CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

Date of hearing: 22.05.2017
Date of Decision: 21.09.2017

Appeal No. C/50025/2016-CU [DB]

[Arising out of the Order-in-Original No. 40-KAM-COMMR-2015 dated 20/08/2015, passed by the Commissioner of Customs (Preventive), New Delhi]

Shri Harish Chandar ... Appellant
Proprietor, M/s Valley Marketing
Vs.

CC (Preventive), New Delhi ... Respondent

Appearance:
Present Shri. Shantnu Tomar & Shri Parvesh Bahuguna, Advocate for the appellant
Present Shri. Sanjay Jain, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 56923/2017

Per S.K. Mohanty

This appeal is directed against the impugned order dated 20.08.2015 passed by the Commissioner of Customs (preventive), New Delhi.

2. The appellant herein, *M/s Valley Marketing* had imported Motor Cycle batteries from *M/s Guangzhou Kaijie Power Supply Industrial Co. Ltd., China* and filed the Bills of Entry for assessment before the Customs authority at the port of import. The Department conducted the first check in respect of the particulars

of imports reflected in the Bills of Entry and re-assessed the same on the ground that the appellant had undervalued the imported goods. Accordingly, show cause proceedings were initiated against the appellant, seeking confiscation of 18 nos. of 12v9AH Motor Cycle batteries seized on 19.01.2012 and confirmation of duty demand in respect of the imported goods under 14 nos. of Bills of Entry. The SCNs dated 18.07.2012 and 16.09.2013 issued in this regard were adjudicated vide the impugned order dated 20.08.2015, wherein by rejecting the declared assessable value, the same was de-determined and finally assessed at Rs.4,60,15,286/- and differential Customs duty of Rs.1,34,01,630/- was confirmed against the appellant. Besides, penalties under Section 112 and Section 114A of the Customs Act, 1962 were imposed on the appellant. Further, the impugned order has confiscated 18 nos. of 12v9AH motor cycle batteries and imposed redemption fine on the appellant. For confirmation of the adjudged demand, the ld. adjudicating authority has referred to and relied on the quotation of overseas supplier; e-mail of M/s Leoch Battery, China; NIDB data, showing imports of subject goods into India; and the commercial invoice furnished by another importer, Shri Jit Singh of M/s Max Electronics, Gurgaon. The said documents were relied on by the ld. adjudicating authority to hold that the appellant had undervalued the imported goods.

3. The Ld. Advocate appearing for the appellant submitted that the Motor Cycle Batteries imported under the Bills of Entries were true and correct as the same were purchased at negotiated price in bulk quantities. Further, he also submitted that the appellant had

imported inferior quality batteries, which have been accepted by Shri Harish Chandar, proprietor of the appellant vide his statement dated 04/07/2017. He further submitted that the E-mails of *M/s Leoch Battery, China* cannot be relied upon in this case, since the same was sent during September 2011 to January, 2012; whereas, the subject imports in case of the appellant took place during the period February, 2010 to April, 2011. Thus, it is his submission that the period is not contemporaneous for the purpose of rejecting the declared value. He also submitted that the reliance placed on NIDB data in the impugned order is misplaced, inasmuch as, the imports shown therein were not of identical/similar goods and of similar quantities. With regard to reliance placed in the impugned order on the commercial invoice furnished by Shri Samrath Jit Singh, the Ld. Advocate submitted that period, quantity and quality of goods are not identical and accordingly, the imported goods under such invoice cannot be equated with the goods imported by the appellant. To substantiate the stand that the declared value cannot be enhanced, the Ld. Advocate has relied on the judgment of Hon'ble Supreme Court in the case of ***Mirah Exports Pvt. Ltd. V/s CC***-1998 (98) ELT 3 (SC) & ***CC, Kolkata v Initiating Explosive Systems (I) Ltd.***- 2008 (224) ELT 343 (SC) and the decisions of the Tribunal, in the case of ***Vyapar Industries Ltd.*** -2016 (343) ELT 825 (T), ***Swastik Mechatronics Pvt. Ltd. v CC, New Delhi***-2014 (314) ELT 373 (T), ***Neha Intercontinental Ltd.***- 2008 (221) ELT A32 (SC) and ***Jabs International Pvt. Ltd v CC***- 2016 (338) ELT 723 (T).

4. On the other hand, the Ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

5. Heard both sides and examined the appeal records.

6. On perusal of the invoices available in the appeal records, we find that the price shown therein for selling of goods within India is in consonance with the price declared for the imported batteries. Further, Shri Harish Chandar, the proprietor of the appellant vide his statement dated 04/07/2012 has also stated that the batteries imported by the appellant were of inferior quality. However, on going through the case records, we find that the adjudicating authority has not specifically discussed the submissions of the appellant and discarded the declared value, solely relying on the e-mail received from M/s Leoch Battery and the NIDB data obtained by the Department. The E-mail data cannot be accepted as the contemporaneous import, for the reason that the period of import indicated there in was from September, 2011 to January, 2012. Similarly, the quantity of imported goods as per the e-mail was for 4000-5000 pieces; whereas, the imports made by the appellant was for approximately 15,000 batteries. Thus, the period of import and quantity of import are not identical. Further, we also find that there is no specific data available in the NIDB report that the goods are of identical/similar in nature and also the quality of the goods imported is not proportionate to the quantity mentioned in such data. Thus, value of subject goods imported in this case cannot be discarded and the same cannot be enhanced by placing reliance on the e-mail, NIDB and the invoices obtained from different sources. In this context, the law is well settled that

NIDB data cannot be relied on, in absence of any proof that the import shown therein are of identical/similar goods and of similar quantities.

7. Further, we also find that the department has not brought on any corroborative evidence to show suppression of facts on the part of the appellant in defrauding the Government revenue. Therefore, we are of the view that shows cause proceedings initiated beyond the normal period of limitation are liable to be set aside.

8. In view of above discussions and analysis, we do not find any merits in the impugned order in support of confirmation of the adjudged demands. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

[Order pronounced in the open court on 21.09.2017]

(V. Padmanabhan)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Rekha