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.C/50535-50536/2017-CU [DB]

[Arising out of Order-in-Appeal No.CC(A)CUS/D-II/ICD/IMP/999-1000/2016 dated 15.12.2016 passed by the Commissioner (Appeals), Customs, Delhi]

M/s.Newtech Pneumatics Pvt. Ltd. …Appellant

Vs.

C.C., New Delhi … Respondent

Present for the Appellant : Mr.G.K.Sarkar, Advocate
Mr.Prashant Srivastava, Advocate
Present for the Respondent: Mr.R.K. Maji, D.R.

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

Date of Hearing / Decision : 23/08/2017

FINAL ORDER NO. 56263-56264/2017

PER: B.RAVICHANDRAN

These two appeals are against common impugned order dated 15.12.2016 of Commissioner of Customs (Appeals), Airport, New Delhi. The main appellant imported Pneumatic Tools Accessories of various types and filed Bill of Entry declaring assessable value of Rs.51,51428/-. Entertaining a doubt regarding correctness of such valuation, certain follow up enquiries were undertaken by the Assessing Officers. Statement of the Director of importing company was recorded and on completion of enquiry the case was adjudicated. The main appellant waived the requirement of in turn show cause notice and personal hearing. The Original Authority vide his order dated 31.03.2016 held that the import value declared by the main appellant in respect of present consignments, as well as past two consignments are not correct. Accordingly, he revised the total declared value of Rs.1,50,20,280/- to Rs.2,69,48,549/- resulting in confirmation of the differential duty of Rs.31.13,538/-.

2. The ld. Counsel for the appellant submitted that the lower authorities adopted the provisions of Rule 7 of Customs Valuation Rules, 2007 to re-determine the value. He contested such re-determination as being arbitrary without any actual or legal basis. Such deductive method of valuation was mainly based on sale the price of the main appellant in Indian market, when the imported goods were sold to dealers. It is the submission of the appellant that the said sale price in India cannot be directly taken to apply the provisions of Rule 7. They have clarified before the lower authorities that they were providing various discounts, extending upto 50% and these things were not considered while arriving at the deductive value under Rule 7.

3. The ld. AR supported the findings of the lower authorities. He submitted that the authorized representative of the importing company admitted for the re-valuation of the product and he was shown the chart containing such re-valuation based on the main appellants own data available in their Web-site. Based on such acceptance, the differential duty was paid by the main appellant and goods were assessed and cleared. It is not open to the appellant, now to question the application of Rule 7. The said Rule talks about the deductive method of valuation which has been correctly followed with a detailed calculation by the lower authorities.

4. We have heard both sides and perused the appeal records. We note that the original authority recorded that the authorized representative of the importing company was shown the valuation chart prepared by the Department on the basis of prices displayed in the main appellant’s Website, after allowing reasonable margin for deduction, the same was accepted and the differential duty was paid. This formed the only basis to confirm the valuation under Rule 7. We note that the ld. Counsel for the appellant strongly contested the methodology adopted by the Revenue in arriving at the deductive valuation. Apart from contesting the rejection of invoice value the ld. Counsel also contested that the payment of differential duty by the appellant in order to speed up the clearance by reducing demerge in the Port by itself does not

form a legal basis to confirm the re-assessed value under Rule 7. We are in agreement in such proposition. The importer in order to avoid further demerge, as waived the issue of show cause notice and also personal hearing and deposited the differential duty as calculated by the Assessing officer. The basis of such re-assessment is the point of dispute now. Admittedly, the price-list of the main appellant as displayed in their Website for trading of imported products in India is the main basis.... While applying the provisions of Rule 7, it is necessary that the parameters mentioned therein are to be adhered to. In the present case, we find no discussion at all regarding the legal provisions of Rule 7 and the method of arriving at the deductive. value in terms of the said Rule. Acceptance by the importer of the chart prepared by the assessing officer was the sole reason mentioned by the lower authorities. Now the appellant is contesting that they have pleaded with reason that the sale price in India cannot be used for deductive method. We find that the submissions of the appellant partly considered before applying and arriving at an assessable value under Rule 7 of the Valuation Rules. As the lower authorities did not do such analysis, we find that the impugned order cannot survive. Accordingly, the same is set aside, the matter is remanded back to the original authority, who will decide the basis of rejection of transaction value and also re-determination of the transaction value if required in terms of the applicable provisions of Section 14 read with valuation rules. The appellant shall be given adequate opportunity to present their case before taking a decision. The appeals are allowed by way of remand.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita