CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

1st Floor, WTC Building, FKCCI Complex, K. G. Road, BANGLORE-560009

Regional Bench COURT-2

Customs Appeal No. 22346 of 2015

[Arising out of the Order-in-Appeal No. COC-CUSTM-OOO-APP-193/2015-16 dated 01.10.2015 passed by the Commissioner of Customs (Appeals), Cochin]

M/s. Plywood Centre,
Near Payyanur College Stop,
Kunhimangalam Road,
Edat, Payannur,
Kannur – 670 327 **.......Appellant**

Versus

Commissioner of Customs,
Customs House, Willingdon Island,
Cochin – 682 009 **.....Respondent**

Appearance:
Mr. M. Balagopal, Advocate Appeared for Appellant
Mr. K. Vishwanath, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20499 of 2024

Date Of Hearing: 16.02.2024
Date Of Decision: 12.06.2024

Per: P.A. Augustian

The issue in the present appeal is regarding valuation of imported Ceramic Sanitary Ware. The brief facts are appellant had imported various Sanitary Wares and declared the value as Rs. 20,49,853/-. However, Respondent enhanced the value by 20% without specifying any reason and due to such loading of value, appellant had to pay an amount of Rs.1,18,313/- in excess of the amount payable by them. Since, the delay in clearing the goods was incurring demurrage charges, the appellant paid the duty amount under protest and cleared the goods on payment of duty as assessed by the respondent. As per the request made by the appellant, a speaking order was issued, wherein the Adjudicating authority held that on examination of goods it was reported that the imported goods are Ceramic Sanitary Ware made in Hong Kong. The value of the goods was loaded by 20% based on best judgment assessment. The Adjudicating authority also held that as the items are not branded goods, identical goods are not available for comparison and therefore value cannot be determined under Rule 4 to 8 in that sequential order as provided in Custom Valuation Rules, 2006. Therefore, value has been appraised by proper officer under Rule 9 and suggested loading of value by 20%. Aggrieved by the said order, an appeal was filed before Commissioner (Appeals), who dismissed the appeal on the ground that the appellant had cleared the goods by accepting the value assessed by proper officer. Aggrieved by the said order, the present appeal is filed.

2. During the hearing, Learned Advocate for the Appellant reiterated the grounds of appeal and also brought to our attention the letter dated 25.09.2014, wherein the Appellant had requested the Respondent to permit clearance of goods as per the price mentioned in the invoice or to issue a speaking order. It is further requested that the Appellant may be allowed to pay the differential duty on the enhanced value under protest. Accordingly, the protest was recorded. The Learned advocate further submits that the loading of value is *prima facie* illegal and unsustainable. The Learned advocate drew our attention to the following relevant judgments of the Hon'ble Supreme court and the Tribunals on this issue;

i. M/s Sounds N Images Versus Collector of Customs [2000 (117) ELT 538 (S.C.)],
ii. M/s A.P. Misra and Ruma Pal, JJ. Eicher Tractors Ltd. Versus Commissioner of Customs, Mumbai [2000 (122) ELT 321 (S.C.)],
iii. M/s Mark Auto Industries Ltd. Versus Commissioner of Customs, New Delhi [2003 (162) ELT 261(Tri. – Del.)],
iv. M/s Devika Trading Pvt. Ltd. Versus Commissioner of Customs, Mumbai [2004 (167) ELT 75 (Tri. - Mumbai)],
v. M/s Sonal Enterprises versus Commissioner of Customs, New Delhi [2015 (316) ELT 144 (Tri. – Del.)],
vi. M/s Cooper Bussmann India Ltd. Versus Asstt. Commr. Of Cus. (SVB), Chennai [2010 (254) ELT 55 (Mad.)],
vii. M/s RPG Cellular Services Ltd. Versus Commissioner of Cus. (Air Port), Chennai [2003 (151) ELT 261 (Mad.).

3. Learned Authorized Representative (AR) for the Revenue reiterated of the finding in the impugned order and submitted that the value was loaded based on the best judgment assessment as held by the adjudicating authority.

4. Heard both sides. It is a well settled law, that when an allegation of undervaluation is made, burden is on the Revenue to establish the allegation of under valuation by a method known in law in a satisfactory manner, and the onus cannot be shifted to the importer. In the impugned order, Adjudication authority categorically held that the goods imported by the Appellant are not branded goods and import details of identical goods are not available for comparison. We find, in the absence of any justifiable reason to reject declared value, loading of value is unsustainable. Since the issue is squarely covered by the various decision relied by the Appellant, there is no reason or justification for sustaining the loading of value.

5. Hence, the appeal is allowed with consequential relief, if any in accordance with law.

(Order Pronounced in Open court on 12.06.2024.)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Ganesh