CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 50409 of 2017

(Arising out of Order-in-Appeal No. CCA/Cus/D-II/Prev/476/2016 dated 25.05.2016 passed by the Commissioner of Customs (Appeals), New Delhi**)**

DATE OF HEARING : 07.09.2017
DATE OF DECISION : 07.09.2017

Shri Sunil Kumar Rungta ….. **Appellant**
Proprietor M/s M.K. Trade Links (Rep by Sh. Awaneet Singh, Adv.)

VERSUS

CC, New Delhi …. **Respondent**
(Rep. by Sh. R.K. Manjhi, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 56514/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellant against the Order-in-Appeal No. CCA/Cus/D-II/Prev/476/2016 dated 25.05.2016 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The brief facts of the case are that, against the Bill of Entry No. 7913968 dated 06.01.2015 the assessee-Appellant has imported the button cells and dial sets of watches of different

specifications. On specific information, it was found that the assessee-Appellant had imported 100 cartons of DP brand button cells AG-1 and the remaining 100 cartons were of Sony SR626SW brand which were not declared. The Department found that the imported goods were declared under-valued and, therefore, demanded differential duty and imposed penalty. Being aggrieved, the assessee-Appellant has filed the present appeal.

3. With this background, we have heard Shri Awaneet Singh, learned counsel for the assessee-Appellants and Shri R.K. Manjhi, learned DR for the Department.

4. After hearing both sides and on perusal of the material available on record, it appears that the assessee-Appellant has agreed to pay the differential duty on the re-determined value as per the price arrived at from the market enquiry and has admitted the same in his statement tendered under Section 108 of the Customs Act, 1962 which clearly proves that the goods were under-valued. When it is so, then the Commissioner (Appeals) has rightly rejected the valuation done under Customs Valuation (Determination of value of imported goods) Rules, 2007. During the course of arguments, the learned counsel has agreed that the 'Sony' brand was the fictitious brand, so the exact valuation was not possible and, therefore, the valuation of the goods was done on the basis of market enquiry.

5. In the light of the above discussion, we are of the view that when the exact value is not ascertainable, then the value determined on the basis of market enquiry, appears reasonable and the Commissioner (Appeals) has rightly demanded the duty on the differential value. Hence, the duty demand is hereby sustained for the reasons mentioned in the impugned order.

6. However, regarding penalty of Rs. 5,00,000/- imposed under Section 112 of the Customs Act, 1962, it appears that the imported 'Sony' brand Button Cells were bearing the fictitious mark, so the same can be treated as spurious Button Cells. When it is so, then the penalty is looking at a higher side. Therefore, keeping in view the equity, justice and good conscience, we modify the impugned order and reduce the penalty to Rs. 1,00,000/- (Rupees one lac only).

7. In the result, the appeal filed by the assessee-Appellant is partly allowed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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