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

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 76778 of 2019

(Arising out of Order-In-Appeal No. KOL/CUS (Port)/AA/322/2019 dated 07.05.2019 passed by Commissioner (Appeals), Customs House, Kolkata)

M/s. Multi Serve Rolls Pvt. Ltd.
(41-C, Garcha Road, Kolkata-700019)

Appellant

VERSUS

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

R**espondent**

APPEARANCE :
Mr. S. P. Siddhanta, Consultant for the Appellant
Mr. A. K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75503/2025

Date of Hearing : 21 February 2025
Date of Decision : 21 February 2025

ORDER [PER R. MURALIDHAR]:

The appellant has imported scrap roll of Iron Steel from Bangladesh. They have adopted the assessable value @ USD 300/MT. The Department engaged the services of the Chartered Engineer from the accredited panel, who came to a conclusion that the fair value for the scrap would be USD $ 410/MT. However, the Assessing Officer held that the assessable value should be USD $460/MT. Accordingly, excess Customs Duty had to be paid by the appellant while clearing the imported goods. No Speaking Order was passed by the Assessing Officer. The appellants filed their appeal before the Commissioner (Appeals) who has dismissed the appeal on the ground that it was filed on 84th day. For arriving at this conclusion, the Commissioner (Appeals) has taken the date of Bill of Entry as date of receipt of the impugned order. Against the dismissal of their appeal, the appellant is before the Tribunal.

2. The Learned Consultant appearing on behalf of the appellant submits that no Speaking Order was passed by the Assessing Officer. The Commissioner (Appeals) is in error in taking the Bill of Entry date as the date of passing the Order. Because of this error, the Commissioner (Appeals) has dismissed the appeal on the ground that it was filed on 84^{th} day.

3. He also relies on the case law of **Kothari Metals Ltd. Vs. UOI reported in 2011 (274) E.L.T. 488 (Cal.)** wherein, the High Court of Calcutta has held that value cannot be increased arbitrarily. He prays that since the issue is in a short compass and is covered by several decisions, it will not serve any purpose if the matter is remanded to the Commissioner (Appeals).

4. He prays that the appeal may be heard and decided at the Tribunal level itself.

5. He further submits that though the Chartered Engineer who is in panel of the Customs Department, had certified that the assessable value should be taken @ USD 410/MT, the Assessing Officer has increased the value @ USD 460/MT arbitrarily without giving any proper reason which is not legal. The Assessing Officer has not followed the procedure given under the Customs Valuation Rules which mandates that the Rules should be applied sequentially. Accordingly, he prays that the appeal may be allowed.

6. The Learned AR reiterates the findings of the lower authority.

7. Heard both sides and perused the appeal papers and submissions made by the Learned Consultant.

8. We find that the Revenue was not satisfied with the assessable value of USD 300/MT adopted by the importer. They have engaged the services of Chartered Engineer who has concluded that the correct value should be @ USD 410/MT. When such conclusion has been arrived at by the professional Chartered Engineer, we do not see as to how the Assessing Officer has increased the value @ USD 460/MT. On being asked about the basis on which this value of USD 460/PMT has been arrived at, the Revenue is not able to bring in any evidence to support this price. The Valuation Rules in Customs have to be sequentially applied, eliminating the ones which are not applicable and finally the value should be applied, which has a proper basis. In this case, it is seen that the value arrived at by the accredited Chartered Engineer, who was appointed by the Revenue itself, is not being adopted but a totally new rate that too without any basis has been adopted. We do not see any reason to discard the value adopted by the Chartered Engineer. Even the appellant has not contested the enhanced value arrived at by the Chartered Engineer.

9. We also find that the Commissioner (Appeals) has overlooked the statutory provision that whenever any enhancement is proposed and adopted, a proper speaking order is required to be issued. In this case, the appellant was not issued such an order when the assessing officer has arbitrarily enhanced the AV to USD 460/PMT as against USD 410/PMT arrived at by the Chartered Engineer. The Commissioner (Appeals) has further erred in taking the Bill of Entry date itself as the date of the order for arriving at the time limit factor. Though even as per this calculation, the appeal was filed on 84th day, he has not used his power to condone the delay. This shows that he has gone ahead with a pre-determined mind to somehow or the other dismiss the appeal. In these circumstances, we do not think it will serve any purpose if the case is remanded to the Commissioner (Appeals). We have already gone through the merits of the case and have held that the Revenue is in error in enhancing the AV to USD

460 / PMT as against the AV of USD /410 adopted by the Chartered Engineer.

10. Accordingly, we hold that the AV should be USD 410/PMT and set aside the AV of USD 460 PMT adopted by the Revenue and allow the appeal filed by the appellant.

11. The appellant would be eligible for consequential relief by way of refund of the excess Customs Duty paid, along with interest from the date of enhancement to USD 460/PMT, till the refund along with interest is paid to the appellant.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pooja