CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs Appeal No.51984 of 2014-Division Bench

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APPL-211-13-14 dated 16/01/2014 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Ghaziabad)

M/s Shiv Enterprises **.....Appellant**

(B-234, Naraina Industrial Area, Phase-I New Delhi-110028)

VERSUS

Commissioner of Customs, Ghaziabad **....Respondent**

(CGO Complex-I, Kamla Nehru Nagar, Ghaziabad)

APPEARANCE:

Request for Adjournment for the Appellant
Shri Mohd. Altaf, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 71010 / 2019

Date of Hearing : 19 February, 2019
Date of Decision : 22 May, 2019

PER: ARCHANA WADHWA

After rejecting the request for adjournment, we proceed to decide the appeal itself inasmuch a short issue covered by precedent decisions is involved. Accordingly, we have heard learned A.R. appearing for the Revenue and have gone through the impugned order.

2. As per facts on record, the appellant imported "Old & Used Offset Printing Sheet-Fed Machines" at a declared value of Euro 34000. The matter was taken up for further examination and based upon the Chartered Engineer report, the value was enhanced by the Lower Authorities to Euro 67600, consequently, confirming the demand of duty and imposing penalties etc.

3. On going through the impugned order, we find that the said enhancement is only based upon the suggestions made by the Chartered Engineer. It is well settled law that before taking up the matter for enhancing the value of the imported goods in terms of Valuation Rules, Revenue is under an onus to establish that the transaction value agreed upon between the importer and the supplier of the goods was not reflecting the agreed transaction value. Revenue is required to produce evidence to show that the agreed upon price was not the sole criteria for supply of the goods and there was some under-hand transactions. In the absence of the same, the enhancement proceeding cannot be initiated against the importer.

4. Admittedly in the present case Revenue has not rejected the transaction value. The Hon'ble Supreme Court in 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 upheld the Tribunal's decision laying down that assessment in terms of Section 14 of the Customs Act, 1962 has to be done on the basis of price which is actually paid. In the absence of any exercise done by the Revenue to show that the transaction price was not the price actually paid to the supplier of the goods, the enhancement cannot be done. In view of the above settled law, we find no reasons to uphold the impugned order. Accordingly the same are set aside and the appeal is allowed with consequential relief to the appellant.

(Order pronounced in the open court on – 22 May, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks