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 : 20/11/2017.
DATE OF DECISION : 20/11/2017.

Customs Appeal No. 51505 of 2017

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-I/General/ 188/2017 dated 17/05/2017 passed by The Commissioner of Customs (Appeals), New Customs House, New Delhi.]

M/s I Décor India Pvt. Ltd. Appellant

Versus

CC, New Delhi Respondent

Appearance

S/Shri S.K. Pahwa and Rohan Pahwa, Advocates – 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. 58006/2017 Dated : 20/11/2017

Per. B. Ravichandran :-

The appellant is aggrieved by the order dated 17/05/2017 of Commissioner (Appeals), New Custom House, Airport, New Delhi.

2. The brief facts of the case are that the appellants imported optical frames of different models having brand name "VANNI".

On examination of the goods, the officers entertained a doubt regarding correctness of the declared value. Certain enquiries were conducted in the market from the sellers of similar optical frames and on conclusion of enquiry proceedings were initiated against the appellant to enhance the declared value for assessment and also to take penal action against them. The Original Authority vide his order dated 02/04/2013 rejected the declared value and re-determined the same at Rs. 1,04,84,348/- in terms of Rule 9 of the Customs Valuation Rules, 2007. He ordered the confiscation of imported goods with permission to redeem on payment a fine of Rs. 58 lakhs. A penalty of Rs. 29 lakhs was imposed on the appellant under Section 112 (a) of the Customs Act, 1962. On appeal, the Commissioner (Appeals) vide his order dated 23/12/2013 held that the market enquiry relied upon by the Revenue is not acceptable. Finding serious infirmity in the process adopted for re-determination of assessable value he set aside the original order and remanded the matter for a re-adjudication. The matter was re-adjudicated by the Original Authority again on 09/09/2015. He again upheld the re-determined value as earlier decided and ordered confiscation of goods with option to redemption of payment of Rs. 20 lakhs as fine. He imposed a penalty of Rs. 10 lakhs on the appellant. On appeal, the Commissioner (Appeals) vide his order dated 11/02/2016 held that the market enquiry was faulty the re-determination of assessable value cannot be sustained. Again nohing serious infirmity in the process adopted by the Original

Authority in re-determining the assessable value, he had set aside the original order and again remanded the matter to the Original Authority. The appellant filed appeal against this order and the Tribunal vide final order No. 52486/2016 dated 18/07/2016 directed the Original Authority to re-examine the matter in line with the directions of Commissioner (Appeals) for a fresh decision. The Original Authority decided the case afresh, for a third time. The Original Authority vide his order dated 04/10/2016 re-determined the assessable value at Rs. 10,52,100/- under Rule 5 of Customs Valuation Rules, 2007. He ordered the confiscation of goods with option to redeem on payment of Rs. 7,50,000/- as fine. He imposed penalty of Rs. 2,50,000/- on the appellant. On appeal, the Commissioner (Appeals) vide his order dated 17/05/2017 upheld the original order. Aggrieved, the appellant filed this appeal.

3. The learned Counsel for the appellant submitted on the following lines :-

(a) the show cause notice originally proposed to re-determine assessable value based on market enquiry invoking Rule 9 of the Valuation Rules. In the present proceedings, re-determination has been made in terms of Rule 5 by resorting to contemporaneous import made by the appellant through Calcutta Port. This is not tenable ;

(b) the contemporaneous import relied upon by the Revenue is from different country (Italy and not from France) and the value taken for comparison is an enhanced value and not a declared value as per NIDB. Generally comparison for contemporaneous import value is done based on declared value as re-determined value cannot form basis for re-assessment.

4. The learned AR reiterated the findings of the lower Authority. He submitted that when the Commissioner (Appeals) found fault with the market enquiry, the Revenue resorted to the verification of contemporaneous value of the same importer of the same brand and as such the value has been arrived at. The mis-declaration of product is evident from the records and the appellant should not be allowed to take technical objections against re-determined assessable value.

5. We have heard both the sides and perused the appeal record. The admitted fact of the case is that the impugned goods were put to assessment by three different orders of the Original Authority. In the first two orders market enquiries conducted by the officers were relied upon to fix the value at Rs. 1,04,84,348/-. In the third order passed on a remand direction the value was fixed at Rs. 10,52,100/- invoking Rule 5 which is with reference to similar goods imported during the relevant time. The show cause notice, admittedly, invoked Rule 9 and proposed market enquiry as the sole basis for re-determination of assessable value. In such situation, it is not open to the Original Authority to take recourse to an entirely different basis for re-determining the assessable value without due notice to the appellant. Even here we note the contemporaneous nature of similar goods is also disputed. Admittedly the country of origin and the period of import are not

same. We find that resorting to value of similar goods could be an admitted process of re-determining the assessable value only if the conditions of Rule 5 are fulfilled and the appellants were provided due opportunity to defend their case. This has not happened in the present case. On repeated remand directions, the Revenue did not take action to rectify the basic infirmity in the reliance placed on market enquiry. This is in spite of specific direction given in the second time by the Commissioner (Appeals). As such, we find that the impugned order is not sustainable on more than one grounds, as discussed above. Accordingly, the same is set aside. The appeal is allowed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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