CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 01.02.2018
Date of pronouncement: 14.03.2018

Custom Appeal No. 50747 of 2017
(Arising out of Order-in-Original No. 35/2016/COMMR/NKS/2016 dated 30.12.2016 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi).

M/s Matrix Valve Pvt. Limited Appellant

Vs.

CC, ICD, Tughlakabad, New Delhi Respondent

Appearance:

Sh. Priyadarshi Manish, Advocate for the appellant
Sh. R. K. Manjhi, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 50948/2018

Per: **V. Padmanabhan**:

The present appeal is filed against the Order-in-Original No. 35/2016 dated 30.12.2016.

2. The appellant is engaged in the import of various electrical and automobile parts. They filed three bills of entry No. 9413449, 9413457 and 941348 all dated 26.02.2013 and declared various goods such as tyre valve, tyre seal, PU Hose, spray paint pump, mini air pump etc. The goods were examined on first check basis. Upon comparison of the value declared with the NIDB data for contemporaneous imports, the Department was of the view that the

value declared was undervalued. It is further noticed that the unit price of tyre valves were declared on per kg. basis and not on per piece basis. The goods covered by Bill of Entry 9413449 was found to be marginally undervalued and hence the value was enhanced with the concurrence of importer and goods were allowed to be cleared. In respect of the other two Bills of Entry, the SIIB carried out investigation into the value of goods declared. Upon perusal of NIDB data, it was noticed that such data was not available in respect of identical goods and hence market enquiry was resorted to. The price at which similar goods were sold in the domestic market was ascertained from two local dealers and the assessable value was arrived at by deductive method in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007. The goods were ordered for confiscation and differential duty was demanded.

3. During the course of investigation, the Department further noticed that the same importer had filed 52 Bills of Entry in the past during the period 18.01.2011 to 26.02.2013 for clearance of similar goods. The value of goods covered by these 52 Bills of Entry were also enhanced and differential duty demanded in the impugned order. Aggrieved by the impugned order, the present appeal has been filed.

4. With the above background, we heard Sh. Priyadarshi Manish, ld. Counsel for the appellant as well as Sh. R. K. Manjhi, ld. AR appearing for the Revenue.

5. The argument of the ld. Counsel for the appellant is summarised below:

(i) The Department was not justified in enhancing the value of the goods covered by the two Bills of Entry. The importer has submitted copies of manufacturer's invoice, duly certified by the Bank and the values tally with the declaration made in the Bills of Entry. Since the Department is not in possession of any other evidence, the declared value is required to be accepted.

(ii) The Department was not justified in adopting the deductive method on the basis of one invoice for import of one hundred valves. The importer has submitted three invoices covering goods similar to the imported goods. The Department has ignored the same, even though the quantity covered in these invoices was more akin to the quantities being imported.

(iii) The Department was not justified in reopening the assessments in respect of 52 Bills of Entry filed in the past. In the absence of any suppression on the part of the importer the show cause notice issued is time barred. The Adjudicating Authority has also not given any finding to reopen such past consignments.

4 The Ld. AR appearing for the Revenue justified the impugned order. His arguments are summarised below:

(i) Ld. AR referred to the statements recorded from Sh. Mukesh Jain, Director as well as Sh. Sanjay Dayal, 'G' Card holder of the CHA who has filed the Bill of Entry. He argued that the representative of the appellant has accepted the market enquiry conducted by the Department and enhancement of value on the basis thereof.

(ii) He has justified the reopening of the assessment for the past period since similar goods have been imported in the past also, whose values were significantly less than the NIDB data for contemporaneous import.

5. We have heard both sides and perused the record.

6. The importer had filed three Bills of Entry on 26.02.2013. The goods covered by Bill of Entry No. 9413449 has been cleared after enhancement of value and are not part of the present dispute. The goods covered by the other two Bills of Entry have been held to be undervalued and differential duty has been demanded. The reason cited by the Adjudicating Authority for rejecting the declared transaction values under Rule 12 of the Customs Valuation Rules is that the contemporaneous NIDB data indicates import values which are higher than the declared value. Consequently, market enquiry was conducted in respect of some of the items with two different shops dealing in similar goods. On the basis of local sale price of the goods, the assessable value of the imported goods have been determined by way of deductive method and custom duty charged at such value.

7. In terms of Section 14 of the Customs Act, 1962, transaction values are required to be accepted for purposes of charging custom duty. Rule 3 of the Customs Valuation Rules makes it amply clear that the value of imported goods shall be the transaction value except in cases where such value is rejected in terms of Rule 12. From the record we note that the Department has asked the importer for documentary evidence to support the declared value. Accordingly, copies of the manufacturer’s invoice, which has also been attested by the Bank, has been submitted which is identical to the declared values. The Department has, inspite of the above, rejected the declared values only on the basis of the NIDB data of contemporaneous imports. It is settled position of law that the declared values cannot be rejected only on the basis of NIDB data. This view is supported by decision of the Tribunal in the case of ***Topsia Estates (P) Ltd. vs.***

CC, Chennai [2015] 53 Taxmann.com 345 (Chennai-CESTAT) wherein the Tribunal observed that-

> "8. *The Supreme Court in the case of Eicher Tractors Ltd. (supra) held that the value, according to section 14(1) of the Customs Act, 1962, shall be taken to be the price at which such or like goods are originally sold, or offered for sale, for delivery at the time and place of importation in the course of international trade. The 'special circumstances' have been statutorily particularized in the Customs Valuation Rules and in the absence of these exceptions, it is mandatory for customs to accept the price actually paid or payable for the goods in the particular transaction.*
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> *9. The Tribunal in the case of DM International (supra), respectfully following the decision of the Supreme Court in the case of Eicher Tractors Ltd. (supra), held as under:-*
>
>> *"5. We find that there is no dispute that the customs has power to reject the transaction value and enhance the assessable value in terms of Customs Valuation Rules. However, such rejection of transaction value and enhancement of assessable value has to be on the basis of some evidences on record. Contemporaneous imports have to be considered with reference to quality, quantity and country of origin with the imports under consideration. It has been held in a number of decisions that NIDB data cannot be made the basis for enhancement of value. Commissioner (Appeals) has relied upon various decisions of the Tribunal for holding that any enhancement in assessable value, the transaction value has to be first rejected based on legal permissible ground as indicated in the Valuation Rules. He has also referred to Supreme Court decision in the case of Eicher Tractors Ltd. vs. CC – 2000 (122) ELT 321 (S.C.) in support of his finding that transaction value cannot be rejected without clear and cogent evidence produced by the department with regard to quality, import of origin and place and time of import.*"

9. In the present case, we do not find any valid reason cited in the impugned order for rejection of transaction value other than reference to NIDB data. The Bank attested invoice for supply of the goods is identical to the declared values. Revenue has not brought anything on record to indicate that any additional consideration has been paid by the importer for such goods. In the circumstances, we are of the view that the transaction value is required to be

accepted. Consequently, the redetermination of value on the basis of market enquiry has no basis and is set aside.

10. The Adjudicating Authority has also reopened the assessment made in respect of 52 Bills of Entry filed in the past. The reason recorded in the impugned order is that in the past also the appellant has imported such goods. The Revenue has undertaken no investigation into the value of goods imported vide the 52 Bills of Entry. The demand for custom differential duty in respect of these Bills of Entry has been made by invoking the suppression clause in Section 28 of the Customs Act. But from the show cause notice we find no specific wilful act of mis-statement or suppression of facts or collusion on the part of the import has been recorded. Hence, we are of the view that the re-opening of assessment in the past 52 Bills of Entry is not justified. In the absence of any investigation into the value of the goods covered under these Bills of Entry, the transaction value already accepted cannot be interfered with.

11. In the light of the above discussions, the impugned order is set aside and appeal is allowed.

(Pronounced on 14.03.2018).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

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