CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 86012 of 2013

(Arising out of Order-in-Appeal No. 764(D'Node) 2012 (JNCH)EXP-132 dated 27.12.2012 passed by Commissioner of Customs (Appeals), Mumbai-II)

M/s. J.K. International Traders **Appellant**
B-12, Anjani Complex,
Opp. Cinemax,
Andheri-Kurla Road,
Andheri (E), Mumbai 400 099.

Vs.

Commr. of Cus. (Exp.), Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist. Raigad,
Sheva 400 707.

Appearance:

Shri H.R. Shetty, Advocate, for the Appellant
Ms. Trupti Chavan, 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/86589/2019**

Date of Hearing: 09.09.2019
Date of Decision: 09.09.2019

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant had exported two consignments of cotton printed and dyed fabrics by declaring the value of Rs.70.25 and Rs.72.49 in the Shipping Bills filed before the authorities at the port of export. During the course of market enquiry conducted on 03.06.2011, the department found that market value of cotton dyed fabric was ranging between Rs.30-35/- per meter, as against the FOB value declared by the appellant. Accordingly, show cause proceedings were initiated against the appellant, which culminated into the adjudication order dated 25.11.2011, wherein the learned Additional Commissioner of Customs (Export), Nhava Sheva had assessed the Shipping Bills on the basis of the price mentioned in the market enquiry report and also imposed redemption fine and penalty on the appellant. In support of confirmation of the adjudged demands, he has not taken cognizance of the cost sheet and other documents produced by the appellant, on the ground that the said documents cannot be produced at the time of personal hearing. The original order dated 25.11.2011 was also upheld by the learned Commissioner (Appeals) vide the impugned order dated 27.12.2012. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. The learned Advocate appearing for the appellant submitted the Bank Realization Certificate to demonstrate that the value declared in the Shipping Bills was realized in actual through the approved banking channel and thus, the market enquiry report obtained by the department cannot alter the stand in respect of rejection of the declared value by the appellant. He further submitted that the cost sheet and other documents prepared by the appellant clearly show the actual FOB value, declared for the exported goods. Accordingly, it is stated on behalf of the appellant that the adjudged demands confirmed against it cannot be sustained.

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

4. Heard both sides and perused the records.

5. We find that the adjudication order dated 25.11.2011 had recorded the submissions made by the appellant, which are to the effect of submission of the documents in respect of the fabrics exported by it. However, the evidence produced by the appellant was not considered favourably on the sole ground that the same cannot be produced at the time of personal hearing of the matter. The Bank Realization Certificate submitted by the appellant proves the fact that the goods were exported and foreign currency to that extent was realized through the approved banking channel. Thus, under such circumstances and in view of the specific fact that the department has not produced any tangible evidence to show overvaluation of the goods, we are of the considered view that the adjudged demands confirmed on the appellant cannot be sustained.

6. Therefore, after setting aside the impugned order, we allow the appeal 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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