IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Customs Appeal No.178 of 2011

(Arising out of Order-In-Original No. 15/COMMR/CUSTOMS/BOL/11 dated 17.03.2011 passed by the Commissioner of Central Excise & Customs, Bolpur)

M/s. Beximco International
(2, N. C. Dutta Sarani, 4th Floor, Sagar Estate, Kolkata-700001)

Appellant

VERSUS

Commissioner of Central Excise & Customs, Bolpur
(Nanoor Chandidas Road, Sian, Bolpur, Dist. Birbhum)

Respondent

APPEARANCE :

None for the Appellant
Mr. S. Debnath, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNI CAL)

FINAL ORDER NO.77144/2023

Date of Hearing : 21st September 2023
Date of Decision : 21st September 2023

PER R. MURALIDHAR:

Inspite of notice, nobody is present on behalf of the Appellant.

2. It is seen from the records that in the past also on several occasions, the Appellant has not attended the hearings granted. This shows that the Appellant is not interested in pursuing their Appeal. However, in the interest of justice, we have taken up the matter for disposal and perused the documents on record with the help of Learned AR.

3. The Learned AR submits that the Appellant had filed the Bill of Entry stating that the goods are of Chinese origin. On physical inspection of the consignment, it turned out that the shoes were of

Chinese, Italian and Austrian origin. The Lower Authorities have followed the principles of natural justice and had adjudicated fairly by giving the detailed finding for the demand which has been confirmed against the Appellant.

4. We have gone through the OIO passed by the Adjudicating Authority who has passed the OIO after granting the Personal Hearing on 02/03/2011 which was attended by two Consultants on behalf of the Noticee. The relevant portions of the OIO are reproduced below:-

> *4.4 Now, I come to the first point. I observe that the notice, <u>at the time of submission of B/E and the concerned Invoice, did not declare the imported goods as stock-lot</u>. But later on, they produced a copy of a correspondence with the seller of the goods where it had been mentioned that the goods they wanted to import were stock losts. Now, from the study of the case and reply of the notice, I observe that the notice imported the goods taking the opportunity of economic recession in European Countries which were making hectic efforts to sell their products at a reduced price with some conditions as detailed herein-before. <u>Therefore, this was nothing but import of brand-new footwear at a heavily discounted price as a business policy</u>. If there was no economic recession, the importer would have had to procure the same new footwear at higher prices depending upon varieties and qualities thereof. <u>Thus, the factor that worked behind the import of shoes at a uniform rate in this case irrespective of size and quality was only to get the benefit of stock clearance at a reduced sale price by the exporter who faced certain problems related to market economy. This is not a case of sale of seconds or old goods</u>. The notice also admitted in their written submission that they imported new footwear and also from the correspondence made by the importer with paolo Sanini Spol, the exporter, <u>I do not find any mention that the footwear so imported as of second-hand quality.</u>*
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> *4.8 Now, I come to the second point, i.e. country of origin. I observe that <u>the noticee in the B/E declared the country of origin of</u>*

<u>the product as China. However, during joint examination of the consignment at ICD, it was observed by the departmental officers that there was only a nominal number of footwear that were of Chinese origin. Most of the goods were of Austrian origin.</u> I observe that the notice in their letter (relied upon in the SCN as Annexure 4) informed "We purchased this stock lot from out seller, M/s Paolo Santini Spol, s.r.o, who informed us that they were made in China and we also believe that they were of Chinese origin. We sincerely regret if in the stock lot purchased by us, <u>there were some shoes which were manufactured in Austria Or Italy".</u> However, in their written submission, they reverted to their former stand and submitted that the declaration was made according to the certificate of Slovak Chamber of Commerce. In this regard, I refer to the case of Surabhi Supreme Marbles & Granites Pvt. Ltd. Vs. CC, Chochin [2007 (219) ELT 377 (Tri.-Bang)] wherein it is held by Tribunal that "the item has been manufactured in Sri Lanka and they have to be considered as having been imported from Sri Lanka and not from China." <u>So the stand of the notice is not tenable. The notices therefore had mis-declared their goods as goods of Chinese origin.</u>

4.9. Now, I come to the last point regarding value of goods. I observe that the notice declared the goods as stock lot and <u>submitted in the B/E the discounted value as transaction value.</u> Since the goods have been, as discussed before, not stock lots but new ones and are liable to be sold in India as new ones, therefore, <u>I observe that the value shown in the B/E was not the real value of the imported goods but a very much reduced value and had no nexus with actual sale price of the goods.</u> Therefore, transaction value in terms of Section 14 of the Customs Act, 1962 read with Rule 3(1) of CVR'07 was not applicable. <u>Also, as the maximum quantity of goods were of Austrian origin and the value of similar or identical goods of Austrian origin was not available from known sources and also, as there was no market price</u> of such goods available at Durgapur, i.e. the place of importation since such goods are not sold in the wholesale markets at

> *Durgapur in the ordinary course of trade there and as the notice also failed to produce that, therefore, I observe that Rules 4 to Rule 8 of CVR'07 were also not applicable. In this regard, I also refer to Paras 2.4, 2.5 and 2.6 of this order. Accordingly, I hold that residual Rule 9 of CVR'07 is applicable in this case. [Emphasis supplied]*

5. We find that the Adjudicating Authority has gone into considerable details of the consignment imported and has passed a very considered Order justifying all his findings. We do not feel any necessity to interfere with the same. Accordingly, we dismiss the Appeal.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja