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

Appeal No. C/190/2011

(Arising out of Order-in-Appeal C. Cus. No.120/2011 dated 17.3.2011 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Witox Tooling India Pvt. Ltd. Appellant

Vs.

Commissioner of Customs, Chennai Respondent

Appearance

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (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: **25.07.2018**

Final Order No. **42187 / 2018**

Per Bench

Brief facts are that the appellants are a 100% subsidiary of M/s. Witox SRL, Italy. They import and trade goods namely special purpose tool for the wood working industry from their principal in Italy. The original authority vide order dated 28.12.2015 had rejected the invoice value and loaded 166.6% under Rule 8 of the Customs Valuation Rules, 1988. Against such decision, the appellant filed appeal before Commissioner

(Appeals) who set aside the order and remanded the matter for fresh consideration. In such denovo adjudication, the original authority once again ordered for loading of 166.6% of the declared value in terms of Rule 8 ibid. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri Hari Radhakrishnan submitted that the appellant had submitted all relevant information to SVB as per the prescribed questionnaire and also supplied the international price list of the supplier, local sales invoice as well as sample involves of the supplier to another country. All details were furnished by the appellant and even then in denovo proceedings, the original authority has loaded 166.6% alleging that the appellant has not submitted sufficient evidence to show that the relationship has not influenced the price. He submitted that both the authorities below have erred in loading the value without giving cogent reasons for rejecting the transaction value. It is his case that tooling industry has a general practice to give basic discount of atleast a minimum of 50%. In the present case, as per the agreement, the appellant was given discount of 70%. The appellant has been given marginal higher discount since they have to bear the additional burden of marketing and administrative expenses in India. For this mere reason, the authorities below have arrived at the conclusion

that the relationship between the supplier and the appellant has influenced the price and that it is hard to believe that 70% discount is offered across the world. The authorities below have not bothered to go into the question as to whether any such trade practice is present in the tooling industry. The appellant has produced copies of invoices of sale made to unrelated third parties all over the world which would show that there is a practice of giving such discount in tooling industry. It is also his case that the department has not enquired as to contemporaneous imports of identical / similar goods and has simply loaded 166.6% without looking into these aspects. The ld. counsel has furnished working sheets before us and argued that the same would be acceptable for valuation under the deductive method. The said worksheet contains price at which goods are imported, overhead expenses, price at which sold and profit margin. That sometimes, the profit margin is so less and this would show that the appellant has not made undue profit by such discount. He relied upon the decision of the Tribunal in the case of Armstrong World Industries (I) Pvt. Ltd. Vs. CC, Mumbai – 2015 9317) ELT 324 to argue that the determination of value by assessing authority by adopting deductive method under Rule of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is acceptable. Pointing on discussions made in the impugned order, he submitted that the Commissioner (Appeals) has held that the appellant has not furnished sufficient data to adopt Rule 7 which is incorrect. In any case, the appellant is ready to furnish the worksheet and relevant documents to the adjudicating authority and therefore requested for a remand.

3. The ld. AR Shri A. Cletus supported the findings in the impugned order. He argued that the memorandum of understanding entered between the appellant and the supplier would show that a discount of 70% is given to the appellant. It is very much clear that relationship has influenced the price. There are no details furnished by appellant of contemporaneous imports of similar goods. The appellant has also not furnished necessary data to adopt the deductive method envisaged in Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In such case, loading of 166.6% is correct and requires no interference.

4. Heard both sides.

5. Undisputedly, the agreement shows that the appellant has been given 70% discount. It is the case of the appellant that there is a trade practice in the tooling industry to give such huge discount. He has also produced a working sheet before us to argue that the deductive method under Rule 7 can

be resorted to arrive at the value of the goods. However, in the impugned order, the Commissioner (Appeals) has noted that the appellant has not furnished any data / details to resort to Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The ld. counsel has pleaded that if an opportunity is given to them, the appellant would be able to establish their case with regard to adoption of deductive method. We find that from the facts of the case as well as working sheet produced before us, it is a fit case to remand the matter to the adjudicating authority who shall consider the plea of the appellant with regard to whether the deductive method is to be applied. The application of the decision of the Tribunal in the case of Armstrong World Industries (I) Pvt. Ltd. (supra) may also be considered by the adjudicating authority. The impugned order is set aside and the appeal is allowed by way of remand to the adjudicating authority for fresh consideration.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex