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

Date of Hearing/Decision:22.11.2017

Customs Appeal No.50942/2017(DB)

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-326-16-17 dated 4.1.2017 passed by the Commissioner (Appeals), Central Excise & Customs, Raipur (C.G.)]

M/s.SKS Ispat & Power Ltd. Appellant

Vs.

CC, Raipur Respondent

Appearance:

Rep. by Shri Manish Saharan, Advocate for the appellant.
Rep. by Shri Govind Dixit, AR for the respondent.

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

Final Order No.58160/2017

Per S.K. Mohanty:

Brief facts of the case are that during the course of assessment of the bill of entry, the Department observed that the unit price declared by the appellant was less as compared to the price of the contemporaneous import of identical goods of UK origin. Accordingly, the price declared by the appellant was rejected in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and by resorting to Rule 5 ibid, the value was determined by the Department @ 266 USD/PMT.

2. Ld. Advocate for the appellant submits that in rejecting the declared value and in enhancing such value, the Department has not referred to any bills of entry or other documents to prove that the goods are in fact, of contemporaneous in nature. He also submits that in absence of any specific substantiation on the part of the Department, the value cannot be enhanced and the value declared by the appellant should be considered for the purpose of assessment of the bill of entry.

3. On the other hand, ld. AR appearing for the Department reiterates the findings recorded in the impugned order. He further submits that the proposal to enhance the declared value was informed by the Department to the appellant and the valuation as determined by the Department was also accepted by the appellant. Thus, he submits that since the appellant has accepted the enhanced value, the value ultimately determined by the Department cannot be questioned or challenged by way of filing of appeal.

4. Heard both the sides and perused the appeal records.

5. We find that the assessing officer has rejected the declared value by taking recourse to Rule 12 of the Customs Valuation Rues and re-determined the value under Rule 5 ibid. For enhancing the declared value, the assessing officer has not specifically referred to the contemporaneous import price of any other imports of identical goods, quantity, country of origin, etc. Thus, the onus lies with the Department to disprove the value of imported goods declared by the appellant, having not been discharged satisfactorily, such declared value cannot be rejected and the same cannot be enhanced.

Regarding acceptance of the enhanced value by the appellant, we find that the assessing authority has recorded the submissions that due to urgency of the matter and to save container lines damage charges, the appellants have accepted the enhanced value and paid the duty under protest. Since the appellant had paid the duty under protest that itself shows that they are not accepting the enhanced value as determined by the assessing officer.

6. Therefore, we do not find any merit in the impugned order in enhancing the declared value in respect of the subject goods. Accordingly, by setting aside the impugned order, we allow the appeal in favour of the appellant.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.