CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 136 of 2012

(Arising out of Order-in-Appeal No. 110 to 112(Group-I)/2011 (JNCH)/IMP-83 to 85 dated 20.10.2011 passed by Commissioner of Customs (Appeals), Nhava Sheva, Mumbai-II)

Commissioner of Customs (Export), Nhava Sheva .....Appellant

Jawaharlal Nehru Custom House Post Uran District Raigad, Sheva 400 707.

VERSUS

D.J. Exports .....Respondent

B-II Gujranwala Town Part I Ring Road, Delhi – 110 009.

Appearance:

Ms. P.V. Sekhar, Authorized Representative for the Department
Shri Anil Balani, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. A/88567/2018

Date of Hearing: 04.12.2018
Date of Decision: 04.12.2018

Per: S.K. MOHANTY

Revenue has fled this appeal against the impugned order dated 20.10.2011 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva, Raigad.

2. Briefly stated, the facts of the case are that the Mumbai Zonal Unit of the Directorate of Revenue Intelligence (DRI) received specific information that various importers, including the respondent herein were engaged in fraudulent import of fresh appeals at Nhava Sheva from USA, by mis-declaring the value. A reference was made by DRI to the Consulate General of India, New York to verify the

authenticity of the information. The Consulate General vide letter dated 12.03.2008 and 13.10.2008 had provided details of actual declarations made by different shippers before the US Customs to the importers in India. Upon co-relation of the import documents and other details, the DRI observed that two sets of invoices were issued by the exporter, one for the actual commercial transaction and the other one for much lesser amount, solely for Indian Customs purpose. On the basis of detailed investigation into the matter, the DRI initiated show cause proceedings against the respondent, seeking for rejection of the declared transaction value and for confirmation of the differential duty amount along with interest and penalty. The show cause notice dated 05.05.2009 issued to the respondent was adjudicated vide order dated 26.05.2010, wherein the original authority had rejected the declared value and confirmed the differential duty amount along with interest on the appellant. Besides, the said order also imposed penalty on the appellant under Section 114A of the Customs Act, 1962. Against the said order dated 26.05.2010, the respondent had filed appeal before the Learned Commissioner (Appeals), which was disposed of vide the impugned order dated 20.10.2011, in setting aside the original order passed by the Additional Commissioner of Customs. The Learned Commissioner (Appeals) has observed that charges of mis-declaration of value cannot be sustained in absence of any corroborative evidence of import of goods at a lesser value by the respondent. He has also held that the value of apples imported by M/s. Ranger Farms cannot be considered as contemporaneous value inasmuch as apples are agricultural produce and do not have any standard specifications. By referring to the letter dated 13.10.2008 of the Consulate General, it has been held in the impugned order that the prices of fresh apples in US varied with their count. Feeling aggrieved with the impugned order dated 20.10.2011, Revenue has preferred this appeal before the Tribunal. It has been contended by Revenue that the retracted statement made by the director of the respondent will have no evidentiary value inasmuch as in the original statement, the respondent had categorically stated issuance of double sets of invoices by the overseas supplier and payment of differential value by the respondent. Further, it has also been contended that the apples

imported by the respondent were similar to those imported by M/s. Ranger Farms Pvt. Ltd. and accordingly, the declared value was rejected and the transaction value was correctly re-determined by the department in terms of Rule 6 of the Customs Valuation Rules, 1988 on the basis of the value of similar goods.

3. Heard both sides and perused the records.

4. It is an admitted fact on record that no adverse report was received by the Department from the Indian Consulate for the respondent herein. Further, the report relied upon by the Department was for a different supplier in USA, who was exporting apples to another importer in India. The director of the respondent had also retracted his statement before the Metropolitan Magistrate. On perusal of the case records, we also find that during the course of search operation carried out at the premises of the respondent, nothing incriminatory was recovered by the department. Thus, the department has not conclusively proved that the respondent had undervalued the goods for defrauding the Government revenue. Since, Learned Commissioner (Appeals) has discussed the issue in hand in great detail and arrived at the conclusion that the adjudged demands cannot be fastened on the respondent, we are of the considered view that the present appeal filed by the Department cannot be sustained, in absence of proper substantiation with the framing of allegations.

5. In view of above, we do not find any infirmity in the impugned order passed by the Learned Commissioner (Appeals). Accordingly, appeal filed by Revenue is dismissed.

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

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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