

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40248 of 2014

(Arising out of Order-in-Appeal C. Cus. No. 1504/2013 dated 23.10.2013 passed by
Commissioner of Customs (Appeals), Chennai)

Oliva Care

4, Islamic School Road, 1st Floor,
Slamath Nagar, Karumbukadai,
Coimbatore – 641001.

..... Appellant

VERSUS

Commissioner of Customs, (Port – Export)

Custom House, 60, Rajaji Salai,
Chennai

.... Respondent

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 No.40468/2024

DATE OF HEARING : 23.04.2024

DATE OF DECISION : 23.04.2024

Per Ms. Sulekha Beevi. C.S

The brief facts are that the appellant filed Bill of Entry No. 4686063 dated 19.09.2011 declaring the goods to be knitted interlining with value declared as USD 60 per KG (Rs.1.75 per meter). The total quantity imported was 11,815 Kg as per Bill of Entry. After examination, samples were drawn and sent to Textiles Committee's Laboratory for test. It was reported that the goods were 100% polyester knitted fusible interlining with a GSM of 42.5. The department was of the view that goods have been undervalued. It was also

observed by adjudicating authority that there was difference in the quantity imported. Instead of 11,815 Kg. declared in the Bill of Entry by the appellant, the total weight was 11,900 Kg. The appellant waived the requirement for issuance of show cause notice. The adjudicating authority, on the basis of NIDB data and other documents, rejected the transaction value and enhanced the value to USD 0.075 per Kg. (Rs.13.01 per meter). The appellant was directed to pay the differential duty. The goods were ordered to be confiscated giving an option to the appellant to redeem the goods on payment of Redemption Fine of Rs.2,00,000/-. The adjudicating authority imposed Penalty of Rs.50,000/- under Section 112(a) of Customs Act 1962. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. The Ld. Counsel Shri. Hari Radhakrishnan, appeared and argued for the appellant. It is submitted that the adjudicating authority has violated the principles of natural justice by not providing copies of the Bills of Entry relied for enhancing the declared value. There are no reasons stated in the order for rejecting the transaction value. Further, the value cannot be enhanced by merely relying on NIDB data without supplying details to the appellant. To support this argument, the Ld. Counsel relied upon the decision in the case of Artex Textiles Pvt Ltd., Vs. Commissioner of Customs, Mundra (2023) 12 Cenvat 17 (Tribunal - Ahmd).

3. The penalty has been imposed alleging that there is misdeclaration in the quantity of goods imported. The appellant had declared the quantity in kilogram. The duty was paid on the basis of measurement in meters. The department had examined the goods and

found that instead of 1700 rolls 96 meters per roll, the quantity imported appeared to be 1700 rolls 100 meters per roll. It is submitted that the difference in weight is insignificant and, since the appellant had imported the goods in kilograms, there was no intention of mis-declaring the goods by its quantity. The Ld. Counsel prayed that the Redemption fine and penalty may be set aside.

4. The Ld. AR Shri. R. Rajaraman, appeared and argued for the department. He fervently argued that the appellant has been provided copy of details of NIDB data. It is noted in the order that NIDB data is made part of the order as annexure to the order. Therefore, the contention of the appellant that they have not been given opportunity to defend the enhancement of value on the basis of NIDB data is without basis. There is much under valuation in the present case as the value declared was very much low than the actual value that is seen on the basis of details obtained from NIDB data. So also, there is mis-declaration with regard to the quantity of the goods imported. It is submitted that the enhancement of value, the Redemption Fine and Penalty imposed are legal and proper.

5. Heard both sides.

6. The issue that arises for consideration is whether there are sufficient grounds for rejection of transaction value, enhancement of value of goods and also whether the imposition of redemption fine and penalty is legal and proper.

7. The adjudicating authority has enhanced the value on the basis of NIDB data. In para 24 of the order passed by the adjudicating

authority, it is stated that the transaction value has been enhanced on the basis of NIDB data and such data has been enclosed as annexure to the order. We are not able to find any such annexure. There is no discussion as to the details of the Bills of Entry which have been relied by the adjudicating authority. The place of import, the foreign supplier, quantity of the goods, the nature of the goods imported etc., would affect the value of the goods imported. These details are to be discussed by the adjudicating authority as well as the Commissioner (Appeals) to hold that there are sufficient grounds to reject the transaction value and for enhancing the value of the goods. We do not see such discussions either in the order passed by the adjudicating authority or the Commissioner (Appeals). For these reasons we find that the enhancement of the value of goods cannot be sustained and requires to be set aside. Order accordingly.

8. The second issue that arises for consideration is whether the redemption fine and penalty imposed are legal and proper. The adjudicating authority has held that there is misdeclaration of the goods with regard to quantity. On perusal of the records it is seen that in the bill of entry, packing list as well as other documents the quantity is declared in kilograms. However, payment of duty is on the basis of measurement in meters. On examination it was found that instead of 11,815 kilograms as declared by appellant, the total quantity imported is 11,900 kilograms. We note that the said difference in quantity is too low so as to allege intentional misdeclaration of the goods. There will be some variation in the quantity during the voyage of the goods. Taking into consideration these aspects as put forth by the Ld. Counsel for

appellant, we hold that the allegation of mis-declaration of the goods cannot sustain. Consequently, the Redemption fine and penalty imposed are set aside.

9. In the result, the impugned order is set aside. The appeal is allowed with consequential relief if any.

(Order dictated and pronounced in the open court)

(VASA SESHAGIRI RAO)
Member (Technical)

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

psd