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

Date of Hearing: 11.10.2017
Date of Decision: 25.10.2017

Customs Appeal No.51342/2017-DB

[Arising out of Order-in-Appeal No.CC(A)CUS/D-I/Import/187/2017 dated 16.05.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110 037].

M/s.S.T. Infosolution Pvt. Ltd. Appellant

Vs.

CC, New Delhi Respondent

Appearance:
Rep. by Shri Bharat Bhushan, Advocate for the appellant.
Rep. by Shri R.K. Manjhi, AR for the respondent.

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

Final Order No.57352/2017

Per B.Ravichandran:

The appeal is against order dated 16.05.2017 of Commissioner of Customs (Appeals), Airport, New Delhi. The appellant filed a bill of entry on 5.3.2015 for clearance of portable power banks imported from China. The unit price declared was US$7. The Assessing Authorities entertained a view that the goods are not valued correctly and accordingly, proceeded to re-determine the value in terms of Customs Valuation Rules, 2007. Relying on certain details available from NIDB, the goods were re-assessed at Rs.US$10 per piece.

Accordingly, the differential duty of Rs.4,52,873/- was confirmed. On appeal vide the impugned order, the Commissioner (Appeals) upheld the original assessment.

2. Ld. Counsel for the appellant submitted that the lower authorities acted arbitrarily in re-assessing the imported goods. He submitted that NIDB data was taken selectively without disclosing the nature of goods and the similarity between the goods mentioned in NIDB with the imported goods. The details were not made available to the appellant. For rejecting the transaction value, the presence other imports with higher value alone is not sufficient. In any case, the data reproduced in para 3 of the original order does not reveal that the goods are comparable with the imported goods. The only parameter taken by the assessing authority is the capacity of the power bank as 10000 MAH. There are other specifications in a power bank, which will affect the value. In any case, the power bank supplied by the same supplier varies widely. Further, the appellants are eligible for exemption under notification no.1/11 for CV duty in terms of decision of the Hon'ble Supreme Court in **SRF Ltd. – 2015 (318) ELT 607 (SC).**

3. Ld.AR reiterated the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records.

5. Admittedly, the value declared by the appellant was rejected and enhanced to US$10 per piece on the sole ground that there were certain imports of similar goods with this value. Neither the basis of NIDB data with full description and specifications of comparable goods were made available to the appellant nor the

NIDB data was examined in full for the relevant period. Admittedly, against certain selected entries the data were taken by the Original Authority and summarily applied for enhancement of value. We note that the power banks of different types though manufactured and supplied by the same person have different features, which will affect their value. This cannot be disputed. Again, the capacity of power bank alone is not the determining feature of the value. There are other parameters, which are to be compared. The Original Authority did not examine the comparability of similar goods in various parameters and also level of transaction before proceeding to enhance the assessable value. We note that the impugned order further records that the Original Authority has taken middle of the range of lowest and highest prices referred to by the appellant. We do not find any legal justification in such fixation of assessable value. It is also not clear whether the NIDB value referred to by the Original Authority itself is a re-assessed value.

6. We note that the appellant's claim for exemption of CV duty also requires clear finding in view of the decision of the Hon'ble Supreme Court in **SRF Ltd. – 2015 (318) ELT 607 (SC)** and as affirmed by the Apex Court on review **2016 (340) ELT A-202 (SC)** and also the recent decision of the Hon'ble Madras High Court in the case of **Prashray Overseas Pvt. Ltd. – 2016 (338) ELT 44 (Madras)**.

7. In view of the above discussion and analysis, we find that the impugned order is not legally sustainable. Accordingly, the same is set aside and the matter is remanded back to the Original Authority for re-assessment after following the

provisions of Valuation Rules strictly. The observations made above are to be kept in mind while deciding the valuation as well as the claim of the appellant for exemption from CV duty. The appeal is allowed by way of remand.

[Order pronounced on…25.10.2017.]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.