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

Appeal No.C/41342/2014

[Arising out of Order-in-Appeal C.Cus.No.159/2014 dt. 03.02.2014 passed by Commissioner of Customs (Appeals), Chennai]

Swarna Heating & Control Co. Appellant

Versus

Commissioner of Customs (Import)
Chennai Respondent

Appearance :

Shri G. Derrick Sam, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 26.03.2018

FINAL ORDER No.40962/2018

Per Bench

The facts of the case are that appellant had imported goods declared as "Used Power Press, Johns, APRX 100 MT Elec/Hyd Operation, Remote Hyd Power pack, Rotating 1100 MM Die Auto INDX (Complete Set)" vide Bill of Entry dt. 10.04.2013. The goods were found to be second hand in nature without any accompanying load port Chartered Accountant Certificate. On perusal of documents furnished by importer, it emerged that goods had been purchased in an e-auction. However, the invoice furnished by the importer does not indicate the year of manufacture, model number, period of usage and extent of reconditioning, if any. The importer did not also furnish any document from supplier in this regard. The declared unit value of the machinery was in Australian Dollar (AUD) 1703.90. It appeared to the Custom House that the price of the machinery when worked out per ton basis was much than the price per ton of Heavy Melting Scrap imported from Australia during that period which was in the vicinity of AUD 400/ton. The goods were examined and valued by the local independent Chartered Engineer which arrived at the value of AUD 66800. The Deputy Commissioner vide an order dt. 29.11.2013 rejected the declared value and re-determined the value as AUD 66,800 (FOB) in terms of Rule 9 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962. In appeal, the Commissioner (Appeals) vide an order dt. 03.02.2014 (impugned order) upheld the order of the original authority. Hence appellants are before this forum.

2. Today when the case came up for hearing, on behalf of appellant, ld. Counsel Shri Derrick Sam submits that the price of the goods as obtained by them in an e-auction and supported by the invoice dt. 21.01.2013 of the e-auctioneers is nothing but the transaction value and there was no legal basis for the Customs authorities to have rejected the value; that no reasons have been given by the original authority for rejecting the transaction value; that there was no justification for getting the goods examined by local Chartered Engineer; that they were not in agreement with the value arrived at by the Chartered Engineer which, according to them, was an highly imaginary value; that they had sought re-examination of the goods by another Chartered Engineer, however the same was not accepted. They finally gave up the request as the goods were delayed and demurrage charges were piling up. Ld. Counsel also submits that they had enclosed the data of similar used machines imported from different country of even higher capacity where the mark value applicable was much lower than that adopted by the customs authorities.

3. On the other hand, Ld. A.R takes us to the copy of Chartered Engineer Inspection Report and Valuation certificate dt. 30.04.2013 in page 30 of the appeal book to point out that the inspection of the goods was caused only at the request of the CHA. Ld. AR also submits that detailed reasoning for rejecting the declared value has been given by the original authority. Hence value caused by the department is very much in order.

4. Heard both sides and have gone through the facts.

5. The appellants have contended that the goods were purchased by them in and through e-auction only and the purchase price as indicated in the invoice should be taken as transaction value. From the invoice dt. 21.01.2013 and the e-auctioneer, it is indicated that the goods sold in the e-auction is "Power Press, Johns, approx. 100 tonne, electro/hydraulic operation". It is seen that while the cost including GST and buyer premium is worked out to AUD 1933.93, the invoice also indicates that extraction / removal of plant from the site should be undertaken in a manner compliant with legislations/ regulations etc. by preapproved contractors. Appellants have submitted that the ex-works charges incurred was AUD 6000. It is therefore obvious that the 100 ton power press is considerably large in size

and weight only due to which reason even the extraction / removal cost is around four times the e-auction cost of the machinery itself. We are therefore then unable to fathom why when such a large Power Press is involved, there are no details in the e-auction invoice of the age, year of manufacture or other serial / identification numbers that would normally be expected to be made available for such machinery. Even gross weight of the machinery is not indicated in the invoice, though, from the inspection report of the Chartered Engineer, it emerges that the gross weight is as much as 27500.00 kgs. In the absence of such particulars, the Customs authorities cannot be faulted for not having accepted the transaction value. In fact, the original adjudicating authority in paras 3 & 4 of his order has given detailed reasons why the value of such used second hand goods cannot be adopted on the basis of the declared value and why the local Chartered Engineer had to examine and value the goods. It has also been pointed out that even the deduced value of the used machinery works out to AUD 66000 (FOB) which is comparable to the value of AUD 66800 arrived at by the local independent Chartered Engineer. The fact that the declared value of the goods was much lower than per/ton value of industrial scrap imported from the same country, though not an approved method for arriving at the transaction value, is nonetheless an indicator of the grossly low value of the imported goods as declared. We do not find any infirmity in the order of the lower appellate authority upholding the manner and reasoning of revaluation of the impugned goods and the resultant enhancement that came about. Appeal does not have merit for which reason it is dismissed.

(operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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