CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 21.04.2017

**Customs Misc. Application NO. 50796 of 2016 with
Customs Appeal No. 67 of 2012**

(Arising out of order-in-appeal No. CCA)/CUS/I&G/201/2011 dated 10.10.2011 passed by the Commissioner of Customs (Appeals), New Delhi)

CC, New Delhi Appellant

Vs.

M/s E.I. Dupont India Pvt. Ltd. Respondent

Appearance:

Sh. Yogesh Agarwal, AR for the Revenue
Sh. Pramod Kumar Rai, Advocate for the Assessee

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 53360/2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against the order-in-appeal No. CCA)/CUS/I&G/201/2011 dated 10.10.2011 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The brief facts of the case are that the respondent-assessee has been importing Chlorimuron Ethyl Technical & Metsulfuron Methyl Technical, Indoxacarab Technical, Methomyl Technical, Cymoxanil Technical, Chlorimuron Ethyl Technical and Metsulfuron Methyl Technical from the foreign suppliers are related persons with reference to the Customs Valuation

Rules, the imports were the subject matter of scrutiny by the Special Valuation Branch. The special valuation branch of Customs, New Delhi have earlier scrutinised the valuation and have passed earlier orders in 2001, 2004 and 2007 and have decided to accept the transaction values. The present dispute is the subject matter of the fourth review by the SVB. In the order passed by the Deputy Commissioner, SVB on 21.02.2011, it was ordered that imports made by the respondent-assessee from their related foreign suppliers should be loaded by .5%. Being aggrieved by this order, the respondent filed the Writ Petition No. W.P.(C) 8224/2010 before the Hon'ble High Court of Delhi who vide order dated 22.12.2010 set-aside the order of D.C. SVB and directed the original authority to pass revised order for the period commencing from 10.04.2010 onwards. The Hon'ble High Court ordered that assessment upto 09.04.2010 cannot be re-opened. In compliance to the order passed by Hon'ble High Court, the D.C. SVB passed the order dated 21.02.2011 vide which he ordered for loading the transaction value by .5% in respect of imports made on or after 10.04.2011. When this order was carried to Commissioner (Appeals) he passed the impugned order in which the appeal was allowed and loading of invoice value was set-aside. Aggrieved, by the impugned order, revenue has filed the present appeal.

3. With this background, we heard Shri Yogesh Agarwal, ld. AR for the Revenue and Sh. Pramod Kumar Rai, ld. Advocate for the assessee.

4. After hearing both the parties and on perusal of record, it appears that Special Valuation Branch has made valuation of the goods in the year 2004 and again in 2007 in favour of the assessee. However, again in the year 2011, the valuation was reopened for the same goods under the same set of facts. From

the record, it also appears that the Commissioner has passed the order on periodical review under Section 14 of the Customs Act, 1962 read with 10(1) order of 2007. The present finding is based on the product technical support agreement dated 01.06.2001 between the respondent-assessee and M/s E.I. Dupont De Nemours & Co. Inc. USA The Commissioner (Appeals) has examined the entire document and followed the earlier valuation made in the year 2004 and 2007 before granting the relief. By keeping in mind the principle of consistency, we agree with the finding of the Commissioner (Appeals). Hence, we decline to interfere with the impugned order. The same is hereby sustained.

5. In the result, appeal filed by the department is dismissed. Misc. application is also disposed of.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant