

**CUSTOMS, EXCISE & SERVICE TAX APPELLATTRIBUNAL
R.K. PURAM, WEST BLOCK NO. 2,
NEW DELHI-110066
COURT NO. I**

Date of hearing: 15.02.2017

Date of decision: _28.2.2017_____

Appeal No. C/ 54193-54194/2014-Cu[DB]

[Arising out of Order-in-Appeal No. 04/2014 dated 07.05.2014 passed by the Commissioner of Central Customs, Jaipur]

**M/s Golden Agro Corporation
Shri Deepak Agarwal, Proprietor**

Appellant

Vs.

CC- Jaipur-I

Respondent

Appearance:

Shri Anil Kumar Khanna, Ld. Advocate for the Appellant.

Shri Govind Dixit & Shri K.Poddar Ld. AR for the Respondent

Coram:

Hon'ble Shri S.K. Mohanty, Member (Judicial)

Hon'ble Shri Ashok K. Arya, Member (Technical)

FINAL ORDER NO. _52054-52055___/2017-Cu[DB]

Per: Ashok K. Arya

1. The appellants, namely, Golden Agro Corporation and Shri Deepak Agarwal are in appeal against Order-in-Original No.4/2014 dated 7.5.2014 passed by the Commissioner of Customs, Jaipur. The Order-in-Original *inter alia* rejects the value of the import goods declared by the importer as Rs.2,09,29,571.00 and re-determined the

same at Rs.2,73,15,090.00 under section 14(1) of the Customs Act read with Rules 4 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules (CVR), 2007.

2. The brief facts are that the appellant importer, namely, M/s Golden Agro Corporation imported glass chatons, cutters and pocket scales.

2.1 The revenue issued a show cause notice(SCN) dated 24.08.2012 to the appellants *inter alia* for enhancement of the values of the goods imported after rejection of their declared values.

2.2 The impugned order *inter alia* rejected the declared value of Rs.2,09,29,571.00 of the imported goods and re-determined the same at Rs.2,73,15,090.00 . The impugned order also confiscated the goods with the option of redeeming the same on payment of redemption fine of Rs.60.00 lakhs. A penalty of Rs.17,13,883.00 was also imposed on the appellant importer and a personal penalty of Rs.5.00 lakhs was imposed on other appellant namely, Shri Deepak Agarwal .

3. The appellants have been represented by the Id. Advocate Shri Anil Kumar Khanna and the revenue has been represented by Id. DRs S/Shri Govind Dixit and K.Poddar.

4. Based on the appeals and the written submissions, the Id advocate for the appellants *inter alia* mainly submits as under:

- (i) **Rejection of transaction value:** Without showing the evidence for contemporaneous imports transaction value cannot be rejected. No evidence has been brought on record despite this fact recorded in Panchnama dated 28.02.2012 at the time of seizure and assessable value was arrived at US\$ 68.00 per kg, on the basis of predetermined presumption and without any proof of evidence.

- (ii) Without any basis such as comparison with contemporaneous imports for similar or identical goods later on justified by the so called market enquiry from retailers and opinion from sales person only, without obtaining the opinion of expert or ascertaining composition or quality or cut of chatons etc.
- (iii) The samples were drawn vide Panchnama dated 28.02.2012 stated to be sealed with customs seal no.66, but no mention of seals when samples were subjected to market enquiry and which sealed packet was shown to whom, the collective general opinion has been taken from the petty retailers, and not from wholesalers without mentioning the identity of persons whose evidence is being relied upon, as to their identity etc. the market enquiry reports even for SS7, SS12 states that goods appear to be Chinese origin are not free from doubt and cannot be presumed to be unimpeachable, concrete, reliable piece of evidence so as to reject the transaction value. These opinions are taken with the sole motive and intention of justifying the valuation arrived at the time of seizure and drawl of Panchnama dated 28.02.2012.
- (iv) Further, the opinion dated 07.03.2012 of Shri Yogesh Desai who opined in respect of SS12, SS10 and SS10 is placed at P-49 of appeal book. The report cannot be presumed to be an opinion of an expert as the person examining the goods is not an expert who has any technical qualification in the field of science related to colored or imitation glass/stones and he is simply a person engaged in marketing business.
- (v) The language itself states that he has examined the glass chatons pouches (crystal), all are of ASFOUR company which belongs to Egypt, and nowhere states that he examined '888' brand pouches which may be perused as was appended to the show cause notice.

- (vi) In this connection, the Directorate of valuation has brought a publication available on net titled as “A study on Beads – Glass, crystal, semi-precious and plastic” relevant part enclosed for information and perusal please; it states that valuation difference is only 30%, that too for “Swarovski” world’s best brand of crystal. Therefore, valuation method adopted and confirmed in the adjudication order is liable to be set aside.
- (vii) The method adopted for valuation of unbranded chatons was based upon market enquiry which itself has no reliability, and no basis for rejecting the transaction value is liable to be set aside.

4.1 The Ld. advocates for the appellant in case of items namely Pocket-Scales and cutlers states as follows:

- (i) No evidence including Market Inquiry has brought anything on record to discard transaction value.
- (ii) It was even contested before the adjudicating authority and submitted before the adjudicating authority referring to the earlier contemporary import against vide bill of entry No.002027 dated 20.07.2011 at one of the ports under the jurisdiction of same Commissionerate that item pocket scales were cleared at Rs.68 per piece, whereas in the above bill of entry under dispute, it is declared at Rs.71 per piece which is still at higher side but no findings were given to discard this transaction value. However, the learned authority has erred and arrived on the conclusions that market enquiry was conducted in the presence of Shri Deepak Agarwal which is without any basis and contrary to facts on record, as it was only got countersigned by importer, that too under fear and pressure; it does not bear any signatures of person from whom enquiry was made or conducted nor the witnesses in whose presence same was made.

4.2 The appellants rely in support on the following case laws:

- i. *Sonal Enterprises Vs Commissioner of Customs*, 2015(316) E.L.T/144(Tri.-Del.)
- ii. *M/s Eicher Tractors Ltd Vs Commissioner of Customs, Mumba* 2000(122)E.L.T. 321(SC)

iii. *M/s Sara Electronics Acoustgics P Ltd V s Commissioner of Cus.ND 2009(240)E.L.T.448 (Tri.-Del.)*

5. Learned DR for the department based on the written submissions mainly submits as under:

(I) GLASS CHATONS:

(a) 888 Brand Glass Chatons

- The invoice mentioned in Country of Origin Certificate was not produced by the importer
- Shri Deepak Agarwal in his statement dated 28.03.2012 admitted that imported glass chatons of 888 brand are manufactured by M/s ASFOUR Crystal, Egypt and the stickers of 888 brand had been removed from the cartons. M/s ASFOUR Crystal, Egypt have declared in their letter (email) dated 15.02.2014 that they have no production facilities of the said goods in China.
- In view of the above, the goods 888 brand glass chatons are misdeclared w.r.t. country of origin to suppress the actual transaction value with an intent to evade payment of appropriate duty of customs and hence declared value is not the correct transaction value.
- The price list (valid from 5th April, 2011) of the Manufacturer has been provided by the importer himself vide letter dated 26.07.2012 and on the basis of Manufacturer's Price List, the prices of the identical goods have been ascertained under sub-rule(1) of Rule 4 of the CVR, 2007. Reliance is placed upon the judgement of Hon'ble Tribunal(Mumbai) in the matter of Commissioner of Customs, Pune Vs Shri Hari Corporaion[2014 (307) E.L.T.771(Tri-Mumbai)].

(b) Unbranded Coloured Glass Chatons

- As regards these goods, because of the gross mis-declarations of description/grade/ and country of origin etc., the value declared by the importer is not the correct transaction value.
- Transaction value is liable to be determined under Rule 9 of CVR, 2007 on the basis of Market Inquiry. After allowing abatement of 40% (26.8487% duty + 10% expenses + 10% profit margin of importer + 10% profit margin of shopkeeper/dealer) on the retail sale price ascertained during market inquiry. Accordingly, for this item, the value is re-determined to Rs.38,20,605.00 and duty payable works out to Rs.10,25,783,00.

(II) POCKET SCALE & CUTTERS

- Because of the gross mis-declarations of description/grade and country of origin etc., the value declared by the importer is not the correct transaction value.
- In this case, as data of import of Pocket scale and cutters is not available and the importer has not submitted any reliable documents on the basis of which correct transaction value can be ascertained, transaction value is liable to be determined under Rule 9 of CVR, 2007 on the basis of Market Inquiry.
- As far as submission of the bill of entry dated 20.07.2011 by importer for evidence as contemporary import is concerned, same are not acceptable as the goods in this case have been imported on 17.01.2012, i.e. after six months of the goods for which the importer has submitted B/Entry.
- Accordingly for this item, the value is re-determined to Rs.15,52,800/- and accordingly duty payable works out to Rs.4,16,056.00.

6. After careful consideration of the facts of the case and the submissions of both the sides, it appears that Revenue's case is not based on the reliable evidences, which could be legally sustained. The Revenue's main case is mis-declaration of values by the appellant importer in case of following goods:

- (i) 888 brand glass chatons
- (ii) Unbranded coloured glass chatons
- (iii) Pocket scale and cutters

6.1 888 Brand Glass Chatons

For this item, the department does not have any contemporary import prices to compare with. Department says that importer produced manufacturer's price list and value has been arrived at after giving 10% discount as proposed in the show cause notice against 30% claimed by the importer appellant. This theoretical exercise of giving 10% discount against claim of 30% by the importer on the manufacturer's price list cannot sustain revenue's case of mis-declaration of value. In the practical world, unless manufacturer's price list has got corroboratory evidences which can be in the form of contemporary imports or further corroboration from the manufacturer's end on the prices for India for this much quantity, the

Revenue's order in appeal for enhancement of value in case of '888 brand glass chatons' cannot be sustained legally.

6.1.1 Further there is finding that these goods are not of Chinese origin and these goods have been mixed up with the other unbranded coloured glass chatons. This fact, however, cannot sustain the enhancement of value made in the impugned order. The revenue has not done further investigation in respect of differential value, if any, paid by the importer for these goods to sustain the charge of under valuation against the importer. The facts on record in the submissions of the revenue do not legally sustain the charge of under-valuation for these goods. The Hon'ble Supreme Court decision in the case of *M/s Eicher Tractors Ltd* (SUPRA) supports our view on this. The Revenue has placed reliance on the CESTA's decision in case of *Shri Hari Corporation*(SUPRA). However, considering facts of the present case and the decision of Hon'ble Supreme Court in the case of *M/s Eicher Tractors Ltd*, we are of the view that the said decision is not applicable here.

6.2 Unbranded Coloured Glass Chatons

The revenue has sustained the charge of under valuation and have re-determined the value purely based on the market inquiry. The method of market enquiry for re-determination of the value for these goods is not free from doubt. There is no enquiry made with the experts in the field of subject goods namely Unbranded Coloured Chatons. The Revenue has re-determined the value under rule 9 of CVR 2007 on the basis of market enquiry. However, from the facts it appears that market enquiry was not scientifically conducted and market enquiry in the absence of any corroboratory evidence cannot become sole basis for sustaining the enhancement of value as done by the impugned order. Therefore, the impugned order enhancing the value of these items cannot be legally sustained.

6.3 Pocket Scale & Cutters

In the case of these goods, the revenue again enhanced the value based on market enquiry. The Revenues further contends that market enquiry was made in the presence of Shri Deepak Agarwal, the proprietor of the importer firm. However, the presence of Shri Deepak Agarwal, the proprietor, cannot make difference to the fact that there is no systematic data of market enquiry available and

further market enquiry alone cannot become the basis of enhancement of the value unless the results of the market enquiry are corroborated by independent evidences which could be contemporary imports or manufacturer's price list, which again needs support by the specific written declaration from manufacturer. Further, when it is a case of enhancement of value, Revenue needs to make an investigation on the differential payments made by the importer to the supplier from where the goods are received. The impugned order also discards the details of bill of entry dated 20.07.2011 produced by the importer indicating the clearance value of the pocket scale @ Rs.68 per pc, and in the case of present imports, the price declared is Rs.71 per pc. The rejection in the impugned order of the said evidence is more in the nature of arbitrary, when revenue has not come out with any other cogent evidence (other than market enquiry) to sustain the enhancement of the value for these goods. Therefore, following Hon'ble Supreme Court decision in case of *M/s Eicher Tractors* (SUPRA) and CESTAT decision in case of *M/s Sara Electro Acoustics Pvt Ltd* (SUPRA) enhancement of value here is not sustainable.

7. In the light of above discussions, the impugned order is set aside and the appeals are allowed with consequential relief, if any.

[Pronounced in Open Court on 28.02.2017]

(S.K. Mohanty)
Member(Judicial)

(Ashok Kr. Arya)
Member(Technical)

pcs