CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. C/247/2009

(Arising out of Order-in-Original No. 06/2009-Adjn- Cus dated 29.01.2009 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad)

M/s SSK Impex Pvt. Ltd., **…..Appellant(s)**

Vs.

Commissioner of Customs, **…..Respondent(s)**
Hyderabad - Customs

Appearance
Shri Ram Sharma Chunduru, Advocate for the Appellant.
Shri Arun Kumar, (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 21/02/2018
Date of Decision: 21/02/2018

FINAL ORDER No. A/30462/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Original No. 06/2009-Adjn- Cus dated 29.01.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that appellant herein had imported Desk top Board classic series, Intel Make duo processors of various series and declared a value of approximately Rs. 12 lakhs. The said transaction value was rejected by the lower authorities and redetermination of assessable value was interms of the provisions of Customs Valuation Rules, 1988. The Adjudicating Authority in the case in hand concluded that the quantity in description of the goods is based on the invoice wherein the quantity did not tally with the actual description of the goods in respect of the Intel core duo processors hence rejected the same as also on the finding that the invoices issued by the person other than manufacturer. After rejecting the transaction value the Adjudicating Authority re-determined the value as per the provisions and arrived at the value based upon similar goods imported, nearest to the time of import of the goods by the appellant. The Adjudicating Authority confirmed the demands raised and appropriated the amount already paid by the appellant importer at the time of provisionally releasing of the goods; confiscated the goods in terms of Section 111(m) of the Customs Act, 1962 and imposed redemption fine of Rs. 8,00,000/- and also imposed equivalent amount of penalty of Rs. 28,10,331/-.

4. Learned Counsel draws our attention to the findings of the authorities and submits that there is no justification given in the order for rejecting the plea raised as to goods being mis-sent by their supplier; the Adjudicating Authority has passed the order on presumptions; that no findings have been recorded, hence there was no mis-declaration on the part of the appellant, the transaction value should be accepted and the demands be set aside.

5. Learned Departmental Representative reiterates the findings of the lower authorities and submits that contemporary imports indicate that the goods were undervalued.

6. On careful consideration of submissions made by both sides, we find that the Adjudicating Authority has, in this case on reasonable suspicion for rejecting the transaction value and has given detailed finding in paragraph No. 10 of the Order-in-Original as to why and how he has ordered for re-determining the value of the consignment of goods imported by the appellant. We reproduce the same

> ***10. Rule 5 of the Customs Valuation Rules, 1988 reads as below:***
> *"(1) (a) subject to the provisions of Rule 3 of these Rules, the value of imported goods shall be the transaction of identical goods sold for export to India and imported at or about the same time as the goods being valued"*
>
> *Therefore the values of identical goods imported at the nearest to the time of import of the impugned goods was taken on the NIDB data available and the values adoptable are found to be as follows:*

Sl. No.	Description of computer mother boards	Quty. In Nos.	Value as declared by Importer Rs.	Value in respect the quantity Rs.	Value of identical goods as per NIDB Rs.	Value in respect of the qty. as per Rule 5 of CVR 1988 Rs.
1.	Intel Mother boards Model BOXDG33BUC	760	1032.50	7,84,700	4104.59	31,19,488
2.	Intel Mother boards Model BOX945GCPE	200	1032.50	2,06,500	2211.60	4,42,320
3.	Intel Mother boards Model BOX0945GCCRL	140	1032.50	1,44,550	2825.93	3,95,630

On scrutiny of the NIDB data available in respect of contemporaneous imports, I find that the values as mentioned above are rightly adoptable for redetermining the value of the impugned goods in terms of Rule 5 of the Customs Valuation Rule, 1988. In adopting these values, I am satisfied that the due consideration was shown towards aspects like physical characteristics, quantity, make, model, sale at the same commercial level. In view of these facts, I uphold the adoption of value of identical goods as discussed in the show cause notice. In arriving at this decision, I find my view is supported by the following case laws:

i) Deepak Electronics [1994 (73) ELT 817]
ii) N.K. Agarwal [1994 (74) ELT 83]
iii) Polyvinyl Industrial Corporation [1994 (74) ELT 426]
iv) Ankit Audio Industries [1995 (76) ELT 173]

7. In the grounds of appeal, appellant has not controverted the above findings as to there being contemporary import, and values of which are applied in the case in hand. The only submission is that the supplier had written a letter the goods have been mis-sent. In our considered view, the findings of the Adjudicating Authority are correct and does not require any interference and the impugned order re-determining the value of the consignment of goods is upheld, as also the duty liability.

8. Since we have come to a conclusion that there is mis-declaration of value; the confiscation of goods ordered is also upheld, and redemption fine in lien of confiscation seems to be in consonance with the numerous decisions of the Tribunal, accordingly, the confiscation is upheld, as also the redemption fine imposed.

9. As regards penalty we find that the penalty has been imposed under Section 112 of the Customs Act, 1962 is of Rs. 28,10,331/-, which in our view seems to be dis-proportionate, considering the facts and circumstances in the case in hand. In similar set of facts when there was mis-declaration of the value and the value stands enhanced, Tribunal has been taking a view that penalty imposed should be proportionate to the value which has been re-determined. In the case in hand, we find that the ends of justice would be met, by upholding the penalty but the same is reduced to Rs. 3 lakh from Rs. 28,10,331/-. The penalty is reduced to Rs. 3 lakh which shall be paid by the appellant.

10. The appeal stands disposed of as indicated herein above.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

C.J. MATHEW	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi….