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.ST/640/2011-CU [DB]

[Arising out of Order-in-Original No.33/2011 passed by the Commissioner of Customs, Tughlakabad, New Delhi].

M/s. Essel International …Appellant

Vs.

C.C., New Delhi … Respondent

Present for the Appellant : Mr.A.R. Madhav Rao, Advocate.
Present for the Respondent: Mr.Yogesh Agarwal, D.R.

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

Date of Hearing/Decision: 05/05/2017

FINAL ORDER NO. 53423/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 20.09.2011 of Commissioner of Customs, ICD, Tuglakabad. The appellants imported Digital Set Top Boxes and viewing card (STB) and filed bills of entry for clearance through Customs. The dispute in the present appeal relates to the value to be adopted for the imported goods for the purpose of payment of additional duty in terms of Notification 49/08-CE (NT) dated 24.12.2008. The imported goods are liable to additional duty of customs in terms of Section 4 A of Central Excise Act, 1944. The value for additional duty is to be arrived at based on retail sale price of the goods after allowing abatements as prescribed in the said Notification. At the time of import of the goods, the appellants had declared the printed retail sale price of Rs.1,000/- on the boxes of these items. However, the declared MRP was not accepted by the Customs who determined the value for additional duty based on the landed cost of the impugned goods at Rs.1,832/- and after allowing abatement of 20% in terms of the said Notification arrived at the assessable value of Rs.1,465/-. The appellant/ importer discharged the duty on the said price and cleared the goods. Later, while scrutinizing the refund claim filed by the appellant with reference to special additional duty, the Revenue raised objection regarding the valuation adopted for additional duty as above. Accordingly, proceedings were initiated against the appellant to demand differential duty by taking Rs.2,100/- as RSP for the impugned goods based on the sale price of appellant to M/s. Dish T.V. The case was adjudicated by the original authority vide the impugned order holding that the appellant is liable to pay a differential duty of Rs.1,53,80,707/- and imposed a penalty of Rs.50,00,000/- under Section 112 (a) (b) of Customs Act, 1962.

2. The ld. Counsel for the appellant submitted that they had declared printed MRP on the cartons of the imported goods. At the time of first assessment, the Customs Authorities adopted value for additional duty, which was arrived based on landed cost of the impugned goods. The appellants complied with the assessment and cleared the goods on payment of duty. However, the present proceedings were later initiated to demand differential duty by enhancing the value for additional duty based on their sale price to M/s. Dish T.V. He submitted that Section 4 A valuation is to be based on RSP and such RSP is to be based on the price at which the goods were sold to the retail consumer. The sale of appellant in bulk to Dish T.V. cannot be taken as basis of arriving at value under Section 4 A as that will be against the statutory provisions. He further explained that the actual price of these impugned goods sold to the actual, ultimate consumer is Rs.961/- only. The transactions happening in between the importer and Dish T.V. and later to the whole sale dealer and others cannot be the basis for arriving at the RSP for duty purposes. Further, he relied on the decision of the Tribunal in Indica Laboratories Pvt. Ltd. vs. Commissioner of Central Excise, Ahmadabad – 2007 (213) ELT 20 (Tri. –L.B.) with specific reference to para 10.2 of the said decision, which is as follows:-

> **"10.2** The Central Government specifies the commodity to which Section 4A is to be applied and also specifies the abatement to be given from the MRP to arrive at the value for excise purposes. The MRP

> minus abatement is taken as the assessable value under Section 4A. If the assessee happens to sell the product at a price more than such an arrived at value, the Department is not at liberty to charge duty on the excess collection. Similarly, if the assessee sells at a price lower than the above arrived at value, they cannot opt to pay duty at the lesser transaction price. In other words, the transaction price is not relevant. If sale is through a related person, the same is immaterial. Trade discounts such as cash discount, prompt discounts are not relevant. Discounts that could not be allowed directly cannot be allowed by back door method. The quantity discount is a concept under Section 4 basically to arrive at the transaction price and such transaction price is not relevant to valuation under Section 4A. In other words, by supplying 125 boxes at the price applicable to 100 boxes, no inference can be drawn that 25 boxes are being given free. This is basically a linked sale which is sale of 125 boxes as a whole. The price is for 125 boxes only. To claim that 25 boxes are supplied free by artificial splitting part of the quantity is not correct understanding of the factual position."

3. The ld. Counsel prayed for setting aside the impugned order as the same is contrarily to the provisions of valuation for additional duty and debarred to merit.

