IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Customs Appeal No. 51148 of 2018

[Arising out of the Order-in-Appeal No. CC(A)CUS/D-II/ Prev/210/2018 dated 12.02.2018, passed by Commissioner of Customs (Appeals), New Delhi]

M/s. Sai International **Appellants**

Vs.

Commissioner of Customs **Respondent**
(Prev), New Delhi

Appearance:

Shri B K Singh, Vandana Singh, Advocates for the Appellants
Shri R K Majhi, AR for the Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. C L Mahar, Member (Technical)

Date of Hearing/ Decision: 06.06. 2018

FINAL ORDER No. 52218/2018

Per: C L Mahar:

The appellants are engaged in the business of trading of dog food/ snacks imported from out of country. The Customs Officers working on specific intelligence, detained a consignment of the appellant covered under the Bill of Entry No. 3412079 dated 30.9.2013. The goods imported under this Bill of Entry were examined and the description of the goods found as per the declaration made in the Bill of Entry as well as invoices. However, it has been alleged by the department that the value of the imported goods namely, dog food / snacks was grossly under-invoiced. The goods under the above-mentioned Bill of Entry were seized and later on released provisionally on payment of duty and furnishing of a bond etc. The Customs department has undertaken a detailed investigation regarding the actual value of the imported consignment, under the above mentioned live Bill of Entry as well as following other Bills of Entry, which were cleared between September 2012 to September 2013 by the appellant.

i) 7978236 dated 18.9.2012;

ii) 8581470 dated 26.11.2012;

iii) 8583815 dated 15.3.2013

iv) 2186876 dated 20.5.2013; and

v) 2715163 dated 16.7.2013.

The preliminary suspicion which the department has made a basis for undertaking detailed investigation was that the price of Dog food / snacks of Gnawers brand given on the website of the manufacturer exporter based in China. The Customs department has found that the particulars given on the website of various kinds of Gnawers brand dog food / snacks are several times higher than what were declared by the importer in the Bills of Entry of the above mentioned six import consignments.

2. The department has made local market inquiry of the same brand of dog food / snacks as well as similar other products of other brands and have reached to the conclusion that the imported consignment under the relevant Bills of Entry as well as the consignment cleared by the appellant under other Bills of Entry have been found grossly under-invoiced and therefore, a show cause notice demanding a differential duty of Rs.15,74,395/- under Section 28 (4) of the Customs Act, 1962 as well as confiscation of the live consignment as per the provisions of section 111(m) of the Customs Act, 1962 came to be issued.

3. It has been alleged in the impugned show cause notice that in order to ascertain the actual market value of the goods a detailed market inquiry was conducted following the Customs Valuation (Determination of Value of imported goods) Rules,2007. The Department has resorted to Rule 7 of Customs Valuation Rules for conducting such inquiry, rejecting the valuation as suggested under Rule 5 and Rule 6 of Customs Valuation Rules, stating that there was no import of "similar goods" and hence value of similar goods was not in knowledge of the Department as per NIDB data.

4. On the basis of the market inquiry, the total assessable value of the goods covered under the six Bills of Entry (as mentioned above)

was recalculated to Rs.1,25,08,531/- involving total Customs Duties of Rs.31,79,745/-. Since the importer has paid Customs duties of Rs.16,05,350/- on all six Bills of Entry, a differential amount of Rs.15,74,395/- has been demanded in the Show Cause Notice.

5. Same was adjudicated by the Additional Commissioner of Customs (Preventive) under Order-in-Original dated 31.12.2014 wherein the above mentioned allegations of the show cause notice have been confirmed by the adjudicating authority. Aggrieved by the above order of the Additional Commissioner, the appellant has filed an appeal before the learned Commissioner (Appeal) who was also pleased to endorse the Order-in-Original of the original Adjudicating authority vide Order-in-Appeal dated 12.2.2018.

6. The appellants are before us against the above mentioned order of the Commissioner (Appeals). It has been argued by the learned Counsel appearing for the appellant that the lower authorities have arbitrarily rejected the transaction value of the imported consignment without giving any valid ground of its rejection. It has been contended that before rejecting the transactional value as provided under section 14 of the Customs Act, 1962, the department has to put forward some concrete and substantial evidence for rejection of the declared transaction value. It has also been added that the Additional Commissioner had no valid grounds for rejection of the transactional value as provided under section 14 and declared by the appellant. In

the instant case, firstly, the Customs Department has rejected their transactional value on some flimsy ground stating that the supplier's website indicates higher prices and secondly, the procedure provided under the Customs Valuation Rules, 2007 has not been followed. It has been provided in the Valuation Rules that in case the transactional value as declared, is found unacceptable to the Assessing officer, the Valuation Rules need to be followed sequentially. In this case, it has been brought to our notice that department has straight away invoked Rule 7 of the Customs Valuation Rules without rejecting the Rule 5 of Customs Valuation Rules which provides that in case the transaction value as declared by the imported goods comes for rejection, in that case, the value of 'similar goods imported', at contemporaneous import price and normally in the same commercial quantities, need to be adopted for re-determination of the transaction value. The learned Counsel has argued that contemporaneous import price of the similar goods were very much available on the NIDB data which should have formed the basis for re-determination of value for the Customs Department. It has been pointed out that invoiced prices of most of the items imported by the appellant under the above mentioned 6 Bills of Entry are almost same as given in the NIDB data. The table given below gives the contemporaneous value of similar goods, which are comparable in commercial quantities of the same brand :

CALCULATIONS AS PER NIDB DATA

Type of Product	Value per Kg.	Value Per Packet	Rate provided by Appellant
Sea weed Bone	399.21	16.77	17.226
Oat Bone 3”	347.75	21.73	19.14
Calbone 3”	161.58	46.54	44.66
Calbone 3”	158.94	133.51	127.6
Calbone 3”	162	15.53	15.95

7. A glance at the above table indicate that the prices declared by the appellant for the goods imported vide above said Bills of Entry are almost same as that of similar goods imported in the contemporary time and substantially in the same commercial quantities.

8. Learned Counsel has also argued that market inquiry method under Rule 7 of Customs Valuation Rules could have only been followed upon no availability of “similar goods price” and since the contemporaneous import price of the similar goods were available which were almost same as that declared by the appellant in various Bills of Entry with regard to Gnawer brand dog food / snacks, therefore, the rejection of transaction value and enhancement of the same is arbitrary and not as per law. The learned Counsel has also relied upon the judgment of this Tribunal in the case of ***M/s. Shivam***

Electronics vs. CC (Import), Mumbai [2013-TIOL-2025-CESTAT-MUM].

9. We have heard both the sides and also perused the record of the appellant. We are of the view that firstly the department did not have any concrete evidence at the time of assessment of the Bill of Entry for rejecting the transaction value declared by the appellant under section 14 of the Customs Act 1962 as the prices indicated on the website cannot primarily form the basis for undertaking the inquiry of an imported consignment. There should have been more concrete evidence before the investigating authority for prompting them to undertake detailed investigation and seizure of imported consignment. We are also of the opinion that if transaction value under section 14 comes to be rejected, in that case the Customs Valuation Rules, 2007 should have scrupulously been followed, sequentially and as a consequence Rule 5 of the Customs Valuation Rules should have been resorted first.

10. In the present case, we find that the contemporary import prices of the similar goods were very much available at the time of import on the Customs NIDB data which are almost very close to the transaction value declared by the appellant at the time of import of various consignments. We find that these prices should have formed the basis for re-determination or comparison of transaction value under Rule 5 of the Customs Valuation Rules, 2007. A glance at the

table at para 6 (as provided by learned Counsel) makes it clear that the transaction value declared by the appellant were comparable or almost same as that of "similar goods" and therefore, we find that the Department did not have any acceptable and legal evidence to reject the transaction value of the six imported consignments.

11. In cases where the declared price of imported goods is proposed to be rejected by the Department, it is onus on the part of the Department to prove as to why the transaction value is being rejected. We are of the opinion that apart from the contemporary higher prices of similar goods, it is also to be proved that how the additional amount of money is being paid to the supplier. We find that there is not even mention of any such evidences in the show cause notice while reaching at the above opinion. We also take shelter of this Tribunal's order in the case of ***M/s. Shivam Electronics*** (supra) wherein it has been held that the Customs Valuation Rules, 2007 have to be applied sequentially and something more than the mere suspicion, has to be proved for rejection of the transaction value. The relevant extract of the above mentioned order of this Tribunal is reproduced herewith:

> "***5.1 As far as customs valuation is concerned, in the impugned case the value has been enhanced under Rule 7 and 9 of the Customs Valuation Rules, 2007. It is a settled position in law that customs valuation rules have to be applied sequentially. First the contemporaneous import price of***

identical goods have to be seen and thereafter the value of similar or comparable goods. If these are available, then the lower of them should be adopted for determination of the value of goods.

5.2 In the present case it is on record that the appellant has submitted 63 copies of Bills of Entry of identical / similar goods imported at Nhava Sheva. There is no finding recorded by the adjudicating authority as to why the price should not be adopted for determination of value in respect of the impugned goods. Therefore, application of the provisions of Rule 7 and 9 overlooking the provisions of Rule 4 and 5 of the Customs Valuation Rules, 2007 is incorrect in law. On this ground alone, the impugned order is liable to be set aside.

5.3 Inasmuch as the appellant has already paid an amount of Rs.1 crore, the same is sufficient for hearing the appeal and we grant waiver from pre-deposit of the dues adjudged against the appellant. Inasmuch as the adjudicating authority has not recorded any findings as to why the contemporaneous value of identical / similar as evidenced by the 63 Bills of entries furnished by the appellant goods has to go back to the adjudicating authority for reconsideration of the matter.

5.4 Accordingly, we remand the matter back to adjudicating authority to consider the evidence of contemporaneous imports submitted by the appellant and then pass a speaking order. Needless to say that the appellant should be given an opportunity of being heard before passing a fresh order.

6. Thus the appeals are allowed by way of remand. Stay applications are also disposed of. ”

12. In view of the above, we do not find any merit in the Order-in-Appeal. The appeal is allowed with consequential relief to the appellant, if any.

(operative part of the order pronounced in the open Court)

(C L Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

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