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

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 382 of 2010

(Arising out of Order-in-Appeal No. SR/42/NGP/2010 dated 29.01.2010 passed by Commissioner Central Excise & Customs (Appeals), Nagpur)

M/s Uniworth Textiles Ltd. (EOU) **.....Appellant**
B-129, M.I.D.C. Industrial Area,
Butibori, Nagpur - 441122

VERSUS

Commissioner of Central Excise, Nagpur **.....Respondent**
Telangkhedi Road, Civil Lines,
Post Box No.81, Nagpur-440001

<u>Appearance:</u>

Shri Jitin Singhal, Advocate for the Appellant
Shri Ramesh 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/87481 / 2019

Date of Hearing: 02.08.2019
Date of Decision: 02.08.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that during the disputed period, the appellant had imported Milling Washing Machine and Automatic Winding Machine and filed the Bills of Entry before the jurisdictional customs authorities for assessment of duty liability. On the basis of the documents submitted by the appellant and based upon the certificate of Chartered Engineer, the Bills of Entry were assessed by the department and upon payment of assessed duty, the consignments were allowed clearance for home consumption. However, the assessed Bills of Entry were appealed against by the department before the learned Commissioner (Appeals), contending *inter alia,* that the subject Bills of Entry should not be assessed in isolation and should be assessed along with other 7 nos. of Bills of Entry containing the same consignments; that the dismantling and other charges paid by the importer (appellant herein) to M/s A.Z. Industries Limited, Israel towards import of complete plant should be added to the total value for the purpose of arriving at the assessable value and that the value of machinery ascertained by the local Chartered Engineer should be considered for computation of the duty liability. Further, the department has also contended that the appellant did not submit the agreement entered into between it and the overseas supplier for determination of the correct transaction value and the duty liability thereon. The appeal filed by the department was disposed of by the learned Commissioner (Appeals), Central Excise & Customs, Nagpur vide the impugned order dated 29.01.2010 in allowing the appeal. Feeling aggrieved with the said impugned order, the appellant has preferred this appeal before the Tribunal.

2. The learned Advocate, at the outset, submitted that the certificate of local Chartered Engineer, Mr. Mohan Kamble was not supplied by the department to the appellant before disposal of the appeal by the learned Commissioner (Appeals). Thus, he submitted that the declared value of imported machineries cannot be enhanced on the basis of such certificate. The learned Advocate further submitted that the value declared by the appellant should be accepted as the transaction value for the purpose of quantification of the duty liability inasmuch as the provisions of Section 14 of the Customs Act, 1962 and Rule 3 of the Customs Valuation Rules, 2007 have been duly satisfied by the appellant.

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

4. Heard both sides and perused the records.

5. We find that the learned Commissioner (Appeals) has mainly relied upon the certificate issued by Shri Mohan Kamble, Chartered Engineer for allowing the appeal in favour of the department. The fact is not under dispute that the appellant was not provided with such certificate before adjudication of the dispute at the first appellate stage and that such certificate was supplied to the appellant along with the impugned order. Thus, it is evident that the principles of natural justice have been violated inasmuch as the appellant was not provided with effective remedy for presenting its case before the lower appellate authority. Therefore, we are of the considered view that the matter should be remanded to the learned Commissioner (Appeals) for a decision on merits on the basis of the submissions to be made by the appellant in context with the certification by the Chartered Engineer and other aspects involved in the present case.

6. In view of above, the impugned order is set aside and the appeal is allowed by way of remand to the learned Commissioner (Appeals) for deciding all the issues afresh. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the appeal afresh.

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

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Judicial)

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