In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.C/51536/2017
(Arising out of Order-in-Original No.DLI/Custom/Pre/MKV/PR.Commr/14/2017 dated 14.06.2017 passed by Principal Commissioner of Customs, (Prev.), New Delhi)

M/s Laxmi Enterprises …Appellant
Vs
CC (Prev.) New Delhi …Respondent

Appearance:
Present for the Appellant : Shri Prabhat Kumar, Advocate
Present for the Respondent : Shri R.K. Manjhi, DR

Coram:
HON'BLE JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR V.PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 30.01.2018
Date of decision: 05.02.2018

Final Order No.50544/2018

Per V. Padmanabhan,

The present appeal is filed against Order-in-Original No.14/2017 dated 14.06.2017. The appellant imported certain goods described as Reflective Sheeting and Luminescent Film and filed bill of entry No.9962802 dated 20.07.2015. After examining the consignment, the Customs Authorities were of the opinion that there was mis-declaration in the quantity of goods since 578 rolls of the material were found as against 577 rolls, declared the Bill of Entry. It further appeared that the goods were mis-declared in terms of value also. To probe the matter further, searches were conducted on 20.08.2015 at the business premises of the importer, residence of the proprietor as well as other connected premises. During the search, one laptop as well as mobile phone found was recovered and the data contained therein was retrieved and printed through panchnama proceedings on 24.082015 and 27.08.2015 in the presence of witnesses as well as S/Shri Sumit Chawla and Rajiv Chawla, the concerned persons of the importer. The data retrieved included proforma invoices, price list, commercial invoices, etc. of various goods imported by the appellant in the past. Shri Sumit Chawla, authorized representative and son of the proprietor of M/s Lakshmi Enterprises, was interrogated and his statements were recorded in relation to the documents recovered from the laptop and mobile phone. In his statement dated 17.09.2015, he confirmed that the documents like invoices, proforma invoices related to consignments imported by him for which the real value of the goods was hidden from the Customs Authorities. In his further statement dated 19.01.2017, towards conclusion of the investigation, he confirmed that the grade and specification of goods imported by them in the past were not cleared in the Bill of Entry; the invoices/commercial invoices recovered could be taken for re-assessment for past import; he further accepted the duty liability for the past consignments on the basis of invoice/commercial invoice found in the electronic devices, as per the following table:

<table>
<tr><th>SN</th><th>Description of goods</th><th>Rates found (USD) per Roll</th><th>Ref. Invoice/ Commercial Invoice No.</th><th>Corresponding Bill of Entry</th></tr>
<tr><td>1</td><td>Glitter Film (Size-90 cm 50 cm)</td><td>51.50 FOB</td><td>HY121213 dated 13.12.2013</td><td rowspan="2">5303180</td></tr>
<tr><td>2</td><td>Multi Lens Film (Size 90*100 CM)</td><td>103</td><td>HY121213 dated 13.12.2013</td></tr>
<tr><td rowspan="2">3</td><td>Reflective Sheeting (Size 1.24*45.7 m) Grade A</td><td>70.835</td><td rowspan="2">YGM1306035 dated 11.12.2013</td><td rowspan="2">4466023 dated</td></tr>
<tr><td>Reflective Sheeting (Size 1.24*45.7 m) Grade B</td><td>66,9048</td></tr>
</table>

	Reflective Sheeting (Size 665*91.4 m) Grade B	64.171		27.01.2014
4	PVC Self Adhesive Tape with pet release (size 45.7m*1.27)	32.70	1207X dated 17.02.2013	8513918 dated 08.03.2013

2. Shri Sumit Chawla further admitted in his statement dated 19.01.2016 that the differential amount, over and above declared in the bills of entry, was remitted in Indian currency to the representative of supplier through un-official channels.

3. The goods covered by the current bill of entry were provisionally released to the appellant and on conclusion of investigation, SCN dated 11.08.2016 was issued to the appellant demanding the differential customs duty for past consignments. This SCN was finalized by issue of impugned order as follows :-

i) Declared Customs value in respect of past clearances made under 32 bills of entry was rejected and re-determined on the basis of the documents recovered during investigation.

ii) Differential customs duty amounting to Rs.1,10,86,061/- was demanded along with interest.

iii) Goods seized in various places were ordered for confiscation and redemption fine imposed.

iv) Penalty equal to the customs department demanded was imposed on the appellant.

4. Aggrieved by the impugned order, the present appeal has been filed mainly on the following grounds:

i) The case has been made based upon the relied upon documents in the form of prints-out from laptop and mobile phone. These documents are not permissible evidence under Section 138C of the Customs Act, 1963, since there is nothing on record to show that the conditions specified in relation to the data have been satisfied.

ii) The adjudicating authority has not followed the Customs Valuation Rules sequentially in arriving at the valuation for demand of duty.

iii) He has failed to cite the value of contemporaneous import of the same kind and quality of goods and hence the transaction value cannot be rejected.

iv) The adjudicating authority has ignored the evidence produced by the appellant regarding contemporaneous import of identical/similar goods.

v) The alleged invoices/commercial invoices cannot be applied to past imports. In particular, the 32 import consignments are spread-over a period of two years and four months which have been re-valued on the basis of evidence of December, 2013. This is improper since these invoices cannot be used to recover a period of more than 90 days

vi) They also relied on various case laws, to the effect that transaction value is required to be accepted.

5. With the above background, we heard Shri Prabhat Kumar, ld Advocate, representing the appellant. He explained the facts of the case as well as various grounds of appeal, in detail.

6. We also heard Shri R.K. Manjhi, ld DR on behalf of the Revenue. He submitted that the original invoices/commercial invoices pertain to the past imports were found in the laptop and mobile phone recovered during the search proceedings of 20.08.2015. Shri Sumit Chawla, in his statements, has admitted the under-valuation of the past consignments and has given his consent for re-determining the value of past consignments on the basis of the above invoices. He specifically pointed-out that none of the statements has ever been retracted. He submitted that the impugned order is fully justified and may be sustained.

7. We have heard both sides and perused the record. The appellant has imported certain goods described as “Self Adhesive Reflective Sheeting” and filed bill of entry dated 20.07.2015 at ICD Tughlakabad, New Delhi. While examining the goods imported under the above bill of entry, the department was of the view that the value declared by the appellant was incorrect and the goods were under valued. There was also mis-declaration in the total quantity of goods imported. As part of the investigation against under-valuation, the department searched the business premises of the importer and other connected premises on 20.08.2015. During the search, along with various documents, electronic media, in the form of laptop and mobile phone, was recovered and the data contained

therein was printed-out under panchnama proceedings. These devices were found to contain invoices/commercial invoices, price list , etc. in respect of the same goods imported in the past. In the statements recorded from Shri Sumit Chawla son of proprietor, he admitted that many of the past consignments were under valued and that the documents recovered from the electronic devices pertain to the consignments imported earlier by the appellant. Accordingly, the department proceeded to demand differential duty in respect of goods imported earlier by the appellant and covered by 32 bills of entry. The present appeal challenges the demand for differential duty and imposition of penalties, levied by the impugned order.

8. In the main grounds of the present appeal, it has been argued that transaction value was required to be accepted in the absence of evidence produced by Revenue of contemporaneous import of identical/similar goods. The appellant has argued that the documents printed-out from the electronic media are not admissible for non-compliance of specified conditions specified in the Section 138C of the Customs Act.

9. The valuation of imported goods is required to be done in terms of Section 14 of the Customs Act, 1962, read with the Customs Valuation Rules, 2007. The transaction value of imported goods can be rejected only as per the provisions of Rule 12 of the Customs Valuation Rules. In the present case, in respect of 32 Bills of Entry pertaining to imports, certain documents were recovered during the course of search from the laptop and mobiles pones. From among the documents

recovered from the laptop and mobile phone, the department has recovered the invoices/commercial invoices pertaining to the goods imported under these Bills of Entry. Such invoices indicate that the goods were procured by the appellant from the foreign supplier at significantly higher prices than what has been declared to the department at the time of filing Bills of Entry. It further has been admitted by Shri Sumit Chawla, son of the proprietor, that these invoices, printed-out from laptop/mobile phone, reflect the correct value of imports. He has even admitted that the differential amount, over and above the invoice originally declared, have been paid to the foreign supplier through means other than the banking channels.

10. In the light of the evidence, as above, we are of the view that the adjudicating authority has rightly rejected the transaction value of goods imported under the 32 Bills of Entry, in terms of Rule 12 of the Customs Valuation Rules, 2007. In fact, Explanation (f) to Rule 12 ibid specifically provides for rejection of the transaction value in the case of fraud or manipulated documents as in the present case.

11. The appellant has raised objections to the admissibility of the documents recovered from the laptop. They have cited the provisions of Section 138C of the Customs Act. We find such objections without basis in as much as the truth of the documents printed-out from the laptop has been admitted by Shri Sumit Chawla son of the proprietor in clear terms. Further, their clear admission by him that

these invoices recovered, reflect the correct valuation at which the transaction was concluded with the valuation supplier. Further the appellant was given an opportunity to prove the correct transaction value of the goods imported under 32 bills of entry by providing bank attested genuine invoices but Shri Sumit Chawla did not make same available. On the other hand, in his statement dated 19.01.2016, that the prices indicated in the invoices/commercial invoices could be taken for assessment of all past imports as the rate of product did not change much during period of imports. We are of the view that there is no infirmity on the part of the adjudicating authority in re-determining the value of the past imported goods on the basis of such invoices. In the peculiar facts and circumstances of the present case, there is no need for the Revenue to collect evidence in the form of contemporaneous imports.

12. In view of above discussions, we find no infirmity in the impugned order, which is upheld and the appeal dismissed.

(Pronounced in Court on 05.02.2018)

(Justice (Dr) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

pcs