CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Appeal No.70306 of 2018-CU[DB]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-1454-17-18 dated 30/11/2017 passed by Commissioner of Central Tax (Appeals), Noida)

M/s R.K.G. International Pvt. Ltd. .....Appellant

(Z-262, Loha Mandi, Naraina, New Delhi)

VERSUS

Commissioner of Customs & Central Excise ....Respondent

(C-56/42, Renu Tower, Sector-62, Noida, U.P.)

APPEARANCE:

Shri Rajesh Rawal advocate, for the Appellant
Shri Pawan Kumar Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 70805/2019

Date of Hearing : 11.04.2019
Date of Decision : 11.04.2019

PER: ARCHANA WADHWA

After hearing both the sides, we find that dispute in the present appeal relates to the assessable value of the CR sheets in Coil Form (Non Alloy) Stock Lot imported by the appellant and sought to be cleared at the transaction value of Euro 344 PMT.

2. Initially, Revenue was having certain doubts about correctness of the declaration of the description of the goods and 100% examination was undertaken, the goods were also got examined from Chemicals Engineers and they were found to be

correctly described. Revenue also accepted the assessee's stands of the goods being stock-lot.

3. However, on the basis of LME price, Revenue entertained a view that the valuation of the goods were required to be enhanced in accordance with the LME prices. As such, enhancement was done originally on the bill of entry itself which enhancement was set aside by Commissioner (Appeals) and matter remanded to the Original Adjudicating Authority for providing LME prices to the assessee and to pass the reasoned speaking order.

4. In compliance, the Original Adjudicating Authority passed an order enhancing the price to Euro 514.20 PMT. The said order stands upheld by Commissioner (Appeals) and hence the present appeal.

5. We find that the entire case of the Revenue is based upon the LME price which assessees are also disputing on the ground of that even LME price have not been adopted by the Revenue. Learned advocate submits that the same is based upon certain calculation and no contemporaneous exports have been referred by the Revenue. We also note that apart from them, Revenue has not first rejected the transaction value declared by the importer, by production of any evidences to the contrary. The Tribunal in the case of M/s Sanjivani Non Ferrous Trading Pvt. Ltd. vs. Commissioner of Central Excise vide its Final Order No.70132-70137/2017 dated 17.01.2017 has held that the Revenue has to first reject the transaction value and has to establish the same as incorrect value by relying upon evidences. It stands held that only after transaction value stands rejected, the same can be re-determined by reference to any other evidences. The said order of the Tribunal stands confirmed by the Hon'ble Supreme Court when the appeal filed by the Revenue was rejected vide their order dated 10.12.2018 an appeal filed by the Commissioner of Central Excise, Noida in Civil Appeal No.18300-18305/2017.

6. Ratio of the above decision is squarely applicable to the facts of the present case. As such, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks