CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

Customs Appeal No. 51435 OF 2019

[Arising out of Order-in-Appeal No. CC(A) CUS/D-II/PREV/NCH/3596/2018-19 dated 27.02.2019 passed by the Commissioner of Customs (Appeal), New Delhi]

M/s Dudadhari Traders **... Appellant**
Shop No. 8, 2nd Floor, Baba Plaza
Karol Bagh, New Delhi-110005

Versus

Commissioner of Customs (Preventive) **... Respondent**
New Customs House,
New Delhi

<u>Appearance</u>

Shri V. S. Negi, Advocates for the Appellant
Shri Sunils Kumar, Authorised Representative for the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P V SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/Decision: March 03, 2021

FINAL ORDER NO. 51067/2021

<u>P V SUBBA RAO</u>

This appeal is filed assailing the order-in-appeal No. CC(A) CUS/D-II/PREV/NCH/3596/2018-19 dated 27.02.2019 passed by the Commissioner of Customs (Appeals) New Delhi, New Custom House, New Delhi.

2. The facts of the case, in brief, are that the appellant imported LCD Panels for laptops. Intelligence was gathered by the Department regarding undervaluation in declaration of goods by the appellant. Live consignment covered by bill of entry No. 4879738 dated 12/03/2014 and 13 previous bills of entry filed by the appellant were investigated by the Department and a show cause notice dated 11/09/2014 was issued calling upon them to explain as to why the declared value in respect of the aforesaid bills of entry should not be rejected and the values re-assessed in respect of all the bills of entry and differential duty along with interest should not be recovered from them. It was also proposed to impose penalty upon them under section 112(a), 112(b) or 114A of the Customs Act, 1962. This show cause notice was adjudicated by the original authority by his order-in-original dated 13/07/2015 confirming the demand of duty and interest as proposed in the show cause notice and imposing penalty upon the appellant.

3. It has been recorded in this order-in-original that the noticee was granted personal hearing on 15.01.2015, 23.01.2015, 26.02.2015, 09.03.2015, 13.03.2015, 21.04.2015 and 28.04.2015. The noticee submitted only an interim reply to the show cause notice **but nobody turned up for personal hearing and, therefore, an ex-parte order was passed.** The averments made by the appellant were rejected by the learned adjudicating authority in a single paragraph as below:

> "All the judgments relied upon by the Advocate of Noticee in his written reply of the show cause notice regarding valuation of goods are different from this case. In this case noticee had imported

> different Chinese brand laptop panels of different sizes by mis-declaring as unbranded and declared lower value. NIDB data of contemporaneous import of same Chinese Brands, size, model, make and specification found value on higher side than declared by the noticee in their bills of entries. This fact had not denied by the noticee in his different statements recorded under section 108 of Customs Act, 1962."

4. Aggrieved, the appellant appealed to the first appellate authority on the following grounds which were recorded in the order-in-appeal as below:

> "The appellant has filed this appeal on the grounds that the impugned order has been passed without affording any personal hearing; that the appellant, through their advocate, appeared on 15.01.2015 and 23.01.2015 and made a request for supply of documents including the 13 past bills of entry; that instead of supplying the documents, the case was posted for repeated hearing; that they had filed an interim reply inter-alia seeking the documents and that instead of waiting for the final reply, the case was adjudicated; that the impugned order has been passed without considering their interim reply; that none of the defence submitted by the appellant has been considered; that in the absence of any allegation or evidence that the buyer and seller are related, the declared value was required to be accepted transaction value in terms of Section 14 of the Customs Act, 1962 and that there was no scope for resorting to Customs Valuation Rules; that the proper officer had nothing in hand to reject the declared value and only after the goods were detained, enquiries were conducted; that the brand of the goods were not popular brands of India and hence they had not mentioned the same in the Bill of Entry; that the declared value was true and correct and hence confiscation and imposition of penalty was wrong."

5. Not agreeing with the appellant, the first appellate authority held that there is no plausible reason to interfere with the order of the original authority and, accordingly rejected the appeal.

6. Learned Counsel submits that it was incorrect for the Adjudicating authority to say that they had not attended personal hearing on any date. In fact, they had attended the hearings on 15.01.2015 and 23.01.2015 and requested for some documents including the past bills of entry and instead of supplying them, the case was posted for repeated hearing. Therefore, they had submitted only an interim reply and they could not make final submissions as the required documents were not given to them. The submissions which they had made in their interim reply were also dismissed by the adjudicating authority in one paragraph (reproduced above) without giving any detailed findings. Therefore, it was a case of complete violation of principles of natural justice – no documents given to enable them to make file their final reply and make submissions in personal hearing and even the submissions in interim reply were dismissed without detailed reasons. On this ground alone, the learned Commissioner (Appeals) should have either allowed their appeal or remanded the matter with directions to the original authority. Instead, he upheld the order of the original authority without giving any reasons as to why their declared value under Section 14 was rejected.

7. Notwithstanding the above, learned counsel asserted that they have declared value which was the transaction value under section 14 of the Customs Act 1962 which was rejected by the

adjudicating authority merely based on NIDB data. No grounds were made out as to why the declared value was rejected under rule 12 of the Customs Valuation Rules. It is a well settled legal position that the invoice value declared by the importer cannot be rejected and Customs Valuation done merely based on the basis of NIDB data; declared value must be accepted or cogent reasons must be given for rejection of such a value.

8. Learned Authorised Representative for the Department has however, supported the impugned order.

9. We have considered a submission advanced on behalf of the parties.

10. It clearly transpires that not only is the order passed by the adjudicating authority a very cryptic order but even otherwise opportunity was not provided to the appellant to file a detailed reply. The appellant had expressed inability to file a detailed reply because the documents, on the basis of which the declared value indicated in the 14 bills of entry was rejected, was not provided. It is, therefore, a fit care case which should be recommended to the adjudicating authority for passing a fresh order.

11. The relevant documents shall be provided to the appellant within three weeks from today. The appellant shall file a reply within three weeks thereafter and the adjudicating authority shall pass a reasoned order within three weeks thereafter.

12. The impugned order is, accordingly, set aside and the appeal is allowed. The adjudicating authority shall pass and reasoned order in accordance with the aforesaid directions.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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