IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 20847 of 2015

(Arising out of Order-in-Appeal No. 543/2014 dated 24.12.2014 passed by the Commissioner of Customs (Appeals), C.R. Building, P.B. No. 5400, Queen's Road, Bengaluru – 560 001)

M/s. M.K. Impex **: Appellant**
No. 410/2, Laxmi Vihar,
Burari, Rohini,
New Delhi – 110 084

VERSUS

The Commissioner of Customs **: Respondent**
Central Revenue Building, P.B. No. 5400, Queen's Road,
Bengaluru – 560 001

APPEARANCE:

Shri Nishant Mishra, Advocate for the Appellant

Shri P. Gopakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 20029 / 2022

DATE OF HEARING: 07.01.2022

DATE OF DECISION: 14.02.2022

Order : Per Hon'ble Mr. P. Dinesha

The only issue for our consideration is as to whether the Revenue was justified in adopting the valuation of the imported goods in terms of Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

2. The appellants are the importers of 'Fresh Orchid Cut Flowers' from foreign suppliers and accordingly, they

submitted Bills-of-Entry with necessary documents declaring the rate at US$ 0.03 (FOB) per stem. The Customs Officer rejected the said transaction value in all the appellant's Bills-of-Entry and enhanced the value to US$ 0.07 per stem. The appellant, feeling aggrieved, filed appeals against such ad hoc adoption of assessable value before the Commissioner of Customs (Appeals), Bangalore, who vide common Order-in-Appeal Nos. 210 to 239/2013 dated 27.03.2013 had found that the assessing authority's action was arbitrary and bad in law. Consequently, the Commissioner (Appeals) set aside the assessment orders, with a further direction to pass a fresh speaking order in terms of Section 17(5) of the Customs Act, 1962. The above order was in respect of 30 Bills-of-Entry filed during the period from 24.11.2012 and 28.01.2013. In respect of the other 10 Bills-of-Entry filed for the period from 08.02.2013 to 28.02.2013 also, the Commissioner (Appeals) vide Order-in-Appeal Nos. 288 to 298/2013 dated 29.05.2013 passed the same remand order.

3. In the second round of litigation, the Original Authority has observed in his Order-in-Original No. 790/2013 passed on 23.09.2013 that the importer *inter alia* had given a consent letter dated 07.02.2013 agreeing to the valuation at US$ 0.07 per stem, which was also held to be in accordance with Rule 4 of the Customs Valuation Rules.

4. The appellant chose to file appeal again, but the Commissioner (Appeals) vide impugned order, however, has rejected the appeal on the ground that the appellant itself had given its consent (vide letter dated 07.02.2013) accepting the enhanced value.

5. Heard Shri Nishant Mishra, Learned Advocate for the appellant and Shri P. Gopakumar, Learned Authorized Representative for the Revenue.

6. We have considered the rival contentions and have very carefully gone through the decisions relied upon by both sides during the course of arguments. We have also gone through the so-called "consent letter" dated 07.02.2013, which is relied upon heavily by the Original Authority and thereafter, by the First Appellate Authority, to adopt the enhanced valuation in terms of Rule 4 ibid.

7. The said letter, which is addressed to the Deputy Commissioner of Customs, Air Cargo Complex, Bangalore is scanned and attached below for the sake of convenience:

670262/2021/Tech-O/o Pr Commr-AP&ACC-Bengaluru
40530/2021/Gr-1-3-O/o Pr Commr-AP&ACC-Bengaluru

M. K. IMPEX

410/2, Laxmi Vihar, Burari, Delhi-84 (India)
Ph. . 011-65571252
E-mail : manojkumar2011@yahoo.com

Ref. No

Dated 7-2-2013

To

The Deputy Commissioner of Customs,
Air Cargo Complex
Bangalore.

Dear Sir,

Sub:- Value Acceptance Letter

We M/s. M.K.Impex, hereby declare that we are importing fresh Orchid Cut flower from Indo Thai Agro Co Ltd (Thailand) @ 0.03 USD per stem and we have price contract for give us same price for 1 year.

We M/s. M.K.Impex, hereby declare that we agree for enhancement for declared value by your good self from 0.03 USD to 0.07 USD per stem in respect of the flower consignment imported by us w.e.f 07.02.2013. We do not dispute this enhanced value as decide by your good self to till the final decision in respect of the appeals filed by us.

Thanking you,

For M.K.Impex
Manoj Kumar
Authorised Signatory.

8.1 From the above letter, we find that there is no such clear admission by the appellant and the so-called "consent" is also limited to the flower consignment imported by them with effect from the date of the letter; but however, the same was also subject to the final outcome of the decision in respect of the appeals filed by them, which means that their challenge to the adoption of the enhanced value was pending in appeal as on the date of the said letter. Vide Orders-in-Appeal, the First Appellate Authority had termed as 'unsustainable' and set aside vide orders passed on 27.03.2013 and 29.05.2013. By this, it is evident that the so-called "consent letter" was not a blank cheque to be adopted universally and for all the imports the appellant could ever make.

8.2 Moreover, the authorities have nowhere given any acceptable reasons as to why they jumped to adopt Rule 4 ibid. and the valuation prescribed thereunder, instead of following the Rules sequentially. From the records, nowhere do we see that the appellant was furnished with the NIDB data or whatsoever that was relied upon for enhancement of the value, for rebuttal, which is clearly in violation of the principles of natural justice.

8.3 Further, we also do not see anywhere any justification as to why and how the valuation declared at US$ 0.03 per stem could not be adopted by the authorities below; nor have they disputed the above transaction value by placing reliance on any contemporaneous import data of other similar importers. We note that the decisions relied on by the appellant support this view.

9. In view of the above, we do not see any reason to sustain the impugned order and consequently, the same is set aside.

10. The appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **14.02.2022**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(P. DINESHA)
JUDICIAL MEMBER

Sdd