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

APPEAL Nos. C/285,418/2010

(Arising out of Orders-in-Original No. 169/2009/CC(I)/JNCH dated 21.12.2009 and No. 188/2009-10/CC(I)/JNCH dated 19.3.2010 passed by Commissioner of Customs (Import), JNCH, Nhava Sheva, Raigad)

Kumar Mahendra Exim **Appellant**

Vs.

Commissioner of Customs (I), Nhava Sheva **Respondent**

Appearance:

Shri Vinay Ansurkar, Advocate, for appellant
Shri M.K. Mall, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. C.J. Mathew, Member (Technical)

Date of Hearing: 8.8.2018
Date of Decision: 8.8.2018

ORDER No. A/**88109-88110/2018**

Per: S.K. Mohanty

Both these appeals are directed against the impugned orders dated 21.12.2009 and 19.3.2010 passed by the Commissioner of Customs (Import), JNCH, Raigad.

2. Brief facts of the case are that the appellant had filed Bills of Entry for importation of Ethylene Vinyl Acetate (EVA), claiming classification under CTH

39013000 of the First Schedule to the Customs Tariff Act, 1975. The value declared in the Bills of Entry was USD 1200/- PMT. The said consignment was earlier consigned in the name of M/s. Appex International by M/s. Texpo International under Bill of Lading No. MYKS 20659330 dated 15.6.2008 at declared unit price of USD 1800/- PMT. The import consignment was placed under seizure by the DRI on the basis of the investigations being conducted regarding importation of goods using fraudulent IEC or IEC of other persons by some unscrupulous importers. Upon investigation into the matter, the DRI had proposed to enhance the value for the consignment at Rs.60,00,000/- as per Rule 4 and Rule 5 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962. During the period of investigation, M/s. Texpo had filed a writ petition before the Hon'ble Bombay High Court with a prayer to permit them to change the buyer of the goods by amending the Bill of Lading of the transaction in question. The prayer of M/s. Texpo was considered and accordingly, the application was allowed by the Customs Department for amendment in the IGM regarding the change in the name of the consignee from M/s. Appex International to M/s. Kumar Mahendra Exim, the appellant herein. Upon filing of the Bill of Entry by the appellant, it was observed by the department that the subject goods were supplied by the consignor, raising invoice at the lower price than the actual price of the goods as sold by the manufacturer and that the differential amount between the actual value and the declared value had been remitted to the supplier in cash. Accordingly, the matter was adjudicated vide the impugned order dated 19.3.2010, wherein the declared assessable value of Rs.25,79,742/- was rejected and the same was redetermined at Rs.56,07,121/- in terms of Rule 4 of the CVR, 2007. Besides, the said order also confiscated the goods with the option to redeem the same on payment of redemption fine. Penalty was also imposed on the appellant under Section 112(a) of the Act. In the impugned order dated 21.12.2009, lower amount of redemption fine was imposed on the ground that the initial importer had already approached the Settlement Commission.

3. The learned Advocate appearing for the appellant submitted that the declared value is true transaction value and there is no undervaluation on the part of the appellant. It has further been stated on behalf of the appellant that the goods were not cleared by the original consignee and during normal course, the supplier had offered it the negotiated price of USD 1200/- PMT.

Thus, it is contended that such price offered by the overseas supplier should be considered as transaction value for the purpose of valuation under Rule 14 of the Customs Act, 1962.

4. On the other hand, the learned AR appearing for the respondent reiterated the findings recorded in the impugned order and claimed that the demands confirmed therein are in conformity with the statutory provisions.

5. We find that the learned Commissioner has not accepted the negotiated price of USD 1200/-PMT for importation of EVA on the ground that reduction in the price was not during the course of international trade, but domestic trade and therefore, such price cannot be accepted for determination of the value under Section 14 of the Act. It is an admitted fact on record that pursuant to the order dated 1.12.2008 passed by the Hon’ble Bombay High Court, the Commissioner of Customs (Import), JNCH had allowed the application filed by M/s. Texpo International for amendment in the IGM regarding the change in the name of the consignee from M/s. Appex International to M/s. Kumar Mahendra Exim, the appellant herein. Since in terms of the permission granted by the jurisdictional Commissioner vide order dated 18.11.2009, the

appellant had filed the Bill of Entry and other import documents, the value declared for the purpose of assessment should be considered, in absence of any plausible evidence that the declared price is not true transaction value and over and above the agreed price, the appellant had paid more consideration through the mode, other than the banking channel. Since Section 14 of the Act mandates that the value of the goods is to be considered on the basis of the price actually paid or payable for the goods, when sold for export to India, the negotiated price offered by the overseas supplier should be considered as the transaction value. Therefore, the impugned order, so far as it has rejected the declared value, redetermined the same, ordered for confiscation and imposition of fine and penalty, is not sustainable and the same is liable to be set aside.

6. In view of above discussions, we do not find any merits in the impugned orders. Accordingly, after setting aside the same, we allow the appeals in favour of the appellant.

(Pronounced in court)

(C.J. Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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