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

C/EH/40633/2017 and C/40776/2017

(Arising out of Order-in-Appeal C. Cus. II No.103/2017 dated 14.2.2017 passed by the Commissioner of Customs (Appeals), Chennai)

M/s. Texpert Appellant

Vs.

Commissioner of Customs, Chennai – IV Respondent

Appearance

Shri K.G. Ragunath, Advocate for the Appellant
Shri B. Balamurugan, AC (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: **28.08.2017**

Final Order No. 41911/2017

Per Bench

The facts of the case are that appellants filed Bill of Entry No. 7696971dated 3.12.2016 for clearance of goods described as magnets of various grades and sizes declaring total assessable value of goods as Rs.7,52,205.68. It appeared to the department that the declared value was low and hence the declared value was enhanced on the basis of contemporaneous import of magnets (N35 and similar goods) as unit price INR 1300 and 'ferrite magnets' as INR 300 per kg. Aggrieved by

Customs, Excise & Service Tax Appellate Tribunal

the said assessment order, the appellant preferred an appeal to the Commissioner (Appeals) who vide impugned order dated 14.2.2017 upheld the assessment order. Hence the appellants have filed the appeal before this Tribunal. They also preferred Writ Petition No. 7269/2017 before the Hon'ble High Court of Madras which was disposed by order dated 11.4.2017, inter alia with the following directions:

> *"5. I do not think that the petitioner can seek indulgence of this Court by filing the present writ petition, more particularly, when he has chosen to file an appeal before the CESTAT, challenging the concurrent findings of the authority, as stated supra and the said appeal is also yet to be numbered.*
>
> *6. Therefore, it is for the petitioner to work out his remedy before the CESTAT in the appeal including by seeking for an interim relief, if such relief is maintainable. Without doing so, the petitioner is not justified in approaching this Court.*
>
> *7. Therefore, I am inclined not to entertain this writ petition not on the merits of the matter, but on the reason that the petitioner has to work out such remedy only before the CESTAT where he has already filed an appeal.*
>
> *8. Accordingly, this writ petition is disposed of, by granting liberty to the petitioner to file an appropriate application seeking for interim relief and if any such application is filed, the same shall be considered and order shall be passed on its own merits and in accordance with law. No costs."*

2. Subsequently, the appellant filed an application dated 17.4.2017 for interim relief and another application dated 23.8.2017 for early hearing/final disposal of the appeal. Considering that the issue involves a live consignment, the appeal was posted for final hearing on 28.7.2017.

3. On behalf of the appellant, ld. Counsel Shri K.G. Ragunath submitted that the goods are live and perishable goods which are still in the custody of the department The goods are in such nature that they would lose their chartered over a period of time. Therefore, seeks for early disposal of the appeal. Taking all factors into consideration and with the consent of both sides, the appeal per se was taken up for final disposal.

4.1 The ld. Counsel made further written and oral submissions which can be broadly summarized as follows:-

(i) The appellant had imported different grades and sizes of magnets, and each category of magnet being priced at different rates depending on the category and sizes and quantity, thus in all amounting to a total value of 10,610 USD.

(ii) Appraising Group had, without appreciating the fact that the entire consignment comprised of different grades of magnets, each valued at different independent rates, had erroneously presumed that the appellant had declared the entire consignment at an **approximate** valuation Rs.70 per kgs, which is not the actual scenario.

(iii) The appellant had declared each of the items at its actual rates, e.g. Item no.14 of the commercial invoice is valued at USD 3,116, and in contrast, item No.22 of the commercial invoice is valued at 5 USD. Hence, the method of valuation adopted by the Appraising Group.

(iv) The data of contemporaneous imports adopted by the Appraising Group, is generic and does not in any way relate to the particular category, quality and quantity of imports of the appellant vide his BoE No.7696971 dated 03.12.2016. It is this erroneous data considered by the Appraising Group has resulted in re-assessment of the goods at an erroneous, approximate and enhanced valuation of Rs.1300/kg, for N35 and similar grade magnets, and as Rs.300/kg for Ferrite Magnets and the Appraising Group had rejected the declared values self-assessed by the importer.

(v) The entire consignment of magnets imported of magnets in the category of Ferrite magnets, measuring a total quantity of 9828 Kgs, which have extensive application in common products of daily use, and 699 kgs of N35 and related magnets.

