CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

WEST ZONAL BENCH
COURT No.

Customs Appeal No. 538 of 2012

(Arising out of Order-in-Appeal No. 184/MCH/AC/Gr.VB/2012 dated 13.03.2012 passed by Commissioner of Customs (Appeals), Mumbai)

Trade Point Impex **Appellant**
3-Ground floor,
Near Ram Mandir,
Kewal Park, Azadpur,
Delhi 110 033.

Vs.

Commissioner of Customs (I), Mumbai **Respondent**
New Custom House,
Ballard Estate,
Mumbai 400 001.

Appearance:

Shri Ashok Kumar Singh, Advocate for the Appellant
Shri Dharmendra Singh, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. **A/86076/2019**

Date of Hearing: 07.06.2019
Date of Decision: 07.06.2019

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 13.03.2012 passed by the Commissioner of Customs (Appeals), Mumbai.

2. Brief facts of the case are that the appellant herein had imported DVD panels and filed Bill of Entry for assessment before the Customs authorities. The transaction value declared in the Bill of Entry as per

the commercial invoice and other documents were discarded by the authorities and the Bill of Entry was re-assessed, resulting in confirmation of additional duty demand of Rs.2,70,551/- on the appellant.

3. The learned Advocate appearing for the appellant, at the outset, submits that for re-assessing the Bill of Entry, speaking order was not passed by the authorities in terms of sub-section (5) of Section 17 of the Customs Act, 1962. He further submits that the Bill of Entry dated 18.02.2009 relied upon in the impugned order towards contemporaneous imports by some other importer was not made available to the appellant at the time of re-assessment of the Bill of Entry. Thus, he submits that the enhancement of value in the Bill of Entry is not proper and justified.

4. On the other hand, the learned AR appearing for Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the value declared by the appellant based on the commercial invoice and other documents was discarded by the Customs authorities and the value was enhanced on the basis of contemporaneous imports made vide Bill of Entry dated 18.02.2009. On perusal of the case records, we find that copy of the said Bill of Entry was not furnished to the appellant at the time of re-assessment of the Bill of Entry. Further, the procedures laid down in Section 17(5) have also not been complied with by the proper officer inasmuch as

no speaking order was passed in support of enhancement of the declared value. It is also noticed that based on the letter dated 24.07.2012 of the department confirming the contemporaneous import price, the learned Commissioner (Appeals) has rejected the appeal filed by the appellant. It is evident from the findings recorded at paragraph 7 in the impugned order that the appellant was not aware of the fact of contemporaneous import price, relied upon by the department. Thus, under the facts and circumstances of the case, we do not find any justifiable reason to accept the findings of the learned Commissioner (Appeals) in support of enhancement of the declared value.

8. Therefore, the impugned order cannot be sustained for judicial scrutiny. Accordingly, by setting aside the same, the appeal is allowed in favour of the appellant.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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