CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

Customs Appeal No: 422 of 2009

[Arising out of Order-in-Original No. COMMR/TKG/ADJN/19/2008-09 dated 24th December 2008 passed by the Commissioner of Customs, CSI Airport, Mumbai.]

Tech Mahindra Limited … ***Appellant***
Gateway Building, Apolla Bunder, Mumbai – 400 001

versus

Commissioner of Customs, CSI Airport ***…Respondent***
Awas Corporate Point, Makwana Lane,
Andheri-Kurla Road, Marol, Mumbai – 400 059

APPEARANCE:

Ms Pooja Reddy, Advocate for the appellant

Shri Chatru Singh, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR P DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 88584 / 2018

DATE OF HEARING: 04/05/2018
DATE OF DECISION: 04/05/2018

PER: C J MATHEW

This appeal lies against order-in-original no. COMMR/TKG/ADJN/19/2008-09 dated 24th December 2008 of Commissioner of Customs, CSI Airport, Mumbai in which the import of 200 nos. and 378 nos. of 'active identity token' *vide* bill of entry no.

41771/06.01.2008 and 45924/02.02.2008 was reassessed to enhance the declared value of ₹1,11,635/- and ₹ 2,09,922/- to ₹29,59,650/- and ₹55,92,746/- respectively. Besides, the goods were held liable to confiscation under section 111(m) of Customs Act, 1962 but allowed to be redeemed for re-export on payment of fine of ₹ 5,00,000/- and penalty of ₹ 1,00,000/- imposed therein.

2. According to Learned Counsel, the appellant, being '100% export oriented unit', was not the loser by revision in value which did not impact the duty to be paid or the obligation devolving on them under the Foreign Trade Policy for which reliance has been placed on the decision of the Tribunal in *Commissioner of Customs (Import), Mumbai v. ASB International Pvt Ltd [2016 (344) ELT 1046 (Tri.-Mumbai)]*. It is also submitted that there was no *mala fide* intention as the absence of any duty liability for the present, or at any time in the future, precluded such. Reliance is placed on the decision of the Tribunal in *Scorpian International v. Commissioner of Customs, Central Excise & Service Tax, Indore [2017 (357) ELT 1093 (Tri.-Del.)]*.

3. We have heard Learned Authorised Representative who reiterates the findings of the original authority.

4. The appellant is an export oriented unit and the proceedings were initiated as the invoices, issued by their overseas entity based in Milton Keynes, UK, were not reported by price-lists from the original manufacturer, M/s Active Identity, France and subsequent

correspondence dated 19th February 2008 declared the cost at £ 13 for each card. It is seen from the records that the said goods had been imported for carrying out the project work and on which a rental was being charged by the parent-company. Therefore, notwithstanding the value at which the goods may have been procured by the parent-company, the importers, even with incorrect declaration of the rental value for assessment, would have been subjected to the appropriate rule under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Nevertheless, this re-assessment order not lead either to any differential duty that was to be recovered nor any other consequences that could lead to confiscation of the goods. It has been held in *re ASB International Pvt Ltd* that

> *'6. We find that the respondent is 100% EOU and their import is not chargeable to customs duty therefore, even if there is any variations in the valuation, there will be no effect of customs duty payment. We therefore, without going into merit of the issue that whether lump sum technical assistance fees is includible in the assessable value or otherwise, we find that since no customs duty involved, in the present case due to respondent being 100% EOU, the Revenue's appeal does not survive. We therefore, without giving any observation on the issue of valuation, dismiss the appeal of the Revenue only on the point that no customs duty demand is involved, Revenue's appeal is dismissed.'*

5. In view of the above we find that the enhancing of value, even if it be for nominal purpose, need not have been accompanied by proceedings under section 117 of Customs Act, 1962. Even if the goods

were to be cleared into the domestic tariff area, the assessment should have to be carried out afresh and, therefore, did not merit confiscation under section 111 of Customs Act, 1962.

6. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in open court)

(C J Mathew)
Member (Technical)

(P Dinesha)
Member (Judicial)

**/as070108012702*