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

Appeal No. C/229/2008

[Arising out of Order-in-Appeal C.Cus.No.110/2008 dt. 31.3.2008 passed by the Commissioner of Central Excise (Appeals), Chennai]

Ramdev Traders — Appellant

Versus

Commissioner of Customs, Chennai — Respondent

Appearance:

Shri A.K. Jayaraj, Advocate
For the Appellant

Shri A. Cletus, ADC (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 : 08.08.2017

FINAL ORDER No. 41634/2017

Per Bench

The facts of the case are that appellant imported Rechargeable Lamps PRL 228 valued at US$ 0.75 per piece vide Bill of Entry No. 938320 dt. 03.01.2006. On examination, the goods were found to be

"PREMIER" brand Rechargeable Portable Lamps, Model-PRL 228 (8WX2) Emergency Lamps and goods were found to be affixed with MRP stickers of Rs.100/- each individual packs. Market enquiries were conducted by department wherein it was apparently found that actual retail sale prices of identical Rechargeable Lamps PRL-228 was Rs.220/- per piece. Accordingly, show cause notice dt. 1.9.2006 was issued to appellant *inter alia* proposing rejection of declared value and determination of value at US$ 1.40 per piece, demand of differential duty of Rs.1,50,908/- with interest liability thereon, confiscation of imported goods and imposition of penalty. In adjudication original authority vide an order dt. 08.03.2007 rejected the declared value and redetermined the enhanced value based on US$ 1.30 per piece, confiscated the imported goods, however allowed redemption on payment of fine of Rs.1 lakhs under Section 125 of Customs Act and also imposed penalty of Rs.1 lakh under Section112 (a) ibid. On appeal, Commissioner (Appeals) vide impugned order dt. 31.3.2008 upheld the order of original authority. Hence this appeal.

2. On 08.08.2017, when the matter came up for hearing, on behalf of appellant, Ld. Advocate Shri A.K. Jayaraj submits that the value declared by appellant is correct and true value; that statement taken from appellant is not voluntary statement and in any case, same had been retracted in their affidavit dt. 30.1.2006 and letter dt. 1.2.2006;

that no copy of bill was furnished by appellant; that Department is bound to accept the invoice value of the goods unless mutuality of interest between the importer and foreign supplier and payment of additional consideration is proved; that Department has not followed Valuation Rules in correct sequence for determining the assessable value. Further, even when value is fixed under Rule 8, to the greater extent possible, it should be based on previously determined customs value.

3. On the other hand, Ld. A.R Shri Cletus supports the impugned order. He draws attention to the statement given by Shri R. Bharat Kumar, wherein he admitted that by declaring less price, he would save customs duty and therefore had told the supplier to send invoices for US$ 0.75 per piece and that the correct price is US$ 1.30 per piece.

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

5. No doubt, the appellant had based their assessable value on invoice price of US$ 0.75 per piece . However, no grounds have been evidenced for rejecting the said declared value as not being transaction value. Even so, instead of following the sequences laid down in the Valuation Rules for redetermination of value, the department, for some reason, found it appropriate to work out the assessable value on the basis of market prices of the impugned item obtained through market enquiry. The enhancement is then certainly

not based on sufficient reasons for rejection of transaction value and redetermination of value thereupon being based on contemporaneous imports of identical goods. The so called "voluntary statement" of the importer has, in any case, been subsequently retracted. The finding of lower authority that "*value of Rechargeable Lamp PRL 228 admitted by Shri R. Bharath Kumar in his voluntary statement recorded under Section 108 of the Customs Act, 1962 also coincides with the value found in NIDB data*", is certainly not the accepting manner of arriving at assessable value. There are spate of Tribunal decisions against setting aside enhancement of declared value on the basis of NIDB data. In the event, we are of the considered opinion that the impugned order upholding the enhancement of the assessable value of the imported goods cannot sustain and will have to be set aside in toto which we hereby do. Appeal is allowed.

(Operative part of the order pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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