IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, EASTERN ZONAL BENCH: KOLKATA

Cus.Appeal Nos.77402,77403/18

(Arising out of Order-in-Original No.Kol/Cus/Commissioner/Port/48/2018 dated 13.06.2018 passed by the Commissioner of Customs (Port), Kolkata)

M/s Balaji Enterprises
Shri Ashok Kumar

Applicant (s)/Appellant (s)

Vs.

Commr. of Customs (Port), Kolkata

Respondent (s)

Appearance:

S/Shri B.K.Singh & S.M.Akhtar, both Advocates for the Appellants(s)
Shri S. Guha, Asstt.Commr. (A.R.) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 31.10.2018
Date of Pronouncement : 06.12.2018

ORDER N. FO/A/77057-77058/2018

Per Bench :

The present appeals are against the Order-in-Original No.Kol/Cus/Commissioner/Port/48/2018 dated 13.06.2018.

2. The appellants filed Bill of Entry No.2763068 dated 07.08.2017 and declared certain electronics goods. When the goods were examined by DRI, the examination report was as under :

Sl.No.	Description of goods declared in Bill of Entry	Description of goods found on examination (Actual)	Total Quantity in pcs.	Declared Assessable Unit Price in Rs.
1.	Power Supply for DTH	SMPS power supply board used	232200	6.455

		for controlled power supply in Set Top Box		
2.	Main PCB for DVB with connector	MPEG-2 Card used as main board of Set Top Box	50000	19.363
3.	Small PCB with connector for DVD	Small PCB with connector for DVD	10000	16.1375
4.	Not declared	MPEG card for DVD player	10000	undeclared

It was noticed that certain items were not declared. The DRI undertook further investigation to ascertain value of the goods not declared as well as to ascertain correct value of the declared goods. Upon conclusion of investigation, it appeared that the " main PCB for DVB with connector" was actually " DVB –C MPEG-2 Card" which was used in Set Top Boxes for converting the source signal into contents in a form that can be displayed on TV Screen and other display device. Further the items declared as "Power Supply for DTH" was actually "SMPS (Switching Mode Power Supply) Printed Circuit Board" used in Set Top Boxes. Undeclared items were found to be "MPEG Card" for DVD player.

3. The DRI ascertained the correct value of the goods by referring to NIDB Data for contemporaneous import prices in comparable quantity. On the basis of such enquiry, the valuation of the consignments was done as follows :

Sl.No.	**Description of goods declared in Bill of Entry**	**Description of goods found on examination (Actual)**	**Total Quantity in pcs.**	**Declared Assessable Unit Price in Rs.**	**Ascertained Assessable unit Price in Rs.**
1.	Power Supply for DTH	SMPS power supply board used for controlled	232200	6.455	28.6093

		power supply in Set Top Box			
2.	Main PCB for DVB with connector	MPEG-2 Card used as main board of Set Top Box	50000	19.363	253.18175
3.	Small PCB with connector for DVD	Small PCB with connector for DVD	10000	16.1375	16.1375
4.	Not declared	MPEG card for DVD player	10000	undeclared	98.70225

4. The statement of Shri Ashok Kumar, proprietor of the Appellant Company, was recorded. After conclusion of investigation, show-cause notice dated 16.02.2018 was issued and upon conclusion of the adjudication process, the impugned order was issued in which the adjudicating authority held as follows :

(i) The declared assessable value is rejected under Rule 12 of Customs Valuation Rules, 2007 ;

(ii) The assessable value of the imported goods including those un-declared was re-determined at Rs.2,06,55,070/- under Rule 9 and Rule 4 of Customs Valuation Rules, 2007;

(iii) The imported goods were ordered for confiscation under Section 111 (l) and 111 (m) of the Customs Act, 1962. However, an option for redemption was extended on payment of redemption fine of Rs.20.00 lakhs under Section 125 ibid ;

(iv) Differential duty of Rs.74,13,247/- was demanded ;

(v) Penalties were imposed on the importer as well as on Shri Ashok Kumar under Section 114A of the Customs Act, 1962.

5. The appellants' case is argued by Shri B.K.Singh, ld.Advocate along with Shri S.M.Akhtar, ld.Advocate as well as Revenue is represented by Shri S.Guha, ld.D.R. assisted by the DRI Officers, Shri Ranjan Sen, S.I.O. and Shri Koushik Halder, I.O.

6. At the outset, the ld.Advocate for the appellants, fairly admitted that certain un-declared goods were found in the consignment at the time of examination of the goods by DRI. He submits that the importer is not challenging the value of the un-declared items. Further, he admitted that the importer is not challenging the value adopted for Sl.No.3 i.e. Small PCB fitted with six point connectors. With reference to the PCB for DVD connector, the ld.Advocate submits that the goods imported by them were meant for DTH (Direct to home application). He draws our attention to the relevant commercial invoices found in the consignment and submitted that the description of the second items was given as PPCB for DVD/DTH un-branded. He argued that the imported goods were meant for DTH. He contested the value adopted by the Revenue for these items. He submitted that the Revenue has adopted the value for the items "Main Board of DVB-C MPEG-2SD STB". He argued that the item imported is different from the items whose value has been adopted. He further submitted copies of several invoices and Bills of Entry said to be of comparable goods imported contemporaneously and argued that the declared value may be accepted by disregarding the value adopted by the Revenue inasmuch as the values sought to be adopted were for totally different goods. With reference to first item. i.e. SMPS Power Supply for DTH,

he submitted that these boards were meant for assembly of power supply for DTH, but the Revenue authorities have adopted value for the items, "SMPS Card (parts of Set Top Box for gaining access to internet)". Finally, he has prayed that the appeals may be allowed.

7. The ld.D.R. for the Revenue has justified the impugned order and the following submissions have been made :

(i) Certain un-declared goods were found in the consignment at the time of 100% exemption of the goods by DRI. It is submitted that the goods declared as "PCB for DVB with connector" were in fact mis-declared and were actually "MPEG-2 Card" used as main board of Set Top Box. Such conclusion was arrived at by DRI by reference to the website "alibaba.com." In the actual description, the item No.2 were under specification "AliM3329". These goods have been specified as "MPEG-2 Card DVB with connector". This is the basis on which DRI has proceeded to adopt the value of comparable contemporaneous import of DVB-C MPEG-2 Card.

(ii) With reference to the power supply card, it is submitted that PCB is meant for SMPS, which is general purpose board, which can be used for power supply of any electronic equipment. Consequently, the comparable value from NIDB Data has been adopted.

(iii) It was finally submitted that the impugned order may be sustained.

8. In his rejoinder, the ld.Advocate submits as follows :

(i) Power supply card cannot be the same for electrical/electronic equipments ;

(ii) In respect of alibaba.com website referred to by the Revenue during argument, he submits that the items under dispute have referred to not only MPEG-2 Card but also DTH under specification mark as "AliM3329". Accordingly, he submitted that by referring to the website "alibaba.com.", DRI has arrived at the wrong conclusion that the product is different, accordingly, the value is not proper.

9. Heard both sides and perused the appeal records.

10. During investigation undertaken by DRI, it was found on examination of 100% of the imported goods that there were certain goods which were found un-declared. The value of the same was determined by DRI and the same is not being challenged in the present appeal. The appellants are also not challenging the price of PCB for DVB with connector.

11. The un-valuation of the following two items have been alleged by the investigating agency and such loading of value has been upheld by the adjudicating authority :

(i) Main PCB for DVB with connector.

(ii) Power Supply for DTH

12.1 The DRI has sought to establish that the item at Sl.No.(i) above, is actually meant for use in the Set Top Box and should actually be described as "MPEG-2 Card" . DRI has further proceeded to determine the value of these goods on the basis of NIDB Data for such goods imported contemporaneously. But the appellant has seriously contested the conclusion of DRI as above. It has been submitted that such conclusion is not based on sound logic. The DRI has referred to website "alibaba.com." on the basis of which it has been concluded as above. It is further submitted that the imported goods are meant for Direct To Home application and hence, would merit significantly lower value.

12.2 We have considered the impugned order carefully as well as the arguments advanced during appeal. The imported goods are electronic populated printed circuit board. A lay man will not be able to decide the nature of the product and the possible use for such products, by casual inspection. Reference to website cannot only be the basis for loading value of imported goods and demanding differential duty. We are of the view that the goods, which are still not cleared out of Customs charge, will need to be examined and a suitable expert opinion obtained as to the nature of the goods.

13. The second item whose valuation is in dispute, is described as "Power Supply for DTH". The investigating agency has concluded that the imported goods were "SMPS Power Supply Board used for control power supply in STB". Further, the appellant's contention is that these are meant for Free To Air Set Top Box used for receiving un-encrypted broad cast signals. In this case also, a lay man will not be able to decide for nature of the product and the possible use for such products. Reference to website cannot only be the basis for loading the value of imported goods and demanding differential duty. We are of the view that the goods which are still not cleared out of Customs charge, will need to be examined and a suitable expert opinion

obtained as the nature of the goods. Thereafter, proper valuations of the goods are required to be re-determined in the light of the Section 14 of the Customs Act, 1962 read with Customs Valuation Rules., 2007.

14. In view of the above discussions, the impugned order is set aside and the issue is remanded to the adjudicating authority for passing a denovo order after getting the goods examined by an expert for taking opinion as to the exact nature of the goods. Such expert opinion as well as the basis for re-determination of value, should be taken for shared with the appellant and an opportunity should be given for rebuttal of the same.

15. Since it is a live consignment, the adjudicating authority is directed to complete the denovo adjudication within a period of one month from the date of receipt of this order.

(Pronounced in the open court on 06.12.2018)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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