IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.I

APPEAL No.C/406/11

(Arising out of Order-in-Appeal No.106/MCH/AC/Gr.VIIC/2011 dated 12/04/2011 passed by the Commissioner of Customs (Appeals), Mumbai)

Arya Ship Breaking Corporation : **Appellant**

VS

Commissioner of Customs(Import) Mumbai : **Respondent**

Appearance

Shri.Vinay Ansurkar, Advocate for Appellant
Shri. S.R. Nair, EO (AR) for respondent

CORAM:

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

Date of hearing : 16/07/2018
Date of pronouncement : 16/07/2018

ORDER NO.87206/2018

Per : **Anil Choudhary**

1. The issue in this Appeal relates to valuation of Prim Hot Roll Coils imported by the Appellant M/s.Arya Ship Breaking Corporation under the Bills of Entry filed by them. The appellant in this appeal is aggrieved by Order-in-Appeal No.106/MCH/AC/Gr.VIIC/2011 dated 12/04/2011 passed by the Commissioner of Customs (Appeals), Mumbai.

2. The brief facts of the case is that the appellant imported Prime HR Coils under three contracts with the overseas supplier, which were backed by Letter of Credit issued by Oriental Bank of Commerce, Mumbai.

The bills of entry filed by the appellant were provisionally assessed by raising three issues namely classification of goods, whether the goods are freely importable or not and whether the value declared was correct or not. The adjudicating authority found that the classification claimed by the appellant under CTH 72253090 is correct and no import licence is required for import of the said goods. However, the adjudicating authority doubted the declared value and enhanced the same to USD 460 PMT as against USD 400 and doubted the declared value and enhanced the same to USD 460 PMT as against USD 400 and USD 410 PMT declared by the appellant. In an appeal by the appellant, the appellate authority upheld the order of enhancement of the order and rejected the appeal. Hence, the appellant is before us.

3. The Ld. Counsel for the appellant submits that both the lower authorities failed to appreciate the fact that the appellant had imported the goods against a contract backed by letter of credit. He further submitted that in arriving at the enhancement of declared value the original adjudicating authority erred in treating HR Coils and HR Plates as one and the same for the purpose of contemporaneous values. He submitted that both the said goods are different in nature and therefore the values relied upon by the Department for enhancement of the declared values is erroneous and not leally sustainable. It is his further submission that the department also failed to produce any evidence with regard to additional consideration remitted by the appellant over and above the declared transaction value. In support of his these contentions he relied upon various decisions on the issue which are part of the appeal memorandum.

4. The learned for the Revenue supported the impugned order.

5. Having considered the facts of the case, the rival submissions and case laws placed on record we find that the imported goods namely HR Coils cannot be compared with HR Plates as has been done by both the lower authorities for enhancement of the declared transaction values. The learned Counsel for the appellant has also pointed out that at para 8.3 of the order-in-original were a table of contemporaneous import with description of goods etc. shows that in respect of HR Coils the lowest value declared was USD 385 PMT and the values declared by the appellant are higher than the said values. We agree with the said submission. We also note that the Revenue has failed to establish the payment of any additional consideration over and above the declared transaction value. Having gone through the decisions relied upon by the appellant, we are of the opinion that the said decisions squarely covers the issue before us and the rejection of transaction value and enhancement of the same by the lower authority is not legally sustainable. Therefore, the value declared by the Appellant have to be accepted.

6. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

(C.J. Mathew)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

PJ