CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. I

Customs Appeal No. 88034 of 2013

(Arising out of Order-in-Appeal No. 396(GR.II H-K)/2013 (JNCH)/IMP-307 dated 30.04.2013 passed by Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II)

M/s. Adarsha Textiles **Appellant**
Plot No. B-59, Jawahar Road No.3,
Udhna Udyog Nagar,
Udhna 394 210, Surat.

Vs.

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

Appearance:

Shri V. Rama Rao, Advocate, for the Appellant
Shri Ramesh Kumar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. **A/87167/2019**

Date of Hearing: 30.10.2019
Date of Decision: 30.10.2019

PER: SANJIV SRIVASTAVA

This appeal has been filed by challenging the order in appeal No 396(Gr.II HK)/2013 (JNCH)/IMP-307 dated 30.04.2013 of the Commissioner (Appeals) Nhava Sheva. By the impugned order, the Commissioner (Appeals) has upheld order in original No 16433/2012 AM(I) dated 17.03.2012 passed by the Additional Commissioner of Customs (Import), Group II(G) holding as follows:

a. *"The goods imported under Bill of Entry No 5750678 dt 17.01.2012 valued at Rs 3080445/- 9A/V) are confiscated under section 111(m) of the customs Act, 1962. However the importers are given an option to redeem the goods on* *payment of a fine of Rs 1,00,000/- 9Rupees One Lakhs Only) under Section 125(1) of the Customs Act, 1962 and on payment of appropriate duty on redetermined value.*

b. A penalty of Rs 50,000/- (Rupees Fifty Thousand only) is imposed on importers under Section 112(a) of the Customs Act, 1962."

2.1 The facts as recorded by Commissioner (Appeal) in para 6 of his order are as follows-

"6. I find that, in the instant case the appellant filed Bill of Entry No 5750678 dated 17.01.2012, for import of 130 rolls of 50 Micron Spangle Film, with assessable value Rs 26,74,335.15/-. On examination, the goods were found to be weighing 2.270 MTS more than the declared weight. Further, it was observed that the packing of the goods were uneven. Therefore two randomly selected rolls (roll no 89, wt 147.2 Kgs & roll no 104, wt 114.9 Kgs) were physically measured in presence of CHA. The measurement of said rolls revealed that the rolls having lesser weight were found to be 7 mt. Shorter than that of the roll having more wt. Since the goods were found to mis declared, the transaction value declared by the importer rejected under Rule 12 of Customs Valuation Rules, 2007 and the value was re-determined as per the actual weight to Rs 30,080,445/-"

2.2 Since importer had vide letter dated 20.02.2012 requested for waiver of Show Cause Notice, as desired by them Additional Commissioner proceeded to adjudicate the case after granting them personal hearing on 27.02.2012 and after considering the submissions made by the appellant in written submissions.

2.3 Aggrieved by the order of the Additional Commissioner, appellant preferred appeal before Commissioner (Appeals) which was dismissed as per impugned order referred in para 1, supra.

2.4 Aggrieved appellants have preferred this appeal.

3.1 We have heard Shri V Rama Rao, Advocate for the Appellant and Shri Ramesh Kumar Assistant, Commissioner, Authorized Representative for the revenue.

4.1 We have considered the impugned order along with submissions made in appeal and during the course of argument

4.2 As per the facts recorded in the order in original the excess weight found in the consignment over the declared weight as per the Bill of Entry was not determined on the basis of actual weighment, but on the basis of estimation. Manner of estimation as recorded by the Additional Commissioner is as follows:

"Total Qty of the goods declared was 130 rolls of 500 meters each. Total gross wt declared 14.950 MTS. Total value of the goods assessed as per declared Assessable Value Rs 26,74,336.15/-

Goods were examined under IInd Check. On examination by docks, goods were found 2.270 MTS weighing more than that of the declared gross weight..

In the examination report, the docks observed that "the packing of the goods is uneven & therefore, the rolls no 104, 87,89,61 & 103 were weighed & were found to have 114.9, 146.3, 147.2, 135.5 & 103.1 kgs of weight respectively. Docks further observed that each roll is marked 500 mt.

Since, goods were found with uneven packing & of varying weight, therefore rolls length appears to be more than that of declared length. In order to set any doubt at rest, two randomly selected rolls (roll no 89, wt 147.2 kgs & roll no 104, wt 114.9 kgs) were physically measured by docks in presence of CHA. The measurement of said rolls revealed that the rolls having lesser wt was found to be 7 mt shorter than that of the roll having more wt. This indicated that wt is proportional to length."

