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

Date of Hearing/Decision:11.01.2018

Customs Appeal No.53156/2016(DB)

[Arising out of Order-in-Appeal No.01/KJ/PR. COMMR/2016 dated 13.01.2016 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals),New Delhi]

M/s. Tahir Star — Appellants

Vs.

CCE, New Delhi — Respondent

Appearance:

Rep. by Shri B.L. Garg, Advocate for the appellant.
Rep. by Shri R.K. Majhi, AR for the respondent.

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

Final Order No.50293/2018

Per B. Ravichandran:

The appellant imported glass chatons through ICD, TKD and filed bills of entry on 28.09.2015. On examination of the cargo and verification of the documents filed with the bills of entry, Revenue found that the quantum and description of the product and the value declared appeared to be not acceptable. There were discrepancies in the contents of the cargo and also in the declared value for such cargo. Investigations were conducted and the Revenue recovered another invoice containing particulars of the imported consignment through email account of partner of the importing firm. On completion of the investigation, proceedings were initiated against the appellant to demand and recover differential customs duty on account of proper valuation of the same and also to confiscate the goods and to impose penalty. The Original Authority adjudicated the case and held that the declared value is not acceptable and re-determined the value to Rs.2,13,95,475/- and customs duty of Rs.62,99,042/- was confirmed along with penalties of Rs.3,44,692/- under Section 112(a) of the Customs Act, 1962. The impugned order confiscated the goods with option to redeem on payment of redemption fine of Rs.12 lakhs under Section 125 of the Customs Act, 1962.

2. Ld. Counsel appearing for the appellant submitted that they have asked for first check of cargo. There were minor discrepancies in the contents of the imported cargo, as declared. However, regarding the valuation, ld. Counsel for the appellant fairly admits that the invoice recovered from e mail account of the partner can be taken for assessment. The grievance of the appellant is that the Department proceeded to take NIDB data that too on a higher basis. Accordingly, the ld. Counsel mainly prays for setting aside the impugned order only on the valuation issue.

3. Ld. AR strongly contested the appeal stating that the First Check requisite is only a ploy by the importer when they realized similarly shipped consignments have been subjected to such check by the officers considering the prevalence of misdeclaration in such goods. This will not absolve the appellant from any penal consequences. He submitted that importer malafidely declared value is wrong and the second invoice produced during investigation had much higher value i.e. Rs.2.42 lakhs instead of declared Rs.1.41 lakhs. Further, regarding not accepting both the invoices, ld. AR submitted that the product is admittedly mis-declared for description and the contents and this importation from China are regularly being monitored for misdeclaration. The value declared during assessment was proved to be fake and admitted by the importer, who paid the duty for clearing the cargo. In fact, the appellant asked for waiver of issuance of show cause notice and waiver

from being heard in person before the order is passed. In such situation, it is not open to the appellant to turn around and ask for detailed reasons for fixing the assessable value as the same has been accepted and assessed without any protest.

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

5. The admitted facts are that the goods were mis-declared both in general description and value. This much has been admitted. However, the plea of the appellant is that the second undeclared invoice unearthed during investigation could have been accepted instead of contemporaneous import value as of NIDB data. We are not in agreement with the submission of the appellant. In fact, the appellant admitted all the misdeclarations and requested for assessment of goods and paid the duty along with the penalty and redemption fine to clear the cargo. Waiver of show cause notice and requirement for personal hearing has also been done by the appellant. The appellant have duly been informed about the correct value proposed by the Revenue. The same has been accepted. Now before us, the appellant is making a plea that detailed reasons and supporting evidence for such contemporenous value was not made available to them and also the same is not in terms of the Valuation Rules for assessment of impugned goods. We note that the value as declared by the importer was based on an invoice, which was admittedly not genuine. In such situation, proposals were made based on the contemporenous assessment, correctness of which has been admitted. No protest has been recorded. As such, we cannot be now called upon to examine the correctness of value in absence of any ground towards that.

6. Ld. Counsel for the appellant relied on the certain case laws to state that admission of valuation for clearance of the goods by itself will not absolve the

Department for giving reasons and justification for re-determination of value. While we agree on such legal principle, we note that in the facts of the present case, it is clear that the appellant themselves were in fault in presenting a fake invoice. The investigation unearthed two invoices for the same consignment and the appellant admitted the proposal of re-valuation based on the contemporenous imports of similar goods. It is not open to the appellant now to ask for detailed reasons for such value, which apparently has been adopted in the impugned order. In view of the above discussion and analysis, we find no merits in the present appeal. The same is dismissed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.