CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench - Court No. – I

Customs Appeal No 1894 of 2010

(Arising out of **Order-in-Appeal** No.47/2010 (H-II) Cus, dated 22.07.2010 passed by Commissioner (Appeals), Hyderabad-II)

R K Exports .. **APPELLANT**
G-23, Sairam Estate,
Nallakunta, Hyderabad,
Telangana – 500 044.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

AND

Customs Appeal No 1967 of 2010

(Arising out of **Order-in-Appeal** No.48/2010 (H-II) Cus, dated 22.07.2010 passed by Commissioner (Appeals), Hyderabad-II)

R K Exports .. **APPELLANT**
G-23, Sairam Estate,
Nallakunta, Hyderabad,
Telangana – 500 044.

VERSUS

Commissioner of Customs, .. **RESPONDENT**
Hyderabad - Customs
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

Appearance
Shri B.V. Kumar, Advocate for the Appellant.
Shri P. Sudhakar Reddy, Deputy Commissioner for the Respondent.

Coram: HON'BLE Ms. SULEKHA BEEVI, C.S. MEMBER (JUDICIAL)
HON’BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. A/30682-30683/2019

Date of Hearing:23.10.2019
Date of Decision:23.10.2019

[Order per: SULEKHA BEEVI, C.S.]

1. Brief facts are that the appellents imported PVC Flex Sheet from China vide two bills of entry. Department entertained the view that the value declared by the importer is less and the same was rejected. Assessments were passed enhancing the value in both the bills of entry. Though appellants paid duty under protest they filed appeal before the Commissioner (Appeals). Since the assessing authority had not given any

reasons for rejecting the value declared by the appellant, the matter was remanded to the adjudicating authority to pass speaking order for enhancing the value. In such reassessment the authority confirmed the enhancement of value. Aggrieved by such order, the appellant filed appeal before the Commissioner (Appeals) and vide separate orders dated 22.07.2010 the Commissioner (Appeals) upheld the enhancement of value of goods. Aggrieved, the appellant has filed these appeals.

2. The issue involved in both these appeals being the same they are heard and disposed by this common order.

3. The Learned Counsel Sh. B.V. Kumar appeared for the appellant. He submitted that the appellant has been continuously importing the said goods as per contract entered with the overseas manufacturer-supplier. The appellant has been importing PVC Flex Sheets/Rolls of different specification from time to time. The materials supplied have to be in accordance with the properties described and should also satisfy the test method mentioned therein. The appellant places purchase order for the supply of Shri Ganesh Brand PVC Flex Sheet Rolls (PVC Cloth) "S.G.-100, 300, G.S.M. front lit of different widths and length of 50mtrs at US$ 0.26 per square metre". Similarly, purchase order dated 19.08.2007 was placed for the other goods imported by the appellant. When there was a standing contract with the manufacturer/supplier the department ought not to have rejected the transaction value without giving cogent reasons.

4. It is also submitted by him that the original authority has compared the value of goods which do not fit into the description of the goods imported by the appellant. He adverted to the findings of the original authority and explained that the alleged contemporaneous import compared by the authority is entirely different from the goods imported by the appellant. Thus the enhancement of value is against the provisions of law.

5. The Learned Counsel relied upon the decision in the appellant's own case vide Final Order No. A/30039/2018 dated 29.01.2018 wherein for the import of very same goods, the order passed by Commissioner (Appeals) setting aside the enhancement was appealed before the Tribunal by Revenue. The said appeal filed by Revenue was dismissed as being without any merits. Again, in the case of M/s Shilpa Abrasive Manufacturing Company Vs CC, CE & ST, Hyderabad-II vide Final Order no. A/30351/2018

dated 29.01.2018 the Tribunal relied upon the decision in the case of JD Orgochem Ltd., reported in [2008 (226) ELT 9 (SC)] to hold that unless there is evidence for contemporaneous imports the transaction value cannot be rejected.

6. The Learned AR Shri P.S. Reddy supported the findings in the impugned order.

7. Heard both sides.

8. The Learned Counsel for appellant has much emphasized that imports were made on the basis of contract entered by the appellant with the manufacture supplier. A letter dated 31.01.2018 is seen issued by the appellant to the Assistant Commissioner of Customs informing that the imports are on the basis of such long term contract. After perusal of the impugned order we find that the transaction value has been rejected without according sufficient reasons. Further, on perusal of the discussions and findings of the original authority, we find that the department has made comparison of the contemporaneous imports of which description of the goods do not match with the goods that are imported by the appellant. The brand name of the goods as well as the specification are different. Comparison of the value of such goods which are different from the goods imported by the appellant and enhancement thereon is against the provisions of law. Further, in the decisions relied by the Learned Counsel for appellant the issues have been settled in favour of the assessee.

9. From the discussions made above as well as following the decisions, we are of the considered opinion that the enhancement of value cannot sustain. The impugned orders are set aside. The appeals are allowed with consequential reliefs, if any.

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

(SULEKHA BEEVI, C.S.)
MEMBER(JUDICIAL)

(P. ANJANI KUMAR)
MEMBER(TECHNICAL)

Jaya