CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Custom Appeal No. 208 of 2012

(Arising out of Order-in- Appeal No. 701(Gr II, H-K)/2011 (JNCH) IMP-606 dated 13.12.2011 passed by the Commissioner of Customs Appeals), Mumbai II)

M/s Victorinox India Pvt. Ltd. .... Appellant

Versus

Commissioner of Customs (Import), ... Respondent
Nhava Sheva

Appearance:

Shri Brijesh Pathak, Advocate for the appellant

Ms. Trupti Chavan, AC (AR) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85690 / 2020

Date of Hearing: 06.02.2020

Date of Decision: 06.02.2020

Per: P. Anjani Kumar

Brief facts of the case are that the Appellant filed a Bill of Entry, dated 03.08.2011, for clearance of bags and backpacks; Country of Origin of the goods were declared as China; however, upon examination, 80% of the goods were found to be of Chinese Origin and balance were found to be of Vietnamese and Swiss Origin; the goods were also found branded; the appellant submitted a letter, dated 07.09.2011, requesting for waiver of Show cause Notice and with a request to take a lenient view and release of the goods. Personal hearing was attended by the representative of the Appellant on 12.09.2011. Adjudicating Authority passed an order, 10077/2011(I) dated 04.10.2011, rejecting the value declared under Rule 12 and re-determining the value under Rule 9 of CVR 2007 and imposing redemption fine of Rs. 2 Lakhs and penalty of Rs.75,000/- under Section 112(a) of Customs Act, 1962. On an appeal filed by the appellant, Commissioner (Appeals) vide impugned order, 701(Group II-HK) (JNCH) IMP-606, upheld the order of Additional Commissioner. Hence, the appellant is before this Tribunal.

2. Learned Counsel for the appellants submits that they were never put to notice as regards the re-determination of value sought to be done by the Adjudicating Authority; 80% of the goods were found to be of Chinese origin, therefore, they Adjudicating Authority should not have ordered for confiscation of entire goods; the impugned goods are not subject to MRP base assessment for CVD; as the goods were covered by a Country of Origin Certificate dated 06.07.2011, there was no mis-declaration on the part of the appellant and therefore, penalty was not imposable. Learned Counsel further submits that the Adjudicating Authority did not give any sufficient and cogent reasons for re-determining the value of the goods and even when value was rejected under Rule 12 of CVR 2007, he did not proceed sequentially through the CVR 2007. He also submits that the Adjudicating Authority is duty-bound to supply the test reports, documents etc. which he dependent on for re-determination of value, even when SCN was waived. He relies upon the following case laws:

- *Ankita Enterprises passed by Allahabad Tribunal in Appeal No. C/70347/2017-CU (DB).*
- *Kisco Casting Ltd & Anr., 2018-TIOL-1667-CESTAT-CHD.*
- *J D Orgochem Ltd., 2008-TIOL-74-SC-CUS.*
- *Kemtrode Pvt. Ltd., 1999 (105) ELT 595 (Tri.)*

3. Learned Authorized Representative for the Department reiterates the findings of OIO and OIA.

4. Heard both sides and perused the records of the case. The brief issue before us for discussion is that whether there was any violation of principles of natural justice and as to whether the re-determination of value by the Adjudicating Authority was legal and proper. On going through the OIO, it appears that the Adjudicating Authority has alleged the mis-declaration on the basis of the only fact that a small percentage of goods are not adhering to the country of origin. The appellants claim that they have contracted with the supplies and the goods came from China even though some goods had having marking of the countries. It is not forthcoming in the order as to how the importer had knowledge that some goods were of origin other than mentioned in COO. Moreover, it is not discussed as to how 80% goods whose COO was correctly declared were liable to calculation and re-determination of value. Similarly, the plea that the impugned goods are not liable to MRP was not discussed. Moreover, the Appellate Commissioner has based his order on the basis of report/comments dated 18.11.2011 obtained from Additional Commissioner. It is not clear whether copy of such report was given to the appellant and his submissions were obtained. The same are not part of findings of OIO. We also find that the OIO has some contradictions. On the one hand OIO says there are no imports of identical or similar goods, and the other hand re-determines the values of some goods on the basis of price of identical goods said to have been imported by the appellants themselves. Moreover, adjudicating authority observes that the appellant has not been able to justify the vast difference in value with any cogent reasons. We find that this approach is not correct. It is for the department to prove that valuation was wrong rather than the appellant proving it otherwise. Under the circumstances, we find that the issue needs to go back to the Original Authority to appreciate the facts afresh, considering the submissions of the appellant and to pass a reasoned order as per law.

5. In view of the above, the appeal is allowed by way of remand with a direction to complete the adjudication within 12 weeks of receipt of this order, as far as it may be feasible.

(Dictated and pronounced in open court)

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

(P. Anjani Kumar)
Member (Technical)

Sinha