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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 78942 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/AA/1425/2018 dated 01.08.2018 passed by Commissioner of Customs (Appeals), Kolkata.)

Commr. of Customs (Port), Kolkata
(15/1, Strand Road, Customs House, Kolkata-700001)

Appellant

VERSUS

M/s. Joy International
(19A, Tiretti Bazar, 2nd Floor, Room No. 27,
Kolkata-700073)

Respondent

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

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

FINAL ORDER NO.75276/2024

Date of Hearing : 21 February 2024
Date of Decision: 21 February 2024

PER R. MURALIDHAR:

The Department has filed the Appeal against the order passed by the Commissioner of Appeals. The Respondent has imported "Christmas light" and others electrical items from China. After DRI investigations it was felt the value is required to be enhanced. The Department adopted the NIDB data to enhance the value and revised the Customs Duty to be paid.

2. Being aggrieved the Appellant had filed an Appeal before the Commissioner (Appeals). The Commissioner (Appeals) has gone through the facts and stated his provisions and has held as under:

> 20. I also find that in the case of Commissioner of Customs (Port), Kolkata Vs. M/s. Krishna Wax Pvt. Ltd. wherein Hon'ble

CESTAT has passed the final order vide no. FO/75466-75472 dated 21.03.2018 where it is held as follows:

> "6. From the record, it also appears that the assessing officer has rejected the transaction value without any valid reasons and without new procedure as per Section 14 and valuation rules especially, there is nothing on record that the appellant has imported the secondary items but the value was considered for the fresh items. No speaking order was passed for enhancement of value. <u>There is nothing on record to suggest that the buyers and sellers of the goods are related persons. Therefore the enhancement of the value is likely to be struck down and rightly struck down by the Commr. (Appeals)."</u>
>
> [Emphasis Supplied]
>
> 7. Hence we do not find any reason to interfere with the impugned order and the same is hereby upheld along with reasons mentioned therein.

21. I also observe that the lower authority stated at Para 5 that as per NIDB data 1341 cases of similar goods were assessed at higher value during the period from July, 2016 to September 2017. However, the data for all those cases were not supplied to the appellant. Instead, data of only 88 cases were supplied to the appellant. <u>Hence it is evident that the lower authority has adopted a pick and choose approach in the present case which is not the right way to adjudication</u>. The Principal Bench of CESTAT, New Delhi in the case of M/s Margra Industries Vs. Commissioner of Central Excise, Nodia reported in 2007 (216) ELT 710 (Tri Del) has held as, "…………………

> 10. It is well recognized that quality and price of marble vary vastly depending upon place of occurrence. The Revenue authorities have made comparison of value without taking these aspects into account. The imports were of 'Monaco Brown', 'Diano', 'Mermer Royal Beize'

> etc. The prices are also varying vastly. In fact, the price of 'Monaco' imported by the appellant under Bill of Entry No. 277105 was higher than the contemporaneous import of the same item at Euro 315. The Revenue has accepted that value and rejected all other values. Clearly, the effort is to assess imported goods at the higher end of the value spectrum. This is contrary to market reality as well as Valuation Rule. While market prices vary depending upon myriad factors, Rule 4 of Custom Valuation Rules specifically provides that transaction value should be the basis for the valuation of the consignment under assessment, unless the transaction value is not representing the full price for the reasons mentioned in the Rule itself. Law does not allow a pick and choose approach Revenue's acceptance of higher prices and rejection of lower prices for assessment is clearly illegal".
>
> [Emphasis Supplied]
>
> The Hon'ble Supreme Court has also supported the same view in its order reported in 2012 (275) ELT A83 (SC).

22. <u>From the above it is found that the assessing officer has rejected transaction values without any valid basis/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 was not the price actually paid for the good when sold for export to India.</u> Also no evidence has been produced by the respondent that any amount, over and above the invoice values was paid by the appellant to the supplier of the goods. <u>There is also nothing on record to suggest that the buyer and seller of the goods were related or price was not for the sole consideration for sale.</u> Therefore, in these circumstances, the enhancement of assessable value is liable to be struck down

and set aside and the bills of entry in the impugned appeal are to be assessed at value declared by the appellant.

23. <u>Therefore, I have no hesitation to hold that the enhancement of values done in this case is without having any sanction of law and is thus liable to be set aside outrightly.</u>

24. In view of above, the enhancement of values in the present case is not sustainable in the eye of law and accordingly assessment of the impugned bills of entry is ordered at the values declared at invoice value. The appeal is accordingly liable to be allowed with consequential relief." [Emphasis Supplied]

3. After going through at the submissions of the Ld. Respondent, we find that the Department has not made any attempt to follow the procedure given under the Valuation (Determination of Value of Importers Goods) Rules 2007 and has simply adopted the NIDB data and selectively enhanced value. As discussed above, the Commissioner (Appeals), has given a detailed finding along with reasons while setting aside the Order-in-Original. We do not find any reason to interfere with the same. Accordingly, we dismiss the Appeal filed by the Revenue.

(Operative part of the Order was pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja