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

Appeal No. C/50125/2016-CU(DB)

[Arising out of Order-in-Original No. CC(A)/CUS/ICD/1087/2015 dated 26.10.2015, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), New Delhi].

M/s. Murphy & Murphy Exclusive ....Applicants

Vs.

C.C.E. New Delhi (ICD & TKD) ....Respondent

Appearance:

Ms. Jya Saxena, Advocate for the Appellant
Shri R.K. Manjhi, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 03.04.2017

FINAL ORDER NO. 52840/2017-CU(DB)

Per Archana Wadhwa:

As per facts on record, the appellant imported artificial leather shoes for gents and ladies and filed the Bill of Entry dated 15.04.2014 declaring prices of the total consignment as Rs.9,22,691.83/- and assessed the Customs Duty of Rs.2,58,267/-.

2. On 100% examination of the consignment it was found that the goods also contained the branded shoes like Nike and Adidas to a large extent. The said fact was accepted by the representative of the appellant that the supplier had sent branded goods which were not declared and the assessable value as also the MRP declared in

the Bill of Entry cannot be accepted to be correct reflection of the facts. Thereafter, the matter was taken up by the Revenue with the brand name owners as regards the IPR violation but no response was received.

3. In the above factual background adjudication was taken up by the authorities as the importer vide their letter dated 18.06.2014 waived the show cause notice as also the personal hearing. In the present impugned order the adjudicating authority observed that in as much as there was mis-declaration about the brand of the goods, the declarations made by the appellant for the value of the goods cannot be accepted and as such going by the contemporaneous imports available in NIDB, the value was enhanced from Rs. 9 lakhs to Rs.30.38 lakhs and differential duty of Rs. 4.55 lakhs was confirmed. Further, the goods were held liable to confiscation with an option to the appellant to redeem the same on payment of redemption fine of Rs.7.50 lakhs. Penalty of Rs.1.50 lakhs stand imposed under section 112 of the Customs Act 1962.

4. Ld. Advocate appearing for the appellant brings out to our notice that the entire duty along with redemption fine and penalty stand paid by them. However, she is not disputing the fact that the consignment also had branded goods but submits that they never placed the order for the same and the supplier had sent it by mistake. However, we note that there is nothing on record to show that the Chinese supplier of the goods sent the high value branded items instead of the branded artificial leather goods for which the order was placed by the importer. No reasonable prudent man

would supply the high value goods as against the low value placed order. In the absence of any evidence on the contrary, we find no merits in the above stand of the importer. As regards the valuation, we note that admittedly the goods were mis-declared i.e. instead of branded items, the same were declared as artificial leather shoe items. It is a fact of common sense that the branded goods are priced much more than the local non-leather Chinese shoes. As such, the value of the goods declared by the assessee would definitely be on the lower side. The appellant has also not placed any evidence on record to show or to reflect upon the correct value of the consignment. They also submitted that they have already deposited the duty along with fine and penalty. As such, we are of the view that the value adopted by the lower authorities cannot be interfered with.

5. As regards, the confiscation of the goods with redemption fine of Rs. 7.50 lakhs, the contention of the Ld. Advocate is that the fine be reduced in as much as the differential duty is only to the extent of Rs.4.55 lakhs and the adjudicating authority has fixed the redemption fine without even resorting to the margin of profit.

We agree with the above contention that there is nothing on record to show the MOP of the goods. As such at this stage by taking into consideration the differential duty confirmed against the assessee we reduce the redemption fine to the extent of differential duty. As regards penalty we find that the same has already been fixed on the lower side and does not require any interference. But for the interference in the quantum of redemption fine, the appeal is otherwise rejected.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu