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

C/00306/2011

[arising out of Order-in-Appeal C.Cus.No.547/2011, dated 25.08.2011 passed by the Commissioner of Customs (Appeals), Chennai]

M/s. RAVI PRASAD STUDIOS APPELLANT

Versus

COMMISSIONER OF CENTRAL CUSTOMS, CHENNAI RESPONDENT

Appearance:

For the Appellant	Shri S. Murugappan, Adv.
For the Respondent	Shri K. Veerabhadra Reddy, JC (AR)

CORAM:

Hon'be Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: **15.03.2018**
Date of Pronouncement: 18-5-2018

FINAL ORDER NO. 41265 **/2018**

Per Archana Wadhwa:

The brief facts of the case are that M/S.Ravi Prasad Studios, Chennai – 600 017 had filed a BE No.934098 dated 12.10.2005 through their CHA M/s. Paramount Shipping Services, Chennai for clearance of goods declared as 10 sets of "Lighting equipments Arrisun 40/25 (4000/2500W) kit comprising Arrisun SE 4000/2500 Lamp head, Barndoor, Head to Ballast (Lighting equipment for studios)". The country of Origin of the goods was declared as 'Germany'. The unit price was declared as EUR 3505/00 per set (C&F) based on the invoice No.22075A dated 22.09.2005 raised by M/s.Cine Equipment Pte Ltd. Singapore, for a total consideration of Euro 35050 (C&F).

On a reasonable doubt that the goods might have been undervalued the BE was taken for investigation by Special Intelligence and Investigation Branch (SIIB). Based on their investigation they arrived the value of the goods at EURO 7800 (CIF) per set. Hence a show cause notice was issued to the importer and after diligently following the procedures laid down for adjudging the case and adhering to the principle of natural justice, the case was adjudged and order-in-original was passed rejecting the declared valuation of EURO 3505 per set and enhancing the same to Rs.7,800/- (C.I.F.) per set. He further ordered confiscation of the goods with redemption fine of Rs.2,50,000/- and imposed penalty of Rs.50,000/- in terms of provisions of section 112(a) of the Customs Act, 1962

2. Aggrieved by the above order the appellant filed the present appeal before Commissioner (Appeals) with the following grounds of appeal:

a) That the order passed by the lower authority is illegal and against the facts and circumstances of the case, provisions of the Customs Act, 1962 and Customs Valuation (Determination of Import Goods) Rules 1988.

b) That the lower authority rejected the transaction value by merely comparing the invoice prices of other imports with that of the appellant which is not as per provisions of the valuation Rules. In this regard they relied on the Case law of ***Basant Industries Vs. Additional Collector of Customs reported in 1996 (81) ELT 195 (SC).***

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c) That the lower authority's observation itself that the period of comparison was not contemporaneous, seldom such an import can be basis for rejection of the transaction value. Relied on ***Commissioner of Customs, Mumbai Vs. J.D.Orgochem, reported in 2008 (226) ELT 9 (SC).***

d) That the so-called contemporaneous imports, the only common thread which can be noticed is the name and brand. The price as well as the time is different. The country of origin of the goods is also different. In the above circumstances the rejection of the value by the lower authority is contrary to the provisions of the Valuation Rules.

e) The appellant further submit that the lower authority held against the appellant for non-production of manufacturer's price list. The lower authority ought to have appreciated that in International practice, such matters are kept confidential and many a times these are not declared publicly for reasons of competition in the trade.

f) That the lower authority's reliance on the number of additional accessories cannot be the ground for rejection of price declared by the appellant.

g) That sole evidence i.e.Euro 7800 in this case and no other evidences to rebut the transaction value and mere suspicion alone will not suffice to reject the transaction value. Case of ***Commissioner of Customs, Calcutta Vs. South India Television Pvt. Ltd reported in 2007 ELT 3 (SC)*** relied upon by the appellant.

h) That the lower authority compared a BE with quantity of 04 sets with that of the appellant with 10 sets is not correct as

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quantities imported does have an impact and bearing on the price of the goods.

