goods by observing as under:-

"Further, with regard to the alleged mis-declaration and under-valuation in respect of goods in question, the department had not adduced any material evidence indicating remittance of any amount over and above the invoice price by the importer to the supplier. In this regard, reliance is also placed on the judgment of the Hon'ble CESTAT in the case of Deepak Bansal Vs CCE, Kanpur, 2012 (279) ELT 66 (Tri.- Del.), Wherein it has been held that "Admittedly there is virtually no evidence on record to reject the transaction value. Further there is neither any reference nor any evidence to the effect that the importer has paid any under hand consideration to the supplier of the goods. We also find no reference to any contemporaneous goods. As such we find no justifiable reasons to reject the transaction value and to enhance the value of the goods in question". Also there is no evidence or details to the effect that the import effected through Kolkata Sea Port 2845413 dated 24.02.2011, ICD Faridabad vide Bill of Entry No.2814740 dated 21.02.2011 & Bombay Sea Port vide Bill of Entry No 2910699 dated 07.03.2011 (as relied on by the department), pertains to the same quality of goods imported by the appellants vide Bill of Entry No. 2937645 dated 10.03.11. In this regard, reliance placed by the appellants on the judgment of the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. v. Commissioner of Customs -2000 (122) ELT 321 (S.C.) is also relevant, wherein it is held that transaction value cannot be rejected without clear and cogent evidence produced by the department in respect of import of identical or similar goods with regard to quantity, quality,

country of origin and place and time of import. In view of these facts, judgements and evidence, there was no valid reason for the lower authorities to reject the assessable value in respect of the subject goods. It therefore, follows that confiscation of subject goods as well as demand of differential duty of Rs. 5,97,603/- raised on account of the alleged mis-declaration of goods relating to B/Entry No.2937645 dated 10.03.11 is not sustainable and hence the same is set aside."

3. A reading of the above shows that the appellant authority has accepted the transaction value on account of the Revenue's failure to rebut the same by any evidence. He has also relied upon various precedent decisions of the tribunal. In the appeal memo also, revenue has not produced any evidence indicating that the transaction value entered into between the supplier and the importer does not reflect correct consideration of the goods. In this scenario we find no infirmity in the views of Commissioner (Appeals). Accordingly, the impugned order is upheld and Revenue's appeals are rejected.

(Dictated & Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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