CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No.42336 of 2013

(Arising out of Order-in-Appeal C.Cus. No.1137/2013 dated 21.08.2013 passed by Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai 600 001)

M/s.Y.S. Enterprises **.... Appellant**
Shop No.22, NZ-19A, 1st Floor,
Sarti Complex, Jawalaheri Market,
New Delhi 110 008.

VERSUS

The Commissioner of Customs
(Seaport-Import) **... Respondent**
Custom House, 60, Rajaji Salai,
Chennai 600 001.

WITH

Customs Appeal No.42338 of 2013

(Arising out of Order-in-Appeal C.Cus. No.1136/2013 dated 21.08.2013 passed by Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai 600 001)

M/s.D.M. International **.... Appellant**
89-90, Industrial Area, Phase I,
Panchkula,
Haryana 122 016.

VERSUS

The Commissioner of Customs
(Seaport-Import) **... Respondent**
Custom House, 60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Hari Radhakrishnan, Advocate, for the Appellant
Shri R. Rajaraman, Authorised Representative for the Respondent

CORAM :

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

FINAL ORDER Nos.40360-40361/2024

DATE OF HEARING : 27.03.2024
DATE OF DECISION : 27.03.2024

Per: Ms. Sulekha Beevi. C.S

As the issue involved in both these appeals is common, they are heard together and disposed of by this common order.

2. Brief facts are that the appellants viz. M/s.Y.S. Enterprises and M/s.D.M. International imported Pile Fabrics declaring the same as 'Stock Lot Polyester Knitted Fabrics' vide Bills of Entry No.217950 dt. 16.05.2006, 220382 dt. 19.05.2006 and Bs/E No.217769 dt. 15.05.2006, 220381 dt. 19.05.2006 and 226911 dt. 30.05.2006 respectively. On investigation conducted by the department, it was noted that the appellants had misdeclared the goods and also undervalued the goods. After due process of law, the original authority held that the goods are not stock lot and also not pile fabrics but knitted fabrics with one side brushing. The value declared by the appellant M/s.Y.S. Enterprises as USD 1/KG (CIF) was enhanced and

in the denovo proceeding redetermined as Rs.112.18/kg. and the value declared by M/s.D.M. International as USD 1/kg (CIF) was enhanced and redetermined as Rs.137.47/kg under Rule 8 of Customs Valuation (Determination of Prices of Imported Goods) Rules, 1988.

3. In the earlier proceedings, department had denied the appellants opportunity to cross examine the witness (Textile expert). So also, they were denied opportunity to cross examine the traders from whom the enquiry was conducted with regard to the market price of knitted fabric with brushing one side. The appellant had then approached the Hon'ble High Court by filing W.P. and vide judgement dt. 30.07.2010 the Hon'ble High Court remanded the matter directing the department to give an opportunity to the appellant for cross examination of the witness. In such *de novo* proceedings, the original authority granted the appellants opportunity to cross examine the textile expert as well as the traders from whom the evidence was gathered with regard to the market price of the impugned goods. Afer such *de novo* adjudication, the original authority confirmed the misdeclaration of goods as well as undervaluation of goods. It was held that the goods are not stock lot and pile fabric but are knitted fabrics with one side brushing and the value was enhanced. The original authority also imposed redemption fine and penalties. Aggrieved by such order, the appellant approached the Commissioner (Appeals). The Commissioner (Appeals) though upheld the

misdeclaration as well as undervaluation of the goods reduced the redemption fine and penalty.

4. The Ld. Counsel Shri Hari Radhakrishnan appeared and argued for the appellant. It is submitted that in the show cause notice, the value was proposed to be enhanced on the ground of evidence gathered from the traders after conducting market enquiry. The original authority in the earlier proceedings had not allowed the appellant to conduct cross examination of these traders against which the appellant had moved the Hon'ble High Court. In the subsequent *de novo* proceedings the appellant was allowed cross examination and none of the traders had supported the evidence put forward by the department to demand duty on the basis of enhanced value of goods. It is submitted by the Ld. Counsel that the adjudicating authority has confirmed the demand on the basis of NIDB data. The appellant has not been supplied with details of the Bill of Entry which were gathered from the NIDB data when the traders did not support the case of department. The adjudicating authority has travelled beyond the show cause notice in relying upon the NIDB data to enhance the value. In the SCN there is no whisper with regard to NIDB data and in the SCN the value has been proposed to be enhanced only on the basis of market enquiry. In such circumstances, the department ought not to have relied on NIDB data. The decision in the case of *CC Mumbai Vs Toyo Engineering India Ltd.* - 2006 (201) ELT 513 (SC) was relied by

the learned counsel to argue that the department cannot travel beyond the SCN.

5. The ld. Counsel submitted that even the allegation that the goods have been misdeclared is without any factual basis. The department has raised the allegation in the SCN on the basis of report filed by the Textile Committee. The textile expert was cross examined. In the cross examination the textile expert has stated that he does not know as to the process that has to be carried out for brushing of the fabrics. He merely stated that since the fabric appears to be having brushing on one side there is value addition and therefore goods would cost more. This is nothing but assumption of the expert and not based on any scientific data. The discussion in para-21 of the *de novo* adjudication order was adverted to by the learned counsel to argue that the department has held that there is misdeclaration of goods only on the basis of the report filed by the Textile Committee which is factually incorrect and based on assumptions and presumptions of the expert who has given the report. More over in para-2 the department has categorically stated that the fabrics were reported by the Docks officers as 'stock lot of Polyester Knitted Fabrics'. It is thus argued that there is no misdeclaration of the goods. Ld. Counsel prayed that the appeals may be allowed.

6. Ld. A.R Shri R. Rajaraman appeared for the department. The findings in the impugned orders were reiterated.

7. Heard both sides.

8. The issue to be considered is whether the enhancement of value as well as the allegation that the goods have been misdeclared is legal and proper.

9. The importer has declared the goods as Stock lot of Polyester Knitted Fabrics whereas the department is of the view that these goods are 'knitted fabrics with brushing on one side'. We have to say that there is no allegation of misclassification of the goods. The only allegation made by the department is that there is brushing on one side of the fabrics. The textile report has been relied by the department to hold that there is misdeclaration of goods. The said expert has been examined before the adjudicating authority. In his statement it has been deposed by the expert that he is not aware as to the procedure that has to be carried out for brushing of the fabric. So also, it is merely stated that since brushing involves more work, the fabric would be more costly. Relevant part of the statement noticed in page 85 of appeal paper book is reproduced as under :

"Qn 6 : Whether 'brush' finishing would add value to the product?

Ans – Yes.

Qn 7 : How is the process of 'brushing' carried out on the fabric?

Ans – I am not aware.

Qn 8 : On what basis you have stated that 'brushed fabric' is of higher value than a 'non brushed one'?

And : Since extra work is involved it is assumed that it may cost more."

10. From the above, it can be seen that the textile expert who reported that the goods have brushing on one side does not have knowledge about what is brushing and how it is carried out. The allegation that the goods have been misdeclared is without any factual basis. Further, in para-2 of the SCN dt. 12.3.2008 it has been categorically stated by the department that docks officers have examined and reported that the goods are Stock Lot of Polyester Knitted Fabrics in different colours. We therefore hold that the finding of the department that goods have been misdeclared is without any factual basis and requires to be set aside.

11. The second point for analysis is whether there is undervaluation of the goods. The appellant has declared the value of the goods as USD 1/kg. However, the department has redetermined the value as Rs.112.18/ kg and Rs.137.47/kg in the *de novo* orders. In the show cause notice, the enhancement of value has been proposed on the basis of market enquiry. This evidence with regard to the market enquiry was supplied to the appellant along with show cause notice. The appellant then cross examined these traders in the *de novo*

proceedings. None of the traders supported the case of the department. Thereafter, in the *de novo* proceedings the original authority has completely rejected the evidence of the traders and relied upon the National Import Data Base (NIDB). The details of the NIDB data of which the adjudicating authority has relied for enhancing the value has not been supplied to the appellant. The SCN does not draw any reference of NIDB data and the enhancement was proposed in the SCN on the basis of market enquiry only. The department ought not to have relied on the NIDB data without providing copies to appellant. We therefore find that the enhancement of value is without any legal or factual basis. The same requires to be set aside which we hereby do.

12. From the appreciation of facts and the evidence placed before us, we are of the considered opinion that the demand, interest, redemption fine and penalty imposed cannot sustain.

13. In the result, the impugned orders are set aside. Appeals are allowed with consequential relief, if any.

(Dictated and pronounced in open court)

sd/- sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI. C.S)
Member (Judicial)

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