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

Appeal(s) Involved:

C/112/2009-DB

[Arising out of OIA No. 272-08 dated 23/09/2008 passed by CC(Appeals), Cochin]

C.C-COCHIN-CUS
CUSTOM HOUSE
COCHIN
KERALA
682009

Appellant(s)

Versus

PRINT TOOLS CORPORATION
NO.79, SMALL SCALE INDUSTRIAL AREA,
RAJAJINAGAR, BANGALORE

Respondent(s)

Appearance:

Shri Gopakumar, Jt. Commissioner(AR) — For the Appellant

None — For the Respondent

Date of Hearing: 13/12/2018
Date of Decision:22/01/2019

CORAM:

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

Final Order No. 20094 / 2019

Per : S.S. GARG

The Revenue has filed the present appeal against the impugned order dt. 23/09/2008 passed by the Commissioner of Customs (Appeals) whereby the Commissioner(Appeals) has allowed the appeal of the assessee after accepting the invoice value.

2. Briefly the facts of the present case are that the respondent filed Bill of Entry No.199371 dt. 17/05/2007 for import of one set used offset commercial web printing machine of Make Komori and Model LR 435 S 11, with declared value JPY 10000000. The goods were procured from M/s. Intertech Co., Japan. On examination of goods, the year of make could not be ascertained. Detailed examination was done in the presence of a Chartered Engineer nominated by department. Even on detailed examination the year of manufacture was not seen on machine but the year 1999, 2000 and 2003 appeared on few parts motor, drier, blown etc. Chartered Engineer based on sophistication design, technology and condition of machine appraised the value at 3,00,00,000 JPY and age as 4.5 years old. Importer contested the finding of Chartered Engineer. On verification, it was ascertained that the price of second hand imported model machine were in range of USD 1,95,000 FOB onwards. Therefore the value declared by the importer was rejected and was refixed based on Rule 8 of Customs Valuation Rules, 1988. Importer challenged the revision of value and the Commissioner(Appeals) vide impugned order set aside the order of adjudicating authority and accepted the invoice value. Aggrieved by the said order, Revenue has filed the present appeal.

3. Heard the learned AR. None was present on behalf of the respondent in spite of notice. In the absence of respondent, we proceed to decide the Revenue’s appeal on merits.

4. Learned AR for the Revenue submitted that the impugned order is not sustainable as the same has been passed without considering report of the Chartered Engineer. He further submitted that the imported item is of second hand machinery imported from China and no Chartered Engineer certificate was submitted from the port of shipment. The goods were not directly purchased from the manufacturer and the invoice produced does not show original value of new machine or any detail or cost of reconditioning. In view of that, the adjudicating authority was justified in rejecting the declared value under Rule 4 of the Customs Valuation Rules, 1988. He further submitted that the Department nominated the Chartered Engineering to examine and value the goods and on examination by the Chartered Engineer, the declared year of make 1988 could not be ascertained and certain parts like motor, blower etc. showed year of manufacture as 1999, 2000, 2003. He further submitted that the importer did not submit the original price of the machinery in the year of manufacture from the manufacturer. He also submitted that the Commissioner(Appeals) has wrongly relied upon the decision of the Apex Court in the case of Tolin Rubber Pvt. Ltd. Vs. Commissioner [2004(163) ELT 289 (SC)].

5. After considering the submissions of learned AR and perusal of the impugned order, we find that the year of make was not available on the machine and Chartered Engineer was nominated to find out the value of the machine. The Chartered Engineer revalued the goods on the basis of

the technology used in the machine. Further we find that the value declared by the importer was rejected. We also find that the Commissioner(Appeals) has taken note of all the facts and the evidences on record and has recorded reasoned finding wherein he has considered the report of Chartered Engineer and the Board's circular No.4/2008 dt. 02/12/2008 and has come to the conclusion that the value declared by the importer is the correct value. The Commissioner(Appeals) has also observed that the second hand machinery should also be assessed by the transaction value method and Rule 3 and other parameters of the Rule 14 of Customs Act are satisfied. Further we find that the circular relied upon by the Commissioner(Appeals) emphasizes that for rejection of the transaction value, the assessing officer has to establish msideclaration, fraud or manipulation whereas in the present case, it has not been established. Further we find that the Commissioner(Appeals) has relied upon the Apex Court's decision in the case of Tolin Rubber Pvt. Ltd. cited supra wherein on similar facts, value of the second hand machinery assessed by the Customs on the basis of Chartered Engineer report was involved and the apex court held in para 3 as under:-

> ***3.****Learned counsel for the appellant brought to our notice a decision of this Court in Eicher Tractors Ltd. Haryana v. Commissioner of Customs, Mumbai - (2001) 1 SCC 315 in which it has been held that the mode of determination of the value of the goods in question in such matters as has been laid down in Rule 4(1), the transaction value will have to be determined and under the Rule 4(2), if any exceptional circumstance is found then the transaction value indicated in Rule 4(1) will have to be rejected and further determination have to be made under Rule 8.*

6. Further we find that in the review order passed by the Committee consisting of the Commissioners of Customs, Cochin and

Commissioner of Central Excise, Cochin, the Committee has not observed that the impugned order is not legal and proper which is required for the purpose of filing appeal by the Department. Therefore, in view of the above, we do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Order was pronounced
in Open Court on **......................**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...