CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.C/255/2008

[Arising out of Order-in-Original No.7587/2008 dt. 17.04.2008 passed by the Commissioner of Customs (Seaport-Import), Chennai]

Commissioner of Customs,(Seaport-Import)
Chennai — Appellant

Versus

Star Exports — Respondent

Appearance:

Shri B. Balamurugan, AC (AR)
For the Appellant

None
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'bleShriMadhu Mohan Damodhar, Technical Member

Date of hearing / decision :08.02.2017

FINAL ORDER No. 40543/2017

PerD.N. Panda

None present for the respondent.

2. Revenue pleads that value of airconditioners imported by respondent being misdeclared, that has caused prejudice to the interest of Customs. Accordingly Revenue is aggrieved.

3. Heard Revenue.

4. When Japanese origin Air-Conditioner of "O" General Brand came through two Bills of Entry No.9909 dt. 17.4.2000 and

No.274072 dt. 19.5.2000 to India under Singapore invoices, Customs noticed that there was undervaluation of the goods as well.

5. So far as Bill of Entry No.9909 dt. 17.4.2000 is concerned, 50 air-conditioners of "O" General brand of 1.50 ton capacity came under DEPB scheme. Invoices although came from Singapore, goods were of Japanese origin. The declared value of the goods was Rs.5,52,975/- per unit which was equivalent to US$ 250. When the Bill of Entry was assessed, goods were cleared on payment of duty on the assessed value which was also the declared value of Rs.5,52,975/-.

6. So far as Bill of Entry No.274072 dt. 19.5.2000 is concerned, 96 Air-Conditioners of Model No.AXG-18 of 1.5 tons capacity of "O" General brand came to India. The goods were under cover of invoice from Singapore although the goods were of Japanese origin. Declared value of the goods was US$ 250 CIF. But that was enhanced to US$ 268 per unit and cleared on that value upon payment of duty.

7. When investigation was made from the collaborator of Japan available in Chennai, they informed that the "O" General brand Air Conditioners were manufactured in Japan and price of unassembled air-conditioner ranged between US$ 268 and US$ 295. Adding further component thereto the air-conditioner were made functional. Thus value of 1.5 ton capacity of "O" General Brand air-conditioner was US$ 350.

8 Respective documents were gathered by investigation to prove its stand that the value of goods came through above Bills of Entry were misdeclared. There was no defence by the respondent before

the adjudicating authority to discard the investigation result except bringing out certain Bills of Entry which were depicted by the authority in para-5 of his order to plead that the value declared by the respondent was in accordance with those bills of entry. Basing on those documents, ld. adjudicating authority held that declared value was correct.

9. It is surprising to notice that ld. Commissioner did not apply his mind to understand the pith and substance as well as gravity of the investigation result to appreciate that Japan origin air-conditioner although invoiced from Singapore should not be of so low value as was declared by respondent, when Respondent could not discard the evidence gathered by investigation against ~~the respondent.~~ it. Ld. Authority was totally sympathetic to the respondent as is apparent from para-8 of his order when he did not enquire into the origin of goods, manufacturer's price, cost of transportation, value addition done by assembly. He heavily leaned on the irrelevant bills of entry placed by respondent. Ld.Adjudicating Authority had misplaced sympathy on Respondent and caused serious prejudice to the interest of Revenue.

10. It is noticed that the goods came through Bill of Entry No.9909 dt. 17.4.2000 was under DEPB scheme. Ld. Commissioner did not examine at all that DEPB clearance whether was proper and in accordance with law and against proper DEPB scrips. That aspect needs rigorous test.

11. Noticing aforesaid features, we send back the matter to the Adjudicating Authority to issue notice to the respondent to hear the matter afresh in accordance with law. He should not ignore the

investigation result, but should expose the respondent to such result for rebuttal. Following course of natural justice, in the course of readjudication, the authority shall grant reasonable opportunity of hearing to the respondent and recording evidence shall pass appropriate order.

12. Registry is directed to send a copy of this order with a copy of the adjudication order to the Chief Commissioner, Customs for necessary action at his end.

13. In the result, appeal is remanded to the Adjudicating Authority with the above direction.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Technical Member

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

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सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai