IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 40935 of 2014

(Arising out of Order-in-Appeal C.Cus. No. 297/2014 dated 21.02.2014 passed by the Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Almaa Traders **: Appellant**
No. 1, Ghouse Moideen Pet Road,
Royapuram, Chennai – 600 012

VERSUS

Commissioner of Customs (Export), **: Respondent**
60, Rajaji Salai, Custom House,
Chennai – 600 001

APPEARANCE:

Shri Shravan Kochar, Advocate for the Appellant

Shri Rudra Pratap Singh, Additional Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40898 / 2023

DATE OF HEARING: 04.10.2023

DATE OF DECISION: 11.10.2023

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

By this appeal, the assessee-appellant has questioned the valuation of "Tin plates defective rejected sheets scrolled".

2. Brief relevant facts are that the appellant had imported "Tin plates defective rejected sheets scrolled" vide Bill-of-Entry No. 6598442 dated 20.04.2012 under DEPB scheme, classifying the same under CTH 7210 1110

by declaring the unit price at USD 590 per metric tonne. The Revenue, during the course of assessment, appears to have relied on alleged contemporaneous imports of similar goods viz., "secondary and defective Tin plate sheets plain/misprints – waste/waste" cleared through Group-4 of the Custom House, as reproduced at the table under paragraph 3, page 2 of the Order-in-Original No. 19279/2012 dated 16.08.2012. In view of the above, the adjudicating authority, having rejected the value declared by the appellant, proceeded to re-determine the same under Rule 9 of the Customs Valuation Rules, 2007.

3. Aggrieved by such re-determination of import value, the appellant filed an appeal before the first appellate authority, but however, even the first appellate authority vide impugned Order-in-Appeal C.Cus. No. 297/2014 dated 21.02.2014 having upheld the re-valuation as made by the adjudicating authority, the present appeal has been filed before this forum.

4.1 Shri Shravan Kochar, Ld. Advocate appearing for the appellant, would submit that the value to be adopted for the purposes of assessment should be the transaction value and unless such values are covered within the exceptions under Rule 3 of the said Rules or are rejectable under Rule 12 *ibid.,* the value declared by an importer cannot be rejected; in the case on hand, however, the adjudicating authority has nowhere examined the import value in the contexts of either Rule 3 or Rule 12 and hence, the action of the adjudicating authority is not in accordance with law.

4.2 Further, it is contended that the value of the Bills-of-entry as extracted at the table at paragraph 3 of the adjudication order cannot be adopted since the same could never be the transaction values in respect of the said Bills-of-Entry.

4.3 In view of the above, the Ld. Advocate requests for setting aside the impugned order whereby the re-determined import value was confirmed.

5. *Per contra*, Shri Rudra Pratap Singh, Ld. Additional Commissioner, relied on the findings of the lower authorities.

6. We have heard the rival contentions, we have perused the orders of the lower authorities and we find, upon hearing, that the only issue to be decided is: whether the authorities below were justified in re-determining the import value?

7.1 We have perused the findings in the Order-in-Original whereby, in the first place, without finding any deficiency in the import value declared by the appellant, the original authority considers the value of contemporaneous imports, but however, the same is not put across to the appellant for rebuttal.

7.2 While there is a reference made to contemporaneous imports of allegedly similar goods cleared through

Group-4, there are also references made to distinguishing factors like numerable types of descriptions, grades, country of origin, place of exportation and importation, etc. This clearly throws a doubt as to the admissibility of such alleged contemporaneous imports and the very basis to treat the same as comparables with the goods in question that were imported. When there is a reference made to variable factors like numerable types of descriptions, the same could lead to an impression that the item may be falling under CTH 7210 1110, which is the classification declared by the appellant. Further, the appellant claimed that its import was from Belgium and the quantity was about 138 M.T. whereas in the table at paragraph 3 of the Order-in-Original, there is no reference to the country of origin, which even the original authority has felt as a variable factor.

7.3 Moreover, the officer has relied on alleged contemporaneous imports which were never put across to the appellant for rebuttal, but however, that such reliance on the contemporaneous imports itself has been doubted by the adjudicating authority when he holds that the value of the imported goods could not be determined under Rule 4 and Rule 5 due to variable factors like numerable types of descriptions, grades, country of origin, etc.; Rules 7 and 8 also could not be applied for want of quantifiable data at the place of exportation and importation respectively. By this, the approach of the assessing officer in comparing the import value with that of the contemporaneous imports stood diluted. In other words, on the one hand the officer says that the value of contemporaneous imports were higher, but on the other hand he refers to various factors like numerable types of descriptions, grades, country of origin, place of exportation and importation, etc., which would apply in equal force in respect of the value of the imported goods as well.

7.4 The quantity of import is much higher than the quantity of import in respect of the contemporaneous imports. Hence, so-called contemporaneous imports were in fact incomparables, due to which the rejection of the value of import as declared by the appellant is without any basis.

8. In view of the above, we are satisfied that the re-determination of the import value by the Revenue is without any basis and certainly not in accordance with the spirits of law, for which reasons the same deserves to be set aside.

9. Resultantly, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on **11.10.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

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

Sdd