CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 892 of 2011

(Arising out of Order-in-Appeal No. 410/GR-VII-H/2011(JNCH)/ EXP-71 dated 22.09.2011 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Param Automotive **.... Appellant**
1348-B/19, Bawa Chamber, Naiwala,
Karol Bagh, New Delhi – 110005

Versus

Commissioner of Customs (Exp), Nhava Sheva **.... Respondent**
JNCH, Uran, Raigad, Nhava Sheva - 400707

Appearance:

Shri Sanjay Singhal, Advocate for the Appellant

Shri Ramesh Kumar, AC, Auth Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86111/2020

Date of Hearing: 08.12.2020

Date of Decision: 08.12.2020

Per: Dr. D.M. Misra

This appeal is filed against Order-in-Appeal No. 410/GR-VII-H/2011(JNCH)/EXP-71 dated 22.09.2011 passed by the Commissioner of Customs (Appeals), Mumbai-II.

2. Briefly stated facts of the case are that the appellants have imported motorcycle parts against Bills of Entry No. 763212 dated 16.11.2009 declaring the total value of the said parts as Rs.7,14,659/- purchased from one M/s China National Electronics, China. After examination of the consignment by SIIB

on 13.11.2009, it was noticed that though the consignment was packed in ready for sale condition, neither on the goods nor on the packages containing the goods, affixed with details like importer's name, address, MRP etc. Hence, further investigation was initiated by the Department. During the course of investigation, statements of proprietor Shri Parampreet Singh and others were recorded. It was stated that the transaction value of the imported parts declared by the appellant is incorrect and accordingly, to determine the correct value of the said imported goods, necessary market survey was conducted in the presence of the importer and their CHA. The assessable value was re-determined accordingly and arrived at Rs.31,20,612/- in accordance with Rule 9 of the Customs Valuation (Determination of value of imported goods) Rules, 2007. A show-cause notice was issued to them on 29.06.2010 proposing rejection of the transaction value and re-determination of the assessable value, re-calculation of RSP for the purpose of levy of CVD; also it proposed confiscation of the goods and imposition of penalty on the noticee. On adjudication, the assessable value was confirmed as Rs.31,20,612/- and the goods were directed to be confiscated with an option to redeem the same on payment of fine of Rs. 7.00 lakhs and penalty of Rs. 5.00 lakhs was imposed on the appellant. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, learned Advocate for the appellant has submitted that the adjudicating authority has determined

assessable value of the imported goods after rejecting the transaction value based on market survey report. He has submitted that the authorities below have wrongly rejected the NIDB data on the ground that the value has been suppressed by the importers of Automobile parts, however, without any substantial evidence in support of the same. The learned Advocate has further submitted that the appellant has not agreed to the market survey report, but merely stated that they would be abiding by the said joint survey report. He has submitted that the adjudicating authority has rejected the transaction price solely on the ground that there was no purchase order or any E.mail in this regard for procuring the goods from overseas market. It is his contention that there was no such requirement in law to have the purchase order or E.mail correspondence while declaring the transaction value of the goods. He has further submitted that the appellant had never agreed to the market survey report and the learned Commissioner (Appeals) had upheld the rejection of transaction value on the ground that the brand, group, specification or quality of the imported goods was not disclosed in the Bills of Entry. It is his contention that this being general auto parts, the literature, brochure etc. not available and there is no brand, specification or quality mentioned on the parts. Further, the authorities below had ignored the invoices produced by them and follow up note that the goods are of OKAMI brand, which is imported as unbranded. These goods were not part of any reputed automobile company, therefore, no brand was found to be affixed on these goods. He has submitted that even though the importer had agreed to the result of the market survey as reasonable and correct but nowhere accepted the same for re-determination of value. Further, he has submitted that the adjudicating authority has not recorded any reason and also failed to discuss any of grounds in support of imposition of fine and penalty; wrongly combined penalty that has been imposed both under Section 112(a)/114A of CA,1962 on the appellant. He submits that there is no excess payment over and above the transaction value to the overseas supplier, therefore, the determination of assessable value in excess of the transaction value cannot be sustained.

