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

APPEAL Nos. C/264,540/2012

(Arising out of Order-in-Appeal No. 151/MCH/ADC/Gr.VB/2012 dated 20.3.2012 passed by Commissioner of Customs (Appeals), Mumbai-I)

Appeal Enterprises — **Appellant**

Vs.

Commissioner of Customs (I), Mumbai — **Respondent**

AND

Commissioner of Customs (I), Mumbai — **Appellant**

Vs.

Appeal Enterprises — **Respondent**

Appearance:

Shri D.H. Nadkarni, Advocate, for appellant assessee
Shri Manoj Kumar, Assistant Commissioner (AR), for Revenue

CORAM:

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

Date of Hearing: 23.01.2019
Date of Decision: 23.01.2019

ORDER No. A/**85181-85182/2019**

Per: Dr. D.M. Misra

These two appeals are filed, one by the Revenue and another by the assessee, challenging the same order-in-appeal passed by the Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the appellant-assessee had imported 2117 pieces of ‘unbranded metal cabinet fitted with PCB CDM and screws and hardware for car CD player’ and 4010 pieces of ‘Xplod brand metal cabinet fitted with PCB CDM and screws and hardware for car CD player’ without any model, declaring the assessable value as Rs.24,05,339/- against Bill of Entry No.900114 dated 25.6.2009. Alleging that the appellant had misdeclared the value, the department initiated proceedings and rejected the transaction value and enhanced the transaction value to Rs.59,14,875/- and assessed the goods accordingly; consequently, the differential duty of Rs.10,25,262/- was demanded and confirmed against the appellant-assessee; confiscation of the goods released provisionally against bond and bank guarantee was directed and penalty of Rs.10,25,262/- imposed. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals) who, though upheld the confiscation, but observed that there was no misdeclaration of the value. The Revenue is in appeal against the observation of setting aside the enhancement of value and the assessee is in appeal challenging the confiscation and imposition of penalty.

3. Learned Advocate, Shri D.H. Nadkarni, for the appellant-assessee submits that there was no basis

under which the transaction value could be rejected by the adjudicating authority as during the course of adjudication, they have produced NIDB data indicating that contemporaneous imports were made at or same time almost on the same value. It is his contention that, therefore, there was no undervaluation and accordingly, accepting their contention, the learned Commissioner (Appeals) rejected the order of the adjudicating authority enhancing the assessable value of the goods. It is his contention that, however, she has erred in confirming the confiscation and imposition of penalty on the appellant.

4. Per contra, learned AR for the Revenue has submitted that the order of the learned Commissioner (Appeals) is cryptic and the learned Commissioner (Appeals) erred in observing that the rejection of the transaction value by the adjudicating authority was without any valid reasons. The learned AR submits that on the basis of similar imports and comparing the goods under assessment, the adjudicating authority rejected the transaction value which the learned Commissioner (Appeals) failed to appreciate. However, he fairly submits that since there are contradictions in the observation of the learned Commissioner (Appeals), therefore, the matter be remanded to the learned Commissioner (Appeals) for fresh consideration.

5. Heard both sides and perused the records.

6. We have carefully considered the submissions advanced by both sides. We find that the issue involved in the present appeals is determination of the correct assessable value of the imported goods declared by the appellant-assessee. The learned Commissioner (Appeals) in the impugned order, though held that the declared value is correct and enhancement by the Revenue is without basis, however, maintained the confiscation and penalty which was imposed by the adjudicating authority for misdeclaration of the goods and its value. In these circumstances, we are of the view that the matter be remanded to the learned Commissioner (Appeals) to decide all issues afresh taking note of the grounds raised by both the appellants i.e. Revenue and assessee before this forum. All issues are kept open.

7. Appeals are allowed by way of remand.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

tvu