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

APPEAL NO.C/85856/2013

(Arising out of Order-in-Appeal No.929/MCH/ADC/ICD(M)(I)/2012 dated 22.11.2012 passed by the Commissioner of Customs (Appeals), New Custom House, Mumbai Commissionerate)

M/s. Disha Impex : **Appellant**
4/89, Vaidas Ashish,
Janardhan Park Co-op. Society Ltd.
Raghunath Nagar,
Wagle Estate, Thane (W) – 400 604

VS

Commissioner of Customs, Appeals : **Respondent**
Ballard Estate, New Customs House,
Mumbai 400 001

<u>Appearance</u>

Shri Stebin Mathew, Adv for Appellant

Shri Ramesh Kumar, AC (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 01.04.2019
Date of decision : 01.04.2019

ORDER NO. A/85968/2019

Per : **Shri P Anjani Kumar, Member (Technical)**

The Appellant M/s. Disha Impex have imported knitted polyester fabrics and filed Bill of Entry No.2153437 dated 26.08.2010. Goods were tested and found to be 100% polyester except for some goods at item No.1, which were found to be of 83.6% of polyester and 6% polyurethane. The department alleged that the goods were undervalued and therefore enhanced the value and released the goods provisionally on bond and Bank Guarantee. The Appellant claimed that they have paid the differential duty under protest. A Show Cause Notice dated 16.03.2011 was issued and was confirmed by OIO dated 04.04.2012. Commissioner Appeal vide impugned order dated 23.11.2012 confirmed the demand of duty at the enhanced value while setting aside the redemption file and personal penalty.

2. The Learned Counsel for the Appellant submits that the duty was paid under protest; department recorded the statement of Shri Ashok Mange the Proprietor; however the statement was exculpatory. The Learned Council submits that the Commissioner (Appeals) incorrectly held that the adjudicating authority ordered the Appellant to pay duty at the enhanced value and that the Appellant have accepted the same. He further submits that copy of the market survey report was not provided to them; therefore an opportunity to submit their contentions was not given; principles of as of natural justice were violated. On the same grounds the order needs to be set aside in view of the ration of Scorpian International v/s. Commissioner of Customer 2017(357) ELT 1093 (Tri-Del.).

2.1 He further submits that it is on record that the goods covered by market survey were not tested to ascertain as to whether they are identical to the impugned goods. He submits that under the absence of the same market survey is absurd as it would lead to perverse findings. He relied upon Kanha Impex v/s. Commissioner of Customs Mumbai 2017(358) ELT 842. He submits that there is no evidence to support the allegation of this declaration therefore the impugned order needs to be set aside.

3. The Authorised Representative for the department reiterate the findings of OIO and OIA.

4. Heard both the sides and perused the records of the case. We find that principles of natural justice have been violated in the case in as much as the copy of the test report was not supplied to the

Appellant. Moreover, the survey report does not indicate that the fabrics which were referred in the survey were same as the impugned goods. Therefore the findings of the market survey becomes questionable and the reliance on the same is rendered unsubstantiated. It is also on record that the proprietor on being questioned did not confirm the under valuation. Moreover, we find that the Learned Commissioner Appeals has set aside the redemption fine and personal penalty. We find that this bench in the case of Kanha Impex (Supra) held that

> *"unless it is established that the goods of market value of which the department sought to apply should be absolutely to the case of the Appellant. In absence of test of market goods, it cannot be said that the goods are identical. Consequently value declared by the Appellant cannot be disputed."*

5. In view of the above appeal is allowed with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(D.M. Misra)
Member (Technical)

(P Anjani Kumar)
Member (Judicial)

HM