CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/571/2008-DB

[*Arising out of Order-in-Original No. 16/2008 dated 12/06/2008 passed by the Commissioner of Customs, Cochin.*]

M/s. THAMEEMA TRADING CORPORATION
(BY ITS POWER OF ATTORNEY HOLDER
DR.T.SALEEM BASHA)
NO.4, LEITH CASTLE SOUTH STREET,
SANTHOME,
CHENNAI – 600 028.

Appellant(s)

Versus

Commissioner of Customs
COCHIN-CUS
CUSTOM HOUSE
COCHIN - 682009
KERALA

Respondent(s)

Appearance:

None
AUM ASSOCIATES,ADV
SUIT NO.25, I[ST] FLOOR, R.R.COMPLEX,
No.1 MURTHY LANE, RATTAN BAZAR,
CHENNAI - 600003
TAMIL NADU

For the Appellant

Dr. J. Harish, AR

For the Respondent

Date of Hearing: 04/12/2018

Date of Decision: 04/12/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21856 / 2018

Per : P. ANJANI KUMAR,

This appeal is directed against Order-in-Original No.16/2008 dated 11.6.2008 passed by Commissioner of

Customs, Bangalore. The respondents M/s. Thameema Trading Corporation, Chennai have imported Global and Bull padlocks brass/iron vide Bill of Entry No.174717/3.3.2006. During the examination of the goods, it was found that there is an excess quantity of 170 dozen in item No.14 of Bill of Entry. Further, comparison of the value of the padlocks with the value of the raw material i.e., brass indicated that the value imported for padlocks was less than the value of the brass scrap. It was also revealed that the importer was the sole distributor of the item in India. In view of the above, it appeared that the value of the import consignment was mis-declared and it was required to be re-determined. A show-cause notice was issued covering the said consignment and other two imports made earlier and adjudicated.

2. None appeared for the appellants. However, on perusal of the appeal papers, it is seen that the appellants have submitted as follows:

(i) The lower authority was wrong in confiscating the goods under Section 111(m) of the Customs Act, 1962.

(ii) The lower authority has not shown reasons for rejection of the transaction value and has not proceeded sequentially from Rule 5 to Rule 7A.

(iii) The lower authority erred in giving credence to the test reports of Customs House Laboratory.

(iv) The lower authority did not consider the ratio of cases of Hon'ble Supreme Court submitted by them i.e., ***M/s. JD Orgochem Ltd.: 2008-TIOL-74-SC-CUS*** and ***South India Television (P) Ltd.: 2008 (214) ELT 3 (SC)***.

3. Learned departmental representative has submitted that the Commissioner has correctly found that there was *prima facie* mis-declaration in respect of quantity and value. The importer being the sole distributor of the item, he was deemed to be related for the purpose of Custom Valuation Rules (CVR), 1988. Transaction value could not be accepted and therefore, it was to be re-determined going sequentially through Rules 5 – 8 of CVR, 1988. The learned Commissioner found that the importer being sole agent, value could not be re-determined under Rule 5, 6, or 7 of CVR, 1988. Therefore, the Commissioner proceeded to re-determine the value in terms of Rule 7A of CVR, 1988. The value of brass and steel ingots during the relevant time were reported to be 102 per kg. and Rs.14.95 per kg. Accordingly, the Commissioner has re-determined the value at Rs.58,75,767/- and confirmed demand of differential duty of Rs.13,85,584/- and

imposed penalty of Rs.6,00,000/- on the appellants; ordered recovery of testing charges of Rs.10,730/-; imposed redemption fine of Rs.14,50,000/- and appropriated the Bank Guarantees amounting to Rs.18,86,744/-.

4. Heard the AR and perused the records.

5. We find that in the instant case, the value declared was less than that of the raw material. Nobody having any commercial prudence would manufacture goods and sell them at price less than that of the raw material which has gone into the manufacture of the same. Raw material needs to be worked upon and certain amount of time, labour and money would have be spent on the same to create a new marketable product. In the instant case, having declared a price which is less than that of the scrap, the appellants cannot claim by any stretch of imagination that the value declared by them was correct. Moreover, we find that there was discrepancy in the quantity also as found during the physical examination. The test report given by the Custom House Laboratory has indicated that the composition of the material in the impugned goods was far different from the one submitted by the appellants. These factors together would constitute beyond doubt reason to believe that the declared value

was incorrect. Therefore, the declared price was rightly rejected. We do not find any infirmity with the order of the Commissioner, in which, he has rejected the transaction value and has re-determined the value in terms of Rule 7A of CVR, 1988. We find that Commissioner has given valid reasons as to why he had to rely upon Rule 7A, therefore, we find that the submissions made by the appellant are not acceptable.

6. In view of the above, the impugned order is upheld and the appeal filed by the appellant is dismissed.

(Operative portion of the Order was pronounced
in Open Court on **04/12/2018.**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

rv...