

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

Customs Appeal No. 53092 of 2014

[Arising out of Order-In-Original No. 14/KAM/Commr/2013-14
dated 06.02. 2014 passed by Commissioner of Customs (Exports),
New Delhi]

M/s. Aakash Enterprises

Appellant

Vs.

**Commissioner of Customs
New Delhi**

Respondent

Appearance:

**Ms. Prabhjyoti Chadha, Advocate for the Appellants
Shri Govind Dixit, AR for the Respondent**

CORAM:

**Hon'ble Ms Archana Wadhwa, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)**

Date of Hearing : 28.03.2017

Date of Decision : 07.04.2017

FINAL ORDER NO . 52740 /2017

Per Archana Wadhwa:

After hearing both the sides duly represented by Ms. Prabhjyoti Chadha, learned Consultant appearing for the appellant and Shri Govind Dixit, learned AR appearing for the Revenue, we find that the

appellant imported various automobile parts under the cover of Bill of Entry dated 29.8.2013 on the declared value. Such goods were cleared from the Customs after paying customs duty on 30.8.2013.

2. Subsequently, the appellants premises were put to search along with his residential premises, two shops and godown on 12.9.13 and 13.9.13 and the goods imported vide above Bill of Entry was put to seizure on the doubt of under valuation. Some other goods lying in the premises were also seized.

3. Thereafter the statements of Shri Ajeet Singh, partner of importer firm was recorded along with the statement of other persons. It is seen that during the course of investigations, the appellant took categorical stand that the goods other than the one imported vide Bill of Entry dated 29.8.2013 are locally procured goods and as such cannot be put to seizure. The appellant also produced sale bills for showing the purchase of goods in question. For verifying the above claim of the appellant, Revenue made investigation at the sellers end and it was found that the address given on the said sale bills was bogus. When the above fact was put to the notice of appellant Shri Ajeet Singh, in his statement deposed that he had purchased the goods from the sales person over a telephonic order and as such, was not aware of the existence or non-existence of shops. However, he maintained that

said goods stand procured by him legally and was not imported by them.

3. Based upon the above proceedings were initiated against the appellant proposing enhancement of value of the goods cleared vide Bill of Entry dated 29.8.2013, confiscating the goods along with the locally procured goods and imposing penalties upon the appellant. Hence the present appeal.

4. As regards the goods imported vide Bill of Entry dated 29.8.2013, the appellants contention is that the Commissioner has rejected the transaction value without their being any evidence on record to the contrary and the value has been enhanced on the basis of NIDB data. The appellant submitted that the Commissioner has simply observed that the Revenue is having doubt about the correct transaction value. It is there contention that simplicitor observation that the importer has not declared correct value of the goods is not sufficient for alleging under-valuation unless the revenue produce evidence to show that the value declared by the importer is not the correct value. Further, the adjudicating authority has enhanced the value based upon the NIDB data which has been held to be not correct method by various decisions of the judicial as also quasi-judicial authorities.

As regards the goods other than the one covered by the Bill of Entry, learned advocate submits that the said goods were procured locally by them and merely because the seller of the goods has not been found to be at the address given in the sale bill, it cannot be presumed that the goods are illegally imported into India. Admittedly, the appellant has the sale bills as also sales tax return showing the purchase of the said goods, it is for the Revenue to establish beyond doubt that the goods in question, which may be imported goods, have been smuggled into India without payment of duty. Accordingly, learned advocate prays for setting aside the impugned order.

5. Learned DR appearing for the Revenue supports the order of the Commissioner, by drawing our attention to various parts of the order. It is the contention of the learned DR that market inquiry has been conducted by the Revenue and it is on that basis that the value declared by the appellant has been found on the lower side. Further, the adjudicating authority has gone by NIDB data inasmuch as same reflects the value of the contemporaneous goods.

As regards the confiscation of the goods claimed to have been purchased by the appellant from local market, he submits that on verification of the sales bills submitted by the assessee during the course of investigation, the address of the sellers were found to be either non-existence or incorrect. In such a scenario, the doubt

entertained by the Revenue that the goods were smuggled into India is entitled to be upheld. He accordingly, prays for rejecting the appeal.

6. After carefully considering the submissions made by both the sides and after going through the impugned order, we find that the first issue relates to under-valuation of the Auto parts covered by Bill of Entry dated 29.8.2013. We find that the transaction value, declared by the importer, stand rejected by the Commissioner on the sole ground that NIDB data for the contemporaneous imports reflects higher value of identical goods. This fact shows that there is no independent evidence with the Revenue to first reject the transaction value. It is well settled law that the transaction value has to be admitted as the assessable value unless proved to be incorrect. For such purpose, proving the value to be wrong declaration, independent evidence is required and mere reference to NIDB data is not sufficient. It is held by various Courts that NIDB data cannot be made the basis for enhancement of the value. One such reference can be made to the Tribunal's decision in the case of ***Commissioner of Central Excise Delhi vs. Anshikha Overseas [2011 (274) ELT 546 (Tri-Del)]*** as also to the Tribunal's decision in the case of ***Divine International vs. Commissioner of Customs, New Delhi [2016 (338) ELT 142 (Tri-Del)]***. As such, we are of the view that enhancement of the value is not justified.

7. As regards the other goods seized from the premises, we find that the appellants, even during the course of investigation itself, had taken a categorical stand that the said goods were purchased by him locally from various traders. On verification of the sellers, the address of the shops etc. shown in the sales challans, were found to be either false or non-existence. When the appellant was confronted with the said fact, he clearly deposed that the goods were purchased by him from the sales representative and sale was not directly from the shops. The appellant has also produced the sales tax challan along with sales bill on record. This fact establish that the goods stand purchased in India only.

8. As regards their foreign origin and smuggled character, we note that even though the said goods are considered to be imported goods, the same are not notified in terms of provisions of section 123 of the Customs Act. As such, the burden to establish that they are smuggled into India lies heavily on the Revenue and is required to be discharged by production of sufficient evidence. In the present case, we note that there is no such evidence on record, though the Commissioner has made reference to certain Bill of Entries, which according to the learned DR covers the goods in question. Even if that be so, it is established that the goods were imported under the said Bill of Entries and for the reasons recorded above, their value cannot be enhanced based upon the NIDB data. As such, the confiscation of the said

goods or the enhancement of value of the same is neither warranted nor justified.

9. Inasmuch as we have set aside the enhancement of the value and confiscation of the goods, imposition of penalty upon the appellant is not called for, the same is also set aside.

10. The appeal is allowed with consequential relief to the appellants.

(pronounced in the open court on 7/4/17)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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