CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 115 of 2011

[Arising out of Order-in-Appeal No:434(Gr.IV)/2010(JNCH)/IMP-399 dated 27.12.2010 passed by the Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai]

Gel Exim
Parda Cottage, 97, Narayan Dhruv Street
Mumbai - 400003 …***Appellant***

versus

Commissioner of Excise Customs (Import)
JNCH, Nhava Sheva, Tal Uran, Dist Raigarh
Mumbai – 400 707 ***…Respondent***

APPEARANCE:

Shri C.M. Sharma, Authorized Representative for the appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85767 / 2020

DATE OF HEARING: 19/09/2019
DATE OF DECISION: 11/09/2020

PER: C J MATHEW

The issue in this appeal of M/s Gel Exim, against order-in-appeal no. 434(Gr.IV)/2010(JNCH)/IMP-399 dated 27th December

2010 of Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai, is the finding that the imported goods were misdeclared and, though without any impact on the classification, the consequent discarding of the declared value to enhance the assessed value. Appellant had classified the imports, described as ‘steel nuts’ and ‘steel nuts’, under heading no. 73181500 and heading no. 73181600 of the First Schedule to Customs Tariff Act, 1975 and valued at US$987 per metric ton in bill of entry no. 803809/14.12.2009 which, after ascertainment of 12.63% of chromium in ‘bolts’ and 9.5% of chromium in ‘nuts’ by ‘hand held testing machine’, was held to be more accurately describable as ‘stainless steel bolts’ and ‘alloy steel nuts’ respectively with the headings remaining unchanged but justifying revision of value to US$2081 per metric ton for ‘bolts’ and US$ 1708 per metric ton for ‘nuts’ by adopting London Metal Exchange (LME) prices. The goods were assessed on ₹19,00,525 instead of declared assessable value of ₹ 10,17,921 to levy differential duty of ₹2,15,537. In addition, the goods were confiscated under section 111 of Customs Act, 1962, with the option to be redeemed on payment of fine of ₹4,50,000, and penalty of ₹2,00,000 imposed under section 112 of Customs Act, 1962. On appeal, the impugned order upheld the allegation of mis-declaration and the enhancement of value with the consolation of reducing the fine to ₹3,00,000 leading to this proceeding.

2. According to Learned Consultant appearing for the appellant, the impugned order upheld the finding of misdeclaration by placing reliance on note 1(d) and 1(e) of chapter 72 of First Schedule to Customs Tariff Act, 1975 and justified enhancement of value on the ground that the appellant has not submitted any data and had not demonstrated any adverse impact arising from re-valuation.

3. The primary contention of the appellant is that there has been no misdeclaration, that specific authority for adoption of London Metal Exchange (LME) prices is not on record and that the fine and penalty are not proportionate to the extent of alleged undervaluation. Learned Consultant points out that the goods cannot be described as ‘any other steel’ without determination of carbon content and that the sequential application of the several rules for valuation has not been complied with. He placed reliance on the decisions of the Hon’ble Supreme Court in *Anil Kumar Anand v. Commissioner of Customs (Preventive) [2019 (366) ELT 601 (SC)]* and of the Tribunal in *Advance Scan Support Technologies v. Commissioner of Customs, Jodhpur [2015 (326) ELT 185 (Tri-Del)]*.

4. We have heard Learned Authorized Representative who submitted that misdeclaration of the goods jeopardised the contents of the invoice justifying assessment at values as permitted by the Customs Valuation (Determination of Value of Imported Goods)

Rules, 2007.

5. Recourse was had to the prices of constituent metals in the London Metal Exchange (LME) for arriving at the enhanced assessable value, on the supposition that the goods had been mis-declared, after discarding the value reflected in the invoice. Hence, the primary requirement is to evaluate the finding in the impugned order that the goods had been correctly re-determined as ‘stainless steel bolts’ and ‘alloy steel nuts’ instead of acceptance of the declaration as ‘steel bolts and nuts’ in the bill of entry.

6. On perusal of note 1 in chapter 72 of the First Schedule to Customs Tariff Act, 1975, we observe that several forms of ‘iron and steel’ have been described and while all of them are intended for determining the rate of duty in relation to goods enumerated in the said chapter, those of ‘steel’, ‘stainless steel’ and ‘other alloy steel’ in (d), (e) and (f) in the note are intended to apply to such descriptions anywhere in the schedule. The first appellate authority cannot be faulted for reference to these descriptions for the purpose of chapter 73 of the First Schedule to Customs Tariff Act, 1975.

7. The lower authorities have relied upon the ascertained chromium content. It is abundantly clear that to conform to description as ‘other alloy’ it should not be ‘stainless steel’ which is distinguished by being ‘alloy steel’ with the carbon content restricted

to 1.2% or less and with chromium content of at least 10.5%. Consequently, it would appear that ‘other alloy steel’ should have at least 0.3% of chromium content. By the scale of chromium content, of itself, the re-assignment of description is not flawed. However, the carbon content is critical for determination of ‘bolts’ as ‘stainless steel’ and the presence, below the prescribed cap, of any other enumerated element would exclude ‘nuts’ from the category of ‘other alloy steel’ for the purpose of classification. As pointed out by Learned Consultant, the proceedings lack any record of determination of such contents. We also take note that the rate of duty is not in dispute.

8. Consequently, the evidence on record is not sufficient to determine the impugned goods either as ‘stainless steel’ or as ‘other ally steel’ and, in the absence of such evidence, the declaration cannot be faulted. There is no ground to dispute the valuation. Hence, the enhancement of values and detriment built upon alleged misdeclaration fails.

9. Appeal is allowed.

(Order pronounced in the open court on 11/09/2020)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*