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

REGIONAL BENCH - COURT NO.2

Customs Appeal No.79753 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/60/2018 dated 31.08.2018 passed by Commissioner of Customs(Port), Customs House, Kolkata.)

M/s. Arcturus Systems Private Limited
(Office No.109, 1st Floor, A-115,
Vakil Chamber, Shakerpur,East Delhi-110092.)

...Appellant

VERSUS

Commissioner of Customs(Port), Kolkata

.....Respondent

(Custom House,
15/1, Strand Road,
Kolkata-700001.)

WITH

Customs Appeal No.79754 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/60/2018 dated 31.08.2018 passed by Commissioner of Customs(Port), Customs House, Kolkata.)

Shri Satendra Singh, Director
M/s. Arctures Systems Private Limited
(Office No.109, 1st Floor, A-115,
Vakil Chamber, Shakerpur,East Delhi-110092.)

...Appellant

VERSUS

Commissioner of Customs(Port), Kolkata

.....Respondent

(Custom House,
15/1, Strand Road,
Kolkata-700001.)

AND

Customs Appeal No.79756 of 2018

(Arising out of Order-in-Original No.KOL/CUS/COMMISSIONER/PORT/60/2018 dated 31.08.2018 passed by Commissioner of Customs(Port), Customs House, Kolkata.)

Shri Yeshray Singh
(Office No.109, 1st Floor, A-115,
Vakil Chamber, Shakerpur,East Delhi-110092.)

...Appellant

VERSUS

Commissioner of Customs(Port), Kolkata

.....Respondent

(Custom House,
15/1, Strand Road,
Kolkata-700001.)

APPEARANCE

Shri V.N.Dwivedi, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

FINAL ORDER NO. 77082-77084/2019

DATE OF HEARING : 26 September 2019
DATE OF DECISION : 26 September 2019

P.K.CHOUDHARY :

The present appeals are by the assessee/importer against the Order-in-Original no. KOL/CUS/COMMISSIONER/PORT/60/2018 dated 31/08/2018 passed by the Commissioner of Customs (Port), Kolkata. The Commissioner rejected the declared value, re-determined the same, imposed redemption fine and penalties.

2. Briefly stated, the facts of the case are that:

(i) Electronic items imported vide two Bills of Entry i.e. B/E No. 2740311 dated 5th August 2017 and B/E no. 3429617 dated 29th September 2017 are the subject matter of the case.

(ii) Upon examination of the goods by DRI, the examination reports were as under:

Re: **B/E No. 2740311 dated 5th August 2017**

Sl	Description of the goods	Description of the goods on	Total quantity	Declared unit

	declared in the Bill of Entry	**examination (Actual)**	**in Pcs.**	**value in Rs.**
1	Power Supply for DTH	SMPS Power Supply Board used for controlled power suppy in set Top Box	60,000	5.22
2	Main PCB for DVB with connector	MPEG-2 Card used as main board of Set Top Box.	60,000	19.56

Re: **B/E No. 3429617 dated 29th September 2017**

Sl	**Description of the goods declared in the Bill of Entry**	**Description of the goods on examination (Actual)**	**Total quantity in Pcs.**	**Declared value in Rs.**
1	MPEG Card (Ali 3328/3329) for DVB Set Top Box (Main PCB for DVB)	MPEG-2 Card used as main board of Set Top Bos	55,000	82.57
2	MPEG Card (Ali 3328/3329) with USB slot for DVB Set Top Box (Main PCB)	MPEG-2 Card used as main board of Set Top Bos.	5,000	132.10
3	SMPS Power Supply Model 008 for Set Top Box	SMPS Power Supply Board used for controlled power supply in set Top	60,000	19.82

		Box		
4	DVB Remote for Set Top Box	Remote for Set Top Box	5,000	13.21

3. DRI undertook investigation to ascertain the proper/correct description of import goods vis-a-vis value. DRI found that two items of import goods appearing in B/E 2740311 and SL no. 1 of B/E 3429617 are identical. The item declared as "Main PCB for DVB with connector"/"MPEG Card" was "MPEG-2 Card". The item at SL. No. 2 (of B/E 3429617) was found to be "MPEG-2 Card" with extra facility such as USB Port connectivity. Item no. 1 (of B/E 2740311) and those at Sl. No. 3 (of B/E 3429617) are identical i.e. SMPS Power Supply Board used for controlled power supply in set Top Box.

DRI further found that "MPEG-2 Cards" are used for converting the source signal into contents in a form that can be displayed on the TV Screen or other display device and "SMPS Power Supply Board" is used for controlled power supply in Set top Box.