4. The ld. A.R. submitted that the imported goods which was printed with Rs.1,000 as MRP was actually sold to M/s. Dish T.V. on a price of Rs.21,000/-. M/s. Dish T.V. are a service provider of direct home television channels. They are entering into a long term beneficial arrangement with the ultimate buyer of Set Top Boxes, which will necessarily provide them a continued income of subscription of their channels. As such, M/s. Dish T.V. who purchase the set of boxes for Rs.2,100/- sold it at a much lower price to the distributors.

This is apparently to have market penetration and future continuous Revenue in other income which is their main business of distribution of television channels direct to home using these set top boxes. Ld. A.R. further submitted that the MRP printed on the boxes were rejected on valid reasons as is evidenced by the first sale of the said imported goods. The same is more than twice the price printed on the boxes. In such situation, the Customs Authorities have to resort to ascertaining the correct RSP, as printed RSP is not reflecting the correct factual position. When the printed RSP was bonafidely questioned with supporting evidence, it is for the importer to come up with the proper supporting evidence to establish his case of correct RSP. The claim that the ultimate buyer has paid only Rs.961/- for the said set top boxes is of no consequence to the appellant as the appellant did not engage in any of these transactions. They have made substantial profit by selling the set top boxes on a price, which is more than double of a printed MRP on the label. He also mentioned that the importer and Dish T.V. are all part of the same group company mainly involved in television entertainment business. As such, the business model evolved by the group companies cannot be the reasons for lower valuation of the imported items.

5. We have heard both the sides and perused appeal records. The basic facts of the case are not disputed. The

appellants imported the impugned items with a declared MRP printed at Rs. 1,000/- per piece. They have sold the said items to M/s. Dish T.V. India Ltd. for Rs.2,100/- per piece. We note, the said sale price is more than double, even though the transaction is in bulk, for 10,000 pieces. Further, M/s.Dish T.V. sold the impugned goods to the distributors at Rs.741/- per piece who further sold it to sub-distributor at Rs.761/- per piece. We note, there is evidence on record that the ultimate retail consumer purchased the set top box at Rs.961/- per piece. We note that the chain of transaction starting from import up to consumption by the retail buyer is having price variations of wide range, which cannot be explained by a linear business sale transaction. Admittedly, the sale price is not the sole consideration in respect of impugned goods from the stage of the first buyer, namely M/s. Dish T.V. India Ltd. who purchased these items at Rs.2,100/- per piece. In such a scenario, which is apparently unique, we find that the RSP printed and declared on the imported items is prima-facie having problem of genuineness. It is apparent that the importer and the first buyer are part of group companies. The sale price of M/s. Dish T.V. India to the distributor is only 1/3 of purchase price. Whatever may be the reasons for said transaction at 1/3 sale price, the undeniable fact is other considerations are in operation in the same transaction. Such transaction is certainly connected to other incomes, which are linked to the sale of the impugned goods.

6. On perusal of the impugned order, we find that the examination of legal provisions especially the provisions of Section 4 A and the scope of RSP as defined in the said Section as well as the application of the provisions of the Standards of Weighs and Measures (PC) Rules, 1977 have not been done in detail. More specifically for application of the facts of the present case. While the rejection of RSP declared by the appellant is prima-facie supported by the evidences as recorded by the ld. Authority to arrive at the correct RSP, the reasoning has to be recorded. While the declared price is rejected, fixing the correct value is to be done with clear reasons and supporting evidence. In this, it is apparent that the appellants have to provide their side on the defence with supporting evidence as the MRP declared on the import package is, prima-facie, found to be not acceptable. However, the correct assessable value in terms of Section 4 A has to be arrived at, afresh by the original authority. We note that the value of Rs.2,100/- per piece has been adopted by the original authority on the ground that the importer has sold the set top boxes at that price to M/s. Dish T.V. India Ltd. We note that the said transaction has to be examined with reference to the definition for retail sale to arrive at the RSP. Admittedly, the appellant sold in bulk and also M/s. Dish T.V. India Ltd. cannot

be considered as the retail consumer of the said set top boxes. This aspect requires reconsideration by the original authority.

7. In view of the above discussion and analysis, we find that the impugned order as it stands, cannot be sustained. The matter requires re-consideration and accordingly, the appeal is allowed and matter is remanded back to the original authority for a fresh consideration. The appellant shall be given adequate opportunity to present their case before a decision is taken.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita