

**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. I

DATE OF HEARING : 04/01/2018.
DATE OF DECISION : 12/01/2018.

Customs Appeal No. 51645 of 2017

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/ICD/TKD (Import)/467/2017 dated 12/07/2017 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

CC, New Delhi

Appellant

Versus

M/s Iqbal RIM Traders

Respondent

Appearance

Shri H.C. Saini, Authorized Representative (DR) - for the appellant.

Shri S.N. Panda, Advocate – for the Respondent.

**CORAM : Hon'ble Shri Justice Dr. Satish Chandra, President
Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 50103/2018 Dated : 12/01/2018

Per. B. Ravichandran :-

This appeal is by Revenue against order dated 12/07/2017 of Commissioner (Appeals), New Custom House, New Delhi. The respondent filed a bill of entry for clearance of imported goods declared as "outer RIM part of tractor trolley". The declared value and the duty are Rs. 18,90,210/- and Rs. 5,56,497/-

respectively. On examination of the goods, the officers entertained a view that the value declared was not correct and also the classification as declared under CTH 87169010 was also not correct. The classification was proposed under CTH 8708 which will attract Anti Dumping Duty under Notification No. 3/2013-CUS (ADD) dated 26/03/2013. Accordingly, proceedings were initiated against the respondent. The Original Authority vide his order dated 07/09/2016 held that the goods were mis-declared with reference to value and description. He confirmed the differential customs duty of Rs. 3,13,879/- and also confirmed AD duty of Rs. 21,99,206/-. He ordered the confiscation of seized goods and permitted the same to be redeemed on payment of a fine of Rs. 5 lakhs; imposed a penalty of Rs. 3,13,879/- on the respondent under Section 114A of the Customs Act, 1962.

2. On appeal, the impugned order held that the Original Authority did not give any valid reason for re-classifying the product under 8708 and it upheld the declared classification in the bill of entry. Appellate Authority relied on the description under CTH 8716 which covers parts and accessories of trailers and include wheel, parts etc. Accordingly, he held that RIMs and Discs imported by the respondent are correctly classifiable under CTH 87169010 and will fall outside the purview of AD Notification 3/2013 – CUS (ADD). Regarding valuation of the imported goods, he held that before relying on NIDB data, parameters like nature, quality, level of import, time of import etc. are to be looked into

before loading the value based on contemporaneous import of similar or identical goods. There is no reason recorded by the Original Authority for rejecting the transaction value. After relying on various decided case laws, the Appellate Authority held that there is no legal basis to re-determine the assessable value and accordingly, set aside the impugned order both on classification as well as valuation. Aggrieved by this order, the Revenue filed the present appeal.

3. The learned AR elaborating the grounds of appeal relied on Rule 2 (a) of General Interpretative Rules of Customs Tariff, the RIMs welded with the Discs were imported as outer Rim part of tractor trolley. Only a minor article i.e. demountable RIM was missing from the complete article known as wheel. The importer himself admits in his voluntary statement that Rim sizes imported by him are meant for use in heavy vehicles like bus and trucks. It is further submitted that there is a deliberate mis-declaration of value and classification. Since, the respondent themselves admitted the usage of the imported goods no further corroboration is required. The Anti Dumping duty is imposable even on CKD or SKD condition. Relying on the decision of Hon'ble Supreme Court in **Systems & Components Pvt. Ltd. – 2004 (165) E.L.T. 136 (S.C.)** in this regard, the learned AR submitted that the what is admitted need not be proved.

4. The learned Counsel for the respondent contested the appeal by the Revenue. He submitted that the original order

never adduced any cogent reason for re-classification of the product. It was presumed that the imported goods are primarily used for commercial vehicle. No supporting evidence was adduced. Anti Dumping duty is attracted only on importation of "flat base steel wheels" having nominal diameter 16" – 20" as given under Heading 8708.7. Three parts of Rim are essential to form a wheel namely outer ring, welded disk and demountable ring. The demountable ring is an essential part of wheel without which a proper wheel cannot be formed. The imported goods are, without demountable ring, of a size 7.5 x 20. The respondent neither imported complete wheel nor the size of the imported goods are in the diameter of 16" x 20". The Department never adduced any evidence for change in the classification as well as to reject/re-determine the assessable value.

5. We have heard both the sides and perused the appeal record. We note that the original order was silent on various crucial aspects. This was pointed out in the impugned order. We note that the goods imported were commercially known and declared in the invoice as 'tractor trolley parts' under Heading 8716. The principal use asserted for such Rim and disk is with the tractor trolley used mainly for agriculture related activities. The Original Authority relying on a statement of the respondent that the said rims and disks can be used in a commercial vehicle, proceeded to classify the same attracting AD duty. We find that the impugned order correctly pointed out various serious lacunae in the original order. In the absence of any sustainable evidence

there is no justification for re-classifying the product and also to reject the declared value. The analysis made in the impugned order is correct and we agree with the same. Accordingly, the appeal by the Revenue is dismissed.

(Order pronounced in the open court on 12/01/2018.)

(Justice Dr. Satish Chandra)
President
PK

(B. Ravichandran)
Member (Technical)