4.3 From the above it is quite evident that for making the charge of misdeclaration of weight, revenue has adopted a novel, self contradictory method of estimation. When they themselves agree that the length of the rolls was not identical, then what was basis for determining the total length of the 130 rolls to multiply the same by weight per unit length. Further in the entire exercise we are unable to determine what was the weight per unit length taken for estimation, and how the figure of 2.270 MT, arrived as short declared. It is not understood if Custom Officers were suspicious of misdeclaration of weight what prevented them from actually weighing the consignment as a whole and determining the actual weight of consignment.

4.4 We find that the Bill of Entry as amended and assessed is still showing the Gross Weight of 14950 kgs as declared by the appellants. Bill of entry as filed by the appellant is reproduced below, along with the bill of entry as assessed after amending the same.

Indian Customs EDI System - Imports V1.5R001
JNCH; NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707
BILL OF ENTRY FOR HOME CONSUMPTION

Stn: INNSA1] CHA : AAACN1249DCH001 [NIRANJAN SHIPPING AGENCY PVT.L]
/Dt./cc/Typ:5750678/17/01/2012/N/H
rter Details : 5207024281 PAN : ACXPM7558GFT001
ARSH TEXTILES
:PLOT NO.B/59, ROAD NO.3,
UDHANA
SURAT/GUJARAT 394210

IGM No :2028854/22/01/2012 24/01/2012 Port Of Loading :Ningbo

Cntry Of Orgn.	: CHINA	Cntry Of Consgn.	:
BL No	: NGBCB11013263	H/BL No	:
Date	: 10/01/2012	Date	:
No. Of Pkgs.	: 130 PKG	Gross Wt.	: 14950.000 KGS
Marks & Nos	:N/M		

Inv No & Dt. : LM11008 20/12/2011
Inv Val : 49725.00 USD TOI: CIF
Freight : 0.00
Insurance : 0.00
SV Load(Ass) :
SVB Load(Dty) :
Misc. Charges: 0.00

M/S. SHAOXING XINXING TEXTILES LASER TECHNOLOGES CO.LTD SHANGYAO VILLAGE, PAOJIANG INDUSTRIAL AREA, SHAOXING, ZHEJIANG, CHINA.
Cust. House: CHINA
HSS Load Rate: 0.00% Amount: 0.00
0.00
Discount Rate: 0.00 Discount Amount: 0.00
Item Details
Exchange rate: 1.00 USD = 53.2500 INR

Slno. / Qty / Unit	RITC	Description / Unit Price / Ass Val	CTH / CETH	C.Notn C.NSNO / E.Notn E.NSNO	RSP / Cus Dty Rt / Exc Dty Rt	Load PROV / BCD amt(Rs) / CVD amt(Rs)
1	39201019	50 MICRON SPANGLE FILM 65000M **50MICRON*1460MM*500M/ROLL(PET FILM FOR TEXTILES) (SQ.MTR:95758)(130CTN)				
14560.00		3.415179	39201019		10.00 %	267433.50
KGS		2674335.15	39201019	002/2008 30	10.00 %	294176.90
		Educational Cess on CVD		:	2.00 %	5883.50
		Sec & Higher Edu. Cess on CVD		:	1.00 %	2941.80
		Customs Educational Cess		:	2.00 %	11408.70
		Customs Sec & Higher Edu. Cess		:	1.00 %	5704.40
		Addl Duty - (Imports)		: 019/2006	4.00 %	130475.40

Rs. 2674335.15

	Rs.	2674335.15	Page Total	Rs.	718024.20
BCD	Rs.	267433.50	BE Gross Total	Rs.	718024.20
ANTID	Rs.	0.00	NCD Duty	Rs.	0.00
CVD	Rs.	294176.90	SAFEGUARD Duty	Rs.	0.00
CESS	Rs.	0.00	Sch 2 Spl Excise Duty	Rs.	0.00
TTA	Rs.	0.00	GSIA	Rs.	0.00
Edu. Cess CVD	Rs.	5883.50	Customs Edu. Cess	Rs.	11408.70
Health CVD	Rs.	0.00	Addl Duty - (Imports)	Rs.	130475.40
SHE. Cess CVD	Rs.	2941.80	SH Cust Edu. Cess	Rs.	5704.40

Duty Payable: Rs. 718024
Rs. Seven Lakh Eighteen Thousand and Twenty Four only

Container Details

1 2028854 F REGU3079199 1 10-11 V1.5

Declaration
1. I We Certify that the above entries are correct.
2. I We further declare that wherever the RSP is applicable same has been truthfully declared

CHA Importer
NIRANJAN SHIPPING AGENCY PVT.LTD. ADARSH TEXTILES

Signature Signature

[NIC]

For, Adarsh Textiles

Proprietor

Duplicate (Importer copy)
Indian Customs EDI System - Imports V1.5R001
JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707
BILL OF ENTRY FOR HOME CONSUMPTION

Custom Stn: INNSA1) CHA : AAACN1249DCH001 [NIRANJAN SHIPPING AGENCY PVT.L]
BE No/Dt./cc/Typ:5750678/17012012 /N/H OOC No./Dt./Officer 2004227594/16-03-2012/10034769
Importer Details : 5207024201 PAN : ACXPM7550GFT001
ADARSH TEXTILES
: PLOT NO.B/59, ROAD NO.3,
[illegible]
SURAT/GUJARAT
394210

IGM No : 2028854/22/01/2012 24/01/2012 Port of Loading : Ningbo
Cntry of Orgn. : CHINA Cntry of Consgn. :
BL No : NGBCB11013253 H/BL No :
Date : 10/01/2012 Date :
No. of Pkgs. : 130 PKG Gross Wt. : 14950.000 KGS
Marks : N/M
& Nos

Inv No & Dt. : LM11008 20/12/2011
Inv Val : 57275.96 USD TOI : CIF
Freight : 0.00
Insurance : 0.00
SVB Load(Ass) :
SVB Load(Dty) :
Misc. Charges : 0.00
Cust. House : CHINA
HSS Load Rate : 0.00 ... 0.00
0.00
Discount Rate : [illegible] Amount : 0.00
Item Detail
Exchange rate : 1.00 USD = [illegible] INR

Description
Unit Price CTH C.Notn [illegible] Load PROV
Ass Val CETH E.Notn [illegible] Cus Dty Rt BCD amt(Rs)
Exc Dty Rt CVD amt(Rs)

1 39201019 50 MICRON SPANGLE FILM 65000M [illegible] MICRON [illegible]
FILM/ROLL(PET FILM FOR TEXTILES) (SQ.MTR:95750) [illegible]
[illegible] 3.415179 39201019
[illegible] 3080444.70 39201019 002/2008 30 10.00 % 308044.50
Educational Cess on CVD : 10.00 % 330840.90
Sec & Higher Edu. Cess on CVD : 2.00 % 6777.00
Customs Educational Cess : 1.00 % 3388.50
Customs Sec & Higher Edu. Cess : 2.00 % 13141.20
Addl Duty - (Imports) : 019/2006 1.00 % 6570.60
4.00 % 150288.60

Rs. 3080444.70

	Rs. 3080444.70	Page Total	Rs.	827059.30
BCD	Rs. 308044.50	BE Gross Total	Rs.	827059.30
[illegible]	Rs. 0.00	NCD Duty	Rs.	0.00
CVD	Rs. 338848.90	SAFEGUARD Duty	Rs.	0.00
CESS	Rs. 0.00	Sch 2 Spl Excise Duty	Rs.	0.00
[illegible]	Rs. 0.00	CSIA	Rs.	0.00
Edu. Cess CVD	Rs. 6777.00			
Health C.D	Rs. 0.00	Customs Edu. Cess	Rs.	13141.20
SHE. Cess CVD	Rs. 3388.50	Addl Duty - (Imports)	Rs.	150288.60
		SH Cust Edu. Cess	Rs.	6570.60

Duty Payable
Rs. Eight Lakh Twenty Seven Thousand and Fifty Nine only Rs. 827059

Container Details
[illegible] 9195 1 10-11 v1.5

For, Adarsh Textiles
[signature]
Proprietor

From perusal of the two Bill of entries it is quite evident that in the Bill of Entry Filed by the Appellants they have declared the gross weight of the consignment as 14950 kgs and Net weight of 14560 Kgs as per the packing list issued by the foreign supplier. In the amended Bill of Entry, as per the order of the Additional Commissioner, the Net Weight was amended to 16771 Kgs without changing the gross weight. This has created the situation wherein the Net Weight as per the assessed Bill of Entry is more than the Gross Weight of consignment.

4.5 In view of the above discrepancies we are not in position to agree that there was any misdeclaration of the weight of the imported goods. Entire case of undervaluation has been made against the appellant, by not amending the declared value, but by enhancing the same to take into account the estimated undeclared weight. This is evident from the order in original, wherein, Additional Commissioner records as follows:

"In view of above facts, transaction value declared by the importer is liable to be rejected under Rule 12 of CVR-2007. The value is re-determined as per the actual weight to Rs 30,80,445/- (A/V) on net weight of 16771 kgs taken on pro-rata basis. Difference in A/V is Rs 4,06,110/-."

Since we are not in position to agree with charge of mis-declaration of weight, we cannot uphold the order enhancing the value in this manner.

5.1 In view of discussions as above we set aside the impugned order and allow the appeal.

(Order pronounced in the open court)

(Dr. D.M. Misra)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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