CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 2

Customs Appeal No. 87153 of 2013

(Arising out of Order-in-Appeal No. 151 to 156 (Gr.IV)/2013/JNCH/IMP-122 to 127 dated 27.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Sheva)

M/s. KRYFS Power Components Ltd. **Appellant**
3rd floor, AZA House, Turner Road,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs, Nhava Sheva **Respondent**
JNCH, Sheva,
Uran, Dist. Raigad

WITH

Customs Appeal No. 87154 of 2013

(Arising out of Order-in-Appeal No. 151 to 156 (Gr.IV)/2013/JNCH/IMP-122 to 127 dated 27.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Sheva)

M/s. KRYFS Power Components Ltd. **Appellant**
3rd floor, AZA House, Turner Road,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs, Nhava Sheva **Respondent**
JNCH, Sheva,
Uran, Dist. Raigad

WITH

Customs Appeal No. 87155 of 2013

(Arising out of Order-in-Appeal No. 151 to 156 (Gr.IV)/2013/JNCH/IMP-122 to 127 dated 27.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Sheva)

M/s. KRYFS Power Components Ltd. **Appellant**
3rd floor, AZA House, Turner Road,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs, Nhava Sheva **Respondent**
JNCH, Sheva,
Uran, Dist. Raigad

WITH

Customs Appeal No. 87156 of 2013

(Arising out of Order-in-Appeal No. 151 to 156 (Gr.IV)/2013/JNCH/IMP-122 to 127 dated 27.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Sheva)

M/s. KRYFS Power Components Ltd. **Appellant**
3rd floor, AZA House, Turner Road,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs, Nhava Sheva **Respondent**
JNCH, Sheva,
Uran, Dist. Raigad

WITH

Customs Appeal No. 87157 of 2013

(Arising out of Order-in-Appeal No. 151 to 156 (Gr.IV)/2013/JNCH/IMP-122 to 127 dated 27.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Sheva)

M/s. KRYFS Power Components Ltd. **Appellant**
3rd floor, AZA House, Turner Road,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs, Nhava Sheva **Respondent**
JNCH, Sheva,
Uran, Dist. Raigad

AND

Customs Appeal No. 87158 of 2013

(Arising out of Order-in-Appeal No. 151 to 156 (Gr.IV)/2013/JNCH/IMP-122 to 127 dated 27.02.2013 passed by Commissioner of Customs (Appeals), Mumbai-II, JNCH, Sheva)

M/s. KRYFS Power Components Ltd. **Appellant**
3rd floor, AZA House, Turner Road,
Bandra (W), Mumbai 400 050.

Vs.

Commissioner of Customs, Nhava Sheva **Respondent**
JNCH, Sheva,
Uran, Dist. Raigad

Appearance:

Shri V.M. Doiphode, Advocate, for the Appellant
Shri Ramesh Kumar, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/**85223-85228/2020**

Date of Hearing: 14.02.2020
Date of Decision: 14.02.2020

PER: S.K. MOHANTY

These appeals are directed against the impugned order dated 27.02.2013 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, the facts of the case are that the appellant herein had imported various consignments of CRGO of different grades, viz., M3/M4/M5 etc. and filed Bills of Entry for assessment and clearance of imported consignment before the Customs authorities. However, the value declared in the Bills of Entry was rejected by the department in terms of Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the same was re-determined under Rule 5 *ibid*. In support of rejection of the declared value and re- determination of the same under Rule 5 *ibid*, the original authority in his order dated 16.10.2012 had referred to the goods imported under the subject Bills of Entry vis-à-vis the contemporaneous higher import price of the similar goods made by the other importer.

3. Learned Advocate appearing for the appellant, at the outset, submits that rejection of declared value is not proper and justified inasmuch as the department has not specifically assigned any reason in support of rejection of the same and re-determination of the value under Rule 5 *ibid*. He further submits that the goods in question imported by the appellant cannot be considered as similar goods as defined under Rule 2(f) read with Rule 5 *ibid*. In this context, he submits that the contemporaneous import price

referred to by the department is not of similar quantity and the country of origin is different and the specification of the goods are also different. Thus, he submits that the value declared by the appellant in the Bills of Entry should be considered as transaction value for the purpose of duty assessment and such declared value cannot be rejected by taking recourse to the Customs Valuation Rules, 2007.

4. On the contrary, learned AR appearing for Revenue reiterates the findings recorded in the impugned order. He further submits that since the department has referred to the contemporaneous import made by some other importer at or about the same time of import of the similar goods, rejection of the declared value and re-determination of the same in terms of the Valuation Rules, 2007 is in conformity with the statutory provisions and as such, the orders passed by the lower authorities cannot be disturbed at this juncture.

5. Heard both sides and perused the records.

6. We find that the adjudication order dated 16.10.2012 at page 1 has prepared the chart, showing the reference of subject goods imported by the appellant herein and the contemporaneous import price of identical/similar goods imported at a higher price by some other importer. On perussal of the description/grade/quantity of the impugned goods mentioned in the said order dated 16.10.2012, we find that the original authority had referred to the description as CRGO-M3, M4, M5 etc. Whereas, on comparison of the said description with other particulars mentioned in the original order vis-à-vis the import documents, viz., Bills of Entry, Purchase Order etc., we find that the reference of such goods are not figuring in all the cases in the import documents presented by the appellant for assessment before the department. Thus, we are of the considered view that the original authority had not referred to the contemporaneous import in the proper manner as prescribed under Rule 5 *ibid*. Therefore, we are of the considered opinion that the matter

should go back to the original authority for appreciation of the facts to the effect that the subject goods imported by the appellant were liable for rejection and the value can be re-determined by referring to the relevant provisions of the Valuation Rules, 2007. For carrying out such exercise, the original authority should properly examine the import documents for a correct approval that the goods in question were in fact identical and similar in all respects and the requirements of the valuation rules have appropriately been complied with for the purpose of re-determination of the value. For carrying out the *de novo* adjudication proceedings, the appellant should produce the documentary evidences in support of its stand that the goods are neither similar nor identical and accordingly, the value declared for the purpose of assessment would be considered as transaction value, which cannot be discarded and re-determined under the Valuation Rules, 2007.

7. In view of above, after setting aside the impugned order, we remand the matter to the original authority for carrying out the *de novo* adjudication proceedings in line with our above observations. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

8. The appeals are disposed of in above terms.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

PER: SANJIV SRIVASTAVA

9. Learned counsel for the appellant has placed the arguments that for the purpose of Customs Valuation (Determination of value of imported goods) Rules, 2007, for comparison of value of the contemporaneous import of similar or identical goods under Rule 4 or 5 or in terms of Rule 12, it should be on the basis of transaction value and not on the basis of the loaded assessable value. For placing this argument, he relies upon the judgment of Chennai Bench of the Tribunal in the case of *Crescent Marine Traders [2019 (368) ELT 693 (Tri.- Chennai)]* and the Mumbai Bench in the case of *Ravi Dyeware Co. Ltd. [2014 (301) ELT 421 (Tri.-Mumbai)]*. Relying on these judgments, he submits that comparison on the basis of loaded value with their value is not correct and it should have been on the basis of only transaction value. On a specific query made to the learned counsel as to whether the judgments to which he is referring were in respect of rejection of transaction value under Rule 12 or it should have been the value under Rule 4 or 5, the learned counsel submits that only after rejection of the value under Rule 12, the question of determination under Rule 4 or 5 will arise. Rule 12 of the Valuation Rules for rejection of transaction value or for not determining the value under Rule 3(1) of the Valuation Rules, is based on the doubt that may come that the Assessing Officer may have on the basis of data available to him in the form of NIDB data. NIDB contains only one value that the value determined at the time of clearance of the goods. Hon'ble Supreme Court in the case of *Garden Silk Mills* specifically said that act of importation starts when the goods enter the Indian territorial waters and is completed when they are cleared from barrier of the Customs. All other charges which are determined in that point become the part of the value and that is the value which is recorded in NIDB data. Section 14 of the Customs Act or the entire gamut of Valuation Rules are only for determination of that value. Loading or determining the value on the basis of transaction value which will have been rejected in the case of contemporaneous import may

not serve any purpose. Accordingly, I reject the argument made by the learned counsel to the effect that for determining the value under Rule 4 or 5 or for rejection of value in terms of Rule 12 Explanation (a), comparison would have been made with the transaction value and not the NIDB data value as available.

10. With the above observation, I concur with the order of my learned brother.

(Sanjiv Srivastava)
Member (Technical)