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

Appeal No. C/629/2011-CU(DB)

[Arising out of Order-in-Original No. 27(DKV)CUS/JPR-I/2011 dated 30.08.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

M/s. Agarwal Marbles & Industries Pvt. Ltd. **....Applicants**

Vs.

C.C.E. Jodhpur **....Respondent**

Appearance:

Shri Kumar Vikram, Advocate for the Appellant
Shri K. Poddar, DR for the Respondent

<u>**CORAM**</u>:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 23.03.2017
Date of Hearing: 18.04.2017

FINAL ORDER NO. <u>52909/2017</u>-CU(DB)

<u>**Per Archana Wadhwa:**</u>

As per facts on record, the appellant filed the Bill of Entry dated 18.10.2010 at ICD Jaipur for import of 170.400 MT of rough marble blocks imported from Turkey along with other relevant documents. The said import of rough marble blocks was covered by an import license issued in pursuance of policy circular no. 29/2009-14 dated 31.03.2010, enabling the appellant to import rough marble blocks, subject to floor price of US $ 275 per MT.

2. As the value declared by the appellant was at the rate of US$253.48 per MT and as such was below the floor price of US$275 per MT, as required in the import license, Revenue took up the matter for adjudication on the ground that the value declared by the appellant was less as also on the ground that the condition of the import license stand violated. The original adjudicating authority took into consideration the fact that the NIDB Data as also the weekly average of rough marble blocks of Turkish origin showed the value of the goods as USD 350.88 per MT. Accordingly, he held that the appellant had undervalued the goods and enhanced the value to USD 350.88 per MT. He further observed that as the appellant had not fulfilled the condition of the notification, the goods are liable to confiscation and the appellant liable to penalty. Accordingly, along with enhancing the assessable value he confiscated the same with an option to the appellant to redeem the same on payment of redemption fine of Rs.5.40 lakhs. In addition penalty of Rs. 1 lakh was imposed upon the appellant in terms of the provisions of section 112 (a) of the Customs Act 1962.

3. On appeal against the above order the Commissioner (A) upheld the same. Hence the present appeal.

4. As regards valuation of the goods, it is seen that the Revenue has enhanced the value based upon the NIDB data as also on the weekly average prices, adopted from the other relevant ports. The appellant’s contention is that the prices of rough marble blocks keeps on changing as the market in respect of the same is very

volatile. They further submit that NIDB data cannot be adopted as the ground for enhancement of the value. Similarly the average weekly price of the goods imported at different ports cannot be adopted.

5. We find that an identical dispute was the subject matter of the Tribunal's decision in the case of ***R K Marble Pvt Ltd. Vs. CCE Jaipur 2009 (245) ELT 383 (Tri-Del),*** and the enhancement of the value based upon the weekly average price was held as bad in law. We find that though the said decision was placed before the Commissioner (A) and he has also taken note of the same but has distinguished the said decision on the ground that in the present case the appellant has not been able to establish that there was reduction in international price during the material time. We find that such distinction made by Commissioner (A) is neither warranted nor justified in as much as the onus to prove that the import was under valued lies upon the Revenue. In the present case also we find that it is the weekly average price of the goods which has been adopted as the assessable value, which was the case in the appeal of R K Marble Pvt. Ltd. As such there is no distinction between the two and the law declared by the R K Marble has to be followed.

6. We also note that it is well settled law that NIDB data cannot be considered as the reliable source for the purpose of enhancement. We find that the issue is no more res integra and has been settled by umpteen number of decisions of the Tribunal. In the case of ***Kelvin Infotech Pvt. Ltd. Vs. CCE Meerut-2015 (316)***

ELT 146 (Tri-Del) the Revenue's reliance on NIDB data, for the purpose of enhancement of value was not favored. The said decision of the Tribunal stands confirmed by the Hon'ble Supreme Court when the appeals filed by the Revenue were rejected reported as ***Commissioner Vs. Kelvin Infotech Pvt. Ltd. - 2016 (339) ELT A291 (SC).*** To the same effect are other decisions of the Tribunal. Reference can be made to the decisions in the case of ***CCE Vs. Marble Art - 2013 (284) ELT 346 (Tri)*** as also in the case of ***Venture Impex Pvt. Ltd. Vs. CC Import New Delhi - 2016 (338) ELT 759 (Tri-Del).*** In view of the foregone we find no justifiable reasons to enhance the value and hold that the transaction value declared by the appellant be adopted as assessable value for the purpose of payment of Customs duty.

7. The second issue relates to the contravention of the licenses. As per the licenses given to the appellant, the imports should be at the floor price of USD 275 per MT. The same was the situation in the case of R K Marbles and it was held that even though the assessment for the purpose of customs duty is to be done on the transaction value but as the said transaction value was below the floor price, there is violation of the policy and the goods are liable to confiscation and the appellant liable to penalty.

8. In the present case also the Ld. Advocate appearing for the appellant has accepted the violation of the condition of the policy. Accordingly, we uphold the confiscation and imposition of penalty but following the decision in the case of R K Marbles, the

redemption fine is reduced from Rs. 5.40 lakhs to 1 lakh and the penalty from Rs. 1 lakh to Rs. 50000.

9. The appeal is disposed of in the above manner.

[Pronounced in the open Court on 18.04.2017]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu