CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 87963 of 2013

(Arising out of Order-in-Appeal No. 378 to 383 (GR-I)/2013(JNCH)/IMP-292 to 297 dated 26.04.2013 passed by Commissioner of Customs (Appeals), Mumbai-II)

M/s Classic Marble Co. Pvt. Ltd. **.....Appellant**
Survey No. 130/2,
At: Village Athal,
Silvassa, Dadra & Nagar Haveli,
U.T. of Dadra & Nagar Haveli,
Gujarat

VERSUS

Commissioner of Customs (Import), Nhava Sheva **.....Respondent**
Jawaharlal Nehru Custom House,
Post Uran, Dist: Raigad,
Nhava Sheva-400707

WITH

(i) Customs Appeal No. 87964/2013 (M/s Classic Marble Co. Pvt. Ltd.); (ii) Customs Appeal No. 87965/2013 (M/s Classic Marble Co. Pvt. Ltd.); (iii) Customs Appeal No. 87966/2013 (M/s Classic Marble Co. Pvt. Ltd.); (iv) Customs Appeal No. 87967/2013 (M/s Classic Marble Co. Pvt. Ltd.); (v) Customs Appeal No. 87968/2013 (M/s Classic Marble Co. Pvt. Ltd.);

(Arising out of Order-in-Appeal No. 378 to 383 (GR-I)/2013(JNCH)/IMP-292 to 297 dated 26.04.2013 passed by Commissioner of Customs (Appeals), Mumbai-II)

Appearance:

Shri Shailesh P. Sheth, Advocate for the Appellant
Shri Ramesh Kumar, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87645-87650/2019

Date of Hearing: 10.12.2019
Date of Decision: 10.12.2019

Per: S.K. MOHANTY

These appeals are directed against the impugned order dated 26.04.2013 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated, the facts of the case are that the appellant herein had imported Rough Marble Blocks and filed the Bills of Entry before the customs authorities for assessment. On scrutiny of the import documents, the department found that the appellant had not submitted the contract enter into between it and the overseas supplier, no payment details were furnished towards such transaction. Accordingly, the value declared by the appellant was rejected by the adjudicating authority under Rule 12 of the Customs (Valuation) Rules, 2007 read with Section 14 of the Customs Act, 1962 had re-determined the same under Rule 5 *ibid*. Besides, the adjudication order also imposed redemption fine and penalty on the appellant. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 26.04.2013 has upheld the adjudged demands confirmed on the appellant.

3. The learned Advocate appearing for the appellant submits that both the authorities below have not properly addressed the issue with regard to import of Rough Marble Blocks made by the appellant. He submits that rejection of transaction value is not in conformity with the Section 14 of the Customs Act, 1962 and the valuation rules made there under. In this context, he submits that the appellant and the overseas supplier are not related and price paid by the appellant is towards the transaction value declared and payments made pursuant to the contract. Thus, he submits that rejection of transaction value and re-determination of the same under Rule 5 *ibid* should not stand for

judicial scrutiny. In this context, he has relied upon the following decisions rendered by judicial forums:

(i) Dee Pearls (I) Pvt. Ltd. Vs. Commissioner of Customs, ICT, TKD, New Delhi – 2004 (167) E.L.T 236 (Tri.-Del.)
(ii) Commissioner of Customs, New Delhi Vs. Marble Art – 2013 (289) E.L.T 346 (Tri.-Del.)
(iii) Agarwal Marbles India (P) Ltd. Vs. Commissioner of Customs, Jaipur – 2017 (350) E.L.T 262 (Tri.-Del.)
(iv) Neha Intercontinental (P) Ltd. Vs. Commissioner of Customs, Goa – 2006 (202) E.L.T 530 (Tri.-Mumbai) [Maintained in 2008 (221) ELT A32 (SC)]

4. On the other hand, the learned AR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that since the appellant specifically waived for the show cause notice and did not submit any defence reply with regard to the imports made by it, rejection of the transaction value and imposition of fine and penalty is in conformity with the statutory provisions.

5. Heard both sides and perused the records.

6. We find that the appellant had specifically waived for the show cause notice to be issued by the department for adjudication of subject imports made by it. Further we also find that no purchase contract, payment details were furnished at the time of assessment of the subject Bills of Entries and also during the course of proceedings before the authorities below. However, since the learned Advocate at this juncture specifically pleaded that the appellant and the overseas supplier are not related and the price paid is the sole consideration of importation of the goods, we are of the view that for determination of correct transaction value, the matter should be remanded to the original authority for a proper fact finding. The appellant should produce

the relevant documents/records to demonstrate that the value declared by it in the Bill of Entry should be considered as transaction value for the purpose of Section 14 *ibid.* On the basis of the documents to be submitted by the appellant, the original authority should determine the valuation aspect with regard to the imported consignments. The original authority should also examine the above referred judgments/decisions relied upon by the learned Advocate for addressing the issue of valuation of imported goods and for imposition of the redemption fine and penalties on the appellant. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

7. In the result, the appeals are allowed by way of remand to the original authority.

(Dictated and pronounced in open court)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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