IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT – IV

Customs Appeal No. C/51959/2018 [DB]

[Arising out of Order-in-Appeal No CC-A-CUS-D-I-GEN-NCH-116-117-2018 dated 28/03/2018 passed by the Commissioner of CGST & Central Excise-Delhi – I]

HD Motors Co. (India) Pvt. Ltd. ...Appellant

Vs.

CC, New Delhi ... Respondent

Present for the Appellant : Mr. Ayush Mehrotra, Advocate
Present for the Respondent: Mr. Sunil Kumar, DR

Coram: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing : 12.09.2018
Pronounced on : 12.09.2018

FINAL ORDER NO. 53096/2018

PER: RACHNA GUPTA

The Appeal has been directed against the Order-in-Appeal No. 116-117 dated 27.03.2018. There has been a periodical review of Order-in-Original No. SVB/Cus/HS/77/2010 dated 09.03.2011 passed by the Deputy Commissioner of Customs, New Delhi in case of valuation of goods imported by M/s HD Motors Company India Pvt. Ltd./ importer/ the appellants from M/s Harley Davidson Motor Company, USA and M/s Harley Davidson Asia Pacific Pvt. Ltd., Singapore/ foreign supplier. After the said Order had completed its three years cycle, the subsequent periodical review thereof became due which was done vide Order No. 6112 dated 24.02.2015 by Deputy Commissioner, Customs, New Delhi holding that the importer and foreign supplier are related persons and that the invoice value of the goods imported by the importer from foreign suppliers is not influenced by their relationship. Resultantly, the said Order, confirmed the earlier Order of 09.03.2011 as renewed. However, Commissioner Customs General vide his review order No. 25/2015 had directed for filing Appeal with Commissioner(Appeals), Customs in this matter on the ground that Adjudicating Authority has merely relied upon the declaration made by the importer and no other data has been verified before reaching the conclusion. The said Order was held to be a non speaking order. Resultantly, the Department filed an Appeal against the Order dated 24.02.2015 which has been decided in favour of the Department vide Order under challenge, resultantly the present Appeal.

2. We have heard Shri Ayush Mehrotra, Ld. Advocate for the appellant and Shri Sunil Kumar, Ld. DR for the Department.

3. It is submitted on behalf of the appellant that as per the requirement, appellant had provided all the details in the prescribed format for seeking review of order dated

09.03.2011. The Deputy Commissioner had duly considered all those details while confirming the valuation as was fixed vide Order 09.03.2011. The review Order has wrongly held the said Order as the non speaking one and Commissioner(Appeals) has also committed the similar mistake while holding that the submission of the importer should have been verified from NIDB data. The findings are alleged to be beyond the provisions of law. Impressing upon the correctness of Order-in-Original, the impugned Order-in-Appeal is prayed to be set aside and Appeal is prayed to be allowed.

4. While rebutting these arguments, it is submitted by Ld. DR that the original Adjudicating Authority was required to examine as to whether the data provided is sufficient in deciding the value of the imported goods under Rule 4 or Rule 5 of the Customs Valuation Rules, 2007. It has been specifically mentioned in the impugned order that other than the declaration made by the importer, the original Adjudicating Authority has not compared any other data due to which the same is a non speaking order. It is also impressed upon that the Adjudicating Authority was aware of the relationship between the importer as well as the foreign supplier. Hence, an elaborate discussion was required. The same, since was missing, the order under challenge is justified, Appeal accordingly is prayed to be dismissed.

5. After hearing both the parties, we are of the opinion that prior adjudicating the controversy, the law applicable to the aspect is important to be looked into. Section 14 of the Customs Act:

> *"5.1 Section 14 of the Customs Act provides the methodology for valuation of imported goods which specifies that in situations where the buyer and seller are not related, the value of the imported goods shall be the transaction value of such goods, i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, with necessary additions for costs and services as specified in the Valuation Rules.*
>
> *5.2 In situations where the parties are related, Section 14 of the Customs Act specifically provides that the valuation of transactions between such parties shall be determined under the Valuation Rules.*
>
> *5.3 The Valuation Rules provide the methodology for determining the value of the imported goods. In this regard, we wish to highlight that Rule 3 of the Valuation Rules specifically deals with the method of valuation of imported goods. Thereunder, Rule 3(1) states that subject to the provisions contained in Rule 12, the value of the imported goods shall be the transactions value of the goods, with adjustments, if any, provided under Rule 10 of the Valuation Rules*

5.4 Rule 3(2) of the Valuation Rules provides that the transaction value for imports between related parties shall be accepted under Rule 3(1) when the transaction value satisfies the provisions of Rule 3(3) of the Valuation Rules.