i) That the Internet price quoted as US $ 13,259 from the website by the lower authority and considering due deductions and discounts to arrive at the value of Euro 7800/- is not acceptable, as the Internet prices are not reliable. Relied on the case of ***B.C.Trading company Vs. Commissioner of Customs reported in 2006 (202) ELT 219 (Tri-Bang) and affirmed by Supreme Court in 2008 (223) ELT A133 (SC).***

j) That the cardinal principle of valuation was laid down in the case of ***Eicher Tractors Ltd., Vs Commissioner of Customs, Mumbai reported in 2000 (122) ELT 321 (SC)*** where in it was held that only after discarding the transaction value under Rule 4, the value can be fixed under other sequential rules.

k) That it is undisputed fact that the appellants have paid the supplier as per the invoice. In such circumstances, the lower authority is duty bound to accept the price declared as the transaction value in the absence of raising any doubt in the authenticity of the invoice of the supplier. Declared value has to be accepted as the transaction value unless the genuineness of the invoice has been questioned – ***Commissioner of Customs, Mumbai Vs. Mahalakshmi Gems, reported in 2008 (231) ELT 198 (SC).*** Transaction value cannot be rejected in the absence of any evidence to show that the appellants had paid any amount higher than the invoice price – ***Brij Plywood Pvt Ltd Vs***

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Commissioner of Central Excise, Hyderabad reported in 2006 (198) ELT 289 (Tri.Bang).

l) That the lower authority imposed a penalty of Rs.50,000/- on the appellant. The appellant contended that the case relates to only rejection of value and hence there cannot be alleged mis-declaration and subsequent imposing of penalty.

m) That the lower authority's main contention of rejection of value is there cannot be vast difference in value even though there is difference in the period of comparison and the appellant failed to produce the manufacturer's invoice, which is totally against the Valuation Rules.

3. The Commissioner (Appeals) also upheld the order of the original adjudicating authority by rejecting contentions of the importer. Hence, the present appeal.

4. Learned Advocate appearing for the appellant assails the impugned orders on the ground that the transaction value of the goods, as reflected in the invoice has not been discarded and proved to be wrong by authorities by production of any evidence to the contrary. For enhancing the value by comparing the same with the value of goods, which have originated from other countries, whereas, the country of origin in the assesses case is Germany. They have further contended that the quantity of the imports in their bills of entry was much less that the quantity ~~quoted~~ imported by them as also the date of import are different and as such the relied upon imports cannot be held to be contemporaneous, so as to adopt their value. Learned Advocate also place reliance on various decisions.

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5. Countering the arguments, Learned Authorised Representative for the Revenue reiterates the findings of the authorities below and submitted that it is not only the contemporaneous bill of entries which stand adopted by the Revenue for enhancing but reference also made to manufacturer's price taken from their website. The authorities have further given deductions and concessions from the manufacturer's website price and have fairly arrived at the price EURO 7800 per set. He makes a reference to the Hon'ble Supreme Court decision in the case of *Collector of Customs, Bombay Vs. M/s. Shibani Engineering Systems* reported in 1996 (86) E.L.T.453 (S.C.), wherein, the transaction value found to be ridiculous law and totally unrealistic, was held as not proper. He accordingly prays for rejection of the appeal.

6. After considering the submissions made by both sides, we find that the dispute relates to the valuation of the goods imported by the appellants. The enhancement stand done by the lower authorities only on the ground of contemporaneous imports, without first rejecting the transaction value. Even the imports, which have been held to be contemporaneous by the lower authorities, are actually not contemporaneous in as much as the same differ in respect of the period or country as also the quantum of the goods. The appellants have relied upon many decisions of the Courts to impress upon their stand that the transaction value cannot be rejected in the absence of any evidence to show that higher amount stands paid by the importer. In the present case, there is no evidence of any type to reflect upon the fact that the ~~excise~~ excess consideration for the imported goods stand paid by the appellant to the exporter, over and above the invoice value. As such, we are of the view that in the absence of any evidence reflecting upon the incorrect payments made to the foreign

supplier, the transaction value cannot be rejected and enhanced. As such, we are of the view that the impugned order is unsustainable. The same is accordingly set aside and the appeal allowed with consequential relief to the appellants.

(Order pronounced in the open court on 18.5.2018)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

Ksr/BB
18-04-2018

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/Assistant Registrar

30 MAY 2018