(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.C/52766-52768/2016
(Arising out of Order-in-Original No.12/SG/Commr/2016 dated 13.06.2016 passed by Commissioner of Customs (Preventive), New Delhi)

M/s Puneet Agarwal
M/s Prajil & Co.
M/s Parth Corporation …Appellant
Vs
CC New Delhi …Respondent

Appearance:
Present for the Appellant : Shri BL Garg, Advocate
Present for the Respondent : Shri Govind Dixit, DR

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

Date of hearing:25.07.2017
Date of decision: 31.07.2017

Final Order No.55588-55590/2017

Per B. Ravichandran

These three appeals are against common impugned order dated 13.06.2016 of Commissioner of Customs (Preventive), New Customs House, New Delhi. The brief facts of the case are that M/s Prajil & Co. filed bill of entry on 02.09.2015 for clearance of "glass sets". The said goods were purchased by them on high sea sales basis from M/s Parth Corporation. On 04.09.2015, M/s Prajil & Co. requested the customs to stop clearance of the goods as they have some dispute with the seller. On 08.09.2015, M/s Parth Corporation informed the customs that subject consignments also contained glass chatons. A revised invoice with very same number and date of old invoice was submitted. The high sea sales agreement was cancelled. A requisition for amendment of bill of entry was submitted. The assessing officer ordered for examination of goods on 18.09.2015 and the same was done on 28.09.2015. On examination, it was found that a total of 857 cartons of glass sets along with 248 cartons of glass chatons, of different marks and sizes, were found in the container. The officers conducted further enquiry and thereafter proceedings were initiated against the appellants for re-valuation of imported goods, confiscation and for imposition of penalties under various provisions of Customs Act, 1962.

2. The original authority, vide the impugned order, rejected the declared value of Rs.10,55,050/- and re-determined the assessable value at Rs.2,07,21,015/- under Rule 5 of the valuation Rules, 2007. He ordered confiscation of imported goods with an option to redeem the same on payment of a fine of Rs.50 lacs, under Section 125 of Customs Act, 1962. He imposed the penalty of Rs.5,50,000/- each on M/s Parth Corporation and Sh Puneet Agarwal under Section 112 of the Act. He also imposed a penalty of Rs.5 lakhs on Mr Anil Saini, prop. of M/s Prajil & Co. under Section 112 of the Act. Aggrieved by this order, the appellants filed these appeals.

3. The ld Counsel appearing on behalf of appellants submitted that there is no attempt of mis-declaration of imported items. Correct information was passed on to the custom authorities by M/s Parth Corporation before the physical examination of the goods. There is no malafide attributable to the importer. Loading of value of the impugned goods, as done by the impugned order, is not legally sustainable. Mere acceptance of loading by the appellant does not justify the re-assessment, as ordered by the original authority. The provisions of Rule 5

of and Rule 12 of the Customs Valuation Rules have not been followed by the original authority. The data of similar imports and the information received from another Commissionerate have not been made available to the appellant. The original authority have adopted the enhanced value in clear violation of the provisions of Rule 5. This is evident from the table below para 11 of the impugned order. He has taken average price of NIDB and highest of rate of similar goods, when the rule clearly stipulates that when multiple comparable value are available, the lowest of the value should be taken.

4. On behalf of M/s Prajil & Co., it is submitted that though they entered into high sea sale contract with the original importer, based on agreement dated 21.07.2015, they withdrew from such contract initially due to certain payment disputes and thereafter the original importer himself intimated the custom authorities regarding the undeclared items shipped. The request for amendment of bill of entry including change of importer's name was also made by the original importer. There is no evidence of their having previous knowledge of possible undeclared item in the consignment. They have entered into agreement for only glass sets and they are not involved in any offence liable for penalty under Section 112 of the Act.

5. The ld AR submitted that it is clearly a case of misdeclaration in the bill of entry. When the goods were on hold by the customs for examination, the original importer gave details of additional goods available in the consignment and also revised the value with an invoice with same number and date. The QR code available on the packages as well as the confessional statements given by Sh

Puneet Agarwal along with manner of stuffing in the container as brought out during examination, will indicate that there is a clear attempt of misdeclaration by the importer. Their informing the officers before the physical examination cannot by itself show their bona fide. The bill of entry with reference to the name of the importer description of goods and their value was revised when the goods were on hold by the officers for examination. The ld AR supported the findings of the original authority and submitted that there is no merit in these appeals.

6. We have heard both the sides and perused the appeal record. On the first issue regarding whether or not there is a violation of provisions of Customs Act on the part of the importer, M/s Parth Corporation, we note that the chronology of events and the other evidences as recorded, including the confessional statement giving full details of the transaction as recorded by the original authority, cannot be refuted. The only plea of M/s Parth Corporation is that they have intimated the officers regarding the contents of the consignment and also revision of value on their own, before the actual examination of the goods. We find that such assertion apart from being misleading will not help the appellant in establishing their bonafideness. It is clear that originally glass sets were subject matter of high sea sale with M/s Prajil & Co. The sale agreement was later on cancelled. In fact, M/s Parth Corporation gave intimation to the customs only on 08.09.2015 after M/s Prajil & Co. gave intimation to customs on 04.09.2015 to stop clearance in view of certain disputes. It is also an admitted fact that M/s Parth Corporation produced revised invoice with the same number and date which substantially increased the price. Glass chatons were not at all declared when the bill of entry was filed. The invoice filed along with bill of entry for value

was also found to be mis-declared. Shri Puneet Agarwal categorically stated that he knew about the fact of loading of glass chatons in subject consignments even before the consignment was sold to M/s Prajil & Co. on high sea sales basis. The QR code on the packages as well as the manner of storage of, initially undeclared, items (chatons) in the consignment clearly established that M/s Parth Corporation were aware of the contents of the shipment and also under-valuation of the imported goods. In this connection, we note that the findings recorded at para 19 to 21 of the impugned order is sustainable and accordingly we hold that M/s Parth Corporation have violated the provisions of Customs Act by their act of attempted clearance by mis-declaring the import item as well as value, in the bill of entry. As such, we hold that they are liable to be proceeded against under the provisions of the said Act.

7. Regarding penal proceedings against M/s Prajil & Co., we note that the impugned order did not bring out evidence to attract the provisions of Section 112 of the Act. Though they have filed bill of entry initially on 02.09.2015, within two days, they have intimated customs to stop clearance and thereafter cancelled the high sea sale transaction. The bill of entry was later amended at the request of M/s Parth Corporation, to substitute the name of the importer and also description and value. We find no supporting evidence recorded in the impugned order to conclude that M/s Pajil & Co. had tried to aid the original importer in execution of wrong high sea sale agreement and had been an active member of this conspiracy. The original authority simply recorded that Sh Anil Saini, proprietor of M/s Prajil & Co. entered into high sea sale agreement with M/s Parth Corporation where he concerned in purchase of the impugned goods

and as such provisions of Section 112 (a)/(b) are applicable to him. We find no support, by way of evidence, discussed in the impugned order. Entering into high sea sale agreement based on the information provided by the original importer by itself, will not attract the penal provisions of Section 112 unless evidence are available to the effect that such high sea buyer had knowledge of possible undeclared item in the consignment and under-valuation. In the absence of any such evidence, we find that penal action against M/s Prajil & Co./Proprietor is not legally sustainable.

8. Regarding valuation of the imported consignment, we have examined the submissions made by M/s Parth Corporation. The first point for consideration is whether the original authority is right in rejecting the declared value in terms of Rule 12 of the Valuation Rules. In this connection, we have examined the findings of the original authority recorded in para 23 of the impugned order. In the present case, when the bill of entry was filed on 02.09.2015, only glass sets were declared with the value of Rs.10,55,050/-. Later on, the importer filed another invoice with the same number and date. Further, the original authority also had occasion to examine value of comparable goods based on NIDB data well as information from other Commissionerate. All these facts enabled the original authority to arrive at a decision to reject the declared value for assessment under Rule 12. Incidentally, it is to be noted here that the person behind the import clearly stated that the value declared is not correct and they are agreeable to enhancement of value. In fact, the importer stated that they were willing to pay the differential custom duty, as per enhancement proposed by customs along with the penalty and fine. It is clear, that based on such facts and evidences, that

the original authority is correct in invoking Rule 12 for rejection of declared value.

9. The next point for consideration is whether or not the original authority followed the provisions of valuation rules for fixing the correct assessable value. We note that the value has been arrived at as per the chart given in the impugned order. A plain perusal of the said chart will indicate that the original authority took into consideration price as per NIDB average and valuation made by officers at ICD for similar goods and thereafter considered highest of these to fix the value. We find that this method is not supported by any provisions of valuation rules. The rules, which were reproduced in para 14 of the impugned order, clearly stipulate that when the transaction value is fixed either in terms of Rule 4 or Rule 5, if more than one transaction value of such goods is found, the lowest such value shall be used to determine the value of imported goods. The methodology adopted in the impugned order is contrary to the said legal provisions. As such, we hold that the valuation of the imported goods requires re-examination by the original authority in line with the applicable provisions of valuation rules. The detail/data based on which value is sought to be arrived at should be made known to the importer before a decision is taken. Adequate opportunity shall be provided to the importer before fresh decision is taken on the correct value. Accordingly redemption fine imposable consequent on confiscation, if any, decided by the original authority, shall be fixed. The appellants also pleaded for a reasonable amount of redemption fine in terms of Section 125 of the Act. This may also be examined by the original authority.

10. In view of the above discussion and analysis, the appeal filed by M/s Prajil & Co. is allowed. The appeals filed by M/s Parth Corporation and Sh Puneet Agarwal are disposed-of in the above terms. The original authority shall re-determine the value of imported goods and keeping the said re-determined value, decide on the quantum of fine and penalty imposable in this case.

(Pronounced in Court on 31.07.2017)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member(Technical)

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