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

APPEAL NO: C/795/2009

[Arising out of Order-in-Appeal No: GOA/CUS/MP/29/2009 dated 30th April 2009 passed by the Commissioner of Central Excise Customs & Service Tax (Appeals), Goa.]

Stephen M Fernandes … ***Appellant***

versus

Commissioner of Customs & Central Excise
Goa …***Respondent***

Appearance:

Shri CS Biradar and Shri Rajiv Shrivastav, Advocates for appellant

Ms. Trupti Chavan, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 08/01/2018
Date of decision: 08/05/2018

ORDER NO: A/86325 / 2018

Per: C J Mathew

The issue in dispute in this appeal of Shri Stephen M Fernandes, against order-in-appeal no. GOA/CUS/MP/29/2009 dated

30th April 2009 of Commissioner of Central Excise Customs & Service Tax (Appeals), Goa pertains to the import of 'ceramic tiles' and 'sanitary ware' of Italian/Spanish origin from Kuwait. Though the appellant had originally sought clearance of these goods as unaccompanied baggage, on insistence of the jurisdictional authority, bill of entry no. 111814 was filed on 25th September 2008. The appellant was proceeded against for not being in possession of import export code, as the value of tiles in contemporaneous imports was said to be much higher and, there being no corresponding imports of sanitary ware, recourse was taken to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to demand differential duty. The value of the goods was enhanced from US $ 3,798.32 and US $ 1,680.25 to US $14,326.79 and US $ 6,335 (totaling ₹ 9,17,814.48).

2. We have heard Learned Counsel for appellant and Learned Authorised Representative.

3. On the issue of failure to obtain import-export code, it is not in dispute that the appellant had procured the goods for personal use and for transacting in personal goods, the Foreign Trade Policy permits a generic ccode to be employed. Accordingly, there being no bar on imports of personal effects against bill of entry and without separate code, there is no flaw in the procedure for import.

4. It is seen that the valuation of tiles has been determined for the purpose of demanding additional duty by recourse to contemporary price under rule 6 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008. It is surprising that rules pertaining to section 4A of Central Excise Act, 1944, which deals with goods manufactured in the country have been invoked in relation to imports without such rules being acknowledged either in the Customs Act, 1962 or the Customs Tariff Act, 1975. Additional duty of customs is a specific levy authorised by section 3 of the Customs Tariff Act, 1975. The taxing provision is self contained and makes reference, for determination of value, to section 14 of Customs Act, 1962. There is, therefore, no scope for insinuation of any rules that does not claim parentage from either of these two statutes or, at least, by adoption in either of these. Accordingly, determination of value for the purpose of additional duty is without basis in law and is not tenable. Insofar as the valuation for the purpose of basic customs duty is concerned, it is mandated that the declared value be rejected with resort to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in sequence. Undoubtedly, as found in the impugned order, the description of goods as ‘second choice’ and discrepancies in relation to the origin of the goods would sustain rejection of the declared value. Nevertheless, to render a closure to the process, it is be necessary to prepare an alternate value culled out

from contemporaneous imports and then to place the importers on notice with sufficient evidence of such contemporaneous imports at higher value. It is seen from the records that such a process has not occurred. In these circumstances, the enhancement of value for ascertainment of customs duty both basic and additional, fails to meet the test of legality.

5. It is also seen that for want of information of contemporaneous imports, rule 9 of the rules has been resorted to enhance the value of ‘sanitary ware’, in proportion to that adopted for ‘tiles’. This is neither justifiable nor logical; the procedure in law does not permit application of an enhancement in one set of articles to be adopted for another. No attempt appears to have been made to follow the letter and spirit of rule 9 of the said rules.

6. In view of the above, the enhancement of value in the imports effected in the impugned order is without sanction of law. Consequently, that is set aside and the appeal is allowed.

(Pronounced in Court on 08/05/2018)

(Anil Choudhary)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as27040205*