IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Appeal No. C/52571/2016-CU [DB]

[Arising out of the common Order-In-Original No. SVB/CUS/YP/11/2015Dated 24.04.2015 passed by Commissioner of Customs (General) New Customs House Near IGI Airport, New Delhi-110037.]

M/s Spectris Technologies Pvt Ltd. …Appellant

Vs.

C.C. Delhi I …Respondent

Appearance:
Sh. Pradeep Sharma, Ld. Advocate for the appellant
Sh. Govidn Dixit, Ld. AR for the respondent

CORAM:
Hon'ble Justice Mr. Dr. Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing. 02.01.2017
Date of decision. 11.01.2017

Final Order No. 50234/2017

Per Ashok K. Arya:

1. M/s Spectris Technologies Pvt. Ltd. is in appeal against the Order-in-Appeal No. 491/2016 dated 03.06.2016 passed by the

Commissioner of Customs (Appeals). Commissioner (Appeals) in the Order-in-Appeal dated 03.06.2016 reduced the loading of value of the import goods from 30% to 24%; thus partly modifying the order-in-original dated 24.04.2015 passed by the Deputy Commissioner of Customs.

2. The appellant importer namely M/s Spectris Technologies Pvt. Ltd. has been represented by the Ld. Advocate, Shri Pradeep Sharma and the Revenue has been represented by the Ld. AR, Shri Govind Dixit.

3. The brief facts are that the appellant imports goods from foreign suppliers. The appellant and foreign suppliers are related persons in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ("CVR, 2007"). The Deputy Commissioner vide Order-in-Original dated 24.04.2015 *inter alia* loaded the invoice values for the goods by 30% supplied by some of the foreign suppliers.

3.1 The appellant filed an appeal against the Order-in-Original dated 24.02.2015 before Commissioner (Appeals), who vide the impugned order dated 03.06.2016 reduced the loading of value from 30% to 24% and upheld the rest of the Order-in-Original. The importer appellant is before this Tribunal against the impugned Order-in-Appeal.

4. The Ld. Advocate based on the appeal memorandum and written submissions mainly submits as follows:

- There is difference in the commercial levels between the Appellant and other unrelated buyers in India.

- The Appellant imports more quantity than any other individual buyer of same goods in India.
- On direct sales made by Spectris Singapore, the Appellant receives commission which is an expense incurred by Spectris Singapore.

- There is no evidence of any payment over and above the declared invoice values.

2. For comparing the values of identical goods imported by the Appellant and other unrelated buyers in India, SVB Delhi and Commissioner (Appeals) allowed deduction of full 20% commission received by the Appellant upto September, 2014 but did not consider revised rate from October, 2014.

5. The Ld. AR reiterates the findings given in the impugned order.

6. After careful consideration of the facts on record and the submissions of both the sides, it appears that the lower revenue authority have failed to carefully examine and appreciate the submissions and evidences submitted by the importer appellant that there is a difference in the quantity of imports; that there are different levels of commerce/transactions made by the appellant importer with the foreign suppliers vis-a-vis unrelated buyers in India. Further, the importer appellant has been receiving commission from the foreign suppliers namely *Spectris Technologies Pvt. Ltd*. which is also to be factored into the transactions between *Spectris Technologies Pvt. Ltd.* and the importer appellant for deciding the issue of valuation. These aspects were not examined properly by the adjudicating authority.

7. Therefore, the matter needs denovo examination and decision by the original adjudicating authority, who is directed to decide the matter afresh within four months of receipt of this order and after providing personal hearing and opportunity of submission of additional evidence, if now be, as per law to the appellant importer.

8. In the result, the impugned order is set aside and the appeal is allowed by way of remand.

[Pronounced in open Court on11.01.2017]

(Justice (Dr.) Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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