IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 42304 of 2013

(Arising out of Order-in Appeal No.148 and 149/2013 (M-IV)(D) dated 02.08.2013 passed by Commissioner of Customs & Central Excise (Appeals) No. 1 Williams Road, Cantonment, Tiruchirappalli - 620 001.)

M/s. The Metal Powder Company Ltd., **: Appellant**
Thirumangalam – 625 706
Madurai District

VERSUS

The Commissioner of Customs, **: Respondent**
Customs House,
New Harbour Estate,
Tuticorin – 628 004.

AND

Customs Appeal No. 40062 of 2014

(Arising out of Order-in Appeal No.148 and 149/2013 (M-IV)(D) dated 02.08.2013 passed by Commissioner of Customs & Central Excise (Appeals) No. 1 Williams Road, Cantonment, Tiruchirappalli - 620 001.)

M/s. The Metal Powder Company Ltd., **: Appellant**
Thirumangalam – 625 706
Madurai District

VERSUS

The Commissioner of Customs, **: Respondent**
Customs House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

Shri Shivakumar G., Chartered Accountant for the Appellant

Shri R. Rajaraman, Assistant Commissioner/A.R. for the Respondent
Ms G. Anandlakshmi, Superintendent for the Respondent

CORAM:

HON'BLE MRS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40648-40649/ 2023

DATE OF HEARING:01.08.2023

DATE OF DECISION: 03.08.2023

Order : [Per Hon'ble Mrs. Sulekha Beevi C.S.]

Brief facts are that the appellants imported 20 MT of Aluminium powder 99.7% declaring the total cost as USD 50920 and 20 MT of Aluminium Powder 96% at total cost of USD 50740. The Department was of the view that the value declared was very low and further the foreign supplier M/s Sterling Metal Power Company, Malaysia being subsidiary of the appellant is a related party transaction. The Department re-determined the value @ 764.37 per Kg. Against this the appellant filed appeal before the Commissioner (Appeals) who upheld the enhancement of value. Hence this appeal.

2. The Ld. Consultant Shri G. Shivakumar appeared and argued for the appellants. It is submitted that the original authority did not pass any speaking order. The authorities below have erroneously held that the appellant has accepted the enhancement of value and paid the duty. It is submitted that the duty was paid under protest. The Department has enhanced the value five times the declared value which is without any basis. The appellant had waived the Show Cause Notice and personal hearing. However, when the value is being enhanced the appellant ought to have been intimated as to the basis for enhancement. The appellant is not aware on what basis the value has been re-determined by the Department. In fact, the appellant had furnished price details of the same supplier, of import of identical goods. The Department did not consider any of these. It is submitted that the price declared is genuine and goods are sold to others also by the foreign supplier at similar price and the relationship has not influenced the price. The appellant has paid duty under protest which has been noted in the impugned order. The authorities below ought

not to have concluded that appellant has accepted the enhancement of value. The Ld. Consultant prayed that the appeal may be allowed.

3. The Ld. Authorized Representative Shri R. Raja Raman and M/s Anandlakshmi Ganesh appeared and argued for the Department. They supported the findings in the impugned order.

4. Heard both sides.

5. It is not disputed that the overseas supplier is a related party. The appellant had waived the Show Cause Notice as well as PH and requested for assessment. They also furnished details of contemporaneous imports. However, the authorities below have not considered any of these evidences. The Commissioner (Appeals) has stated that appellant accepted the enhancement and paid duty under protest. There is no detailed discussion as to how the enhancement has been arrived at by the assessing authority. For this reason we are of the considered view that the matter has to be remanded to the adjudicating authority for re-considering the assessment of the imported goods. The appellant is at liberty to furnish details of contemporaneous imports before the adjudicating authority who shall look into these evidences also.

6. In the result, the impugned order is set aside. The appeals are allowed by way of remand.

(Order pronounced in the open court on 03.08.2023)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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

RKP