CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Customs ROA Application No.70170 of 2019
IN
Customs Appeal No.70300 of 2018-[DB]

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-1443-17-18 dated 30/11/2017 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Noida)

Commissioner of Customs, Noida **.....Appellant**

(Noida Customs Commissionerate)

VERSUS

M/s Imperial Housing Ventures Pvt. Ltd., **....Respondent**

(11th Floor, Paras Twin Towers (Tower-B)

Sector-54, Golf Course Road Gurgaon-122002)

APPEARANCE:

Absent on call for the Appellant
Shri Anupam Kumar Tiwari, Authorised Representative for the Respondent

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

MISC ORDER NO-70096/2020
IN

FINAL ORDER NO-70254/2020

DATE OF HEARING : 19 February, 2020
DATE OF DECISION : 19 February, 2020

PER: ARCHANA WADHWA

The present application stands filed by the revenue to recall the Final Order No.71836/2018 dated 07.08.2018 vide which their appeal was dismissed under litigation policy. The contention of the appellant is that the amount involved in the present appeal is to the extent of approximately Rs.16 lakhs and litigation policy in Customs matters only applies to those appeals which involved duty of Rs. 10 lakhs. As such, the prayer is to recall the order and to decide the same on merits.

2. We find merits in the above contention of the learned A.R. and accordingly recall the order and restore the appeal to its original number. Further, as a short issue is involved covered by the Hon'ble Supreme Court's decision, we proceed to decide the appeal itself and have accordingly heard the learned A.R.

3. The issue relates to the valuation of the imported furniture and kitchen cabinets which the revenue has sought to increase based upon the RMS instructions. Commissioner (Appeals) has observed that the respondents have placed on record the letter of communication between their company and the overseas suppliers, copies of purchase orders placed by the companies on the overseas suppliers which confirmed negotiation between the importer and the overseas suppliers in the normal course of International business. The importer has also submitted proof of remittance through normal banking channels as also the export declarations filed by the overseas in Italy duly attested by the Revenue Department of the Government of Italy which show that the declared invoice value are true and correct, declared value of the subject goods at the time of their export from Italy.

Learned Commissioner (Appeals) has also observed that the Department has not alleged that apart from the declared invoice value, any amount stands paid to the exporter of the goods is payable to them. As such, he has observed that it is not a case of undervaluation. The said order of Commissioner (Appeals) is under challenge by revenue.

4. On going through the impugned order, we find that there is virtually no evidence to establish that the importer has undervalued the goods in their filed declaration. The entire case of revenue is based upon RMS Instructions which cannot be adopted as a legal evidence to establish undervaluation. The issue stands considered by Hon'ble Supreme Court in the case of Commissioner of Customs, Noida Vs Sanjeevani Non Ferrous Metal reported at 2019 (365) ELT 3 (SC) vide which the Hon'ble Supreme Court has approved the decision of this Bench, by holding that NIDB data cannot be adopted for the purpose of enhancing the value, in the absence of any other evidence to the contrary. Accordingly, by following the said decision, we find no infirmity in the view of Commissioner (Appeals).

The appeal filed by revenue is accordingly rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

akp