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

APPEAL No.C/71015/2016-CU[DB]

(Arising out of Order-in-Original No.21/COMMR./NOIDA-II/2016 dated 22/08/2016 passed by Commissioner, Central Excise, NOIDA-II)

M/s Global Impex **Appellant**

Vs.

Commissioner, Customs & Central Excise, Noida-II **Respondent**

Appearance:

Shri Mohd. Faraz Anees (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 : 16/07/2018
Date of Pronouncement : 07/08/2018

FINAL ORDER NO.71811/2018

Per: Archana Wadhwa

As per facts on record the appellant imported a consignment of different types of 'Nutritional Supplements' from M/s Universal Nutrition, New Burnswick, USA under the cover of invoice dated 20.04.2016. On arrival of the goods the appellant filed an inbond bill of entry dated 20.06.2016 at ICD, Dadri for warehousing of goods at Arshiya Northern Free Trade Warehousing Zone, at the declared value. The goods were examined by the officers on 23.06.2016. As the goods were of different variety and were packed in different packages, each and every carton were cut opend and the number of bottles found in them were counted. Most of the goods were found to be in order. However, in respect of some of the products like Animal Whey, Amino 1900/300 Tab (2 bottle) and Animal flex each 44 packs (2 bottles), the goods were found double than the quantity declared by the assessee.

2. By entertaining a view that the importers have mis-declared the quantum of the goods and the consequent value, further investigations were conducted and statements of various persons were recorded. Shri Nitin Agarwal proprietor of the importer appellant in his statement recorded on 26.07.2016 deposed that they have imported the goods from M/s Universal Nutrition, who had supplied the same by offering “buy one get one free” offer and accordingly, inbond BOE was filed by them. On being questioned as to whether free supply offered by the overseas supplier was declared by them in the Bill of entry, Shri Nitin Agarwal stated that in column of description in the bills, two bottles were mentioned. However, he agreed that in column 5, total weight,

volume, number etc of quantity, alleged free supply has not been declared. However, he insisted that since two bottles stand mentioned by them in the description column and the goods having been imported under “buy one get one free” scheme offered by the foreign supplier, there is no mis-declaration as regards the quantum of the bottles supplied. Consequently, no undervaluation can be alleged against them.

3. However, Revenue not being in agreement with the above stand of the assessee, proceedings were initiated against them by way of issuance of show cause notice alleging, mis-declaration as regards quantum as also undervaluation of the goods which stand culminated into the impugned order passed by the Commissioner confirming demand of duty and confiscating the imported goods with an option to the appellant to redeem the same on payment of redemption fine of Rs.17,00,000/-. In addition penalty of Rs.4,00,000/- stand imposed upon the appellant in terms of Section 112(a) of the Customs Act, 1962.

4. On going through the impugned order and by appreciating the submissions made by both the sides, we note that the dispute revolves around the extra bottle supplied by the foreign supplier in respect of some of the

items. Revenue has not disputed the fact that such supply was made by the foreign suppler under “buy one get one free” offer by the supplier. In fact they have made investigations from the local dealers also and found no variation in the MRP declared by the appellant in the Bill of Entry when compared with the MRP of the goods sold in the local market. The Revenue has alleged mis-declaration on the sole ground that the quantity of goods declared in the Bill of entry is less than the quantity of actual bottles imported by the appellant.

5. We find that the appellant in the column of description in the Bill of Entry has clearly mentioned against the involved entries as “two bottles”, though under the column quantity of each package, the said extra bottles have not been specified. The fact of mentioning two bottles against the concerned serial numbers in respect of some of the supplements is indicative of the appellant’s bona fide. And it cannot be said that there was any mis-declaration by the assessee. Further, the importers has paid the total value of the goods to the foreign suppliers, inclusive of the one extra bottles in the carton, as reflected in the invoices issued by the foreign supplier and as such it cannot be said that the transaction value is not the correct assessable value.

Revenue has not produced any evidence to show that the appellant has paid any extra amount for the one bottle supplied free of cost by the foreign supplier. As such, the total transaction value paid for the entire consignment has to be treated as the assessable value for the consignment and in the absence of any evidence of any extra payment made by the importer, the enhancement done by the Revenue cannot be held to be justifiable. Accordingly, we find no reasons to uphold the Revenue's stand.

6. The impugned order is, accordingly, set aside and appeal is allowed with consequential relief to the appellant.

(Pronounced in Court on 07/08/2018)

Sd/-	Sd/-
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

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