5.5 A conjoint reading of Rule 3(2) and Rule 3(3) above evidences that the transaction value of related party imports shall be accepted through either of the following methods:

(i) An examination of the circumstances of the sale indicates that the relationship between the parties did not influence the price of the imported goods;

OR

(ii) The importer demonstrates that the declared value of the goods closely approximates the transaction value of identical or similar goods in sales between unrelated parties, or the deductive value for identical or similar goods, or the computed value for identical or similar goods.

5.6 As discussed above in our first ground of appeal, Rule 3(1), Rule 3(2) and Rule 3(3) are intrinsically linked and provide for a mechanism to determine the acceptability of the transaction value for related party imports. Therefore, it is evident that the proper officer is first required to ascertain that the transaction value cannot be determined under Rule 3 before proceeding to apply Rule 4 to Rule 9 of the Valuation Rules.

5.7 A bare perusal of the text of Rule 3(1) indicates that the determination of transaction value under Rule 3 is subject to the provisions of Rule 12 of the Valuation Rules. Relevant text of Rule 12 is extracted below for reference:

> *"Rule 12. Rejection of declared value:- when the proper officer <u>has a reason to doubt the truth or accuracy of the value declared</u> in relation to any imported goods, <u>he may ask</u> the importer of such goods to furnish further information including documents or other evidence <u>and if, after receiving</u> such further information, or in the absence of a response of such importer, <u>the proper officer still has reasonable doubt</u> about the truth or accuracy of the value so declared, <u>it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3</u>. ""*

6. The above discussion to statutory provisions makes it abundantly clear that the detailed inquiry into the transaction value is not required to be conducted at every instance except where the proper officer has previously examined the relationship between the parties or where the proper officer has detailed information about the buyer and the seller. In addition, none of these Rules require the adjudicating officer to

inquire into NIDB data as was directed vide the order under review dated 18.05.2015 and has been accepted vide order under challenge. The law has been settled that onus to prove that the declared price did not reflect the true transaction value is always on the Department and that Department is bound to accept the transaction value entered between the two parties, unless and until, Department has a cogent evidence that identical or similar goods were imported by other importers at higher price as it was held by Supreme Court in the case **Commissioner of Customs, Mumbai Vs. Prodelin India Limited 2006 (202) E.L.T. 13 (S.C.)**. In another case titled **Commissioner of Central Excise, Rohtak Vs. Sai Sales Corporation 2012 (278) E.L.T. 197 (Tri.-Del.)** has held that mere suspicion cannot be used to reject the declared value and proceed for valuation under alternative valuation methodologies provided under the Valuation Rules. It was held that for rejecting the declared price, it must be proved with cogent evidence that the conditions for accepting the transaction value as given in the Rule are not satisfied. The element of doubt of the proper officer under Rule 10A of the Rules must be proved with the cogent evidence.

7. Now, coming to the facts of the present case, it is an admitted fact that appellant's/ importer's relationship with foreign suppliers was previously examined in terms of SVB order dated 09.03.2011. After the expiry of subsequent three

years, the importer provided detailed information about itself as well as about the foreign suppliers in the requisite format alongwith the costing information, commercial agreements between the parties, financial statements, invoices, certificate from Chartered Engineer, transfer pricing reports, etc. confirming that the pricing of the imported goods in question i.e. the motor cycles parts and accessories were undertaken at margins par with industries standard. It becomes clear that the requirements for Rule 3(3) of the Valuation Rules for acceptance of declared transaction value has been fulfilled. Since, NIDB data is not a mandatory requisite under the Rules, as discussed above, the same cannot be held to be a cogent evidence proving the reasonable doubt of the assessing officer.

8. We are of the opinion that the order under challenge has wrongly rejected the transaction value at the time of reviewing order dated 09.03.2011 merely for want of its comparison with NIDB data. There is no evidence otherwise for supporting the doubt that the relationship of the parties herein had influenced the transaction value. Mere suspicion or doubt is not sufficient as discussed already above. As a result, we hereby set aside the order under challenge. Appeal accordingly stands allowed.

[Operative part pronounced in the open Court on 12.09.2018]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.