CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 484 of 2010

(Arising out of Order-in-Original No. 41/2010/CAC/CC (I)/SHH dated 27.04.2010 passed by the Commissioner of Customs (Import), Mumbai)

Navdeep Gupta **......Appellant**
S.G. Impex,
B-232, Darewal Nagar,
Delhi – 110 009.

VERSUS

Commissioner of Customs (Import), Mumbai **......Respondent**
New Customs House, Ballard Estate,
Mumbai 400 001.

WITH

(i) Customs Appeal No. 485 of 2010 (M/s. S.G. Impex); (ii) Customs Appeal No. 521 of 2010 (M/s. Sai Siddhi Shipping); (iii) Customs Appeal No. 522 of 2010 (Ashok Bhikaji Mahadik)

(Arising out of Order-in-Original No. 41/2010/CAC/CC (I)/SHH dated 27.04.2010 passed by the Commissioner of Customs (Import), Mumbai)

<u>Appearance</u>:

Shri J. C. Patel, Ms. Shamita Patel and Shri N.S. Patel, Advocates for the Appellants
Shri R.K. Dwivedly, Authorized Representative for the Respondent

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

FINAL ORDER NO. A/87448-87451 / 2019

Date of Hearing: 21.08.2019
Date of Decision: 21.08.2019

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that M/s. S.G. Impex had filed the Bill of Entry No. 899592 dated 22.06.2009 for clearance of 369 cartons of different goods viz. 16700 sets of Front Panels and remote controls for car CD (brand: JVC, Sony, Pioneer); 8049 nos. of manuals; 8049 nos. of gift boxes, declaring the value at Rs.21,25,044.94. As per the Bill of Entry, the country of origin was declared as Malaysia, country of consignment as Singapore and port of loading as Singapore. The above mentioned goods were assessed in the second check by the appraising group at the assessable value of Rs. 26,53,376/- by relying upon the declarations made by the said importer. The importer had paid the duty on the said value and presented the goods for examination. Meanwhile, on the basis of information received that some unscrupulous importers had indulged into dismantling the complete car stereos into panel and back body mechanism and imports them separately along with manual and packing box, with the intent to undervalue/evade duty, the officers of the SIIB (import) initiated investigation and found that the importer M/s. S.G. Impex had not declared the specific parameters of imported goods such as model nos. of front panels which had a direct bearing on the value of the goods. They also found that the quantity declared in the invoice and the packing list did not tally with quantity declared in the Bill of Entry. Hence, the subject consignment was examined on 100% basis in the Docks under Examination Panchanama dated 09.07.2009. During physical examination of the goods, it was found that there were 24 different models of front panels along with Remote Controls, Manuals of 29 models and Packing Boxes of 23 models of Car stereos of three different branded companies. The department recorded statement of various persons with regard to alleged fraudulent import of the goods. On detailed investigation into the matter, the department initiated show cause proceedings against various persons, including the appellants herein. The show cause notice dated 13.01.2010 issued in this regard was adjudicated by order dated 27.04.2010, wherein the Ld. Commissioner of Customs (Import), Mumbai vide the impugned order dated 27.04.2010 has rejected the declared value and re-determined the same under Section

14 of the Customs Act, 1962 read with Rule 3 (4) and Rule 9 of the Customs Valuation Rules, 2007 at Rs.5,55,88,783/-; confiscated the seized goods, providing the option to the importer to redeem the same by paying a fine of Rs.1,50,00,000/-; confirmed demand of differential duty amounting to Rs.1,28,55,695/-. Besides, the impugned order also imposed penalties on the appellants under Section 114A and 112 (a) *ibid.* Feeling aggrieved with the impugned order, the above named appellants have filed these appeals before the Tribunal.

2. Heard both sides and perused the records.

3. The Ld. Advocate appearing for the appellants submitted that the impugned order has not considered the vital aspects with regard to the subject imports made by the appellant. In this context, he submitted that there were contemporary imports made by the appellant itself and the other documents/records submitted by the appellant were not properly considered or examined for effective adjudication of the matter.

4. On *prima facie* examination of the case records, we find that certain information/records submitted by the appellant namely, comparative chart along with Bill of Entry showing contemporaneous import made by the importer M/s. S.G. Impex; data with regard to the imported goods reflected in the system etc., were not properly examined at the adjudication stage. Further, the submissions of the appellant that the valuation should be done under Rule 4 *ibid* were also not considered in proper prospective. Thus, we are of the considered view that the issues raised in the show cause notice and dealt with in the impugned order cannot be considered as proper and justified. The documentary evidences submitted by the appellants at this juncture for a decision on merit cannot also be considered as proper inasmuch as such submissions were not considered properly in support of confirmation of the adjudged demands at the original stage. Hence, we are of the opinion that the matter should go back to the

original authority for a detailed fact finding on the merits of the case, based on the available documents/records.

5. Therefore, by setting aside the impugned order, the matter is remanded to the original authority for fresh consideration of all the issues involved in the present case and for adjudication of the matter afresh on the basis of the records available in the adjudication file and to be submitted by the appellants. Needless to say, that opportunity of personal hearing should be granted to the appellants before deciding the matter afresh.

6. In the result, the appeals are allowed by way of remand.

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

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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