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

Appeal No.C/291/2010

[Arising out of Order-in-Appeal C.Cus.No.296/2010 dt. 29.3.2010 passed by the Commissioner of Customs (Appeals), Chennai]

Commissioner of Customs (Imports)
Chennai — Appellant

Versus

Wine Legend India Pvt. Ltd. — Respondent

Appearance:

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

None
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 : 07.12.2017

FINAL ORDER No. 43416/2017

Per Bench

The appellants imported various brands of red and white wines from Spain vide Bill of Entry No.392537 dated 28.12.2009. The original authority rejected the invoice value for Vina Adela Red and

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

White wines, Mondelion Calatayud Wine and Campode Borja Crianza Red wine declared as Euro 0.97, 1.73, 2.45 per bottle each and instead ordered values at Rs.140, Rs.195 and Rs.245 per bottle respectively and further ordered inclusion of Euro 1067 as transportation charges to the Port. Aggrieved, the appellants preferred appeal before Commissioner (Appeals) inter alia contending that none of the situations referred to in Rule 12 of the Valuation Rules 2007 are present; that the department has chosen to doubt the value on flimsy grounds; that almost in all the wine making countries large players and very few and rest are only family owned small and medium sized vineyards and these wine makers form as a consortium which is encouraged by respective Governments and even supported by funding the marketing effort; that MRP has to be declared taken into consideration the importer's note, trade margins, customs duty and local taxes; that many factors influence pricing of wines and therefore RSP cannot be compared even to those coming from the same region; that the mere fact that supplier is giving credit by itself does not vitiate the transaction value; that department themselves have found out that there are no comparable higher contemporaneous values. The Commissioner (Appeals) vide impugned order dt. 29.3.2010 held that the rejection of declared value is not proper and hence set aside the enhancement of value. However inclusion of transportation charges of Euro 1067 was held as proper under Rule 10 (2) of the Valuation Rules, 2007. Department is aggrieved over this order and has filed this appeal.

2. In their grounds of appeal, Revenue has contended that declared value was found to be very low as compared to the value of similar goods sold in the local market; that import invoice was from a trader and not from a manufacturer and hence mentioning of price Ex-works in the invoice appears to be manipulated. Revenue also contends that the certificate produced by the importer from the manufacturer to the effect that invoice raised by the intermediary represents a fair value of the goods does not seem to be authentic. Revenue has also pointed out that payment terms in the invoices stated as telephonic transfer (TT) with 90 days is unusual as no supplier would give such a high value on credit for such a long period in normal course of trade.

3. Heard both sides. After going through the records, we find that the original authority had analysed the nature and manner of import and had pointed out a number of discrepancies with respect to the pricing. In the first place, the adjudicating authority found that the goods were actually sold by a trader and not by a manufacturer.

Nonetheless, the invoice indicates that the prices are Ex-works. The adjudicating authority has been fair enough to concede that Rule 5 of the Customs Valuation Rules, 2007 pertaining to the transaction value of similar goods would not be applicable since no contemporaneous import of the similar goods from Spain has been noticed. He has also critically examined the applicability of Rule 6 and only thereafter arrived at the conclusion that value will have to be determined under provisions of Rule 7 of the Valuation Rules according to which, subject to the provisions of Rule 3, the transaction value of goods being valued or identical or similar imported goods are sold in India, then these shall be determined using deductive value. For arriving at such deductive value, the adjudicating authority has taken into account the effect of neutralization of taxes and only thereafter arrived at a conclusion that assessable value of goods viz. Vina Adela Red and White Wine should be pegged at Rs.140 per bottle; that Mondelion Calatayud Wine should be pegged at Rs.195 per bottle and finally Campo de Borja Crianza Red Wine should be pegged at Rs.245 per bottle. He has relied upon the ratio of the Tribunal decision in the case of *Commissioner of Customs Vs Metro Trading Co.* - 2006 (206) ELT 625 (Tri-Chennai) In the circumstances, we find merit in the Revenue's appeal that the Commissioner (Appeals) has

Customs, Excise & Service Tax Appellate Tribunal been peremptory in setting aside the findings and conclusions of the original authority. We are of the considered opinion that the portion of the impugned order setting aside rejection of declared value and enhancement of value of the imported goods cannot be sustained and is therefore set aside. In respect of inclusion of the transportation charges of Euro 1067, we find that the Revenue has not filed any appeal against that decision. In the circumstances, the order of the original authority is restored and the appeal filed by the department is allowed in respect of the grounds of appeal filed by them.

(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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05/12/18
सहायक पंजीकार / Assistant Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण,
चेन्नई / CESTAT, CHENNAI - 600 006.