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

<u>APPEAL NO: C/46,47,49/2011</u>

Arising out of: Order-in-Appeal No. 311-314 Group-III/2010(JNCH)/IMP-291-294 dated 22.10.2010

Passed by: Commissioner of Customs (Appeals), JNCH, Nhava-Sheva

Appellants – Represented by:

1. R.S. Enterprises
2. Rachit Tuli
3. Rajnish Tuli

Shri Prashant Patankar, Consultant

versus

Respondent – Represented by:

CC (I), Nhava Sheva

Ms. Trupti Chavan, Assistant Commissioner (AR)

Date of hearing 18.12.2018
Date of pronouncement 10.04.2019

<u>CORAM</u>

Hon'bler Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

ORDER NO: A/85705-85707/2019

Per: Ajay Sharma

These Appeals have been filed from the impugned order dated 22.10.2010 passed by the Commissioner (Appeals), JNCH, Sheva, Mumbai-II in Order-in-Appeal No.311 to 314(GR.III)/2010 (JNCH)/IMP-291 to 294. The issue to be decided in these Appeals is about the valuation of 100% Polyester Chennile yarn.

2. The facts leading to the filing of these Appeals are as follows. M/s. R.S. Enterprises fled two Bills of Entry dated 22.10.2008 for the clearance of 100% Polyester Filament Yarn on Hanks 150D/48F, 1/11 NM at the declared value of US$ 1.4 per Kg. under Tariff Heading 54023300. The Bills of Entry were assessed on second check. The samples of the same were drawn and sent to D.Y.C.C., JNCH and to the Dy. Director Textiles Committee, Ministry of Textile, Mumbai for testing. Test Analysis report dated 20.11.2008 from Textile Committee described the imported goods as Chenille Yarn and the identification of the fibre was reported as Fancy Yarn of Polyester made of 100% filament yarn, bleached, which falls under Tariff Heading 56060020. The Dy.C.C., JNCH also vide their report dated 30.12.2008 reported that the goods were Chenille Yarn made of Polyester Filament Yarn and were not dyed. Accordingly a show cause notice dated 17.7.2009 was issued to the Appellants and the Adjudicating authority vide Order-in-Original dated 26.5.2010 classified the imported goods under CTH 56060020, rejected the declared value and re-determined the same @ US$ 2.365 per Kg. Same were confiscated with the option to redeem the same on payment of fine of Rs.13,00,000/-. Penalty was also imposed on the proprietor. On Appeal filed by the Appellants, the learned Commissioner (Appeals) vide impugned order dated 22.10.2010

upheld the Order-in-Original and rejected the Appeals filed by the Appellants.

3. We have heard learned Consultant for the Appellants and learned Authorised Representative for the Revenue and perused the Record. The learned Consultant submitted that the description in the bills of entry matches the '*generic description*' as '*100% Polyester Filament Yarn on Hanks*' as per trade practice which includes '*Chennile Yarn'*. He further submitted that the impugned order has not specified any breach of the proviso to Rule 3(2) of the CVR, 2007 so as to reject the declared value. According to the learned Consultant the import of the similar goods at other ports viz. ICD, Ludhiana have been allowed at much lower value and that in support of it they submitted the relevant documents to the Adjudicating Authority as well as the Appellate Authority but despite that the learned Commissioner has recorded the finding that supporting evidence of import of similar goods at lower value at other ports is not produced by the Appellant. He also submitted about violation of the principle of natural justice and stated that Bill of Entry of M/s. Ahuja Yarn Agency, on the basis of which the value for the purpose of re-assessment was ordered by the Adjudicating Authority, has not been supplied to the Appellants. Whereas the Learned Authorised Representative reiterated the findings recorded in the impugned order

and submitted that the Appellants were given opportunity to inspect the original records but they did not turn up to inspect the same.

4. Be that as it may, the fact remains that there is no finding about the import of similar goods at others ports at lower value, in the impugned order for whatever reason. Justice should not only be done but also seen to be done. Therefore, without going into the merits of the Appeals, we set aside the impugned order and remand the matters back to the Commissioner (Appeals) to decide these Appeals afresh after giving proper opportunity to the Appellants to produce all the documents/evidence in support of its submission and also after supplying the Bill of Entry of M/s. Ahuja Yarn Agency (*which has been relied upon while enhancing the value of the imported goods)* to the Appellants. We are not going into the question as to whether the Appellants had submitted the relevant documents or not and are directing the Appellants to submit all the documents/ evidence before the Appellate Authority in support of their claim of lower value at other ports etc. All contentions of the Appellants are left open to be urged before the learned Commissioner. It is needless to mention that we have not commented on the merit of Appeals.

5. The Appeals are therefore allowed by way of remand.

(Pronounced in Court on 10.04.02019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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