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

Appeal(s) Involved:

C/11/2009-DB

[Arising out of Order-in-Appeal No. 276/2008 dated 30/09/2008 passed by the Commissioner of Customs, Cochin]

Commissioner of Customs
Cochin
Custom House
Cochin – 682 009

Appellant(s)

Versus

Polycolors International
VIII/397, Kerezhathukadavu Road,
Maradu P.O., Cochin

Respondent(s)

Appearance:

Dr. J. Harish, Deputy Commissioner (AR) — For the Appellant

None — For the Respondent

Date of Hearing: 06/12/2018
Date of Decision: 06/12/2018

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

Final Order No. 21854 / 2018

Per: S.S GARG

The present appeal has been filed by the Revenue against the impugned order dated 30.09.2008 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has allowed the appeal of the assessee. Briefly the facts of the present case are that the respondent filed

Bill of Entry No. 228584 dated 30.07.2008 for the clearance of goods declared as "E-glass Chopped Strand Mat' of specifications "300G/M2 – 104 cm & 450 G/M2 – 104 cm". The declared value of both the types was Rs. 39.70/Kgs. On comparing the declared values with contemporaneous imports, it was noticed that similar goods of comparable quantity had been cleared through Nhava Sheva and Chennai ports as detailed below:

Sl. No.	Custom House	B/E No. & Date	Country of origin	Description	Quantity	Unit value (Rs.)
1	Nhava Sheva	888003/ 26.06.08	China	E glass chopped strand mat EMC 450G/1040 MM	16280 Kg	68.56
	Nhava Sheva	888003/ 26.06.08	China	EMC 300G/1040 MM	3960 Kg	68.56
2	Nhava Sheva	886282/ 25.06.08	China	E glass chopped strand mat EMC 450G/1040 MM	16280 Kg	68.56
	Nhava Sheva	886282/ 25.06.08	China	EMC 300G/1040 MM	600 Kg	68.56
3	Chennai	756466/ 31.05.08	China	EMC 300G/1040 MM EMULSION	3000 Kg	68.62
	Chennai	756466/ 31.05.08	China	450G/1040 MM	1332 Kg	68.62

It was noticed that the lowest of the contemporaneous import prices available for similar goods was Rs. 68.56/Kg. Thereafter the importer was asked to produce additional documents/evidences in support of the declared value, as per the provisions under Rule 12(1) of the Customs Valuation Rules, 2007. But the importer did not produce any evidence to substantiate the declared value but only stated that contemporaneous import values relied upon by the Department were not comparable as the quality of the goods were different. After the due process, the original authority rejected the declared value under Rule 12(1) of the Customs Valuation Rules, 2007 and re-fixed at Rs. 68.56/Kg under Rule 5 of the said Rules. Aggrieved by the said order, assessee filed appeal before the Commissioner who set aside the original order and restored the declared value on the ground that the quality of the goods imported by the appellant is inferior to that relied upon by the Department.

2. Heard the learned AR. None appeared on behalf of the assessee in spite of the due notice. The issue is in a narrow compass, therefore we proceed to decide the case on merit after hearing the learned AR. The learned AR submitted that the impugned order is not sustainable in law as the same has been passed in violation of the principles of natural justice. He further submitted that the Commissioner (Appeals) has set aside the valuation made by the Department on the basis of a certificate issued by the Department of Polymer Science & Rubber Technology, Cochin University of Science & Technology and a certificate from the supplier certifying that the material supplied to the importer is 'C' grade. He further submitted that this certificate which has been relied upon by the Commissioner (Appeals) was produced by the importer for the first time before the Commissioner (Appeals) and has not been produced before the adjudicating authority at any point of time and therefore the reliance on this certificate to set aside the Order-in-Original is not tenable in law as the Department has not been given any opportunity to examine the said certificate. He further submitted that as per Rule 5(1) of Customs (Appeals) Rules, 1982, an appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence other than the evidence produced by him during the course of proceedings before the adjudicating authority except in certain specific circumstances. He further submitted that as per Rule 5(3) the Commissioner (Appeals) shall

not take any evidence produced under Sub Rule (1) unless the adjudicating authority or an officer authorized in this behalf has been allowed a reasonable opportunity to examine the evidence and to produce any evidence in rebuttal of the evidence such produced under Sub Rule (1). He further submitted that the circumstances enumerated in Sub Rule (1) of Rule 5 does not exist in the present case and therefore admission of the new evidence under Sub Rule (1) of Rule 5 by the Commissioner (Appeals) is not proper and legal and against the Rule. He further submitted that the whole testing and analysis conducted by the Department of PS & RT, CUSAT was done behind the back of the Department and it is not known whether all the samples were tested and whether they were actually from the importers' consignment.

3. After considering the submissions of the learned AR and perusal of the material on record, we find that the Commissioner (Appeals) has relied upon the certificate issued by the Department of Polymer Science & Rubber Technology, CUSAT which was produced before him. He further note that this certificate was not produced before the adjudicating authority and the Commissioner (Appeals) has not given any opportunity to the Department to controvert the findings recorded in the certificate issued by the Department of PS & RT. Further we find that relying upon the certificate, the Commissioner (Appeals) has set aside the Order-in-Original without affording any opportunity to the Department to controvert the said findings which in our opinion is in violation of Rule 5 of the Customs (Appeals) Rules 1982. Further we find that the said sample also tested behind the back of

the Department and the Department was not given any test report. In view of these facts, we are of the considered opinion that the impugned order is not sustainable in law and therefore the same is set aside by remanding the case back to the Commissioner (Appeals) to pass a fresh order after affording reasonable opportunity to the Department to controvert the evidence produced by the importer before the Commissioner (Appeals). Consequently, appeal is allowed by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **06/12/2018**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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