CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 50239 of 2018

(Arising out of Order-in-Appeal No. CC(A)CUS/D-I/Import/271/2016 dated 31.07.2017 passed by the Commissioner of Customs (Appeals), New Delhi)

DATE OF HEARING : 12.04.2018
DATE OF DECISION : 12.04.2018

M/s ARM Embedded Technologies Pvt. Ltd. ……..Appellants
(Rep. by Sh. Mohan Lal, Adv.)

VERSUS

CC, New Delhi ……….Respondent
(Rep by Sh. R.K. Manjhi, DR)

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

FINAL ORDER NO. 51381/2018

PER V. PADMANABHAN:

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. CC(A)CUS/D-I/Import/271/2016 dated 31.07.2017 passed by the Commissioner of Customs (Appeals), New Delhi.

2. The brief facts of the case are that, the assessee-Appellants have filed Bill of Entry No. 7332944 dated 11.11.2014 and declared the import of 'Server' and certain related items. The Customs authorities noticed that the value declared for the imported

goods appears low and further that the invoice attached was from the third party. Hence, additional documents were called for from the importer and the goods were examined on first check basis. In response to the query by the Customs, the importer submitted the relevant quotation obtained from M/s Solid State Solution Limited, UK, as also the sale invoices no. 12285 and 12286 dated 31.10.2014. Taking together these two invoices, the goods were valued as under :

Item	Part Number	Description	Qty	Unit Cost (GBP)	Total Cost (GBP)
1.	SYS-T650	T650, Base SVV license & 1 yr HW	1	39,366.00	39,366.00
2.	OPT-10GBE-SFT+SR	Dual-port 10 GBE (SFP+SR) NIC installed in system	1	1,800.00	1,800.00
		Software			
3.	LIC-REPL-T650	T650 Replicate VM license	1	8M329.00	8,329.00
		Maintenance			
4.	SUP-T650-REPL-PLAT-3YR	Maintenance-Platinum Support, T650 HVV+ba	1	4,165.15	4,165.47
5.	SUP-T650-PLAT-3YR	Platinum Support, T650, Replicate VM 3-yr	1	28,486.00	28,486.00
		Software			
6.	LIC-TSCS-ONEVMSTORE	Tintri Global Centre, I VMstore	1	1,532.00	1,532.00
		Maintenance			
7.	SUP-TGCS-ONEVMS-PLAT-3YR	Platinum Support, TGC, I VMstore-3yr	1	766.21	766.21
				Total	84,444,68

From the above, it is noticed that the total value of the consignment was UK Pound 84,444,68 (+freight). As against the above, the total declared value of the consignment was only GBP 39,366 + 1,800 (+freight). Accordingly, the Department took the view that the importer had mis-declared the imported goods and after issuance of show cause notice, order dated 12.11.2015 was passed by the original authority; the declared value was rejected and the correct assessable value was re-determined and differential duty was demanded. Penalties were also imposed on the importer as well as CHA. When the issue was challenged before the Commissioner (Appeals), the impugned order was passed in which the findings of the original authority was upheld. Hence, the present appeal.

3. With this background, we have heard Sh. Mohan Lal, learned counsel for the assessee-Appellants and Sh. R.K. Manjhi, learned DR for the Revenue.

4. The learned counsel submitted that the imported 'Server' was supplied pre-loaded with the necessary software, but the same was indicated separately in the invoice in the form of software licence. He argued that there is no import duty on imported software and hence, value of the same cannot be loaded to the value of the imported 'Server'. He further submitted that certain amounts were paid by the assessee-Appellants to the supplier of the 'Server' abroad towards the annual maintenance contract for a period of three years. Since such amounts have been paid for post importation service, there is no need to pay the Customs duty on such charges. In this connection, he also referred to the CBEC Circular No. 15/2011 dated 18.03.2011 in which the issues relating to the assessment of software have been clarified.

5. The learned DR justified the impugned order. He argued that the software stands already pre-loaded in the 'Server' at the time of import and hence the value of the software is to be added to the hardware for the purpose of charging the Customs duty. He further argued that the assessee-Appellants have intentionally mis-declared the imported goods inasmuch as he has furnished along

with the import documents a third party invoice in which certain parts of the value have been deliberately suppressed. Consequently, penalty is also fully justified.

6. After hearing both sides at length and on perusal of the material available on record, we note that the relevant purchase order placed by the assessee-Appellants with the supplier of the equipment is on record. The assessee-Appellants have also furnished copy of the two invoices both dated 31.10.2014 in which the correct value of seven items imported have been given. It is seen that the importer has declared only a fraction of the correct value of the imported goods. Consequently, mis-declaration on the part of the importer stands established and hence, goods are liable for confiscation under Section 111(l),(m) of the Customs Act, 1962.

7. Upon perusal of the two invoices, we note that the seven items were mentioned in the two invoices out of which the value of the software is required to be added to that of the hardware inasmuch as the hardware is received pre-loaded with the software. However, we note that the amounts paid towards the annual maintenance contract for three years, cannot be added to the transaction value of the imported goods inasmuch as such payment is towards post import service.

8. In view of the above discussions, we modify the impugned order and remand the matter to the adjudicating authority with the direction to add the value of software to that of the hardware and charge Customs duty accordingly. At the same time,

the amount paid towards the maintenance, cannot be added for the purpose of charging Customs duty. He is also directed to decide the issue of penalty in the light of re-computed demand.

9. In the result, the appeal filed by the assessee-Appellants is partly allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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