IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT HYDERABAD

**C/651/2008**

(Arising out of Order-in-Appeal No. 24/2008 (H-II) Cus. dated 12.06.2008 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals-II), Hyderabad).

M/s. Big Apple Mfg. : Appellant

Vs.

CCE, Hyderabad-II : Respondent

Appearance

Shri T.Jaypathi Rao, Advocate
for the Appellant

Shri Dass Thavanam, AC (AR)
for the Respondent.

**CORAM :**

**Hon'ble Shri M.V. Ravindran, Member (Judicial)**
**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**

Date of Hearing/Decision: **01.02.2018**

FINAL ORDER No**. 30371/2018**

**Per: Madhu Mohan Damodhar,**

The facts of the case are that M/s. Big Apple Manufacturing, the appellant herein, had filed Bill of Entry dated 21.09.2006 for import of goods declared as 1344 nos. of Celeron CPUs and 86 Nos. of P-III 700 Sockets with declared assessable value of Rs.3,28,400/-. On examination the goods were found to be second hand and certain discrepancies in respect of description and quantity were also noticed. On the request of the importer, goods were subjected to examination by a Chartered Engineer, who confirmed that there were discrepancies in the description and quantity vis-à-vis in the invoices and that all the goods were second hand. In proceedings initiated against the appellants, the original authority vide an order dated 17.10.2006 determined the assessable value as Rs. 4,80,060/-, ordered confiscation of the goods under Section 111 (d) and (m) of the Customs Act, 1962, however, gave option to redeem the goods on payment of a fine of Rs. 80,000/- under Section 125 ibid. A penalty of Rs.40,000/- was also imposed under Section 112 (a) ibid. In the first round the Commissioner (Appeals) vide an order dated 14.03.2007 rejected the appeal of the appellant as barred by limitation under Section 128 (1) of the Act. However, on further appeal, the Tribunal vide Final Order No. 08/2008 dated 02.01.2008 condoned the delay and allowed the appeal by way of remand to the Commissioner (Appeals) to decide the case on merits. The Commissioner (Appeals) vide impugned order No. 24/2008 (H-II) Cus. dated 12.06.2006, found no reason to interfere with the order of the original authority except taking into consideration the actual freight and enquiry initiated under Rule 10A of the Valuation Rules. The lower appellate authority also held that the original authority has not given the calculation for margin of profit either in the notice or in the order and remanded the matter to enable such calculation. Hence this appeal.

2. On 01.02.2018 when the matter came up for hearing, Ld. Counsel, Shri T. Jaypathi Rao appeared for the appellants. The

submissions made on behalf of the appellants can be summarized as under:-

i) Determination of the transaction value under Rule 8 of the Customs Valuation Rules without ruling out valuation under Rule 4 onwards is illegal and unjust, as has been held by a number of decisions and judgments.

ii) Both the adjudicating authority and the Commissioner (Appeals) have not considered the submissions of the appellant that used micro-processors are freely importable and that there is no license is required for such importation.

iii) Clarification given by DGFT, which was submitted to these authorities have not been considered.

iv) The imposition of redemption fine and penalty is unwarranted.

v) There are two certificates for the same goods by the Chartered Engineer which contradict each other and hence cannot be relied upon.

3. On the other hand, on behalf of Revenue, Ld. AR, Shri Dass Thavanam supported the impugned order.

4. Heard both sides.

5. We find that the appellant is aggrieved with the manner of arriving at the enhanced value. IT is also a grievance that the goods are in the nature of reconditioned goods which are freely importable as per the import policy in force. There is also an allegation that a second report was prepared by the Chartered

Engineer on pressure from the department. The import pertains to September 2006. At this point more than 11 years have elapsed. After such a gap of time, it would not be possible to cross verification of the appellant's claim concerning the reconditioned nature of the imported goods. The only recourse then would be to rely on the certificate given by the Chartered Engineer. The original authority has found that the Chartered Engineer's Certificate did not mention about the claimed recondition of the impugned goods but that the goods were mentioned as used, hence would require license for import. We also find that the allegation of a second report of the Chartered Engineer and also about the requirement of import license for the goods have been analysed and adjudged upon by the Commissioner (Appeals). We are therefore unable to find any infirmity with the impugned order passed against upholding the enhancement of value and confiscation of the impugned goods. At the same time, we find that the Commissioner (Appeals) has found merit in the arguments that when actual freight and insurance was available that should have been taken instead of a notional quantum. In the event, we do not find any cause for interfering with the impugned order, for which reason it is sustained. The appeal filed by the appellant is dismissed.

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

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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