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

Appeal No. C/156 to 158/2011

(Arising out of Order-in-Appeal No. 22 to 24 (Gr.VI)/2011(JNCH)/IMP/-14 to 16 dt.20.1.2011 passed by the Commissioner of Customs (Appeals)Mumbai-II, JNCH, Sheva

M/s. Nilkamal Limited : **Appellant**

VS

Commissioner of Customs (Import), Nhava Sheva : **Respondent**

Appearance

Shri Sachin Chitnis, Advocate for Appellant

Shri Manoj Kumar, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of hearing : 15/11/2018
Date of decision : 15/11/2018

ORDER NO. A/87974-87976/2018

Per : Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. . 22 to 24 (Gr.VI)/2011(JNCH)/IMP/-14 to 16 dt.20.1.2011 passed by the Commissioner of Customs (Appeals)Mumbai-II, JNCH, Sheva.

2. Briefly stated the facts of the case are that the appellant had imported Wooden Furniture's against Bills of Entry Nos. 848933

dt.12.01.2010, 878738 dt. 2.2.2010 and 876573 dt.1.2.2010, declaring the assessable value of the said goods as per the transaction price mentioned under the proforma invoice issued by the overseas supplier. On examination of the consignment imported, it was found that the weight of the furniture declared in the respective Bills of Entry/Packing List is less in comparison to the actual weight of the said goods. Alleging that the appellant had suppressed the value of the goods to the extent of the weight less declared, differential duty on prorata basis was confirmed and the goods were directed to be confiscated and penalty also imposed. Aggrieved by the said order, they filed appeal before the Ld. Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. Ld. Advocate Shri Sachin Chitnis for the appellant submits that goods, namely, King size bed, Sofa set, Dresser, Wardrobe etc. were imported by them declaring the assessable value as per the proforma invoice issued by the overseas supplier. The weight shown in the respective invoices found to be less in comparison to the actual weight wherein received. It is his contention that the price was declared on unit wise of the imported furniture and not against weight of the furniture. It is his further contention that the said furniture classifiable under Chapter 94038900, where rate of duty prescribed against units i. e. per piece and not according to the weight of the said furniture. Therefore, loading the invoice price to the extent of excess weight on prorata basis is untenable in

law. Therefore, the order is bad in law and liable to set aside. In support he has referred to the judgements of this Tribunal-

(i) *Marble Art Vs. Commissioner of Customs, ICD, TKD, New Delhi 2003 (156) ELT 370 (Tri.-Del.)*

(ii) *Nitco Tiles Ltd. Vs. Commissioner of Customs, (Imports), Mumbai*
2008 (230) ELT 89 (Tri.-Mumbai)

(iii) *Siyarco Industries Vs. Commissioner of Customs, Jodhpur 2005 (182) ELT 141 (Tri.-Del.)*

(iv) *Topaim Properties Pvt. Ltd. Vs. Commissioner of Customs, Nhava Sheva*
2005 (192) E.L.T. 950 (Tri.-Mumbai)

(v) *Sham Lal & Co. Vs. Collector of Customs, New Delhi*
2003 (161) E.L.T. 1060 (Tri.-Del.)

4. Per contra, Ld. AR for the Revenue reiterates the findings of the Ld. Commissioner (Appeals). He has submitted that since there has been difference in the weight of the importer furniture, they shown in the invoice, the authorities below have rightly loaded the invoice price on prorata basis to the extent of excess weight found on physical verification of the goods.

5. Heard both sides and perused the records.

6. We find that undisputedly the appellant had imported wooden furniture of different varieties meant to be used in bedrooms and hall etc. While importing the said goods, the appellant had declared the classification of the product, under Chapter 94038990 of CTA, 1975 which are assessable to duty as unit not by weight. Therefore, noticing excess weight at the time of physical verification of the import by the Customs authorities, in our view, could not in any

manner change the transaction value disclosed in the proforma invoices, which has not been disputed by the Revenue. In these circumstances, loading the invoice price prorata basis to the extent of excess weight of the furniture noticed during the physical examination, in our view, unsustainable in law for the reasons mentioned above. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative portion of the order pronounced in court)

(Sanjiv Srivastava) ***(Dr. D.M. Misra)***
Member (Technical) ***Member (Judicial)***

SM.