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

Date of Hearing/Decision:28.07.2017

Customs Appeal No.322/2006-DB(BR)

[Arising out of Order-in-Appeal No.14(MPM)CUS/JPR-I/2006 dated 18.04.2006 passed by the Commissioner (Appeals-I), Customs & Central Excise Commissionerate, Jaipur]

CC, Jaipur — Appellant

Vs.

M/s.Pihu Gems — Respondent

Appearance:

Rep. by Shri Govind Dixit, DR for the appellant.
Rep. by Shri Jatin Mahajan, Advocate for the respondent.

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

Final Order No.55618/2017

Per B. Ravichandran:

The Revenue is in appeal against the Order-in-Appeal dated 18.04.2006 passed by the Commissioner (Appeals-I), Jaipur. The respondent imported rough semi precious stone as well as cut and polished emerald. The dispute is regarding the correct value of the imported consignment. The Original Authority held that the declared value of Rs.5,38, 768/- is not correct and based on opinion by jewelery expert in the department, he enhanced the value to Rs.19,03,858/-. He confiscated the goods with option to redeem on payment of fine of Rs.1,50,000/- and penalty of Rs.50,000/- was imposed under Section 112(a) of the Customs Act, 1962.On appeal, against the impugned order, the Commissioner set aside the original order and the appeal was allowed. The Revenue preferred the appeal against the impugned order and the Tribunal vide Final Order No.C/247/2009 dated

15.06.2009 allowed the appeal of the Revenue except for reduction in value of the goods to Rs.10,17,960/- and reduction of fine to Rs.25,000/- and penalty to Rs.5,000/-. The importer filed Customs Appeal No.2/2011 before the Hon'ble High Court of Rajasthan challenging the order of the Tribunal. The Hon'ble High Court vide their order dated 17.05.2017 set aside the order of the Tribunal and remitted the matter back for a fresh decision.

2. We have heard ld. DR for the Revenue and the ld. Counsel for the Respondent.

3. On perusal of the original order, we note that the Authority has rejected the invoice value and re-fixed the value based on the departmental experts. It is seen that the respondent are contesting the grounds of rejection under Rule 10(A) of the Customs Valuation Rules, 1988. The reason for rejection as recorded in para-16 of the original order is that consignor, M/s. Color Impex Company Ltd. did not sign the invoice and it appeared that the brother of the importer, who is working with the consignor managed improper invoice for the import. The goods were brought as hand parcel by the brother of the importer. On these reasons, the Original Authority rejected the value and also recorded that the provisions of Rule 5 to 7 of Valuation Rules, 1988 cannot be applied, in view of the nature of the goods. Thereafter, he adopted the value as suggested by the departmental experts.

4. We note that the impugned order took into account different opinions on the value given by the experts and accordingly, rejected all the opinions. We note that considering the nature of goods, there could be a possible variation in the value suggested by the experts. However, such variation cannot amount to difference of

more than 100%. The value suggested by other experts, one of which was apparently accepted by the Tribunal in the Final Order is less by more than Rs.9 lakhs of what is originally fixed based on the departmental expert's opinion.

5. On perusal of the impugned order as well as the original order and upon hearing both the sides, it is clear that the matter requires re-examination by the Original Authority for a fresh decision. Among other things, the points which required clear finding are genuineness of invoice, reasons for rejection of transaction value under Rule 10(A) and thereafter, fixation of correct assessable value under specific provisions of Valuation Rules, 1988. The reason for adopting one expert's opinion over the other is also needs to be recorded. The basis of expert's opinion available on record may be made available to the respondent, who will also be given an opportunity of hearing before a decision is taken. With these observations, the impugned order is set aside and the matter is remanded back to the Original Authority.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.