CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 09.08.2017
Date of decision:20.09.2017

Appeal No. C/52649/2015 [DB]

[Arising out of the Order-in-Appeal No. 06/ COMMR/2015/ICD/TKD dated 24-04-2015 passed by the Commissioner of Customs, New Delhi]

M/s. N.K.G. Marketing … Appellant

Vs.

C.C. New Delhi ... Respondent

Appearance:
Present Shubhankar Jha, Advocate for the appellant
Present Shri N. Nunthek, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No.- 56613/2017

Per Justice (Dr.) Satish Chandra:

1. The appeal is filed against the Order in Original 06/2015 dated 24/04/2015.
2. The brief facts of the case are that the appellant had filed the bill of entry dated 16/01/2015 for clearance of goods declared as Resin Beads, Fancy Stones (Glass) Packing Material, Cup Chain with Stone (Imitation Jewellery) Aluminum Mesh etc.
3. The goods were examined on 30.01.2015. On the basis of intelligence report, on examination, the goods were found different in net weight as well as in description. The statement of the partner of the firm Shri Anubhav Bansal was recorded on 30.01.2015 & 17.02.2015 where he stated that CHA was unaware of the actual content of containers.
4. Finally, the duty demand was raised along with interest and penalty for the difference and miss-declaration of weights and

value of the imported goods. Feeling aggrieved, the appellant has filed the present appeal.

5. With this background we heard Shri Shubhankar Jha, Ld. Advocate who submits that the date of statement of Shri. Anubhav Bansal has wrongly mentioned in the Order in Original. It is the submission of the Ld. Counsel that the determination has reassessed the goods on the basis of NIDB data which was wrong. The rejection of transaction value and enhancement of assessable value has to be on the basis of some evidence as per the customs valuation rules and the NIDB data cannot be made the basis for enhancement of value.

6. At the strength of the written submission, the Ld. Counsel further submits that the department has wrongly proceeded to take the NIDB data and rejected the transaction value declared by the appellant. To support his arguments, he relied on the ratio laid down on the following case laws:-

   i. Topsia Estates Pvt. Ltd. Vs. Commr. Of Cus, Chennai 2015 (330) ELT 799 (Tri-Chennai),

   ii. Commissioner of Customs New Delhi Vs DM International 2013 (289) ELT 169 (Tri-Del.)

   iii. Commissioner of Customs New Delhi Vs. Rainbow Impex 2013 (296) ELT 207 (Tri-Del).

7. Further, Ld. Counsel submits that even otherwise Rule 4 (3) of the Valuation Rules, the lowest value has to be considered to demand the duty of imports goods but in the instant case, the value has been determined on the higher side. Finally, he made a request that the impugned order may kindly be set aside.

8. On the other hand, the Ld. Counsel for the department Shri N. Nunthek has relied on the impugned order.
9. After considering the relevant submissions and case record, it is evident that the description of the goods were not as per the invoice and packing list and also appeared to be miss-declared including the miss-match in weight so the container was seized. There was a difference in the invoiced amount and the remittance received against the same bill of entries.
10. Initially, Shri Aubhav Bansal, the partner of the firm has stated that one item namely *Chattons* was not owned by him but later, he accepted the ownership. Shri Bansal also requested to take a lenient view by accepting his guilty.
11. When the description of the goods were not as per invoice and packing list and also appeared to be miss-declared including the mismatch in weight then we are of the view that no interference is required in the impugned order. The appellant has committed a mistake resulting in the evasion of the custom duty. When it so, then there is no reason to interfere with the impugned order passed by the Commissioner (Appeals). Hence, we sustain the reasonable order passed by the Commissioner (Appeals).
12. In the result, the appeal filed by the appellant is dismissed.

[Order Pronounced in the open court on 20/09/2017]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

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