IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

COURT No. I

Appeal No. C/175/09

(Arising out of Order-in-Original No. 164/2008/CAC/CC(EP) dated 28.11.2008 passed by Commissioner of Customs (Adjudication), Mumbai)

Bard Exports **Appellant**
Vs.

Commissioner of Customs, Mumbai **Respondent**

Appearance:

Shri T.A. Khalid, Representative for appellant
Shri Chatru Singh, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Shri Raju, Technical Member

Date of Hearing : 05.03.2018
Date of Decision :14.03.2018

FINAL ORDER NO. A/85641/2018

Per: Archana Wadhwa

As per the facts on record, the appellant M/s. Bard Exports filed three shipping bills dated 19.04.199 for export of readymade garments under claim of duty drawback. Along with 200 dozens of umbrella and P.P. cover of no commercial value were also sought to be exported. Revenue had doubt about the value of the readymade garments and drew samples from the consignments and forwarded the same to the assessing group for verification of D.V., who further forwarded the same to SIIB for necessary investigation. Provisional export of the shipment was allowed. Subsequently, investigation was conducted and the statement of authorized representative of the appellant was recorded wherein he disclosed the names of the suppliers who delivered the readymade garments to the appellant. He also submitted the invoices issued by the said suppliers. Summons were issued to the suppliers wherein some of them like M/s Fancy Fair have admitted to having supplied the goods to the appellant and others like M/s Shivam Apparels, M/s. Dolfin & M/s. Kin-Kini Garments did not respond to the summons. Subsequently, Revenue conducted some market enquiry and on that basis entertained a view that the value of the exported goods were on the higher side. After about passing a period of two years approximately, another market enquiry was conducted and various items were also purchased under the invoices to substantiate its stand that the goods were available at lower value in the Indian market.

2. As the appellant had submitted the procurement invoices of various suppliers, Revenue noticed that there were certain discrepancies in some of the invoices. In the case of supplies made by M/s Fancy Fair, it was found that the payment has not been made by the appellant to the said supplier. In the case of invoices issued by M/s. Dolfin, it was found that the invoice No. 213 was issued subsequent to invoice No. 215. The invoices issued by M/s Kin-Kini Garments were found to be computer

generated. All these led the Revenue to believe that the export consignment was over-valued.

3. On the above basis, proceedings were initiated against them by way of issuing show-cause notice dated 14/18.11.2003 proposing to confiscate the goods, to impose penalty and to restrict the drawback to the market value of the goods. The said show-cause notice culminated into an order passed by the Commissioner who confiscated the goods with an option to redeem the same on payment of redemption fine of Rs.6,72,750/- and further imposed a penalty of Rs.50,000/- under Section 114(i) of the Customs Act, 1962. In addition, the drawback restrictions were also made, restricting the claim to market value.

Hence, the present appeal.

4. On going through the impugned order of the Commissioner, we note that the entire case of the Revenue is based upon the result of two market enquiries. We note that the readymade garments were Baba Suits, Boys trousers, Boys T-shirt-knitted etc. The first market enquiry conducted by the Revenue was from a number of small stores selling more or less the said goods. The market survey specifically says that "identical readymade garments were not available in the said shops, some what similar goods are available". We observe here that the value of the clothing depends upon the number of factors including the quality of fabric used, stitching quality,

brand name and art work done on the same. A baba suit may be available in the market at a price of Rs.50/- or Rs.500/- or more. Similarly, in respect of second market survey also there is nothing on record to indicate that the type of garments available in the market were identical to the type of garments exported by the assessee. As such, we agree with the assessee that over-valuation of the consignments cannot be proved by making reference to the market enquiry without there being any indication of comparability of the goods. We also find that though the appellant has produced the invoices of the suppliers but the same stand dismissed by the adjudicating authority on the flimsy ground without being any concrete evidence to show that the same do not stand issued by the said supplier. The adjudicating authority has raised the same flimsy doubt about the correctness of the said invoices, even in those cases where the supplier has come forward and has admitted having supplied the goods. Such attitude of the Revenue cannot be appreciated.

4.1 The onus to prove over-valuation falls upon the Revenue and is required to be discharged by production of evidence. This was so observed by the Tribunal in the case of *Akshay Exports & Inds. V. Commissioner of Customs – 2003 (156) ELT 268 (Tri.Kolkata)*. The said decision stands approved by the Hon'ble Supreme Court when the appeal filed by Revenue was rejected. In the absence of positive evidence, the value of export cannot be rejected on the basis of market enquiry or on the flimsy ground. In any case, we note that the appellant had admittedly received the entire remittance of the export proceeding by way of BRCs. If that be so, the Revenue's case that there was over-valuation of the goods does not stand. The appellant having been able to sell the goods even at higher value to their foreign buyer and having realized the entire consideration for the export consignments, is entitled to the drawback, admissible to him under the law.

4.2 In view of the foregoing discussion, we find no justifiable reason to uphold the impugned order. Accordingly, the same is set aside and the appeal is allowed with consequential relief fo the appellant.

(pronounced in the Court on 14.03.2018)

(Raju)
Technical Member

(Archana Wadhwa)
Judicial Member

nsk