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

Customs Appeal No. 79211/2018, CO-75276/2019

Arising out of Order-in-Appeal No. KOL/CUS(CCP)/AA/1853/2018 dated 05.10.2018 passed by the Commissioner of Customs (Appeals), Kolkata

Commissioner of Customs (Prev.), WB, Kolkata.
15/1, Strand Road Customs
House, Kolkata-700001.

….Appellant (s)

Vs.
M/s Manik Chand Motilal,
158/27, Aswini Kumar Mondal
Road, Howrah, Pin-711101.

….Respondent (s)

Appearance:
Shri A. K. Singh, A. C. (AR) for the Appellant (s)
None, for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Final Order No. 76617/2019

Date of Hearing:- 24.07.2019

Date of Decision:-24.07.2019

PER SHRI P.K.CHOUDHARY:

When the matter was called none appeared on behalf of the Respondent/assessee.

We find that the matter is being listed regularly on board. Therefore, has the same is taken up for disposal with the consent of the Ld. Authorized Representative for the appellant Revenue. Respondents assessee has filed cross objection.

2. Briefly stated the facts of the case are that the respondent assessee M/s Manikchand Motilal, 158/27, Aswini Kumar Mondal Road, Howrah, Pin-711101, Having IEC:0209019913 had imported a consignment declaring the goods as Unwrought/Unrefined Zinc falling under CTH Code 79012090 from Bangladesh through Petrapole Land Customs Station, under 05 Bills of Entry from 01/2016 to 01/2017. Representative samples were drawn and sent to CRCL, Custom House, Kolkata vide TM No. 346 dated 12.03.2015 to ascertain the % of the zinc content. The B/E was assessed provisionally on LME price

applicable on the date of filing of Bill of Entry and on execution of P.D. Bond and furnishing of a Bank guarantee.

Upon receipt of the test report from CRCL, Kolkata it was found that the actual %-age of zinc content was more than that declared by the importer and accordingly assessment was finalized by issuing order No. 28/2017-18 dated 16.07.2017 by the Assistant Commissioner of Customs. PTPL LCS. The assessable value was enhanced on the basis of LME price and the differential duty amounting to Rs.88801/- was confirmed.

Being aggrieved, Revenue filed an appeal against the Final Assessment order passed by the Assistant Commissioner of Customs, Petrapole LCS, before the Commissioner (Appeals), Kolkata, on the ground that the imported zinc was not unwrought/unrefined zinc but zinc dross. It was prayed that the Final Assessment Order be set aside in view of the infirmities and pass as order as deemed fit.

The importer had also filed an appeal before the Commissioner (Appeal) on the grounds that the value of the impugned goods had been arbitrarily enhanced by the Assessing Officer and the transaction value should have prevailed. The demand of extra duty on the basis of theoretical transaction value based on NIDB price of primary zinc ingots was not supported by any contemporaneous import and therefore bad in law.

The Commissioner (Appeals) in his Order, in as much as it related to the importer's appeal, held that the assessing officer has rejected transaction values without any valid reasons and without following the due procedure as per Section 14 and Valuation Rules, especially when there is nothing on record to suggest that the transaction value declared by the appellant were not the price actually paid and the buyer and seller were related or price was not the sole consideration for sale. Therefore, the enhanced value was liable to the struck down and set aside.

On the appeal filed by Revenue the Commissioner (Appeal) observed that the lower adjudicating authority had decided the case on the grounds of valuation only. However, in the appeal, the ground was that the impugned goods were not, "unwrought/unrefined zinc", as declared by the importer but "Zinc Dross" which should have been classified under a different CTH. Therefore, the grounds of appeal of Revenue were beyond the scope of the Assessment Order and hence not maintainable.

The Commissioner (Appeal) set aside the enhanced value and ordered assessment of the Bill of Entry at the declared price. The Importer's appeal was allowed and the appeal filed by Revenue was rejected. Hence, the present appeal by the Revenue before the Tribunal.

3. Heard the Ld. Departmental Representative and perused the appeal records.

4. We observe that the Ld. Commissioner (Appeals) has passed a detailed and reasoned order. We do not find any infirmity with impugned order and accordingly the same is sustained.

5. In view of the above, discussion, the appeal is rejected. Cross objection gets disposed off.

(Operative portion of the order already pronounced in the Open Court)

Sd/-
(P.K. Choudhary)
Member (Judicial)

Sd/-
(P. Venkata Subba Rao)
Member (Technical)

T.K.