CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.

Appeal No. C/285/2012

(Arising out of Order-in-Original No. 78/2011/CC(I), JNCH dated 25.01.2012 passed by Commissioner of Customs (Import), JNCH, Nhava Sheva)

Mangali Petrochem Ltd. **Appellant**
601 A-Wing, Shrikant Chamber,
Near R.K. Studio, Chembur,
Mumbai 400 071.

Vs.

Commissioner of Customs (I), NS **Respondent**
JNCH, Post Uran,
Dt. Raigad, Sheva 400 707.

Appearance:

None for the Appellant
Ms. Trupti Chavan, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. **A/85790/2019**

Date of Hearing: 21.01.2019
Date of Decision: 21.01.2019

PER: SANJIV SRIVASTAVA

This appeal is directed against the order in original No 78/2011/CC(I) JNCH dated 25.01.2012 of Commissioner Customs (Import) JNCH Nhava Sheva. By the said order Commissioner held as follows:

"6. In view of above discussions and findings, I pass the following order:

(i) I order confiscation for 208.925 MTs of Base Oil SN-500, imported vide Bill of Entry 5340827

dated 30.01.2011 under Section 111(l) and 111(m) of Customs Act, 1962.

(ii) However, I give an option to the importer to redeem the goods on payment of Redemption Fine of Rs 3,00,000/- (Rupees Three Lakh only), in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

(iii) I impose a penalty of Rs 2,00,000/- (Rupees Two Lakh Only) on the importer i.e. Mangali Petrochem Ltd under Section 112(a) of the Customs Act, 1962."

2.1 Appellants have filed Bill Of Entry No 5340827 dated 30.01.2011 for clearance of imported goods declaring them as "Base Oil SN 300", quantity 200.7 MTs and having unit price of US$ 900 PMT.

2.2 On examination it was found that the import consignment was for 208.925 MTs instead of declared quantity of 200.7 MTs. Representative samples of the imported goods were drawn and forwarded to M/s IOCL Vashi, Navi Mumbai for testing. For the misdeclaration of quantity the goods were seized under section 110 of the Customs Act, 1962.

2.3 M/s IOCL Vashi vide its test report Ref No CSL-TR-322 dt 26.12.2011 remarked *"The base oil sample meet closer to SN-500 specification".* Hence revenue was of the view that goods have been misdeclared.

2.4 Holding the goods misdeclared, the transaction value as declared by the Appellants was rejected under Rule 12 of Custom Valuation (Determination of Price of Imported Goods), 2007. The valuation of the imported goods was proposed on the basis of value of contemporaneous imports of identical goods i.e. Base Oil SN-500. In terms of Rule 4 of Custom Valuation (Determination of Price of Imported Goods), 2007, the value was redetermined at US$ 1280 PMT. Appellants vide their letter dated

02.01.2012 accepted the proposed value of US$ 1280 PMT.

2.5 In view of the above misdeclaration in terms of description, quantity and value with the intention to evade payment of duty, the goods were rendered liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962 and importer (appellant) was liable for penal action under Section 112(a) ibid.

2.6 Importer (appellant) was informed about the above facts. They waived the requirement of written show cause notice and requested for personal hearing.

2.7 After granting personal hearing to the appellants on 02.01.2012, Commissioner adjudicated the matter as per his order referred in para 1, supra.

2.8 Aggrieved by the order of Commissioner, Appellants have filed this appeal before us.

3.1 In their appeal Appellants have challenged the order of Commissioner on following grounds:

i. The documents such a SIIB(X) report which was the basis for enhancement of the value of the imported goods was never furnished to them.

ii. The declared value in the present case has been rejected on the basis of SIIB (X) report and not on the basis of any other ground such as undervaluation of goods, evidence regarding remittance of excess amount to overseas supplier etc.

iii. The report of IOCL Vashi Ref No CSL-TR-322 dt 26.12.2011 was not furnished to them.

iv. Commissioner has erred in recording in his order that Appellant had accepted the valuation as per contemporaneous import of Base Oil SN-500 and did not dispute the findings of IOCL Vashi.

v. They had never misdeclared the description and value of the imported goods. The rejection of transaction value by application of Rule 12, in the present case is not justified.

vi. It is settled law that onus to prove that declared price did not reflect the transaction value is on department and department has failed to discharge the said burden. (Prodelin India Pvt Ltd [20-06 (202) ELT 3 (SC)]

vii. Variation in the quantity declared was due to mistake at the port of loading and same is to the extent of 4% only and was not intentional.

4.1 None appeared on the behalf of Appellant at time of hearing despite notice. Ms Trupti Chavan Assistant Commissioner, Authorized Representative was heard on the behalf of revenue.

4.2 Learned Authorized Representative arguing on behalf of revenue reiterated the findings of the Commissioner in impugned order.

5.1 We have considered the submissions made in appeal and during course of arguments along with the impugned order.

5.2 In our view the firstly the matter needs to be examined vis a vis the supply of relevant documents to the Appellant, and whether the appellants had accepted the unit value as determined by SIIB(X). Commissioner has in para 6 of his order while recording the submissions made during the course of personal hearing stated as follows:

"6 A personal hearing was given to the importer before the undersigned on 02.01.2012. The personal hearing was attended by Shri Rohit Goyal on behalf of M/s Mangali Petrochem Ltd. During the personal hearing, he made submissions that the standards for SN-300 and SN-500 vary from refinery to refinery. There are fluctuations in parameters. The flash points and density of the product under import to the level of SN-500. There is no intentional mis-declaration of the product as they are dealing with this for 10 years. The valuation has been accepted mainly considering the delay and detention. He

further requested that lenient view may be taken and goods released timely."

5.2 Further vide their letter reproduced below appellants had disputed the value determined

EXHIBIT-'C'

Mangali Petrochem Ltd.

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E-mail : info@mpcl.co.in
Visit us : www.mpcl.co.in

28-11-2011

Commissioner of Customs (Import)
29 DEC 2011

To,
The Commissioner of customs,
Import, JNP custom house,
Nava Sheva, navi Mumbai.

Subject: Bill of entry: 5340827 dt.30.11.2011

Dear Sir,
With reference to above bill of entry # 5340827 Dtd. 30-11-2011 of base oil Sn 300 was imported by us. SIIB export has taken our bill of entry for investigation [illegible] SIIB against one Bill of entry of some importer M/s Balaji Urjanix (P) ltd which they imported base oil Sn 500 from Thailand at the rate of USD 1180 cfr Mumbai. On which taking into account SIIB has fixed the value. In this regard we are submitting following submission:

1. Our material is differ then Balaji product. We would like to request your honor to go thru the test report of M/s balaji urjanix issued by SGS which is renown company whose report is accepted in world. There is difference of parameter like flash point, color and density of product which are very important while selling the product in Indian market. (Copy of test report enclosed). Your Honour is requested to compare our report with the above report

2. M/s Balaji ltd product is CFR in which freight from Thailand to Nava Sheva is included, where as in our consignment there is nil freight. A copy of letter from IAL enclosed for your kind reference.

3. There material was booked in the month of October 2011 (Performa invoice copy enclosed) and where as our material was purchased in early December, 2011 from Dubai (UAE). Apart from that we are providing ICIS base oil report which is domestically and internationally accepted by all refineries.

Our consignment is incurring heavy ground rent and detention. We request your honor to clear the same at early date. We will be highly obliged to consider our request and clear the cargo.

Thanking you,

Yours truly,
For Mangali Petrochem Ltd.

Auth. Signatory

Jawaharlal Nehru Custom House,
Nhava Sheva
29 DEC 2011
Office of Joint Commissioner of Customs (Import)

Cc to: Addl. Commissioner of custom (Import Group I)

5.3 In view of the above we are not in position to agree with the observations made by the Commissioner in his order in para 7(ii) and (iii) as follows:

"(ii) M/s Managli Petrochem Ltd during the Personal Hearing dt 02.01.2012 accepted the valuation as per contemporaneous import of Base Oil SN-500.

(iii)I find that the noticee did not dispute the finding of the IOCL Vashi to the effect that the goods are Base Oil SN-500. In view of the above I hold that the goods are Base Oil SN-500."

5.4 In our view matter needs to be reconsidered by the Commissioner on the basis of all the facts and documents on record.

5.5 Further we find that there is no evidence available on record to show that documents that revenue intended to rely against the appellants were ever given to them. Non supply of the documents relied against the appellant to them before passing the impugned order is denial of natural justice to them.

6.1 In view of discussions as above we allow the appeal filed by the Appellants and remand matter back to adjudicating authority for reconsideration of matter after following the principles of natural justice. Needless to say that copies of all documents that are relied against the appellant are served upon them and then Commissioner should adjudicate the matter after affording reasonable opportunity of personal hearing to them. Since the matter is quite old, Commissioner should complete the proceedings in remand within four months of the date of receipt of this order.

(Order pronounced in the open court)

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

(Sanjiv Srivastava)
Member (Technical)

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