(vi) On the basis of the end usage for each of the category of magnets, and in consonance with the data of contemporaneous imports, that ought to be adopted for valuation of the consignment, the assessable value declared in the Bill of Entry No.7696971 is true and correct."

4.2 To a specific query, ld. Counsel clarified that the acronyms N35 C8, N50, N35, N45 etc. are technical terms for different types of magnets having different composition and properties which are internationally accepted.

4.3 In respect of N35 and other such specified types of magnets, he submits that the contemporaneous data adopted by the department has been based on N(SH) magnets and grades other than those imported which are having different composition and material and hence are not comparable. That in respect of ferrite magnets, these are predominantly used as for white board magnets, small headphone speaker, magnetic clips, magnets of metal chess board coins, magnetic toys, fridge magnets and are much lower in quality and price. That they have imported ferrite magnets in different quantities and in different sizes, however, the department has unilaterally and without any proper justification enhanced the value to much higher levels. For example, in respect of ferrite magnets of 150*100*25, against declared unit price of Rs.38.64/-, the same has been loaded to Rs.349/- per piece i.e. 780% loading. The same declared price after converting to 'per kilogram' comes to Rs.21.50 per kg. However, the department has enhanced this value to Rs.194/- per kg.

4.4 Thus the contemporaneous prices adopted by the department is not of comparable products. On the other hand, appellants themselves have gathered details of contemporaneous imports which have been placed in pages 3 to 32 of compilation (Book – I), submitted during the hearing. Perusal of these contemporaneous imports would indicate that the department has not adopted correct contemporaneous data, which has resulted in injustice to the appellant.

4.5 The commercial invoice of the imported consignment, Invoice No.16-S-CHN-03 dated 16.11.2016 of foreign supplier has given details, inter alia, of 22 types of different of magnets imported in different quantities. The unit price therein has been charged by foreign supplier based on USD 'per piece' and the total amount in respect of each type of magnet has been indicated accordingly. The contemporaneous import data, submitted by them during the hearing, all have prices based on 'per piece'. However, the department has insisted on converting the number of pieces into kilograms and adopting the assessable value thereafter. When there is an accepted practice of selling and buying of magnets in USD per piece, which has been followed by all other importers, the department is unjustified in trying to adopt 'per kg.' method of pricing. The insistence of department to adopt per kg. valuation has resulted in untenable assessment. To emphasize this, ld. Counsel draws our attention to Bill of Entry No. 7696971 dated 3.12.2016 and to declared import therein of 3000 magnets (6 x 6 – N52), declared at Rs.0.026 per piece; however, the department has unilaterally worked out a price of Rs.12,769/- per kg. and has determined assessable value as Rs.48,653.79. Such level pricing is not possible for the said type of magnets. Such ad hoc enhancement of assessable values without proper justification is seen in respect of each of the other types of grades of magnet imported.

4.6 Ld. Advocate further contends that no notice was issued to them for rejecting the declared transaction value in terms of Rule 12 of the Customs Valuation Rules, 2007. The magnets imported by them are of different grades, types and have different uses and applications, obviously therefore, the prices of each such grade type will different. However, the department has unilaterally fixed a uniform price for each grades / types of magnets.

4.7 To a query, Ld. Advocate states that based on the transaction values declared by them at import, the customs duty liability would only be Rs.2.80 lakhs.

5.1 On the other hand, ld. AR Shri B. Balamurugan submits that the declared value of magnets of various grades and sizes was rejected only on the basis of contemporaneous imports and are determined under Rule 5 of Customs Valuation Rules, 2007 by adopting the value of similar goods.

5.2 Ld. AR further submits that although N35 and higher grades like N45 etc. have been imported, lesser value of N35 has only been adopted in respect of all such grades. So also, for ferrite magnets, reasonable value based on contemporaneous import has been adopted. Value of N35, magnets has been adopted as Rs.1,300/- per kg, which is near the lowest value of contemporaneous imports. Even this value is found to be almost double the declared value of magnets of grades N35.

5.3 In respect of ferrite magnets also, value declared by the appellant is in the range of Rs.20 to Rs.56/- per kg only. The contemporaneous import value has been found in the range of Rs.204/- to Rs.521/- per kg.

5.4 To a query, ld. AR submits that based on the enhancement of value, the customs duty liability will be in the vicinity of around Rs.17 lakhs.

6. Heard both sides and have gone through the facts of the case.

7.1 The core issue for decision in this appeal concerns the correctness or otherwise of the method and manner of valuation of imported goods followed by the department.

7.2 The main thrust of the contentions made by the appellant is that the magnets imported are of various types, grades, sizes and quantities, each of them depending upon the composition and have different magnetic properties and magnetic strength. The appellants have contended that the department has however bunched all the magnets together for adhoc uniform enhancement in price. They are also aggrieved that while imports are on 'per piece' basis, the Department has chosen to adopt 'per kg' basis for determining assessable value.

7.3 While upholding the enhancement of declared values, the lower appellate authority in para 6 of his order has observed that 'the appellant could not demonstrate if there is import of ferrite magnet or magnet (N35 and similar) at nearer the value declared by them by other importers also'. However, the appellant during the hearing has contended that they had represented that other importers had also made similar imports at much lower price than that enhanced by the department. We also note that appellants have submitted a long list of contemporaneous imports running into 32 pages, during the course of hearing.

7.4 It is noted that the commercial invoice accompanying the imported goods indicate the price therein as USD per piece. From the details of the contemporaneous imports submitted by the appellant during hearing, it appears that the pricing therein

Customs, Excise & Service Tax Appellate Tribunal

is also 'per piece' If this be the case, it is not understood how and why the department has chosen to adopt 'per kg' method of assessment if that is not the internationally accepted practice in transactions between foreign sellers and importers in India.

7.5 The other crucial aspect in this appeal concerns the appellants prayer for interim relief by way of release of goods covered in the above Bill of Entry which are still lying in the custody of the department. The Hon'ble High Court of Madras, in their order dated 11.4.2017 in W.P. No. 7269/2017 has inter alia granted opportunity to the appellant to file appropriate application seeking interim relief and has ruled that in case if any such application is filed, the same shall be considered and order shall be passed on its own merits and in accordance with law. In this regard, we find that the goods are lying in the custody of the department at least from 3.12.2016 when the Bill of Entry No. 7696971 had been filed. Thus, for almost nine months the goods have been lying in Customs custody, presumably in the Docks ICFS. Appellants do have a point in their contention that the magnetic properties of the imported goods would deteriorate over long periods of storage. In any case due to this imbroglio, neither has the importer been able to clear his goods for his trade or business nor has the department been able to obtain any revenue by way of customs duty.

8. Viewed in this light, we are of the considered opinion that the prayer for interim relief should be considered sympathetically, while at the same time protecting the interests of Revenue to the extent possible. Further, we hold that the resolution of this dispute will require denovo consideration of the matter by the adjudicating authority after taking into account the various contentions and arguments of both sides. Accordingly, we order as follows:-

(a) During the hearing, Revenue has pointed out that as per the enhanced values confirmed by lower authorities the Customs duty liability will be in the vicinity of Rs.17 lakhs. On the other hand, appellants contend that based on the import values declared by them, the duty liability would only be around Rs.2.80 lakhs. Taking both these contentions into account, we order provisional release of the impugned goods to the appellant on payment of deposit by the importer-appellant of an amount of Rs. 5,00,000/- (Rupees five lakhs only) including the amount which has already been deposited at the time of filing the appeal before this Tribunal along with a suitable Bond, without bank guarantee for an amount of Rs.12 lakhs furnishing bond. On compliance with this order of deposit and furnishing of bond, the imported goods shall be released provisionally to the importer-appellant pending denovo adjudication of the matter.

Customs, Excise & Service Tax Appellate Tribunal

(b) For the purpose of assessment, the original authority will immediately take up denovo adjudication in the matter for arriving at the assessable value in respect of the imported goods for the purpose of levy of duties of customs. In such denovo proceedings, the authority concerned shall give opportunity to the appellants to put forth their case including submission of additional evidence / documents if any. All issues are left open. The concerned authority shall also take into consideration the various contentions and arguments made by both sides capsuled in para 4.1 to 4.7 and 5.1 to 5.4 respectively. Considering that the import is almost nine months old, denovo proceedings shall be completed within two months from the date of receipt of this order. The early hearing application stands disposed of accordingly.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

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

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
15/9
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/CHENNAI