IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 3.10.2018
Date of Pronouncement: 15.2.2019

Appeal No. C/50389/2017-DB

(Arising out of Order-in-Original No. 15/2004 dated 25.6.2004 passed by the Commissioner of Customs, ICD, TKD, New Delhi)

M/s G & G Enterprises Appellant

Vs.

CC, ICD, TKD, New Delhi Respondent

Appearance

Shri Rajesh Rawal, Advocate - for the appellant

Shri R.K. Manjhi, DR - for the respondent

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 50243/2019

Per Bijay Kumar :

The present appeal is against the Order-in-Original No. 15/2004 passed by the ld. Commissioner, ICD, TKD, New Delhi. Being aggrieved by the impugned order, the appellant is before this Tribunal.

2. Briefly stated that facts of the case are that the appellant are, engaged in importing automobile motor parts such as Heat Exchanger, Condenser and magnetic clutch assemble. The Customs entertained a

view that the appellant had been importing these items at heavily under invoiced price including parts of air conditioner, accordingly the officer of SIB, New Custom House, New Delhi visited the premises of the appellant and resumed two Bills of Entry viz. Bill of Entry No. 113121 dated 17.11.1997 and Bill of Entry No. 10080 dated 17.1.1998. The appellant had imported the consignment of aforestated parts and the same were cleared after assessment and examination by the Customs. It was found during the investigation that the appellant has imported heat exchanger, filter drier, magnetic clutch assembly declaring the value of Rs. 9.40, 14.91 and 497 per piece respectively. On comparison of this import price with the other Bills of Entry for identical/similar goods imported by M/s Sanden Vikas (India) Ltd., it was noticed that the goods imported under above stated two Bills of Entry were under invoiced. The details of the contemporary import price stated to be made by the appellant and those by M/s Sanden Vilas (India) are detailed below:

	Sanden Vikas (I) Ltd	**M/s G & G Enterprises**
Bill of Entry No. & date	605118 dt. 9.12.97	113121 dt. 17.11.97
Item	Heat Exchanger Condenser	Heat exchange condenser
Unit Price	US $ 45.60 (FOB)	Sing $ 4 (C&F)
Bill of Entry No. & date	5914 dt. 17.11.97	10080 dt. 17.1.98 & 113121 dt. 17.11.97
Item	Filter Dryer	Filter Dryer
Unit Price	Sing. $ 7.15 (C&F)	Sing. $ 0.6 (CIF)

3. The statement of Shri G.R. Batra, proprietor of the appellant company was recorded under Section 108 of the Customs Act, 1962 (for short, Customs Act). Shri G.R. Batra, in his statement stated that they have filed those Bills of Entry for the imports of the consignment of automobile parts such as heat exchanger, filter dryer, magnetic clutch assembly from M/s Formula Intertrade Co. Ltd., Thailand as per the price declared in the export invoice. He also stated that the product imported by the appellant was not branded one, and was also of inferior quantity when compared with those of M/s Sanden Vikas (I) Ltd. Not only that, he could also negotiate a discounted price to the extent of 30% from the supplier however, he could not submit the country of origin certificate. In the country of origin certificate, it was agreed by Shri G.R. Batra that the same indicated origin of Japan. It was explained by him that heat exchanger and condenser imported by them at Singapore $4 per piece after mutual meeting in China. However, same has been embossed made in the Japan in order to get market popularity. Similarly, filter dryer which had also been imported Singapore $ 7.15 per piece by M/s Sanden Vikas at the strength of invoice of M/s Product International Pvt. Ltd., Singapore but the same is not comparable with the import by the appellant.

4. However, the Show Cause Notice was issued to the appellant importer demanding duty of differential duty rejecting the declared

price and also imposing penalty and interest as per Customs Act. The importer were also proposed for confiscation under Section 11(m) of Customs Act.

5. Ld. Advocate on behalf of the appellant contests the impugned order on the ground that the order has been passed without affording personal hearing to the appellant. The appellant contacted the adjudicating authority and requested for the personal hearing however was surprised, to find the order dated 2.3.2010 after getting a call from Supdt. for recovery for the payment of dues.

6. It was also said that the goods imported by the appellant are not identical goods but are of different quality. The appellant has imported the goods of Chinese origin however, comparison is being made with those of reputed brand of Japanese origin. It was also submitted by ld. Advocate that initially the country of origin certificate was submitted showing the Japanese origin which was later on, corrected by the supplier stating clearly that the same of the Chinese make. It was also submitted that in his statement Shri G.R. Batra has never accepted that the item imported by the appellant are of Japanese origin and same are branded goods. Ld. adjudicating authority failed to take into consideration the various averment made by the appellant. It was also submitted that in this case assessment has already been made under

provisions of Section 17 of the Customs Act and the consignment were cleared on payment of duty in the year 1997 and 1998. However, demand has been raised in 2002 after the lapse of 4/5 years. The assessed Bill of Entry was not appealed against by the department and, therefore, is not open to the Revenue to raise the demand under the provisions of Section 28 of the Customs Act as there was no mis-declaration on their part. Reliance was placed on the decision of Hon'ble Supreme Court in the case of ***Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. -*** 2000 (120) ELT 285 (SC) and ***Priya Blue Industries Ltd. Vs. CC (Pre.)***. – 2004 (172) ELT 145 (SC). Ld. Advocate therefore, argued that the impugned order is , therefore, not sustainable.

7. On the other hand, ld. DR on behalf of Revenue reiterated the grounds contained in the impugned order for confirmation of demand.

8. We have heard the parties and considered the rival submissions. In this case, it is fact that the appellant has imported consignment namely heat exchanger, filter dryer, magnetic clutch assembly from Thailand and Singapore were not branded one. The Revenue is attempting and comparing the quality product imported by M/s Sanden which is reputed supplier and the imported goods are branded one. We also find that the import in this case has already been assessed finally

and cleared after examination thereof. The demand cannot be raised after the gap of 4/5 years on the basis of alleged contemporaneous import price. It is on record that the alleged contemporaneous price of M/s Sanden Vikas was available with the assessing officer at the time of import but the same was not considered at that time considering these to be of different quality. The reliance cannot be placed on the same contemporary price after such a long period. We also find in this case the goods were not liable for confiscation as proposed in Show Cause Notice and held in the impugned order in view of above.

9. We also find that the appellant had imported Condenser during same period vide Bill of Entry No. 3446 dated 21.7.1997 and 3515 dated 25.7.2997 from Air Cargo Complex, Trivandrum. These imports were also compared with the import price vide Bill of Entry No. 605118 dated 9.12.1997 imported by M/s Sanden Vikas India. The aforesaid import made by the appellant travelled to Hon'ble CESTAT in ***G.R. Batra Vs. Commissioner of Customs, Trivandrum –*** 2006 (206) ELT 843 (Tri.-Del.), wherein it is held as under :

> "**5.** We have considered the submissions made by both the sides. In this case, the value of the condensers imported by the appellants were enhanced solely on the ground that the condensers imported by M/s. Sanden Vikas India Limited, Faridabad from M/s. Sanden Corporation, Japan were valued at US $ 45.60 per piece. We find that M/s. Sanden Vikas India Limited, Faridabad had imported condenser from Sanden Corporation, Japan where identification mark

for these condenser are 001Z-RU26692E and these have been described as the component as per part No. IS-087860 whereas the condenser imported by the appellant are described as M.P. parts condenser by M/s. Uniden Systems (S) PTE Ltd., M-part condenser by M/s. Pely Auto Aircon Parts PTE Ltd. The country of origin is not mentioned for comparing the value of these condensers imported by the appellants. There is no examination report available on the bill of entry with the department to show that these are branded goods and manufactured by M/s. Sanden Corporation, Japan. No contemporaneous invoice of any other importer was taken into consideration for coming to the conclusion that these condensers imported by the appellants are not of the value as declared by them in the bill of entry and in the invoices. We find that when the goods were cleared from Customs these were cleared after finalisation of provisional assessment and department has taken about six months for investigation before finalisation of assessment of these goods at the time of clearance from the customs. They could not get any invoice of a price other than the prices declared by the appellant. Even the invoice of import of condensers from M/s. Sanden Corporation by M/s. Sanden Vikas India Limited, Faridabad was also available with the department but they have not utilized this. After four years of the clearance of the goods the investigation was initiated and statement of the representative of the CHA and the statement of the Prop. of the importing concern was recorded. These statements were used in the adjudication to show that the importer as well as the CHA has stated that the condenser imported by the appellants were identical to those imported by M/s. Sanden Vikas, Faridabad. We find that nowhere in the statement of CHA this fact has been stated. Revenue also could not show this after verification of the statement. We find that in the statement of Shri G.R. Batra, Prop, of the appellant concern, it is stated that "I have been shown a copy bill of entry No. 113121 dated 17-11-1997 filed by my company along with invoice No. 57521 dated 30-10-1997 issued by M/s. Uniden Systems (S) PTE Ltd., Singapore and corresponding country of origin certificate. It is true that in the country of origin certificate the manufacturer of goods have been mentioned as M/s. Sanden Corporation, Japan. I have also shown invoice No. 09520 dated 5-12-1997 issued by M/s. Sanden Corporation, Japan. It has been seen that the item heat exchanger which we have imported at the price of Singapore $ 4.00 per piece is being compared with Sanden condenser supply at a price of US $ 45.60 per piece. It is evident that the heat exchange condenser imported by us at Singapore $ 4.00 per piece is actually made in China with the made in Japan embossing on his sticker because of marketing gimmick. This is not made in Japan item invoice from supplier will be submitted to the custom shortly". Thus, from this statement it is clear that neither Shri G.R. Batra, Prop. of the importing concern nor the CHA has ever accepted that the condenser imported by the appellant concern are of Japanese origin and they are branded goods of Sanden Corporation. Therefore, their prices cannot be compared with the stray import made by M/s. Sanden Vikas India Limited under one bill of entry for a small quantity of 240 branded condenser. There is no other evidence by which the transaction value would have been rejected after finalisation of the assessment by the customs. Therefore, on facts itself we do not find any merit in the order confirming the demand. Therefore, we do not find it necessary to give our views on other contentions raised in the defence.

6. The order of the Commissioner is therefore set aside and appeal is allowed with consequential relief, if any, to the appellants.

The Revenue's appeal against this order before Hon'ble Supreme Court was dismissed in Civil Appeal No. 3391/2006, wherein it is held as under:

"The issue is as to whether the value of condenser imported by the respondent is $ 4 per pipe as declared by the respondent-assessee or it is to be taken at $45.6 per piece which was declared by the Revenue. The Tribunal has recorded the findings that goods in question imported were of China in original whereas the Department wanted to compare the same with the goods imported from Japan for the purpose of claiming the aforesaid value. On that ground, the Tribunal rejected the case of the Revenue and further recorded that since no other evidence is produced by the Revenue to arrive at the transaction value, the value as declared by the assessee-respondent is accepted. These are mere findings of fact and no question of law arises for consideration.

2. The appeals are, accordingly, dismissed.”

We find that the impugned order is not sustainable in view of aforesaid judgement, in respect of all items imported by the appellant.

10. We, thus, hold that the impugned order is bad in law and not sustainable. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit as per law.

(Pronounced in Court on 15.2.2019)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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