CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20298 of 2021

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-59/2020-21 dated 28.08.2020 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Omega Home Decors
XXIV/168-A, Vayattatil Towers,
Mount Sinal Road,
Thodupuzha,
Idukki – 685 584.

Appellant(s)

VERSUS

Commissioner of Customs,
Customs House,
Cochin - 09

Respondent(s)

APPEARANCE:

Shri Baby M.A., Advocate, for the Appellant

Shri K. Vishwanatha, Authorised Representative for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)**

Final Order No. 20585 /2024

DATE OF HEARING: 22.07.2024
DATE OF DECISION: 22.07.2024

PER : R BHAGYA DEVI

This appeal is against Order-in-Appeal No. 59/2020-21 dated 28.08.2020.

2. Briefly stated the facts are the appellant M/s. Omega Home Decors are importers of roof tiles and they have imported the same from China for the period 19.12.2017 to 18.06.2019. The original authority while finalising the provision assessments for all the 87 Bills of Entry for the above period has re-fixed by enhancing the values based on the contemporaneous imports as per the Customs Valuation Rules, 2007. On appeal, the

Commissioner (Appeals) has upheld the enhanced values and hence this appeal before us.

3. The learned counsel for the appellant submits that they had entered into Business Agreement in roofing tiles and the price was negotiated and the invoice value of the goods imported was the actual transaction value as per the Agreement. In the impugned order, no reasons were specified for rejecting the declared transaction value nor there are any allegations that the appellant has paid over and above the transaction value. Relying on the decision of the Supreme Court in the case of **Eicher Tractors Ltd.: 2000 (122) ELT 321 (SC)**, the appellant claims that the declared transaction value cannot be rejected without any reasoning.

4. The learned Authorised Representative for the Revenue reiterated the findings of the authorities of below and submits that the impugned order is to be sustained.

5. Heard both sides. The appellant is a regular importer of roof tiles. From the records, it is noted that the tiles cleared prior to 19.12.2017 was assessed accepting the transaction value based on the directions of the SIIB. In the present case, both the authorities have not given any reasoning for rejecting the transaction value especially when the identical goods for the earlier period, the valuation have not been questioned. The Commissioner (Appeals) in the impugned order for rejecting the transaction value, the only reasoning provided is that "*a different importer M/s. KPG Import Export Company had imported the same items in higher quantities at higher price than the declared price of the appellant, from the same country of origin (China) and therefore this can be considered as contemporaneous import.*" We find it difficult to accept the above reasoning of the Commissioner (A) because no where the identical nature of the products have been discussed and the contemporaneous imports relied upon by the authorities below are from different suppliers

when compared with the suppliers of tiles in the case of the appellant. As rightly submitted by the learned counsel, they cannot be considered as contemporaneous prices.

6. The Supreme Court in the case of **Commissioner of Cus. (Imports), Mumbai Versus Bayer Corp. Science Ltd. 2015 (324) E.L.T. 17 (S.C.)** dated 08-09-2015 observed as follows:

> "8. Mr. Ajit Kumar Sinha, learned senior counsel appearing for the Revenue has referred to the judgment of this Court in Commissioner of Customs, Calcutta v. South India Television (P) Ltd. [2007(6) SCC 373 = 2007 (214) E.L.T. 3 (S.C.)]. The law on this aspect is explained in para 11 to 14 of the said judgment, which read as under :
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> > *"11. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct.*
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> > *12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value.*

Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

14. Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s. Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation."

9. Once we apply the principles stated in the aforesaid paras to the facts of the present case, we are of the view that the aforesaid judgment helps the assessee rather than the Revenue. In para 12 it is categorically mentioned that before rejecting the invoice price the Department has to

give cogent reasons for such rejection. There are no such cogent reasons coming forth in the present case. Moreover, it is to be borne in mind, as stated in para 14 of the said judgment, that the onus is on the Department by leading cogent evidence. No evidence of any nature whatsoever is brought on record to show that they were contemporaneous sales/transactions at high price. Reliance upon the agreement between M/s. Indofil and M/s. R&H is of no avail as admittedly the transaction between the aforesaid two parties were for the period prior to 1-11-1995 and they were not contemporaneous."

7. In view of the above, we do not find any reason to uphold the enhancement of value without any cogent reasons for rejection of the transaction value and for enhancement of value without any basis. Consequently, the impugned order is set aside and the appeal is allowed.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Triveni/rv