

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

Customs Appeal No. 75364 of 2016

(Arising out of the Order-in-Appeal No. 01/CUS(A)/GHY/16 dated 31.01.2016 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Guwahati.)

Shri Rumen Dey

S/o Sri Nepal Dey, Krishnanagar, banerjee Para (North),
Agartala, P.S. West Agartala, Dist.- West Tripura, Pin-799001.

...Appellant (s)

VERSUS

Commissioner of Customs (Prev.) Shillong.

NER, Customs House, 110, Mahatma Gandhi Marg, Shillong-793001.

...Respondent(s)

APPEARANCE :

Shri H. K. Pandey, Advocate for the Appellant

Shri Faiz Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No.....75832/2023

DATE OF HEARING : 19.06.2023

DATE OF DECISION : 19.06.2023

PER K. ANPAZHAKAN :

The Appellant Shri Rumen Dey, was a Power of Attorney holder of M/s Asha Enterprise, engaged in import and export business through land borders in the state of Tripura. He imported OPC/PPC Cement in 50 Kg. PP woven bags from Bangladesh during the period 17.03.2012 to 31.10.2014, through Muhurighat L.C.S. As the product was subject to levy of Additional duty of Customs (CVD) on MRP basis, the Appellant asked the exporter from Bangladesh to print the MRP on the bags.

2. The Appellant was issued with two Show Cause Notices, both dated 05.11.2014, alleging that he has evaded Additional duty of customs amounting to Rs. 12,113/- and Rs. 72,677/- respectively by way of

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undervaluation in as much as cement from the same manufacturer in Bangladesh imported through Agartala L.C.S. was having a higher MRP of Rs. 320/- per bag of 50 Kg.

3. The Adjudicating Authority vide Orders-in-Original both dated 06.10.2015 confirmed the demands and imposed equal amount of duty as penalty. However, the goods were not confiscated, as the same were not available for confiscation.

4. Aggrieved against the said Orders-in-Original, the Appellant filed appeals before the Commissioner (Appeals) Guwahati, on the ground that the impugned Bills of Entry duly which were self-assessed were not challenged by the department and hence they became final. The Commissioner (Appeals) vide Order-in-Appeal dated 05.02.2016 upheld both the Orders-in-original and rejected the appeal filed by the Appellant. Aggrieved by the impugned order dated 05.02.2016, the Appellant filed the present appeals.

5. In their submissions, the Appellant stated that different lots of the impugned goods were imported by different importers through different land ports though the goods were manufactured by the same manufacturer in Bangladesh. The MRP printed on the goods imported through other ports can be different, as the Place of importation itself was different and hence difference in MRP is quite natural. It is not a case that more than one MRP were printed on every bag. Only one MRP was printed on one lot which was independent of the other. MRP on the same item is decided in consideration of a number of factors besides landing cost and duty element. In the instant case goods being imported through different ports was the obvious reason for the difference in MRP. There is no evidence to suggest that the goods so imported through different ports under different MRP were sold at the same price. Thus, they contended that the authority has erred in observing different prices printed on different consignments as one and the same. In absence of

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any evidence that the goods were being sold at a higher price than MRP, allegation of undervaluation for the purpose of levy of CVD is unfounded and not tenable under law.

6. The Appellant contended that the impugned Bills of Entry duly self-assessed were not challenged by the department and hence became final. As held by the Hon'ble Supreme Court in the case of ITC Ltd, unless the original Assessment by the assessing officer is challenged, the department cannot demand differential duty subsequently by issuing a demand Notice.

7. The Appellant cited the decision of the Hon'ble Supreme Court in the case of I.T.C. Vs. Commissioner of Central Excise, New Delhi [2019(368) ELT 216 (SC) wherein it has been held that the department cannot demand differential duty without challenging the self-assessment made by the importer. Accordingly they contended that the impugned order is not sustainable.

8. The Ld A.R reiterated the findings in the impugned order

9. The issue involved in the present appeal is undervaluation of cement imported from Bangladesh .The department alleged that the declared MRP of the cement imported by the Appellant was much less as compared to the MRP declared on the cement imported from the same manufacturer through other ports. We observe that different lots of the impugned goods were imported by different importers through different land ports though the goods were manufactured by the same manufacturer in Bangladesh. The Appellant stated that the MRP printed on the goods imported through other ports can be different as the Place of importation itself was different and hence difference in MRP is quite natural. We observe that MRP on the same item is decided in consideration of a number of factors besides landing cost and duty element. In the instant case the goods were imported through different ports. That itself is a valid reason for the difference in price. There is no evidence to suggest that the goods so imported through different ports under different MRP were being

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sold at same price. Hence, the price difference cannot be attributed to suppression of the value by the Appellant. Accordingly, we hold that the demand is not sustainable.

10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd, has held as under:

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

11. We observe that the ratio of the above said decision is squarely applicable in this case. we find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also.

12. In view of the above decision, we set aside the impugned order and allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar