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

Appeal No. C/337/2012

(Arising out of Order-in-Appeal No. 32/2012 dated 25.7.2012 passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

Commissioner of Customs, Tuticorin — Appellant

Vs.

M/s. Crescent Enterprises — Respondent

Appearance

Ms. T.Usha Devi, DC (AR) for the Appellant
Shri V. Muthuraman, Advocate 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: **20.03.2019**

Final Order No. **40578 / 2019**

Per Bench

The facts of the case are that the respondents had filed Bill of Entry 5059371 dated 30.10.2011 for import of 1,24,800 meters of 'interlining fabric (flock)'. The Bill of Entry was filed by the respondent by declaring the value as 0.18 USD per meter as per the invoices of foreign supplier. During first check, it emerged that the goods were declared in the accompanying invoice only as 'interlining fabric'. On the basis of test report and NIDB data, the original authority enhanced the value from 0.18 USD to 1.374 USD by invoking Rule 5 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 vide order dated 23.12.2011. In appeal, the Commissioner (Appeals) held that the lower authority has relied upon NIDB data, there is nothing on record that there was any special relationship between the importer and the foreign supplier or that they had paid anything extra over and above the transaction value and the test report had not stated that the impugned goods are not made up of interlining fabrics and only stated that the sample is printed woven fabrics having one side flock. The lower appellate authority has held that without confirming the imported are not interlining fabrics, the value redetermined and adopted by the original authority are to be rejected. Aggrieved, the department has filed the present appeal.

2. Today, when the matter came up for hearing, ld.AR Ms. T.Usha Devi appearing for Revenue reiterated the grounds of appeal. She submits that the foreign supplier’s invoice clearly showed that the goods are interlining fabrics whereas Bill of Entry had described it as interlining fabrics (flock). The test report has brought out the fact that the imported goods have characteristics of flock fabrics. She submits that the NIDB data was relied upon to the impugned goods as the respondents had

mis-declared the description of the goods imported and that the test report has clearly shown that the goods have characteristics of flock.

3. On the other hand, ld. counsel Shri V. Muthuraman supported the findings in the impugned order. He submitted that there are number of decisions which hold that such reliance is not in order. That the NIDB data on which the enhancement was done was not provided to them. So also copy of the test report was not provided to the importer by the department before order was passed by the original authority.

4. Heard both sides.

5. After hearing both sides, we find that there are number of decisions which hold that NIDB data is not substantive material to enhance the value. Commissioner (Appeals) has held that the exact nature of the import of the goods is not very clear. The copy of the test report was not provided to the importer. The NIDB data on which basis the enhancement of declared value was done was also not informed to the respondent. There are any number of decision of higher appellate forum which have consistently reiterated that reliance on NIDB data for the purpose of enhancement of declared value of imported goods is not in order. For all these reasons, we do not find any infirmity in the order passed by Commissioner (Appeals). The

same is upheld and the appeal filed by department is dismissed.

(Dictated and pronounced in open court)

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

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

Rex