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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76896 of 2016

And

Customs Cross Objection No. 75139 of 2017

(Arising out of Order-in-Appeal No.44/Siliguri-Cus/2016 dated 12.08.2016 passed by Commissioner of Central Excise (Appeal-I), Kolkata)

M/s. Fathima Trading Concern.
(81/2, Bentick Street, Kolkata-700001)

Appellant

VERSUS

Commr. of Customs, Siliguri,
(C. R. Building, Haren Mukherjee Road, Hakimpara, Siliguri)

Respondent

APPEARANCE :
Mr. S. P. Majumdar, Advocate 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 (TECHNICAL)

FINAL ORDER NO.76445/2024

Date of Hearing : 19 July 2024
Date of Decision: 19 July 2024

PER R. MURALIDHAR:

The appellants have imported "Smoked Rubber Sheet" (Inferior Quality) from Bangladesh. They have imported the consignments which were cleared under three Bills of Entry filed between 01/07/2009 to 14/07/2009. The Appellant had filed all the relevant documents like Invoice, packing list, SAFTA, country of Origin details etc. and claimed the value of US$ 600 for assessment purposes. The Customs officials did not agree for the same and enhanced the value US$ 700. Based on this value, the appellant paid the relevant Customs Duty and cleared the consignments.

2. After sometime, a Show Cause Notice was issued on 01/10/2009 on the ground that Bangladesh is not the main grower/producer of rubber and the value given in the Invoice was doubted. The NIDB Data pertaining to imported 'smoked rubber sheet' during the period 31/03/2009 to 15/6/2009 was cited so as to enhance the value of the imported goods. After due process, the differential duty of 15,61,713/- along with interest and penalty was confirmed by the Adjudicating Authority. Being aggrieved, the appellant's filed their appeal before Commissioner (Appeals) who upheld the Order-in-Original and dismissed the appeal. Being aggrieved, the appellant is before the Tribunal.

3. The Learned Advocate appearing on behalf of the appellant submits that this is not a case of self-assessment of Bills of Entry. The appellants had produced all the relevant documents in the form of Invoice, Sales Contract Agreement, Certificate issued by Dhaka Chamber of Commerce & Industry towards origin of material. While they had adopted the price of US $ 600 per Metric Ton, the Customs officials after going through the documents took the view that the value per metric ton should be taken as US $ 700. No other objections were raised on any other count whatsoever. Since the appellants required the material urgently, they have followed the directions of the Customs officials and cleared the imported goods by enhancing the value to US $ 700 per metric ton. Thus, this is a case where the Department has gone through the documentary evidence and enhanced the value once. Thus the enhanced value given under Order-in-file No. II (26) 125/PTPL-RD/IMP/09 has reached finality. This being so, the Department issued a Show Cause Notice on 05/10/2009, wherein based on the NIDB Data pertaining to the import of 'smoked rubber sheet' from various other countries like Srilanka, Thiland and other countries, the value was proposed to be enhanced by almost ten times at US $ 1350 per MT. The Learned Advocate submits that the NIDB Data cited at Para 1 by way of Table in the SCN would clarify that the item imported pertains to "normal smoked rubber sheet" of

good quality. On the other hand, the present imported smoked rubber sheet from Bangladesh is of "inferior quality" as mentioned in the Invoice, Sales Contract Agreement and in the Certificate of Origin issued by the Dhaka Chamber of Commerce & Industry. These goods shown in the NIDB data and the goods imported by the appellant are two different varieties of smoked Rubber Sheet and their values cannot be compared. The very fact that the Certificate of Origin has been issued by Dhaka Chamber of Commerce and Industry clearly specify that 'smoked rubber sheet' (inferior quality) has been exported by the Bangladesh exporter, puts it beyond doubt that the consignment is of Bangladesh origin only.

4. The Learned Advocate relies on the case law of **Harish Chandar Vs. Commr. of Customs (Preventive), New Delhi-2018 (360) E.L.T. 567 (Tri.-Del.),** wherein it has been held that the NIDB Data cannot be relied on if the goods are not identical in nature. He also relies on the case law of **Unik Traders Vs. Commr. of Customs, Tuticorin-2023 (386) ELT 759 (Tri.-Chennai)**, wherein it has been held that declared value cannot be enhanced merely on the basis of NIDB Data.

5. He further submits that the value adopted by the appellant was as per the proper documentary evidence produced before the authorities. The Department has not brought in any evidence to the effect that the appellant has not made the payment as per the transaction value given in the Invoices. Nor the Department has gathered any information that further payments have been made to the overseas exporter by any other means. He submits that in such cases, the transaction value cannot be rejected on the basis of presumptions and assumptions without any corroborative evidence. In view of the above submissions, he prays that the present appeal may be allowed.

6. The Learned AR reiterates the findings of the lower authorities and justifies the confirmed demand.

7. Heard both sides and perused the appeal papers and the documentary evidence placed before us.

8. Coming to the fact as to whether the origin of the imported goods can be doubted or not, we find from the appeal papers that the Dhaka Chamber of Commerce & Industry has issued the Country of Origin Certificate clearly stating that the Country of Origin is Bangladesh. There is no other contrary evidence brought in by the Revenue. Hence, the doubt raised about the origin by the Revenue has no legs to stand on.

9. This Certificate also certifies that the goods exported from Bangladesh are "smoked sheet (inferior quality)". From the copies of the Sales Contract Agreement, Pro-forma Invoices and the Commercial Invoice, it can be clearly seen that in all the places, the description of the goods is given as **"smoked sheet (inferior quality)"**. The Department has not brought in any evidence to the effect that any test was conducted on the imported goods so as to disprove that they are of "inferior quality" but are "normal quality" goods. From the NIDB Data provided in the Table given to the Show Cause Notice, it is seen that the Data pertains to the normal smoked rubber sheets. Since the Department has not brought in any evidence to the effect that the imported smoked rubber sheets are not of inferior quality, comparing the imported goods with the NIDB Data is not proper. Apart from this, the NIDB Data clarifies that the imports are from different countries and the quantities imported differ from the quantities imported by the appellant. Hence, even on this count the NIDB Data cannot be used for enhancement of this value.

10. The Tribunal in the case of **Harish Chandar Vs. Commissioner of Customs (Preventive), New Delhi**, cited supra has held as under:-

> ***6.*** *On perusal of the invoices available in the appeal records, we find that the price shown therein for selling of goods within India is in consonance with the price declared for the imported batteries. Further, Shri Harish Chandar, the proprietor of the appellant vide his statement dated 4-7-2012 has also stated that the batteries imported by the appellant were of inferior quality. However, on going through the case records, we find that the adjudicating authority has not specifically discussed the submissions of the appellant and discarded the declared value, solely relying on the e-mail received from M/s. Leoch Battery and the NIDB data obtained by the Department. The e-mail data cannot be accepted as the contemporaneous import, for the reason that the period of import indicated therein was from September, 2011 to January, 2012. Similarly, the quantity of imported goods as per the e-mail was for 4000-5000 pieces; whereas, the imports made by the appellant was for approximately 15,000 batteries. Thus, the period of import and quantity of import are not identical. Further, we also find that there is no specific data available in the NIDB report that the goods are of identical/similar in nature and also the quality of the goods imported is not proportionate to the quantity mentioned in such data. Thus, value of subject goods imported in this case cannot be discarded and the same cannot be enhanced by placing reliance on the e-mail, NIDB and the invoices obtained from different sources. In this context, the law is well settled that NIDB data cannot be relied on, in absence of any proof that the import shown therein are of identical/similar goods and of similar quantities.*
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> ***7.*** *Further, we also find that the department has not brought on any corroborative evidence to show suppression of facts on the part of the appellant in defrauding the Government revenue. Therefore, we are of the view that show cause proceedings initiated beyond the normal period of limitation are liable to be set aside.*
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> ***8.*** *In view of above discussions and analysis, we do not find any merits in the impugned order in support of confirmation of the adjudged demands. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant. [Emphasis supplied]*

11. The Chennai Tribunal in the case of **Unik Traders Vs. Commissioner of Customs, Tuticorin,** cited supra has held as under:-

> ***25.*** *In the present case, the department has failed to substantiate as to how the value adopted on the basis of NIDB data is comparable in the absence of details required in the nature of name of manufacturer, country of origin etc. to arrive at contemporaneous price. The facts being so, we are of the view that there are no sufficient reasons to reject the transaction value and for the enhancement of value. The demand of differential duty cannot sustain and requires to be set aside which we hereby do. [Emphasis supplied]*

12. We also find that the Revenue has not brought in any evidence to the effect that the transaction value as per the Invoice is not correct and that any further amount was paid to the exporter. In such a case, enhancement of the value by way of issue of the present Show Cause Notice is arbitrary and cannot be sustained.

13. In view of the factual details discussed above and applicability of the cited case law, we hold that the impugned order is not legally sustainable.

14. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

15. Cross Objection also stands disposed off.

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

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

Sd/-
(Rajeev Tandon)
Member (Technical)

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