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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.75280 of 2015

(On behalf of Appellant)

(Arising out of Order-in-Appeal No.60/Cus(A)/GHY/14 dated 13.11.2014 passed by Commissioner (Appeals) of Customs & Central Excise, Guwahati)

M/s Bothra International

P.O. Mankachar, Dist.-Dhubri, Assam, Pin-783131

Appellant

VERSUS

Commissioner of Customs (Prev.), Shillong

NER, Shillong,Customs House, 110 M.G.Road, Shillong

Respondent

APPERANCE :

Ms.Chandreyi Alam, Advocate for the Appellant
Shri A.K.Choudhary, Authorised Representative for the Respondent

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

FINAL ORDER NO.75056/2024

DATE OF HEARING : 08.01.2024
DATE OF DECISION : 08.01.2024

Per Rajeev Tandon :

The appellants, a proprietorship concern, have filed the impugned appeal against the Order-in-Appeal No.60/Cus(A)/GHY/14 dated 13.11.2014.

2. The current proceedings before the Tribunal are in the second round of litigation wherein the Ld.Commissioner (Appeals) has upheld the denovo adjudication, whereby the adjudicating authority rejected declared transaction value and re-assessed the goods enhancing the import price besides imposing a penalty of Rs.15,000/- under Section 112 (ii) of the Customs Act, 1962.

3. The short question involved in the present appeal is in respect of the valuation of imported goods (Float Glass Sheets) and whether the declared transaction value called for a revision for assessment purpose.

4. The Tribunal vide its Final Order No.A-349/Kol/2011 dated 16.11.2011, while remanding the matter to the original authority and to decide the matter afresh, had specifically directed the Department to furnish the details of imports relied on by the Department to the importer and adhere to all the prescriptions of the principles of natural justice. The said direction given to the original authority in the 1st round of litigation was with reference to the case of M/s Ganeriwala Brothers Private Limited vide Order No.A-91-95/Kol/2009 dated 05.03.2009.

5. The fact of imparting of this direction has been duly recorded by the ld.Commissioner (Appeals) in Paragraph 4 of the Order-in-Appeal.

6. In the denovo adjudication proceedings, we, however, find no specific mention of this direction of the Tribunal. It is however seen in Paragraph 3.1 of the Order-in-Original that the relied upon documents reflected in the show-cause notice, were the Bills of Entry and were duly provided to the appellant. There is also no protest from the appellant on this score. We, therefore, take this as substantial compliance of the directives.

7. The ld.Adjudicating Authority after making necessary adjustment as per evidence proposed in the show-cause notice has assessed the goods on higher values disregarding the transaction value, and has arrived thereon on the basis of allegedly contemporaneous evidences thereto, which the ld.Counsel. Ms.Chandreyi Alam, vehemently disputes

as comparable. The department’s stance being that the declared value as per importers’ invoice is unrealistic and not tenable for appropriate levy of Customs duties. Hence, in terms of Customs Valuation (Determination of Prices of Imported Goods) Rules, 1988 (CVR), the transaction value is liable to be rejected. For ready reference, Rule 10A (1) is reproduced below :

“10A. Rejection of declared value. —

1. *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 4”.*

Therefore, the revenue seeks to re-workout the said transaction value by adopting the values indicated in respect of allegedly identical imports of Float Glass Sheets by way of the said “contemporaneous” imports adopting Rule 5 of CVR, subject to required adjustments.

8. The question for determination that therefore arises in the present appeal is whether the evidence relied upon by the department for upward revision in the declared import price can be accepted as

contemporaneous and is in accordance with Rule 5 of the CVR. For ready reference, Rule 5 ibid is quoted below :

"5.**Transaction value of identical goods. —**

a. Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

b. In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

c. Where no sale referred to in clause (b) of sub-rule (1) of this rule, is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

2. Where the costs and charges referred to in sub-rule (2) of Rule 9 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

3. In applying this rule, if more than one transaction value of identical goods is found; the lowest such value shall be used to determine the value of imported goods."

9. It is, therefore, necessary to evaluate the evidence that has been sourced by the department to drum up its case. It may be pertinent to also point out herein that the invoice tendered by the appellant is that directly from the manufacturer and not a trader or a vendor or any third party supplier, therefore, in ordinary course , the said invoice carries far greater credence and acceptability and can be discounted only by way of strong and cogent reasons and not mere generalization and or comparisons.

10. The details of the appellant's imports are as under :

Sl. No	B/Entry No. & Date	Description (Clear float Glass)	Rate/Sqm.	Quantity
1.	193/06-07 dated 13.1.07	2 mm- 1829mm x 1219 mm	0.65 US $	401.31 Sqm.
		3 mm- 1829mm x 1219 mm	1.15 US $	2675.46 Sqm.
		4mm- 1829mm x 1219 mm	1.53 US $	2051.18 Sqm.
		5mm- 1829mm x 1219 mm	1.92 US $	802.63 Sqm.
2.	24/07-08 dated 17.4.07	3mm- 1829mm x 1219 mm	1.15 US $	3478.10 Sqm.
		5mm- 1829mm x 1219 mm	1.[illegible]2 US $	2088.86 Sqm.
3.	35/07-08 dated 22.4.07.	3mm- 1829mm x 1219 mm	1.15 US $	1739.05 Sqm.
		4mm- 1829mm x 1219 mm	1.53 US $	3999.81 Sqm.
			TOTAL	17,236.40 Sqn

The department has sought to offer by way of comparison of identical imports the following :

(i) B/E No.395/IMP/AGT-LC/2006-07 dt. 29.05.2006-Dhrubajoti Shil

TABLE "B"

Sl.No.	Description of Goods(Clear Float Glass Sheets)	Rate/Sqm.	Total Quantity
1	3 mm – 36" x 72" & 48"x72"	2.60 US $	1365.020 Sq.m.
2	4 mm - -do-	3.50 US $	772.020 Sqm.
3	5 mm - -do-	4.35 US $	602.010 Sqm.
4	6 mm - -do-	5.20 US $	334.440 Sqm.
			Total=3073.490 Sqm.

(ii)B/E No.1397/Cus/CBD/07 dt.08.03.2007 – M/s J.P.Enterprises

TABLE-"C"

Sl.No.	Description of Goods(Clear Float Glass Sheets)	Rate/Sqm.(Rs.)	Total Quantity
1	3 mm	29x3=87.00	2020.64 Sq.m.
2	4 mm	29x4=116.00	2040.15 Sqm.
3	5 mm	29x5=145.00	811.04 Sqm.
4	6 mm	29x6= 174.00	338.17 Sqm.
			Total=5210.00 Sqm.

(iii) B/E No.IMP/305/CUS/CBD/07 dt.24.05.2007-J.P.Enterprises

Sl.No.	Description of Goods(Clear Float Glass Sheets)	Rate/Sqm.(Rs.)	Total Quantity
1	2 mm	29x2=58.00	2006.59 Sq.m.
2	2.5 mm	29x2.5=72.50	802.63 Sq.m.
3	3 mm	29x3=87.00	4682.05 Sq.m.
4	3.5 mm	29x3.5=101.50	579.68 Sq.m.
5	4 mm	29x4=116.00	769.19 Sqm.
6	5 mm	29x5=145.00	401.31 Sqm.
7	6 mm	29x6= 174.00	312.26 Sqm.
8	8 mm	29x8=232.00	133.82 Sq.m.
9	12 mm	29x12= 348.00	107.06 Sq.m.
			Total=9794.59 Sqm

11. From the aforesaid table, it is clear that the imports made by the appellant pertained to the period January to April, 2007, whereas the comparisons offered by the department are for imports made during May, 2006, March and May, 2007. Thus by way of timelines beyond six months period the B/E No.395 at Sl. (i) above cannot be considered appropriate and relevant for purpose of present discussions. This leaves the remaining two cases of import which certainly can be considered relevant and taken up for comparison being proximate in time to the appellant's imports. However, it is noted that the appellant's imports of float glass sheets are of 2 mm, 3 mm, 4 mm and 5 mm whereas in the examples for comparison in one case the thickness of float glass imported are 3 mm, 4 mm, 5 mm and 6 mm while in the other float glass sheets are 2 mm, 2.5 mm, 3 mm, 3.5 mm, 4 mm, 5 mm, 6 mm, 8 mm & 12 mm. With the appellants not having imports of 2.5 mm, 3.5 mm, 6 mm, 8 mm and 12 mm reference of such imports are not for a meaningful comparison. We note that in the second case, such quantity for consideration of imported float glass has to be distanced with. This alone is nearly 1935 sqm. (802.63 + 579.68 + 312.26 + 133.82 + 107.06 = 1935.45).Thus, it leaves for comparison

nearly 7860 (9795 – 1935) sqm. of imported float glass. We note that the appellant has imported more than double the quantity of float glass sheets vide three Bills of Entry against the one offered for comparison with the case at Sl.No.3 ; whereas as regards the other case offered for purpose of comparison, the imported quantity is much less than even 25%. Therefore, it cannot be said that the appellant's imports of float glass sheets were at comparative commercial levels with that of the two impugned Bills of Entry. We also find no exercise of conversion of prices from dollars to rupees, in the order, which is so necessitated for rendering a meaningful comparison as the two tables Sl.No. (ii) & (iii) above indicate the rate/sqm in rupees, while that of for the importer, the appellant importer mentions the same in US$. Elsewhere in the adjudication order in Para 3.9 the price for 2 mm, 3mm of clear float glass for imports by Jain International in March, 2007, upon finalization is indicated as 1.15 US$ / sqm. & 1.72 US$ per sqm. However, with no quantity indicated, mere mention of the unit price is inconsequential. Therefore, that statistics too is rendered meaningless and offer no valued comparison. Further, it is too well known that the price of float glass sheets would vary as per its dimension and quality (i.e. the level of impurities present). We find no discussion on these aspects in the adjudication order, though the imports indeed as stated earlier have been made directly from a manufacturer-exporter.

11.1 We also note that the importer has also doubted the department's ascertainment of the price of float glass sheet adopted @ Rs.29 per mm, per sqm, as there is no such float glass in trade of 1 mm thickness and there is no counter thereto from the side of the department.

12. In view of the above, we are not convinced with the adoption of the revised transaction value based on comparisons as offered, and note that the Department's case cannot be sustained on the basis of evidences as relied upon for the aforesaid reasons and discussions.

13. Proposition of law as related to issues hereinabove have been upheld in the following cases (for records) :

(1) Sai Impex Vs. Collector of Customs : 1992 (62) ELT 616 (T)

(2) Overseas International Vs. Commissioner of Customs, Chennai : 2001 (127) ELT 599 (T).

14. In view of the aforesaid findings, we set aside the impugned order of the lower authority under challenge and allow the appeal with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open court)

(R.Muralidhar)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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