IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:31/08/2017
Date of Decision: 09/10/2017

Customs Appeal No.780/2007 (DB)

[Arising out of Order-in-Appeal No.375(HKS) Cus/JPR-II/2007 dated 28.06.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur]

M/s. Ace Microelectronics Pvt. Ltd. Appellant

Vs.

CC, Jodhpur Respondent

Appearance:

Rep. by none for the appellant.
Rep. by Shri R.K. Manjhi, DR for the respondent.

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

Final Order No.57045/2017

Per B. Ravichandran:

The appeal is against order dated 28.06.2007 of Commissioner (Appeals-II), Jaipur. The appellants are engaged in trading of computer peripherals. They imported consignments of unrecorded CD-R and DVD-R and filed bill of entry on 22.07.2005 for clearance of the same. The goods were examined, assessed and cleared. Subsequently based on certain investigations, proceedings were initiated against the appellant for enhancing the assessable value from Rs.13,99,109/- to Rs.21,72,616/- and to demand differential duty of Rs.1,62,226/-. Proposal for imposing penalty were also made. The case was adjudicated. The Original

Authority vide his order dated 27.11.2006 rejected the declared assessable value and enhanced the value as proposed in the show cause notice and confirmed the differential customs duty. He also imposed a penalty of equivalent amount to customs duty under Section 114 A of the Customs Act, 1962.

2. On appeal, vide the impugned order, the Commissioner (Appeals) confirmed the original order.

3. When the case is called, none appeared on behalf of the appellant. We note that the matter is 10 years old and has been listed on many occasions. On most of the dates, no one appeared on behalf of the appellant. When the case was last listed on 21.08.2017, Shri Saroj Kumar, Accounts Officer of the appellant appeared and requested for further adjournment. As a last chance, the case was adjourned to 31.08.2017. As no one appeared on this date also, the matter is taken up for disposal based on the appeal records and on the submissions of the ld. AR.

4. The appellants submitted that the goods imported by them were unbranded and cannot be compared with branded goods for valuation. The value of imported goods depend on various factors like quality, quantity, country of origin and trade relationship between the buyer and the seller etc. When the Department compared the value of other imports, such comparison was not made considering the various influencing factors for value. The appellants submitted before the lower authorities the data to support that similar goods have been cleared at a much lower price in other ports. The Revenue selected a few consignments of higher value and without assigning reasons adopted the same for assessment. The backward calculation of

costing submitted by the appellant has been rejected without any reason. Even the comparison made is not with reference to contemporaneous price. The entire NIDB data for the relevant time will show the price varied widely. In fact, the Government was considering imposition of anti-dumping duty because the goods sold in the international market are alleged to have been dumped at the prices lower than the normal value in the exporting countries. None of these factors have been examined in detail and a finding recorded in the impugned order. The decision is summarily arrived at without adducing the reasons.

5. We have examined the appeal records and heard the ld. AR, who supported the findings in the impugned order. First of all, we note that the impugned order reproduced the submissions of the appellant, wherein almost all the points are mentioned above. Thereafter, the submissions of the Department were reproduced. After almost 7 pages of such reproduction of submissions, the impugned order are arrived at a summary finding in a brief two paragraphs stating that the adjudicating authority correctly rejected the transaction value and the value has been fixed based on the value of the similar goods imported. It was recorded that the appellants have not submitted supporting documents to evidence the genuineness of their transaction value. A plain reading of the impugned order will reveal that none of the submissions made by the appellant has been discussed for a finding. It would appear that the appellant’s failure to submit copy of the contract, manufacturer’s price list, details of negotiated price are the reasons for rejecting the transaction value. We note that the appellant filed bill of entry with supplier’s invoice. The value was enhanced on the ground that the similar goods were

imported at higher price. We note that the appellant has rightly objected to such enhancement on the ground that the contemporaneous value should be comparable on various parameters. There is no finding as to how the contemporaneous value has been accepted based on true comparison. The appellant's contention that their product is unbranded and the product, with which it is compared, is branded again carries much weight. It is also noted that the there is more than two months gap in comparison of similar consignments. The admitted fact is the price of impugned goods are highly flexible and varied even in a short period. The rejection of transaction value and refixing of such value has not been done by the lower authorities with justifiable reasons.

6. In view of the above discussion and analysis, we find the impugned order failed to justify with factual and legal basis for enhancing value as ordered by the Revenue. As such, the impugned order is set aside and the appeal is allowed.

[order pronounced on 09.10.2017]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.