IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:24.07.2017

Customs Appeal No.3913/2012

[Arising out of Order-in-Appeal No. CC(A)CUS/ICD/426/2012 dated 12.10.2012 of the Commissioner of Customs (Appeals), New Delhi]

CC, New Delhi Appellant

Vs.

M/s.V.J. Traders Respondent

<u>Appearance</u>:

Rep. by Shri Govind Dixit, DR for the appellant.
Rep. by Shri Ashutosh Mishra, Advocate for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.55541/2017

<u>Per B. Ravichandran:</u>

The Revenue is in appeal against order dated 12.10.2012 of Commissioner of Customs(Appeals), New Delhi. The respondent imported various paint items, which are liable to CVD based on MRP. Entertaining certain doubts regarding the value declared, the Revenue proceeded to demand differential duty on that account, based on the market inquiry. The case was adjudicated by the Original Authority, who confirmed a differential duty of Rs.18,81,227/- and Rs.18,44,047/- on two bills of entry. The imported goods were also ordered to be confiscated with option to redeem the same on payment of fine. Penalties were imposed under Section 112 (a) and 114 A of Customs Act, 1962. On appeal, vide the impugned order, the Commissioner (Appeals) modified the original order and held penalties under

Section 114A is not applicable in the instant case and reduced fine and penalty to Rs.35, 000/- each in terms of Section 125 and 112 of the Customs Act, 1962.

2. Elaborating the grounds of appeal made by the Revenue, the ld. AR submitted that reliance placed by the Commissioner (Appeals) on the decision of the Tribunal in **ABB Ltd. – 2011 (272) ELT 706 (Tribunal-Bang.)** regarding legality of MRP based assessment by the officers , he submitted that the matter is pending in the Hon'ble Supreme Court. On the other issue, regarding reliance placed by the Commissioner (Appeals) on the other decisions of the Tribunal, ld. AR submitted that this case should have been examined in different footings as RSP/MRP declared was found to be much lower as revealed during market inquiry. Such mis-declarations should attract adequate penalty, which the impugned order failed to uphold.The Commissioner (Appeals) ordered the differential payment of duty, however, failed in upholding the penalty.

3. None appeared for the respondents. The Counsel on record submitted that he is withdrawing the Vakalatnama. We proceed to decide the case based on the case records and the submissions made by the ld. AR, as the case has been listed on many occasions earlier with due notice.

4. On careful consideration of the grounds of appeal by the Revenue, we note that grounds of Revenue is with reference to suppression of facts on import in mis-declaring the MRP and non applicability of the cited case laws relied upon by the Commissioner (Appeals). In this connection, we note that the Commissioner (Appeals) categorically recorded that there is no dispute in respect of description, classification and quantity of the impugned goods and the appellant had declared

RSP. He, therefore, found that the adjudicating authority could not proceed to determine the MRP/RSP in absence of any enabling provisions in the Customs Tariff Act, 1975 as held by the Tribunal in **ABB Ltd. (supra).** He also relied on the other decided cases holding similar view. We note that the decision of the Tribunal has not been stayed, though the appeal is still pending before the Hon'ble Supreme Court. As such, we have no reason to interfere with the findings recorded by the impugned order, which has relied on the decision of the Tribunal not reversed by any higher authorities. Accordingly, the appeal is dismissed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.