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

APPEAL No.C/131,132,133,144/2012-CU[DB], C/56829/2013-CU[DB]

(Arising out of Order-in-Original No.06/Cus/Comm/GZB/2012 dated 31/01/2012 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Bhawani Enterprises,
(In appeal No. C/131/2012-CU[DB])
Naresh Chandra, Proprietor,
(In appeal No. C/132/2012-CU[DB])
M/s Sunbeam Industries,
(In appeal No. C/133/2012-CU[DB])
Praveen Chandra Agarwal, CHA
(In appeal No. C/144/2012-CU[DB])
Deepak Gupta, Proprietor,
(In appeal No. C/56829/2013-CU[DB]) **Appellant**

Vs.

Commissioner of Customs, Ghaziabad **Respondent**

Appearance:

Dr. Prabhat Kumar (Adv) & Shri S.S. Dabas (Adv) for Appellant

Shri Mohd Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 04/07/2018
Date of Decision : 04/07/2018

FINAL ORDER NO.71351-71355/2018

Per: Archana Wadhwa

1. All the appeals arising from the same impugned order passed by Commissioner are being disposed of by a common order. We find that the Commissioner has enhanced the value of the goods imported by M/s

Bhawani Enterprises along with imposition of penalties upon them as also on the other appellants.

2. After hearing both the side duly represented by Dr. Prabhat Kumar (Adv) & Shri. S.S. Dabas (Adv.), it is seen that M/s Bhawani Enterprises with Shri Naresh Chandra, being the Proprietor filed a Bill of Entry on 23/05/2008, for import of 'PVC Adhesive Sheeting with Paper liner' which is used for making stickers/labels, etc. for advertisement of products. Along with the Bill of entry, the appellant filed copy of the invoice issued by their foreign supplier as also the other requisite documents.

3. Investigations were initiated against the appellants on the doubt of undervaluation of the goods as also about the ownership of the same. However, it is seen that finally Commissioner, vide his impugned order accepted M/s Bhawani Enterprises and Shri Naresh Chandra as the owner of the goods. The value of the imported goods was enhanced from declared value of Rs.7.20 lakhs to Rs.71 lakhs (approx.) and the appellant was directed to pay duty on the enhanced value. In addition the goods were confiscated with an option to the appellant, Shri Naresh Chandra, to redeem the same on payment of redemption fine of Rs.20 lakhs. The Adjudicating Authority also imposed penalties on M/s Bhawani Enterprises, Shri Naresh Chandra, M/s SunBeam Industries, who were initially held to be the owner of the goods as also Shri Deepak Gupta, Proprietor of M/s SunBeam Industries. Penalty was also imposed on Shri Praveen Chandra Agarwal, CHA G Card holder along with the imposition of penalty on Shri Ramesh Chandra CHA.

4. Arguing on the appeal learned Advocate submits that the value of the goods was enhanced so much that the importer could not redeem the

same during the pendency of proceeding before the Adjudicating Authority or before the Tribunal. The goods are perishable in nature and get spoiled within a period of one year. Inasmuch as the goods are still with the Revenue and have been damaged and deteriorated, they are not interested in release of the same. As such the question of valuation is relevant only for the purpose of challenge to the penalties imposed upon various persons.

5. Arguing on valuation he submits that admittedly the importer had filed the invoice issued by the foreign supplier and the goods imported by the appellant were stock lot second quality goods, as is clear from the certificate given by the foreign supplier. Nevertheless the Revenue compared the value of the same with the value of the goods available in Indian markets, by making market inquiries. The Revenue has also referred to certain contemporaneous imports, which according to learned advocate were not at all contemporaneous in quality as well as in time. By drawing our attention to the chart appearing in the impugned order, he clarifies that as is clear on the comparison of both the charts the goods imported by the appellant were of different grades indicated by the numbers given to the goods, whereas the description of the goods in contemporaneous imports was different. He submits that the numbers given to the goods indicate the quality, the thickness etc. of the adhesive tapes and the goods of one grade cannot be compared with the goods of the other grade.

6. After hearing the learned DR appearing for the Revenue, we find that the appellants are not contesting the valuation for the purpose of clearance of the goods as they have given up their right to pay the duty on the higher value and to clear the goods on payment of redemption fine. As such, the challenge in the present appeals is only to imposition of penalties,

which stand imposed upon the appellants on the allegations and findings of undervaluation of the imported goods.

6(ii) As regards undervaluation, we have examined the chart appearing in the impugned order of Commissioner and find that whereas the description of the goods in the appellants invoice show different grades, the goods described in the so called contemporaneous bills of entry referred to different grade numbers. Admittedly, grades are given to indicate the quality of a particular product and in case of variance in the grade, qualities are bound to differ. As such, we agree with the learned advocate that the goods cannot be held to be contemporaneous.

6 (iii) Otherwise also we note that the appellants have produced on record invoice issued by the foreign supplier indicating the transaction value of the goods. It is well settled law that such transaction value has to be first rejected as incorrect value before the Revenue proceeds to enhance the value of the imported goods in the light of the valuation rules, which have to be followed sequentially. The said rejection of the transaction value has to be on the basis of sufficient, positive & tangible evidences. In the present case, we find no efforts on the part of the Revenue to first reject the transaction value and then proceed to enhance the value by referring to any contemporaneous imports. The legal position is settled and references can be made to some of the decisions of various Courts as listed below:-

- *Commissioner of Customs, Calcutta V/s South India Television (P) LTD.,2007 (214) E.L.T.3 (S.C.),*
- *Rajdeep Singh V/s Commissioner of Customs, Amritsar, 2008 (299) E.L.T. 390 (Tri. – Del.),*

- *Commissioner of Customs, Mumbai V/s Mahalaxami Gems, 2008 (231) E.L.T. 198 (S.C.),*
- *Commissioner of Customs, Mumbai V/s J.D. Orgochem LTD. 2008 (226) E.L.T. 9 (S.C.)*
- *Oswal Fats & Oils V/s Commissioner of Customs, Amritsar, 2007 (220) E.L.T. 795 (Tri. – Del.)*
- *New Techno Graphics V/s Addl. Commr. of Cus. & C. EX., Hyderabad-II, 2008 (222) E.L.T. 260 (Tri. – Bang.)*
- *Victory Press (P) LTD. V/s Commissioner of Central Excise, Cochin, 2006 (205) E.L.T. 1125 (Tri. – Bang.)*
- *H.T. Company V/s Commissioner of Customs, Hyderabad 2007 (208) E.L.T. 507 (Tri. – Bang.)*

7. In view of the forgoing discussion we agree with the learned advocate that there is virtually no evidence for establishing the value of the goods on the lower side so as to enhance their value. As such we find no justification for enhancement, which has led the revenue to impose penalties upon the appellants. Consequentially, the penalties imposed upon all the appellants are required to be set aside.

8. Accordingly, the appeals filed by the appellants are allowed to the extent of setting aside of penalties upon them.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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