

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 1186 of 2012

(Arising out of Order-in-Appeal No. 410(GR.IIB)/2012(JNCH)/IMP-353 dated 24.08.2012 passed by Commissioner of Customs (Appeals), Mumbai-II)

M/s Aryavart Sales Corporation

.....Appellant

30, Rajdhani Enclave,
Pitampura, Delhi-110034

VERSUS

**Commissioner of Customs
(Import), Nhava Sheva**

.....Respondent

Jawaharlal Nehru Customs House,
Post Ura, Dist: Raigarh,
Nhava Sheva-400707

Appearance:

Shri Ashok Kumar Singh, Advocate for the Appellant

Shri Manoj Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88553 / 2018

Date of Hearing: 19.12.2018

Date of Decision: 19.12.2018

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 24.08.2012 passed by the learned Commissioner of Customs (Appeals), Mumbai-II.

2. Brief facts of the case are that the appellant had filed the Bill of Entry No. 314779 dated 07.04.2011 for the imported goods, declaring the same as "stock lot of coated/uncoated printing paper in mix size and GSM." The appellant had declared the value of the imported goods at USD 0.300 per kg and the assessable value at Rs.6,77,247.42. The Bill of Entry was assessed on first check basis. The docks Appraising Officer vide

his report dated 26.04.2011 had stated that the goods did not appear to be stock lot nor coated and appeared to be fresh lot of uniform/identical size, colour, thickness, GSM etc. Accordingly, department concluded that the appellant had mis-declared the description as well as value of the goods and thus, the same are liable for confiscation under Section 111(d) of the Customs Act, 1962 and the appellant should be exposed to the penal consequences provided under Section 112(a) *ibid*. The matter was adjudicated against the appellant vide order dated 29.06.2011, wherein the assessable value of imported goods was re-determined, based on the contemporaneous import value mentioned in the Bill of Entry No. 735536 dated 25.02.2011 filed by some other importer. The adjudication order had confiscated the goods and offered redemption of the same on payment of redemption fine of Rs.4,00,000/-. The said order also imposed penalty of Rs.1,00,000/- on the appellant under Section 112(a) *ibid*. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 24.08.2012 has upheld confirmation of the adjudged demand and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Heard both sides and perused the records.

4. We find from the available records that in the statement recorded by the department, the appellant had specifically stated that the overseas supplier had offered the goods as mill rejects due to not having uniform coating and therefore, the price has been negotiated on basis of its being rejected. Further, we also find that similar explanations furnished by the appellant during the course of adjudication have also been brushed aside and the value was re-determined, without proper substantiation. The orders passed by the authorities below have also not recorded any specific findings with regard to acceptance of the contemporaneous import made by the other importers. Thus, it is difficult to appreciate the facts at this juncture, whether the relied upon contemporaneous price is in conformity with the

statutory provision or not. Hence, under the circumstances, we consider it proper to remand the matter to the original authority for a proper fact finding on all the issues involved in this case.

5. Therefore, by setting aside the impugned order, the matter is remanded to the original authority for re-adjudication of the case on the basis of the materials available before him and to be submitted by the appellant during the course of re-adjudication. The appellant should be afforded with reasonable opportunity to explain its case, which should be considered before deciding the matter afresh.

6. In the result, the appeal is allowed by way of remand.

(Operative part of the order pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

HK

(Sanjiv Srivastava)
Member (Technical)