IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Customs Appeal No.C/316/2009-CU [DB]

[Arising out of Order-in-Appeal No.06-Cus/MRT-II/2008 dated 31.12.2008 passed by the Commissioner (Appeals), Customs-II, Meerut].

M.U. Enterprises …Appellant

Vs.

C.C, Lucknow … Respondent

Present for the Appellant : Ms. Rinki Arora, Advocate
Present for the Respondent: Ms.Kanu Verma, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 02/03/2017

FINAL ORDER NO. ___52257/2017__

PER: B.RAVICHANDRAN

The appellant is aggrieved by the order dated 31.12.2008 of Commissioner (Appeals), Meerut-II

2. The brief facts of the case are that the appellants imported sports shoes from Nepal and filed 2 Bills of Entry in January and February, 2001. They claimed the classification under Tariff Heading 6401.10, which is meant for footwear of retail sales price not exceeding Rs.125/- per pair, with Nil rate of duty. The Revenue insisted that the footwear should be

classified under 6401.19 as other footwear liable to Customs duty. The appellants paid such duty and later filed refund claims of such Additional Customs Duty. The claims were rejected by the original authority and the rejection was upheld by the appellate authority.

3. The ld. Counsel appearing for the appellant submits that they have paid duty under protest and endorsed the same in their Bills of Entry. They have declared the retail price as Rs.123 and Rs.99/- in respect of imported footwear. In such circumstances, product is correctly classifiable under CTH 6401.12 and eligible for exemption of additional duty of customs.

4. Ld. AR submits that the classification is relevant for additional duty of customs. The same is determined by the retail sale price which should not exceed Rs.125/- per pair. The terms "retail sale price" has the meaning as given in Section 4 A of the Central Excise Act, 1944. Since MRP is to be established by the product labeled, not by any other evidence, the claim of the appellant cannot be accepted.

5. We have heard both the sides and perused the appeal records. It is clear that the classification of the imported product with reference to retail sale price is a matter of dispute now. We note that retail sale price has to be evidenced in terms of provisions of Section 4 A of Central Excise Act, 1944 which refers to provisions of Legal Metrology Act, 2009. In other words, the retail sale prices are to be affixed in terms of

the provisions of Legal Metrology Act, 2009 or Rules made there-under. Any declaration by the importer or invoice details regarding the imported goods will not establish the fact of "retail sale price". In the present case duty was paid under heading 6401.19 at the time of import. The appellant recorded a protest in the Bill of Entry for such payment. However, perusal of the appeal records indicates the reasons for payment under protest and subsequent evidence in support of such protest is not forthcoming. It is also to be noted that no adjudication or proceedings by the assessing officer was recorded subsequent to such protest to resolve the issue. We find that after almost 9 years of import, such a resolution based on material evidence is not practicable. Hence, in the absence of evidence to the effect that the imported goods are actually having retail sale price of below Rs.125/- per pair in terms of Section 4 A of the Central Excise Act, 1944. We find the assessment and payment of duty under the heading 6401.19 cannot be varied. As already noted, retail sale price has to be evidenced by declaration of price affixed on the goods in question and not by any other document.

6. In view of the above findings, we find no merit in the present appeal. Accordingly, the same is dismissed.

[Dictated and pronounced in the open Court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita