IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41617 of 2015

(Arising out of Order-in-Appeal C.Cus.II No. 509/2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. ABI Showatech (India) Limited **: Appellant**
[Formerly 'M/s. Lap Ross Engineering Ltd.']
67, Chamiers Road,
Chennai – 600 028

VERSUS

Commissioner of Customs **: Respondent**
Chennai-III Commissionerate
No. 60, Custom House, Rajaji Salai,
Chennai – 600 001

APPEARANCE:

Shri S. Murugappan, Advocate for the Appellant

Smt. Sridevi Taritla, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40477 / 2023

DATE OF HEARING: 29.05.2023

DATE OF DECISION: 23.06.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee against the Order-in-Appeal C.Cus.II No. 509/2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals-II), Chennai, wherein the Commissioner (Appeals-II) has directed the original authority to examine the issue afresh thoroughly and comprehensively. While doing so the first appellate authority has, however, directed the original authority to collect 5% of the invoice value towards Extra Duty Deposit in all the imports of the assessee from its related suppliers. The first appellate authority has chosen

to order so after entertaining a doubt as to why the importer did not import the goods directly from the manufacturers, and that there has to be a finding as to whether the Royalty paid by the importer to its foreign supplier had any nexus to the imported goods and the existence of condition of sale.

2.1 Brief, undisputed facts that emerge from the perusal of the Order-in-Original dated 11.10.2010 and the impugned Order-in-Appeal are that the assessee had imported Aluminium Ingots, Gypsum, additives, binders and other mould preparatory items and consumables for the manufacture of castings of Aluminium and its alloy products from its foreign supplier, M/s. Ross Casting and Innovation LIC, USA.

2.2 It emerged that there was no dispute that the importer and its foreign supplier were related and therefore it required an investigation as to the acceptance of the importers invoice price for assessment, for which reason case details were forwarded to SVB, Chennai Customs. It appears from the record that Circular No. 02/2010-SVD dated 06.01.2010 was issued for provisional duty assessment with 1% Extra Duty Deposit [EDD].

2.3 It appears that there was some delay on the part of the importer to submit all the necessary documents which invited 5% EDD but, however, the importer having submitted the necessary documents, the same were analysed and scrutinized during adjudication. It was thereafter concluded that with regard to paying Royalty to their foreign suppliers for use of technical know-how in their manufacture, as per the Technical Know-how agreement, Royalty was paid at 5% of net sales which was not connected to the imported goods. It appears from the record that the appellant explained that there was no flow back of any amount to their foreign supplier towards the imported goods.

2.4 The original authority appears to have verified all the documents furnished by the importer, and in the Order-in-Original, has observed, as under:

- There is no dispute as to the relationship between the importer and its foreign supplier.

- From the documents and submissions furnished by the importer, it was clear to him that the appellant had been importing the goods specified elsewhere from their related foreign suppliers.

- The invoice prices were not influenced by the relationship as the foreign supplier has procured locally and supplied to the importer with a value addition of 10 to 20%, and hence the examination of the circumstances indicated that the relationship did not influence the invoice price, for which reason the declared invoice value was accepted under Rule 3(3)(a) of the Customs Valuation Rules, 2007.

- The very fact that the importer had imported the goods based on quotation on case to case basis and no sales discount or cash discount was given by the foreign supplier, clearly indicated that the invoice value was not influenced by the relationship.

- After verifying the company's balance sheet, it was clear to the original authority that there was no flow back and hence, in view of the importer's claim that the Royalty was paid based on the calculation of net ex-factory sales price of the products exclusive of excise duties is minus the cost of imported components, therefore, the authority accepted the plea of the importers that the Royalty and Technical Fee was not related to the import of raw materials and was not addable to the import value.

3. The Revenue, feeling aggrieved by the act of no addition being made to the transaction value by the original authority, appears to have filed an appeal before the first

appellate authority. It appears from the record that first appellate authority having dismissed the appeal of the Revenue, the Revenue preferred a second appeal before this Bench. This Bench vide its Order dated 25.02.2015, however, has felt it proper to set aside the impugned order of the first appellate authority and thereby directing the first appellate authority to pass an appropriate order, after hearing both sides.

4. It appears that the first appellate authority having passed the impugned Order-in-Appeal C.Cus.II No. 509/2015 dated 29.05.2015 with the direction to collect 5% of the invoice value towards EDD and with further direction to examine comprehensively, the present appeal has been filed before this forum.

5. Heard Shri S. Murugappan, learned Advocate appearing for the appellant and Smt. Sridevi Taritla, learned Additional Commissioner representing the Revenue.

6. After hearing both sides, we find that the issue to be decided by us is: whether the finding of the Commissioner (Appeals-II) with a direction to pass a fresh order and to collect 5% Extra Duty Deposit is correct?

7.0 We have gone through the Order-in-Original as well as the impugned Order-in-Appeal and other documents placed on record. At the outset, we find that the order of first appellate authority is unsustainable.

7.1 The original authority has clearly recorded in his order that he had verified all the documents, related agreements and balance sheets of the importer and thereafter, has recorded a categorical finding that the importer and the foreign suppliers were related and that their relationship did not influence the invoice prices.

7.2 He has also recorded at paragraph 14 of the Order-in-Original that upon verification of the importer’s balance sheet for the years ended 2006, 2007, 2008 and 2009, he

did not find any flow back of money towards Royalty which was calculated on the net ex-factory sales price of the products exclusive of excise duties minus cost of imported components. It was at this juncture that the authority has accepted the fact that the Royalty and Technical fee has nothing to do with the import of raw materials for which reason, the same did not require any addition to the import value.

8.1 When a speaking order of this kind is issued, we do not agree with the finding of the first appellate authority that the original authority had not done a proper job and that a thorough and comprehensive verification was required to be made. At the same time, we also do not find any specific reference made by the first appellate authority to the any of the documents or evidence that had missed the attention of the original authority, which prompted the first appellate authority to issue such directions.

8.2 Hence, we are of the view that impugned order is not sustainable in view of the fact that the same is a slipshod order passed without proper application of mind. He has not even looked into the Order-in-Original against which the appeal was filed before him and the reasons given by the adjudicating authority. Further, we do not find any reference to any documentary evidence being made by the first appellate authority, to record a contrary finding.

9. In view of the above discussions, we are of the view that directions as well as the impugned order are not maintainable or sustainable and hence, the same are set aside.

10. The appeal filed by the assessee-importer therefore stands allowed with consequential relief, if any, as per law.

(Order pronounced in the open court on **23.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd