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

Customs Appeal No. 708 of 2009

[Arising out of Order-In-original No. 06/ 2009 dated 22.9.2009 passed by Commissioner of Customs, Jaipur]

Aman Trading Company **Appellants**

Vs.

Commissioner of Customs **Respondent**
Jaipur

Appearance:

Shri A K Prasad & Ms. Priyanaka Goel, Advocates for the Appellants
Shri K Poddar, AR for the Respondent

CORAM:

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

Date of Hearing : 10.03.2017
Date of Decision: 21.04 .2017

FINAL ORDER NO . 52970 /2017

Per Archana Wadhwa:

As per facts on record, the appellant filed Bill of Entry on 22.8.2008 for clearance of 54720 sets of drawer slides of various sizes, by declaring the classification of same under Customs Tariff

Heading 8302. All other documents like Bill of lading, certificate of country of origin and invoices issued by the exporter M/s. Mount Overseas (HK) Ltd. , were attached along with Bill of Entry. As the goods were purchased by the appellant on high seas sales basis from one M/s. S B International, Jaipur, the invoices issued by the high seas seller was also produced.

2. Entertaining a doubt about the under-valuation of various sizes of the drawer slides, the Revenue undertook investigation. Samples of the each size of drawer slides were drawn, net weight of a set (having two pieces) were taken and proceedings recorded under a panchnama dated 28.8.2008. Market inquiries were conducted by the Revenue from local wholesale traders of Jaipur namely M/s. Delhi Hardwares as also M/s. Rajasthan Fitting House Pvt. Ltd. The said wholesaler opined that the goods are sold in the market on per inch basis and usually the value is around Rs.4.60 or Rs. 4.70 per inch. These persons also deposed that usually the margin of profit is around 5%. Based upon the said market inquiries, the Revenue believed that the goods in question are under-valued. Accordingly, the same were seized under a panchnama dated 10.9.08.

3. Subsequent investigation undertaken by Revenue revealed that the appellant had purchased the goods on high seas sales basis from M/s. S B International, Jaipur. However, M/s. S B International,

Jaipur, revealed in their statement that it is only their IE code which is being used by the appellant and all the correspondence was done by the appellant himself. Shri Atin Gupta, authorised representative of the appellant, in his statement, recorded during investigations revealed that he visited the trade fair in China in December, 2006, met the manufacturer of Drawer slides and after negotiation of rates etc., they imported two containers of Drawer slides at Kolkata. However, the present consignment has been imported by them in the name of M/s. S. B. International, Jaipur from whom they had purchased the goods on high seas sale basis. Statement of CHA representative was also recorded wherein he deposed that he introduced the appellant to M/s. S. B. International, Jaipur and inasmuch as the goods were required to be imported in the name of Jaipur based firm as they could save freight towards Delhi to Jaipur and Central Sales Tax and local sales tax etc. During his subsequent statement, Shri Aman Bansal, proprietor of M/s. Aman Trading Company deposed that they had purchased the goods from M/s. Mount Overseas (Overseas Exporter); which is a trading company and is not a manufacturer of the imported goods; that the impugned goods are known in the market as Drawer slides Telescopic and description given by them is drawer slides; that the order for the goods was placed by him during his visit to trade fair in China; he was shown another Bill of Entry relating to HM scrap of another importer which was assessed on value per Kg. basis; based upon the said value of scrap, the declared value of the Drawer slide is less than the value of steel scrap only. However, it is worthwhile to note here that said deponent nowhere in his statement admitted that value shown in the invoice was not the real price of the goods paid by him or settled between the importer and the exporter. However, pending adjudication, the appellant agreed to pay the duty on the basis of value adopted by the Revenue and prayed for the provisional release of the goods, which prayer was accepted and the goods were released provisionally on execution of bond and giving the bank guarantee.

4. Revenue made further inquiries from ICD, Tughlakabad, New Delhi and found that the value of telescopic channels of various sizes imported by M/s. Jyoti Iron and Hard Ware Store, New Delhi from M/s. Glazy Industries (Hong Kong) was on the higher side. As the appellant could not procure and produce the manufacturers invoices, Revenue proceeded to enhance the value based upon the market inquiries as also on the basis of imports made by M/s. Jyoti Iron & Hard Ware Store. Reference was also made to find out the value of contemporaneous import of similar goods, through the official website of Directorate of Valuation, CBEC, New Delhi. It stands recorded in the impugned order that contemporaneous import of identical or similar goods was not available but it was observed that the data related to import of telescopic channels by M/s. Jyoti Iron and Hard Ware

Store was relevant. Accordingly, proceedings were initiated against the appellant by way of Show cause notice dated 3.3.2009 proposing to enhance the value of the goods from Rs.4,39,317/- to Rs. 29,17,335/- ; to confirm the differential duty of Rs.9,24,895/-; to confiscate the seized goods, and to impose penalties upon the appellant under various sections of the Customs Act. The said show cause notice resulted in passing of present impugned order and confirming the proposals made in the show cause notice.

5. Hence the present appeal.

6. We have heard both sides duly represented by Shri A K Prasad and Ms. Priyanka Goel, learned advocates appearing for the appellant and Shri K Poddar, learned DR appearing for the Revenue. After carefully considering the submissions of both the sides and after going through the impugned order, we find that the adjudicating authority had enhanced the value of the imported goods in terms of Rule 9 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. In terms of the said Rules, the value has to be arrived by proceeding sequentially. Rule 3(1) requires the transaction value, duly supported by the invoice and other documents, to be accepted as assessable value. It is only if the said transaction value is established to be false or incorrect, the authorities can proceed to determine the value, by refereing to various other Rules. From the impugned order,

we find that the adjudicating authority has not accepted the transaction value, in terms of Rule 3(1), to be a correct value on the ground that the investigation revealed that the importer has used the name of M/s. S B International so as to avoid the sales tax; that the imports have been made from the trader and not directly from the manufacturer; that word 'telescopic' was not declared in various documents along with the drawer slides / channels; that the value declared by the appellant is even less than the value of steel scrap; that the domestic market inquiry revealed goods to be valued on higher side.

7. On going through each and every reasons adopted by the adjudicating authority for rejecting the transaction value, we find that the said reasons are nowhere relatable to value of goods. The imports made in the name of M/s. S B International, and subsequent purchase of the goods on high sea sales basis from them have got no bearing on the value of the goods. The appellant have very clearly in their statement deposed that such course of action was taken by them to avoid sales tax, freight etc. Further, the import of the goods from the trader instead of manufacturer, could not be adopted as a ground for rejection of the invoice value. Revenue has also no where shown that the goods known in the market as 'telescopic channels' but are shown as drawer slides in description of the goods, is of such an importance, so as to change the nature of the goods and its value. It

stands explained to us that the channels and drawer slides are always telescopic. Similarly, the value of the raw materials i.e. scrap cannot be adopted as a reason for rejecting the transaction value especially keeping in view the fluctuating rates of scrap as also quantity of the same**.** We also note that the appellant's authorised representative as also the proprietor in their various statements recorded during the course of investigation clearly deposed that the value of the goods was negotiated in person when the importer visited Trade Fair in China. Neither of them in their statement had accepted the value negotiated between exporter and importer is not correct value and any additional flow back of money is there. The fact that the value of the goods is less than the value of the scrap can also not be cited for rejecting the transaction value when there is no other evidence available on record. To decide the value of one's goods is prerogative of the seller and keeping in view the invested value of the goods and as also the time gap etc. including the market status of particular person, he may decide to sell his goods at a particular price. It stands well settled that for rejecting the transaction value, the onus is upon the Revenue which is required to be discharged by producing sufficient, relatable and tangible evidence on record. As such, we are of the view that transaction value declared by the appellant having not been rejected on valid ground, the impugned order enhancing the value cannot be upheld.

8. In any case and in any view of the matter, we note that the appellants during the course of investigation, produced various Bills of Entry in relation to the import of identical goods at Kolkata, at the same value as declared by the assessee. The adjudicating authority has examined the said Bill of Entries and has distinguished the same on minor technical grounds. The first ground adopted by the adjudicating authority is that detailed description of the goods in every Bill of Entry is not available and in the instant case, the goods had to be assessed on the basis of weight, such weight is not available in respect of goods imported at Kolkata. However, we find that the description given in every Bill of Entry is 'telescopic channel' . It is Revenue's own case that the goods in the present case are telescopic channels and drawers rather than the simple channels. If that be so, if telescopic channels are imported at the same price as is clear from another Bill of Entry, we really fail to understand as to how the other Bill of Entry are not contemporaneous and value shown in them cannot be adopted. The adjudicating authority has further rejected the evidence of contemporaneous imports by observing that whereas the goods in the present case were bought on high sea basis and imports at Kolkata were direct, the same cannot be considered to be at the same commercial level. We find no merits in the above distinction made by the adjudicating authority, as the import on high sea sale basis has no relevance for the purpose of value. As such, we are of the view that in

as much as the appellant has been able to establish the contemporaneous imports the value of which is almost near to the values declared by the appellant, the enhancement is unsustainable.

9. It is further seen that the Revenue has adopted the value of the goods imported by M/s. Jyoti Iron and Hard Ware Store as also the market inquiries conducted and have arrived at the value through backward calculations. The appellants have challenged said backward calculations on the ground that whereas the Revenue has taken the transportation and selling expenses as 5% and profit of margin as 5%, factually the sales expenses are to the tune of 25% and profit margin is 15%. Further it also depends upon the fluctuations in conversion rates of USD . The fact that the goods arrive in India after 30 to 40 days and takes 5 -6 days for clearance; payments are received after the sale of goods and as such, amount is investigated for about three months, maintenance of office space, salaries, renting of godown and transit etc and in some case imported goods remain unsold for quite a long period and have to be offered for sale on heavy discounts, are the reasons for high expenses. As such, if 25% expenses are taken into account, and profit margin of 15% is considered, the backward calculation would arrive at the value more or less declared by them.

The said plea of the assessee does not stand accepted by the adjudicating authority on the ground that they have not given any details supported by documentary evidence to substantiate their claim of 25% expenses and 15% of profit margin. As such he has done backward calculation on less expenses and lesser profit margin . We note that the reasonings given by the assessee, which relates to valuation in USD and time gap of the import of goods, subsequent period taken for sale etc, are valid grounds to reflect upon the expenses which the importer may incur to further dispose of his goods in India. On the contrary, Revenue has not given any reasons to allow only 5% profit margin and 5% selling price. In the absence of any evidence as also in view of our observations made in the preceding paragraph, we do not find any merits in the Revenue's stand. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief.

(pronounced in the open court on 21.04.2017)

(Archana Wadhwa)
Member(Judicial)

(V Padmanabhan)
Member(Technical)

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