CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Application(s) Involved:

Custom/CROSS/20033/2017 in
Customs Appeal No. 21632 of 2016

Appeal(S) Involved:

Customs Appeal No. 21632 of 2016

(Arising out of Order-in-Appeal No. 470/2016 dated 30/06/2016 passed by Commissioner of Customs, BANGALORE-I (Appeal).)

Commissioner of Customs
Bangalore-cus
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

Appellant(s)

VERSUS

M/s. HIDd India Pvt. Ltd.
Tower D Annex No 1-2,
The Millennia Towers,
Murphy Road Ulsoor
BANGALORE - 560008
KARNATAKA

Respondent(s)

Appearance:

Mr. K. B. Nanaiah, Asst. Commissioner (AR) — For the appellant

Mr. Sanjeev Nair, Advocate
PDS LEGAL
23/24, 2nd Floor, Mittal Chamber
Nariman Point,
Mumbai – 400 021

For the respondent

CORAM:

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

Final Order No. 21299 / 2019

Date of Hearing: 20/12/2019
Date of Decision: 20/12/2019

Per : P. ANJANI KUMAR

M/s. HID India Pvt. Ltd., a subsidiary of M/s. HID Asia Pacific are incorporated in 2005 and are engaged in the sale and distribution of contactless access control chords and readers. They import goods from HID Asia Pacific. As the supplier and the importer are related Special Valuation Bench (SVB) proceedings have been initiated. On finalization of the proceedings, Asst. Commissioner, SVB issued an Oder-in-Original 5756/2007 dated 17.1.2007 vide which it was held that there was no need to interfere with the transaction value. On an appeal filed by the department, Order-in-Appeal No.560/2009 dated 29.6.2009 was passed remanding the matter to the original authority to determine the value in terms of Rule 5 of Customs (Valuation) Rules, 1988. On an appeal filed by the respondent, CESTAT has ordered that the matter be decided by the original authority. Vide de novo Order-in-Original No.783/2015 dt. 20.11.2015, the Asst. Commissioner has passed an order holding that the transaction value declared by the respondent cannot be accepted and needs to be loaded by 30% under Rule 5 of Customs Valuation Rules, 1988. On an appeal filed by the respondents, Commissioner (Appeals) vide Order-in-Appeal No.470/2016 dated 30.6.2016, held that the rejection of transaction value was baseless and the Order-in-Original (OIO) was wrong in loading 30% on the declared assessable value. Aggrieved by said OIA, the department is in appeal No. C/21632/2016 on the grounds that the learned Commissioner (A) has wrongly rejected the loading of 30% based on deductive value for the reason that the adjudicating authority has not quantified the expenditure towards the marketing services and associated business services; deductive value method has not fixed any limit for adjustment; procedure under Rule 5 of Valuation Rules, 1988 was not followed. Commissioner (A) has erred in holding that the adjudicating authority has not given any reason for not accepting the invoice price as per Rule 4(3)(a) of the said Customs Valuation Rules. The respondents have filed the cross objections No.C/Cross/20033/2017.

2. The learned AR appearing for the department reiterated the grounds of appeal. Per contra, the learned counsel for the respondent submits that the learned Commissioner (A) has passed a very reasoned order; the OIO did not give any valid reasons for rejection of declared assessable value; arbitrarily 30% of the value was loaded wrongly under Rule 5 of Customs Valuation Rules, 1988; Having rejected the value, OIO has not proceeded sequentially in terms of Customs Valuation Rules, 1988; the OIO considered sale price of the respondents in the domestic market of India without giving any allowance for the expenses incurred in transportation, storage, value addition, sale expenses, etc. The OIO passed in de novo has not only gone beyond the scope of remand proceedings but also has traversed beyond the provisions of Customs Valuation Rules, 1988. He relied upon ***Eicher Tractors: 2000 (122) ELT 321 (SC)*** and ***Home International: 2014 (299) ELT 245;*** relying on ***Gemplus India Pvt. Ltd.: 2005 (185) ELT 269 (Tri.-Chennai)***, he submits that trader and actual user cannot be considered to be at the same commercial level; relying on ***Armstrong World Industries India Pvt. Ltd.: 205 (317) ELT 324 (Tri.-Mum.)*** **and Giessel India Pvt. Ltd. : 2015 (315) ELT 479 (Tri.-Mum.),** he submits that as there is no allegation of any flowback or payment of additional consideration to the foreign collaborator, transaction value cannot be rejected.

3. Heard both sides and perused the records of the case. On going through the Order-in-Appeal (OIA), we find that the learned Commissioner (A) has given a detailed and a reasoned order as submitted by the learned counsel for the respondents. The Commissioner (A) has discussed the reasons as to why the price of readers sold by the appellants in the local market cannot be compared with that of the price at which the related suppliers sells the same in India, for the purpose of Customs Valuation and as to whether the appellant was being compensated for the expenditure incurred by reducing the prices. We find that the learned Commissioner (A) rightly founds that the Customs Valuation Rules, 1988/2007 do not envisage such type of comparisons; comparisons can only be made with the import prices of the related buyer with the import prices of third party buyers in India; when the comparison itself is not as per provisions of law, inference

drawn has no legal basis. The learned Commissioner (A) also finds that the period of import was also not considered; the adjudicating authority has not ascertained the details of the expenditure incurred by the respondents such as transportation, storage, value addition, sale expenses, etc.; moreover, deductive method has not fixed any limits for profit and general expenditure. The learned Commissioner (A) has rightly held that the adjudicating authority has not followed the procedures and methods specified under deductive method; he has also not quantified the expenditure as discussed above. The learned Commissioner (A) has also correctly observed that the declared value has been rejected without proper basis and such rejection becomes illegal; Rule 5 speaks about adopting the value of contemporaneous import of identical goods and the impugned order does not specify any contemporaneous imports; moreover, Rule 5 does not provide for any addition arbitrarily. The learned Commissioner (A) has correctly observed that the requirements of Rule 3(3)(b)(ii) of Valuation Rules, 2007/Rule (3)(b)(ii) of Customs Valuation Rules, 1988 are fulfilled and the value declared is acceptable for the purposes of Section 14.

4. We find that OIA is very reasoned, logical and maintainable; we find that no cogent reasons have been brought out in the OIO for rejection of declared value; even when it was rejected, the Rules were not sequentially followed; even then, while following the deductive method, due allowances were not given and correct data was not compared. The OIO proceeds on a curious admixture of Rule 5 and Rule 7 which is nowhere provided for. While invoking Rule 5, no values of contemporaneous imports were taken for comparison; arbitrarily 30% has been loaded without any authority of law under Rule 5 and clearly the OIO transgressed the scope of remand.

5. We find that the Review Order passed by the Committee of Chief Commissioners states that the impugned order has given the reason for not accepting the invoice value as per Rule 4(3)(a) of Customs Valuation Rules, 1988 and proceeds to say that as the value cannot be determined as per Rule 5, Rule 6 recourse was taken to Rule 7. This ground of appeal is contrary to the facts stated therein OIO. The OIO has not at all discussed

the non-applicability of Rule 5, Rule 6 in a sequential manner and the applicability of Rule 7. Therefore, we find that the premise on which the appeal is made is factually incorrect and for the reason stated above, we find that no cause has been made by the appellants necessitating to interfere with the impugned order. Therefore, we find that the appeal is devoid of any merit and is liable to be rejected.

6. in the result, revenue appeal is rejected and cross objections are accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **20/12/2019.**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

rv...