CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 812 of 2011

[Arising out of Order-in-Appeal No: 398(Gr.IIA)/2011(JNCH)-IMP 336 dated 8th September 2011 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai– II.]

Asian Paints Ltd … ***Appellant***
Asian Paints House, 6A Shanti Nagar, Vakola
Santacruz (E), Mumbai – 400 055

versus

Commissioner of Customs (Imports) ***…Respondent***
JNCH, Nhava Sheva, Taluka Uran,
Dist: Raigad-400 707

APPEARANCE:

Shri Raj Mohan, Manager - Taxation for the appellant

Ms PV Sekhar, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 88458 / 2018

DATE OF HEARING: 28/11/2018
DATE OF DECISION: 28/11/2018

PER: C J MATHEW

Appeal lies against order-in-appeal no. 398(Gr.IIA)/2011

(JNCH)-IMP 336 dated 8th September 2011 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai– II which has upheld the order of the original authority. It is seen that the original authority had been requested for an order of assessment, in imports effected against ten bills of entry, on clearance of 'titanium dioxide CR-50 grade' after rejecting declared value of US $1940 per metric tonne, evidenced purchase order dated 31st August 2009 for substitution with contemporaneous price of US $ 2100 per metric tonne and, in the absence of any satisfactory response, adopted for assessment. Furthermore, to justify the revision, it was also held that the goods were subject to fluctuation in price and the value contracted six months prior to the date of import was not reflective of the contemporaneous value and, hence, rule 4(1)(A) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was invokable.

2. On a perusal of the impugned order, we find that the submission of the appellant before the first appellate authority of lack of evidence for adoption of an enhanced value was not accepted owing to issue of corrigendum on 17th August, 2010, almost a month and half after the date of order-in-original to insert the bill of entry no. 856317/16.01.2010 of M/s DTC India Ltd in discussion as the basis of the findings.

3. We have heard the representative of appellant and Learned Authorised Representative.

4. We find from the decision of the Tribunal, as cited by the representative of the appellant, in *Vyapar Industries Ltd v. Commissioner of Customs (I), Mumbai [2016 (343) ELT 825 (Tri.-Mumbai)]* the proceedings therein had been invalidated for non-availability of contemporaneous import and price when proceedings were initiated. We find in the present case that the gap in the evidence for the enhancement of value was made available only subsequent to issue of order-in-original. Moreover, there is no reference to the said contemporaneous import price in the discussion and findings which would have sufficed to demonstrate that the importer had been put on notice about the said price. Therefore, it would appear that proceedings for re-determination of the assessable value is not in compliance with the principles of natural justice.

5. The appellant herein had not been placed on notice about the availability of contemporaneous import prices or the details pertaining to those imports. An assessment order is no substitute for show cause notice or adequate for compliance with the principles of natural justice. Therefore, we set aside the impugned order and remand the matter back to the original authority to furnish the copies of the documents and other evidence to enable a proper defence of the

allegation of mis-declaration.

6. Accordingly, the appeal is allowed by way of remand.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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