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

APPEAL No.C/50280/2015-CU[DB]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-33 & 34/2014-15 dated 22/08/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Ghaziabad)

M/s Nishant Enterprises, **Appellant**

Vs.

Commissioner of Customs, Ghaziabad **Respondent**

Appearance:

Ms Reena Rawat, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 31/01/2019
Date of Decision : 31/01/2019

FINAL ORDER NO- **70268 / 2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by learned Counsel Ms Reena Rawat, advocate for appellant and learned A.R. Shri Sandeep Kumar Singh, Deputy Commissioner for revenue, we note that the appellants had imported consignment of Mobile Adopter, Mobile Charging Connector, Mobile Chipper Cover Plastic, Mobile Batteries and Memory Card Reader. Appellant filed Bill of Entry and requested for first check examination. On first check examination, discrepancy was noticed in the quantity reflected in the invoice and the Bill of Entry and the factual quantity of goods found in the consignment. On further investigation the quantity of few items were found to be more and few items were found to be less than disclosed quantity. As a whole no much significance could be attached to the discrepancy in the quantity. On further investigation, the exchange of E-mail between the appellant and the foreign supplier was taken into consideration and it was revealed that the E-mail dated 16th September, 2010 reflected the rate of Mobile Charging Connector to be 0.34 Dollar per dozen whereas the invoice enclosed with the Bill of Entry reflected the same to be 0.34 Dollars per Twelve Dozens (GROSS). Further, the rate stated in the said mail in respect of memory card reader was 1.34 dollar per piece whereas in the invoice it was reflected to be 1.34 dollar per dozen. Therefore, it appeared to revenue that there was gross undervaluation and proceedings were initiated. The Original Authority enhanced the value of above stated two imported goods on the basis of exchange of E-mail and information available, and in respect of other items the Original Authority compared the price of temporary import of similar goods and enhanced the value. Further, the goods were confiscated and redemption fine of Rs.10,34,000/- was imposed and appellants were also imposed with penalty of Rs.10,92,558/-. Further, the matter was carried before the learned Commissioner (Appeals) who did not interfere.

2. After hearing both the sides and on perusal of records, we note that the exchange of E-mail, the content of which has not denied by appellant establishes that there was undervaluation in respect of Mobile Charging Connector and Memory Card Reader. We, therefore, do not interfere with the finding of lower authorities in respect of the same. However, in respect of the other items revenue has enhanced the value on the basis of data available in respect of similar goods imported during the relevant period. We do not find any evidence established by revenue that said data was applicable to the imported goods and in respect of the goods such as Mobile Adopter, Mobile Zipper Cover Plastic and Mobile Batteries, revenue could not establish that the price reflected in the invoice is not actual price paid by the appellant to the foreign supplier. We, therefore, in respect of Mobile Adopter, Mobile Zipper Cover Plastic and Mobile Batteries, relying on the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise and Service Tax, Noida Vs Sanjivani Non-ferrous Trading Pvt. Ltd. in Civil Appeal No.18300-18305 of 2017 through which the Hon'ble Supreme Court have ruled that unless the value declared by the appellant is not rejected by revenue, the same cannot be enhanced as provided by Section 14 of Customs Act, 1962. We, therefore, restore the value declared by the importer in respect of Mobile Adopter, Mobile Zipper Cover Plastic and Mobile Battery. As a result, we set aside the confiscation of

Mobile Adopter, Mobile Zipper Cover Plastic and Mobile Battery and accordingly, reduce the redemption find to Rs.2.50 lakhs and penalty imposed under Section 14A to Rs.1 lakh.

3. In above manner, the impugned order is modified and appeal is partially allowed.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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