The DRI ascertained the correct value of the goods by referring to NIDB Data for contemporaneous import prices in comparable quantity. The item "MPEG Card with USB Slot/port facility" has been valued at Rs. 49.53 more than "MPEG Card" without USB Slot/port facility". On the basis of such enquiry, the valuation of the consignments were done as follows:-

Re: B/E No. 2740311 dated 5th August 2017

Sl	**Description of the goods declared in the Bill of**	**Description of the goods on examination (Actual)**	**Total quantity in Pcs.**	**Declared value in Rs.**	**Ascertained Assessable unit price in Rs.**

	Entry				
1	Power Supply for DTH	SMPS Power Supply Board used for controlled power supply in Set Top Box	60,000	5.22	28.6093
2	Main PCB for DVB with connector	MPEG-2 Card used as main board of Set Top Box.	60,000	19.56	253.18175

Re: B/E No. 3429617 dated 29th September 2017

Sl	Description of the goods declared in the Bill of Entry	Description of the goods on examination (Actual)	Total quantity in Pcs.	Declared Assessable value in Rs.	Ascertained Assessable unit price in Rs.
1	MPEG Card (Ali 3328/3329) for DVB Set Top Box (Main PCB for DVB)	MPEG-2 Card used as main board of Set Top Box	55,000	82.57	253.18175
2	MPEG Card (Ali	MPEG-2 Card used as main	5,000	132.10	302.71175 (253.18175+49.5

	3328/3329) with USB slot for DVB Set Top Box (Main PCB)	board of Set Top Box.			3)
3	SMPS Power Supply Model 008 for Set Top Box	SMPS Power Supply Board used for controlled power supply in set Top Box	60,000	19.82	28.6093
4	DVB Remote for Set Top Box	Remote for Set Top Box	5,000	13.21	13.21

4. During investigation, DRI recorded the statements of Sh. Yeshray Singh and Sh. Satendra Singh, respectively Director and Manager of the importer, which were later retracted.

5. In course of investigation, the importer deposited an amount of Rs.38,93,712/- towards payment of Customs Duty.

6. On 21.05.2018, the goods covered by Bill of Entry No. 2740311 dated 05.08.2017, were released upon deposit of Rs.50,00,000/- against security as per order No. FO/75591/2018 dated 20.3.2018 passed by this Tribunal in an Appeal arising out of Order-in-Original No. F. No. S60(VA&B)-360/2017(Misc.) dated 01.01.2018 passed by the Commissioner u/s 110A of Customs Act, 1962.

7. After conclusion of investigation, Show cause notice dated 10th February 2018 was issued and after conclusion of adjudication process

on contest, the impugned order dated 31st August 2018 was issued in which the adjudicating authority held as follows:-

i) The declared assessable value is rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rule 2007;

ii) The proper description of the imported goods for the purpose of assessment is to be taken as “SMPS Power Supply Board used for controlled power supply in Set Top Box, and “MPEG-2 Card used as main board of Set Top Box”.

iii) The assessable value of three items imported was re-determined at Rs.3,40,62,396/- under Rule 9 of Customs Valuation Rules, 2007.

iv) The goods imported vide B/E No. 3429617 dated 29th September 2017 were ordered for confiscation under section 111(m) of the Customs Act, 1962. However, an option for redemption was extended on payment of redemption fine of Rs.17.00 Lakhs under section 125 ibid.

v) The goods imported vide B/E No. 2740311 dated 5th August 2017 were ordered for confiscation under section 111(m) of the Customs Act,1962. However, an option for redemption was extended on payment of redemption fine of Rs.16.00 Lakhs under section 125 ibid.

vi) Differential Duty of Rs.1,40,46,168/- was demanded for the two subject Bills of Entry u/s 28 (8) of Customs Act.1962.

vii) The amount of Rs. 38,93,712 and security deposit of Rs. 50.00 Lakhs paid by the importer was appropriated against the Customs duty of Rs.1,40,46,168/-

viii) Penalty was imposed upon the importer u/s 114A of the Customs Act, 1962,

ix) Penalties were imposed upon Shri Satendra Singh and Shri Yeshray Singh u/s 114AA of the Customs Act, 1962.

