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

C/33/2009

(Arising out of Order-in-Appeal No. 23/2008 dated 11.11.2008, passed by the Commissioner of Customs and Central Excise (Appeals), Trichy)

M/s. D.S.K. & Co. : Appellant

Vs.

CCE, Trichy :
Respondent

Appearance

Shri A.K. Jayaraj, Advocate
for the appellants

Shri B. Balamurugan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **11.08.2017**

FINAL ORDER No. 42143 **/2017**

Per Bench

The facts of the case are that the appellants had filed four Bills of Entry dated02/11/2007 and 05/11/2007 for import of 98.61 MTs of rusted M.S. Pipes declaring total value of USD 26624.70. The department took the view that the imported

Customs, Excise & Service Tax Appellate Tribunal goods are restricted item under 2.17 of Foreign Trade Policy and requires valid import licence for the same. It was also alleged that the declared value of the imported goods are much lower than the value of similar imported goods. Accordingly, in adjudication proceedings, the original authority enhanced the value of the imported goods to USD 33527.40 (Rs. 13,36,067/-) and confiscated the impugned goods under Section 111 (m) of the Customs Act, 1962, however, gave an option to redeem the goods on payment of fine of Rs. 3,00,000/- under Section 125 ibid. A penalty of Rs. 1,50,000/- was also imposed under Section 112 (a) ibid. On appeal, the Commissioner (Appeals) vide impugned order dated 11.11.2008 reduced the redemption fine to Rs.1,35,000/- and the penalty to Rs. 70,000/-, however upheld the remaining part of the order of the original authority. Aggrieved, appellants are before this forum.

2. On 11.08.2017, when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Shri A.K. Jayaraj submitted that the import was a bulk purchase under quantity import hence enjoyed discount. Therefore, the invoice value has to be accepted unless it is found that the seller and the buyer have mutual interest in their business and proved additional consideration of the same. He also contended that lower authorities have not followed the valuation rules for determination of the assessable value of the impugned goods.

3. On the other hand, on behalf of the department, Ld. DR, Shri B. Balamurugan, supports the impugned order and submitted that the appellants have not produced any evidence in support of the declared value. Further, the exporters as well as consignees were one and the same. He also submits that the Commissioner (Appeals) has gone into all aspects of the matter and even reduced the redemption fine and penalty.

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

5.1 In as much as the nature of the imported goods viz., used rusted pipes, there is no dispute. This being so, the allegations of goods requiring specific import licence, but not produced, is sustainable.

5.2 The only remaining dispute concerns the enhancement of value. In this regard, we find merit in the contention of the Ld. DR that the appellants have not produced any evidence in support of their claim that the declared price was correct transaction value, before any of the lower authorities. On the other hand, we find from the invoices, that both exporter and consignee are identical, aspect which would definitely raised doubt about correctness of the declared imported value, at the same time lower authority has gone by the Section 14 (1) of Customs Act, 1962 read with Customs Valuation Rules 2007, rejected the value under Rule 12 and consequently to arrive at the enhancement in value. We are therefore do not find any infirmity in the order of

Customs, Excise & Service Tax Appellate Tribunal the lower authorities rejecting the declared value and its enhancement.

6. In view of the discussions herein above, no merit is found in the appeal, for which reason it is dismissed.

(Order dictated and pronounced in the open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB