IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 20/09/2017.
DATE OF DECISION : 20/09/2017.

Customs Appeals No. 55779-55780 of 2013

[Arising out of the Order-in-Original No. RT/ACE/219/2012 dated 03/10/2012 passed by The Commissioner of Customs (Exports), New Custom House, New Delhi.]

M/s ABB Limited] Appellants
Shri Puneet Mitra]

Versus

CC, New Delhi Respondent

Appearance

Shri Abhinav Jagannathan, Advocate – for the appellant.

Shri R.K. Manjhi, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 56712-56713/2017 Dated : 20/09/2017

Per. B. Ravichandran :-

These two appeals are against common impugned order dated 03/10/2012 passed by Commissioner of Customs, Airport, New Delhi. M/s ABB Limited imported "Stressometer Flatness Measurement and MC 40 R Millmate Roll Force Measurement for Hitachi Mill" sold on High Sea Sale basis to M/s Bhushan Steel

Ltd. who filed bill of entry for the said goods on the ground that they have purchased the same on High Sea Sale basis from M/s ABB Ltd. The officers conducted certain verification of documents submitted by the appellant and entertained a view that the claim for High Sea Sale cannot be excepted and also certain discounts claimed for valuation is also not admissible. On these two issues, proceedings were initiated against both M/s Bhushan Steel Ltd. and M/s ABB Ltd., alongwith others. The impugned order decided the case holding that the High Sea Sale is not valid. The goods under import were ordered to be confiscated with the permission to redeem on fine of Rs. 10,00,000/-. Various penalties were imposed on different persons including the present appellants. Penalty of Rs. 2,50,000/- under Section 112 and Rs. 1,00,000/- under Section 114AA of the Customs Act, 1962 were imposed on M/s ABB Ltd. (main appellant herein). Penalty of Rs. 1,00,000/- each under Section 112 and 114AA were imposed on Shri Puneet Mitra, Business Controller of M/s ABB Ltd. (second appellant).

2. The learned Counsel appearing for both the appellants submitted that the High Sea Sale is evidenced by various documents like purchase order, order placed on the supplier indicating M/s Bhushan Steel Ltd. as the buyer etc. The Original Authority rejected the High Sea Sale only on the ground that the agreement was dated and signed on 23/12/2011 on a stamp paper which was purchased on 29/12/2011. Finding recorded serious infirmity in such agreement, the Original Authority rejected the High Sea Sale transaction. Accordingly, penal

consequences followed. The learned Counsel submitted that there are other supporting evidences which could have brought out the existence of sale transaction between M/s ABB Ltd. and M/s Bhushan Steel Ltd.

3. The learned Counsel contested the finding of the Original Authority on disallowance of discount offered by the seller. It is submitted that Rule 12 has not been properly appreciated by the Original Authority and the rejection has been made summarily. The purchases on behalf of M/s Bhushan Steel Ltd. in particular transaction cannot be treated as transaction between related persons attracting guidelines of SVB.

4. The learned Counsel for the appellants strongly pleaded for setting aside the penalties imposed on the main appellant as well as second appellant as there is no intended violation of provision of Customs Act to evade any duty. Further, he submitted that the bill of entry filed contained all details which are facts and there is no mis-declaration attracting confiscation of goods under Section 111 (m).

5. The learned AR reiterated the findings of the Original Authority. He submitted that it is clear that the agreement for High Sea Sale was shown signed on 23/12/2011 on a stamp paper which is sold on 29/12/2011. This clearly puts question mark on the authenticity of the transaction. Regarding valuation, he submitted that M/s ABB Ltd. India placed an order and imported goods from M/s ABB Ltd., Sweden. Both are part of the

same group. Admittedly, the import transaction between group companies is to be scrutinized by officers of SVB for a proper valuation. In the present case, the Original Authority rejected the 20% discount offered by the seller as not admissible because of the reason that no such discount was recognized in the scrutiny by SVB and the importer failed to give justification for such discount.

6. Regarding penalties, learned AR submitted that considering the value of imported goods and the duty involved (Rs. 67.76 lakhs), the penalties are nominal and are justified.

7. We have heard both the sides and perused the appeal records. The confiscability of the imported goods and the admissibility of the discounts claimed are directly linked to the fact of existence of High Sea Sale transaction between M/s ABB Ltd. and M/s Bhushan Steel Ltd. admittedly. The importer filed a signed agreement for evidencing such High Sea Sale. As noted already, the said agreement is apparently not genuine on the simple ground that the agreement could not have been signed on 23/12/2011 on a stamp paper, which was admittedly purchased on 29/12/2011. We are in agreement with the Original Authority that submission of such document before the Customs Authorities vitiates the claim of the importer. The plea that they have other supporting documents to establish High Sea Sale transaction becomes seriously jeopardized in the face of such untenable

document filed before the authorities. Accordingly, we hold that the Original Authority has correctly rejecting such agreement.

8. The next question for consideration is the discount of 20% claimed by the importer. Admittedly, the said discount is a special discount for which no explanation was offered by the importer. It is also an admitted fact that the seller and M/s ABB India who placed orders, are part of the same group and the transaction are to be scrutinized for special relationship. In other words, the sale value between these two companies of the same group cannot be accepted as transaction value for Customs duty unless the relationship is examined and non-influenced nature of such transaction is brought out by evidence. In the present case, admittedly the transaction is between these two related units of ABB and the Original Authority recorded that such special discount was not recognized in the SVB order and the importer also did not submit any explanation to justify such discount. We find no reason to interfere with such finding. Accordingly, we reject the contention of the appellant on these issues.

9. Regarding the penalties imposed on the appellant, the learned Counsel submitted that the declarations contained in bill of entry are correct and there is no mis-declaration. We are not in agreement with the same. The bill of entry claimed High Sea Sale. The support for High Sea Sale is a document which was found to be mis-declared. In such situation, we find the confiscability of the goods and the penal consequences thereof

were correctly examined and decided by the Original Authority. The second appellant has signed the High Sea Sale agreement which, as noted above, is found to be unacceptable and pre-dated.

10. In view of the above discussion and analysis, we find no reason to interfere with the impugned orders. Accordingly, the appeals are rejected.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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