8. With reference to the “PCB for DVB with connector”, the Ld. Advocate appearing on behalf of the appellants submits that the goods imported by them were meant for DTH (Direct to Home Application). He contested the value adopted by the Revenue for these goods. He further submitted that the appellants had placed before the Adjudicating Authority the duly assessed Bill of Entry No. 3120704 dated 05.09.2017 and Bill of Entry No. 3564740 dated 10.10.2017 where value of the MPEG Card is USD 1.25/piece and that of SMPS for power supply is 0.2 USD/piece. However, the Adjudicating Authority did not take into account the value as assessed in the aforesaid two Bills of Entry for re-determination of the value in the subject case. The Adjudicating Authority found that B/E No. 3120704 dated 05.09.2017 is “System” or “RMS Assessed” i.e. not assessed by the group officers and there was no officer’s intervention. As regard B/E No. 3564740 dated 10.10.2017 the Adjudicating Authority found that it was incorrectly assessed by the officer. The Adjudicating Authority further found that the Assessing Officer should have consulted the NIDB for proper assessment.

9. Ld. Advocate appearing for the appellants further submits that the same Adjudicating Authority in respect of goods imported against Bill of Entry No. 2763068 dated 07.08.2017 by M/s Balaji Enterprises, Delhi in Remand Adjudication Order, i.e. Order-in-Original No. Kol/Cus/Commissioner/Port/07/2019 dated 19.02.2019, in terms of Order No. FO/A/77057-77058/2018 dated 06.12.2018, passed by this Tribunal, re-determined the value of the identical goods as follows:

Items Declared	**Items found**	**Qty. found in pcs.**	**Declared unit price (Rs.) [CIF]**	**Re-determined unit price (Rs.) [CIF]**

Power Supply for DTH	SMPS Card	232200	6.455	28.61
Main PCB for DVB with connector	DVB-S MPEG-2 Card	50000	19.363	80.69

10. The said order is at pages 291 to 314 of the Supplementary Paper Book filed by the Appellant. The Advocate for the appellant submitted that the item imported is different from those items whose value has been adopted. He further submitted that value of the comparable goods imported contemporaneously be adopted disregarding the value adopted by the Revenue in as much as the value sought to be adopted is for totally different goods. With reference to the item i.e. SMPS Power Supply for DTH, he submitted that those were meant for assembling of power supply for DTH. But the Revenue Authority has adopted the value as part of the Set Top Box.

11. With reference to the website “Alibaba.com” on the basis of which the Revenue has re-determined the value, the Ld. Advocate for the appellants submitted that there is no evidence that any importation took place of the referred web-site item on the website value. He further submitted that impugned goods are meant for Direct to Home Application and hence merit significantly lower value.

12. The Advocate also submitted that power supply card cannot be the same for electrical/electronic equipments.

He further submitted that when the identical goods, contemporaneously imported, have been assessed and cleared on the identical value, there was no justification for enhancing the value of subject import goods and cited case laws in support of his contention.

13. The learned ADR. for the Revenue supported the impugned order and added that mis-declaration of value is apparent in as much as declared value of "SMPS Power Supply Board" as in B/E 2740311 is much lower than those declared in B/E 3429617.

14. In rejoinder, the learned Advocate submitted that the declared value for "SPMS Power Supply Board" is on the lower side as it was purchased on "Stock lot Basis".

15. Heard both sides and perused the appeal records.

16. The imported goods are electronic printed circuit board. A layman will not be able to decide the nature of the product and the possible use for such products by casual inspection. Reference to the website cannot only be the basis for loading of the value of the imported goods and demanding differential duty. The goods lying in the Customs' charge need to be examined and a suitable expert opinion obtained as to the nature of the goods.

17. With reference to "Power Supply for DTH" the Investigating Agency" has concluded that the imported goods were "SMPS Power Supply Board used for control power supply". The appellants' contention is that these are meant for Free to Air Set Top Box used for receiving unencrypted broad-cast signals. In this case also a layman will not be able to decide the nature of the product and possible use for such product. Reference to website cannot be the only basis for loading the value of the imported goods and demanding differential duty. The goods lying in the Customs' charge need to be examined and a suitable expert opinion as to the nature of the goods. Therefore, proper valuation of the goods is required to be re-determined in the

light of Section 14 of the Customs Act 1962 read with the Customs Valuation Rules 2007.

18. In view of the above discussion, the impugned order is set aside and the issue is remanded to the adjudicating authority for passing a denovo order after getting the goods examined by an expert for taking opinion as to the exact nature of the goods. Such expert opinion as well as the basis for re-determination of value, should be shared with the appellant and an opportunity should be given for rebuttal of the same.

19. Since, it is a live consignment, the adjudicating authority is directed to complete the denovo adjudication within a period of one month from the date of receipt of this order.

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

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(C.J.MATHEW)
MEMBER (TECHNICAL)

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