CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.C/453/2011 (Cross Objection No.115/2011)

[Arising out of Order-in-Appeal No.AGS(47)37/2011, dt.14.03.2011, passed by the CC (Appeals), C.Ex. & S.Tax, Aurangabad]

Commissioner of Customs, ...**Appellant**
Town Centre, N-5, CIDCO,
Aurangabad 431 003

VERSUS

M/s Videocon Industries Ltd ......**Respondent**
14 KM Stone, Village: Chitegaon, Tal: Paithan,
Aurangabad

Appearance:
Shri Dharmender Singh, Supdtt. (AR) for the Appellant
Shri T. Viswanathan, Advocate for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.A/85816/2019

Date of Hearing: 03.05.2019
Date of Decision: 03.05.2019

PER: D.M. MISRA

Heard both sides. This appeal is filed by the Revenue against Order-in-Appeal No.AGS(47)37/2011, dt.14.03.2011, passed by the CC (Appeals), C.Ex. & S.Tax, Aurangabad.

2. Briefly stated the facts of the case are that the Appellants had imported 1.5 Tons of Split Air Conditioner during the period

21.08.2008 to 06.09.2008 while filing into-bond bill of entry for the purpose of additional duties of customs (CVD). The MRP of the imported goods were declared as Rs.24,790 per set. While the goods were in the warehouse itself, the Respondent changed and re-affixed the MRP as Rs.16,300/- earlier declared in the into-bond bill of entry and thereafter cleared the goods by filing ex-bond bill of entry. The Assistant Commissioner directed provisional assessment as the MRP of the goods could not be ascertained at the time of the clearance of the goods from warehouse. Later, the assessment was finalised by the Deputy Commissioner of Customs considering the MRP of the goods as Rs.24,790/- and not the revised MRP of Rs.16,300/- declared at time of ex-bond bill of entry and confirmed the differential duty. Aggrieved by the said order, the Respondent filed appeal before learned Commissioner (Appeals) who in turn, allowed their appeal. Hence, the Revenue in in appeal.

3. The learned A.R. for the Revenue argued that in view of the provisions contained in Section 4A of Central Excise Act, 1944 as interpreted by the learned Commissioner (Appeals), the MRP cannot be revised downward. Therefore, the MRP once declared while filing into-bond bill of entry would remain constant even after in the warehouse the Assessee re-affixed the MRP on the basis of the market condition. Further the learned A.R. for the Revenue argued that in any case, the Adjudicating authority has disallowed the reaffixing MRP declared at Rs.16,300/- by the Respondent on the ground that they could not establish by producing necessary evidence before the Adjudicating authority that these goods were

sold at the declared MRP of Rs.16,300/- at the time of filing ex-bond bill of entry.

4. Per contra, the learned Advocate Shri T. Viswanathan submits that the argument of the Revenue that MRP before clearance cannot be altered downward is without any basis. Further, he has categorically made a submission that the MRP was revised while the goods were in the warehouse and they cleared the goods affixing the revised MRP from the warehouse and the said goods were sold at the revised MRP also and not at the MRP initially declared at the time of filing into-bond Bill of Entry. He has fairly submitted that they could not produce necessary evidence in support of their claim before the Adjudicating authority, however, it has been placed before the learned Commissioner (Appeals) establishing the fact that the cleared goods were ultimately sold at the revised MRP of Rs.16,300/- per piece.

5. We have carefully considered the submissions advanced by both sides. We find that the Adjudication authority, while finalising the assessment, has not accepted the MRP of Rs.16,300/-, observing that even though the importer was directed to place the evidence of selling the goods at lower MRP of Rs.16,300/-, no evidence is placed before him. Consequently, the assessment was made final on the basis of initially declared MRP of Rs.24,790/- while filing into-bond bill of entry. We find that the learned Advocate for the Respondent in support of their case that the imported goods were subsequently sold at re-affixed MRP of Rs.16,300/- produced evidences in form of sales invoices which the learned Commissioner (Appeals) verified and accordingly accepted. It is the contention of the Revenue that

these evidences have not been scrutinised at the original level, hence it cannot be ascertained whether the goods were sold at the MRP of Rs.16,300/- as declared by filing ex-bond bill of entry. This fact needs to be ascertained by the Adjudicating authority. Therefore, we remand the matter to the Adjudicating authority to examine the evidences about the sale of the imported goods at the declared MRP at the time of filing ex-bond bill of entry. Only for this limited purpose, the matter is remanded to the Adjudicating authority.

6. Revenue's appeal is allowed by way of remand. The cross objection, which is in the nature of written submissions, is also disposed of.

(Dictated and pronounced in the open court)

(D.M. Misra)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

CBB