CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 51161 of 2015

(Arising out of order-in-original No. 01/2014 dated 22.12.2014 passed by the Commissioner of Customs (Import), New Delhi)

DATE OF HEARING : 02.02.2017
DATE OF DECISION : 09.02.2017

CC, New Delhi .... **Appellant**
(Rep by Sh. Amresh Jain, DR)

VERSUS

M/s Sun Grace Indus. .... **Respondents**
(Rep. by Dr. Prabhat Kumar, Adv.)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 50719/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the Department against the order-in-original no. 01/2014 dated 22.12.2014 passed by the Commissioner of Customs (Import), New Delhi.

2. The brief facts of the case are that, the assessee-Respondent, during the period under consideration, was importing rubber compound from USA as well as from South Africa. The DRI intercepted certain emails of another importer Md. Munna of M/s Bombay Rubber wherein the value of rubber compound from M/s

GGP Services was mentioned. From the same supplier, the assessee-Respondent has also imported the goods. After comparative study, it was found that the assessee-Respondent imported the rubber compound at the maximum rate of USD 464 per MT. On the other hand, Md. Munna, Proprietor of M/s Bombay Rubber, had imported the rubber compound at the maximum rate of USD 700 to 785 per MT. The assessee-Respondent has imported total 217 consignments of the goods and out of which 183 consignments were purchased from Vest Design Seven (Pty) Ltd., Port Elizabeth, South Africa and the remaining consignments from M/s GGP Services Inc, Illinois, USA. The Department has raised the duty demand for the differential price shown by the assessee-Respondent vis-a-vis in the emails of Md. Munna of M/s Bombay Rubber, but the same was dropped by the impugned order. Being aggrieved, the Department has filed the present appeal.

3. With this background, we have heard Shri Amresh Jain, learned DR for the Department and Dr. Prabhat Kumar, learned Counsel for the assessee-Respondent, at length.

4. The learned DR for the Department relied on the show cause notice. He submits that in the statement, Shri Vijay Thukral, Proprietor of the assessee-Respondent, has admitted the under-valuation of the imported consignments. The same was recorded under Section 108 of the Customs Act, 1962. He also submits that M/s GGP Services were the suppliers to Md. Munna as well as to the assessee-Respondent for the rubber compound of

Grades B & C and only after comparative study, the duty was demanded.

5. On the other hand, the learned counsel for the assessee-Respondent has justified the impugned order. He submits that out of 217 consignments, 183 were imported from M/s Vest Design Seven (Pty) Ltd., Port Elizabeth, South Africa and 34 from M/s GGP Services Inc, Illinois, USA. Thus, the import of rubber compound from M/s GGP Services is about 3% of the total imports, but the duty was demanded on the total consignments. He also submits that the statement of Shri Vijay Thukral was under duress before the DRI Officials which was immediately retracted, so it has no value. The sole demand raised was based on the emails of Md. Munna. No corroborative evidence has been collected by the Department. The transaction value was enhanced on the basis of certain alleged emails of third party which is totally un-known to the assessee-Respondent. To support his submission, he relied upon the ratio laid down in the case of **Eastern Exports & Imports Co. Vs CCE&C,** 2007 (209) ELT 459 (Tri.-Kolkata); **Anand Mahindra vs Commissioner of Customs (Import), Mumbai,** 2008 (226) ELT 371 (Tri.-Mumbai); and **Forbes Patvolk vs Commissioner of Customs, Chennai,** 2004 (169) ELT 346 (Tri.-Chennai).

6. We have considered the submissions made by both sides and perused the record. From the record, it appears that the sole evidence in the hands of the Department was the emails pertaining to Md. Munna of M/s Bombay Rubber / Allied Industries. Except for these emails, no other evidence was collected by the

Department before demanding the duty. The statement of Shri Vijay Thukral was retracted immediately and it was not supported by any corroborative evidence. The rubber compound imported from M/s GGP Services is only about 3% of the total imports, but the duty was demanded on the total consignments. The main import of the assessee-Respondent is from South African origin. In the show cause notice no comparative study of identical goods was provided. In the case of **Sounds N Images vs Collector of Customs,** 2000 (117) ELT 538 (SC), it was observed that under-valuation must be established through proper methods under the law and that burden cannot be shifted to the importer. In the instant case, no evidence has been adduced to corroborate the statement of Shri Vijay Thukral or the emails of a third party. Hence, the impugned order before us is reasonable.

7. In view of the above, we find no reason to interfere with the impugned order. Hence, the order passed by the Commissioner is hereby sustained along with the reasons mentioned therein.

8. In the result, the appeal filed by the Department is dismissed.

(Pronounced in the open court on 09.02.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay