IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Customs Appeal No. C/57456/2013 CU [DB]

[Arising out of Order-in-Appeal No.D-II/ICD/81/13 dated 06.03.2013 passed by the Commissioner (Appeals), Central Excise, New Delhi]

Shubham Impex …Appellant

Vs.

C.C., New Delhi … Respondent

Present for the Appellant : Mr.N.K. Sharma, Advocate.
Present for the Respondent: Mr.R.K. Maji, D.R.

**Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)**

Date of Hearing/Decision: 25/04/2017

FINAL ORDER NO. 53138/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 06.03.2013 of Commissioner (Appeals), Customs, New Delhi. The appellants imported Triglycidyl Isocyanurate (TGIC) from China and filed bill of entry on 23.11.2010. The unit price declared for customs duty is US$1.05 per K.G. The Assessing Officer entertained a doubt regarding correctness of the said declared value and the importer was asked to justify the value in view of the fact that during the material time, similar goods from China were being assessed at more than US $ 6 per K.G. After examining the issue and taking note of explanation given by the importer, the value was enhanced to US$ 6.236 per K.G. Penalty of Rs.50,000/- and the redemption fine of Rs.1,50,000/- was also imposed on the importer/ goods. On appeal, the Commissioner (Appeals) vide his order dated 14.06.2011 remanded the matter back to the Original Authority, for issuing a speaking order in terms of Section 17 of Customs Act, 1962. The Adjudicating Authority upon fresh adjudication, passed order dated 28.06.2012 confirming the loading of value, imposition of fine and penalty. On further appeal, vide the impugned order, the Commissioner (Appeals) upheld the valuation done by the original authority. However, he reduced the fine to Rs.50,000/- and penalty to Rs.20,000/-.

2. We have heard both the sides and perused the appeal records. The dispute in the present case is relating to valuation of TGIC imported by the appellant. The ld. Counsel for the appellant submitted that they have imported 4th grade TGIC, as such, the valuation cannot be done based on NIDB data. There is no legal justification to reject the declared value as the same is supported by Performa invoice, invoice and foreign exchange remittance, thereafter. The Customs

authorities do not have any evidence to contest the value adopted by the importer. They have also imported similar consignment earlier and the value of the same has been accepted and clearance made. The ld. Counsel also pleaded for waiver of fine and penalty as there is no ground for confiscation of goods or imposition of penalty on the importer. He also relied on the decision of the Tribunal in Topsia Estates Pvt. Ltd. vs. Commr. of Customs (Import – Seaport), Chennai – 2015 (330) ELT 799 (Tri.-Chennai) to submit that NIDB data cannot be automatically adopted for valuation of imported items.

3. The ld. A.R. contested the appeal by stating that nowhere in import document the appellant mentioned any grade or quality of the imported product. Their claim that the quality is 4^{th} grade is not supported. The Department relied upon large number of bills of entry covering import of same items during the relevant time, from the same country. Differential value of more than 5 times could not be justified by the appellant with the documentary support. Further, the ld. A.R. submitted that unlike other cases of following NIDB data, in the present case the product is specific and after examining the value adopted in various comparable bills of entry the officers took lowest of such prices for application to the present case. Regarding fine and penalty, he informed that the same works out to less than 10% and 5 % of CIF value. The same is

justified. We note that admittedly, the import documents did not bear any reference to grade and quality of the imported product. The claim made by the appellant could not be supported by any material evidence. Further, regarding assessment of similar product imported by the appellant having been cleared without any loading of value in the past, we note that in RMS, self-assessed bills of entry are subjected to selection for check by system on certain parameters. Non selection of any bill for scrutiny or verification by the Apprising Officer by itself cannot be quoted as the basis for supporting subsequent clearances on the same value.

4. Regarding adoption of NIDB value to the present case, we note, admittedly, the imported chemical having not been identified with any particular quality or grade, can be compared to similar item imported during the same period, from the same country. When comparable transaction level is taken into consideration, there cannot be any illegality in adopting the price for assessment. Regarding the decision of the Tribunal in Topsia Estates Pvt. Ltd. (supra), we find the product there is PU Coated Fabrics apparently having variation in quality, size, quantity etc. In such circumstances, the Tribunal held relying on NIDB data without any corroboration regarding the correctness of comparison is not justifiable. In the present case, we are dealing with a defined chemical with no evidence of variation in grade or quality. In such situation,

a difference of almost 500% in value cannot be brushed aside. After having gone through the impugned order and the appeal papers, we find no reason to interfere with the same. Accordingly, the appeal is rejected.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita