

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

Appeal No. C/40340/2013

(Arising out of Order-in-Appeal No. 80/2012 dated 19.11.2012 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy).

M/s. P. Kumareasan Paulnadar : Appellant

Vs.

CC, Tuticorin : Respondent

Appearance

Shri S. Krishnanand, Advocate
Shri B. Satish Sunder, Advocate
for the Appellant

Ms. T. Usha Devi, DC (AR)
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: 11.12.2018

FINAL ORDER No. **43202/2018**

Per Dinesha

The appellant filed a Bill of Entry No. 2848342 dated 25.02.2011 for import of "Shell Bangles, Plastic Toys and Kitchen items" declaring a value of Rs. 8,45,517/- and the weight of the consignment was 18000 Kgs. A Show Cause Notice (SCN) dated 19.05.2011 was issued interalia

proposing to reclassify shell bangles and toys under different CTHs and in turn re-determining the value under Rule 9. In the SCN, it was pointed out that there was mis-declaration with regard to quantity as well. The assessee filed a detailed reply and the adjudicating authority after considering such reply, passed Order-in-Original dated 22.06.2012 in which, the appellant's classification of both shell bangles and toys was rejected, he re-classified the shell bangles under CTH 9601 9040 and toys of plastics under CTH 9503 0030; rejected the declared value (CF) under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined the same at Rs. 84,75,490/- under Rule 3 ibid; ordered confiscation of the goods under Section 111 (d) and 111(m) of the Customs Act, 1962 giving an option for redemption of the goods with a fine of Rs.10,00,000/-, under Section 125 ibid. In appeal, the Commissioner of Customs and Central Excise (Appeals), Trichy, having rejected and thereby upheld the OIO, the assessee-appellant has filed the present appeal before this forum.

2. Heard Shri S. Krishnanand for the assessee-appellant and Ms. T. Usha Devi, DC, for the Revenue.

3. The contentions of the Ld. Advocate for the appellants could be broadly summarized as under:-

- For an alleged difference in quantity the demand raised is almost ten times the declared value (CF)

- Valuation under the Customs Act is covered by Section 14 read with Customs Valuation Rules, 2007.
- The SCN has alleged only the mis-match with regard to the quantity but however, the declared value could not be interfered in the absence of a contemporaneous import.
- The impugned order is not a speaking order, since the legal arguments of the appellant are not addressed to by both the authorities below, nor is there any finding on the decisions relied.
- The adjudicating authority has not given any supporting evidence to re-determine the value at almost ten times the imported value.
- The adjudicating authority has to follow the valuation Rules sequentially through Rule 4 to Rule 9 when he rejects the declared value under Rule 12 of the Customs Valuation Rules *ibid*.
- The value rejected under Rule 12 is the value declared by the importer under Rule 3 of Customs Valuation Rules, 2007, the effect of which is that the authority shall follow the Valuation Rules 4 to 9 sequentially and not at his will.
- The redemption fine of Rs. 10,00,000/- is imposed without any rational and not even ascertaining the market value of the goods, in the first place.
- Admittedly, the goods imported having not met with the declaration and the supplier having issued

communication to that effect, the appellant had also sought for re-exporting the goods back to its supplier, etc.

4. Per contra, Ld. DR appearing for the Revenue supported the findings of the lower authorities.

5.1 We have carefully gone through the orders of the lower authorities as also various submissions which are placed on record and on a careful analysis, we find that there is no finding on the legal submissions of the assessee nor is there any discussion as to the correctness or otherwise of such submissions and we have to say that the findings arrived at and upheld by the First Appellate Authority, are incoherent as far as the facts are concerned. At this juncture, it is very useful to refer to one of the pleas of the assessee that it had sought for re-export of the goods back to its supplier on account of mis-match and apparently the same is not at all discussed by the lower authorities. At the same time, we also do not find any justification given by the adjudicating authority in re-determining the value at almost ten times the declared value nor is there any working given by the adjudicating authority before arriving at his value. Further, the adjudicating authority has also not discussed about the prevailing market value of the goods involved before imposing redemption fine nor has he discussed about applicability of Section 125 since, admittedly, the Revenue

has not made out a case that the goods sought to be imported are prohibited under the Customs Act or under any other law for the time being in force and therefore the redemption fine appears to be disproportionate. So many loose ends as of above, make the orders of the lower authorities not only non-speaking but also unsustainable.

5.2 For the above reasons, we are unable to consider the plea of the assessee and decide the issue sitting in appeal and therefore, deem it proper to set aside the impugned order which we hereby do and thereby remand the matter back to the file of the adjudicating authority who shall pass a denovo adjudication order, after considering the explanations as also the various case laws relied upon up the assessee. It goes without saying that he shall offer reasonable opportunities to the assessee before passing the denovo adjudication order as per law. All issues are left open.

6. The appeal is treated as allowed by way of remand for statistical purposes.

(Operative part of the Order pronounced in the open Court)

(P.DINESHA)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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