4. Per contra, the learned AR for the Revenue has submitted that the appellant failed to produce documents like, purchase order, quotation or any offer letter from the seller indicating the transaction price of the imported goods on the plea that the same are not existence. Also, no country of origin certificate was produced even though it was declared to be of Chinese origin. It is his contention that in absence of said information, doubt has been raised by the SIIB about the correctness of declared transaction value. Besides, the declared value was rejected when it came to the notice of the Department that the RSP declared by the Appellant is much lower than the RSP of similar goods available in the market. Consequently, after rejecting the transaction value under rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007, the same was re-determined under Rule 9 of the said Rules by conducting market survey with the consent and in the presence

of the appellant and their CHA. The re-determined value was calculated as Rs.31,20,612/- against the declared value of Rs.7,14,659/-. Before and after the value was re-determined through joint market survey, the statements of the importer have been recorded wherein he has categorically admitted to the said market survey and accepted the re-determined assessable value, which now he cannot disown, hence it is binding on the Appellant. Further, the learned AR for the Revenue has submitted that at no point of time these statements have been retracted nor the letter written to the Department for clearance of the goods adopting the said value has been challenged. In support, the learned AR has relied upon the judgment of this Tribunal in the case of *Commissioner of Customs, Delhi Vs. Hanuman Prasad vide Final Order No. 51584-51619/2020 dated 20.10.2020 reported at 2021-TIOL-30-CESTAT-DEL, Commissioner of Customs, Mumbai Vs. Sapna Enterprises – 2009 (243) ELT 440 (Tri-Mum), Advanced Scan Support Technologies Vs. Commissioner of Customs, Jodhpur – 2015 (326) ELT 185 (Tri-Del) and Vikas Spinners Vs. Commissioner of Customs, Lucknow – 2001 (128) ELT 143 (Tri-Del).*

5. Heard both sides and perused the records.

6. The limited issues for determination are: whether (i) the value of imported motorcycle parts as declared by the appellant is correct or the re-determined value by the Department based on market survey are correct, and (ii) fine and penalty imposable on the appellant in the circumstances of the present case.

7. The facts not in dispute are that the appellant has imported various motorcycle parts declaring its total value as Rs.7,14,659/-. The said declared value was not accepted by the Department. Accordingly, the transaction value was re-determined by the Department by conducting market survey with consent and participation of the proprietor of the appellant and his representative CHA. Also, it is not in dispute that the appellant accepted the result of the market survey and consequent enhancement of declared value in his statements recorded by the department after the survey and requested to release the goods. The said statements neither disowned nor retracted. In the present appeal, the appellant has challenged the methodology of re-determination of the value through market survey and also the validity of rejection of transaction value declared by them at the time of import of goods on various grounds. The Revenue's contention, on the other hand, is that since the appellant had failed to provide necessary information/ evidences in relation to the transaction value declared in the respective Bills of Entry, hence its correctness being doubted by the Department, accordingly, the transaction value was rejected under rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and the value was re-determined by the assessing authority under Rule 9 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 after applying the Valuation Rules in sequence. Consequently, in the presence of the importer, joint market survey was conducted to assess the correct value of the imported and the result of the said survey was accepted by the

appellant. Thus, the Revenue's main argument is that at no point of time, for re-determination of the value through the method of market survey, after rejecting the declared value, the proprietor of the appellant Shri Parampreet Singh neither challenged the re-determined value nor retracted the statements accepting the said method of market survey conducted in his presence and result thereof. Hence, he cannot be allowed to go back on the accepted value re-determined by adopting joint market survey.

8. We find that in more or similar fats and circumstances when the re-determined value has been accepted by the importers, this Tribunal in *Commissioner of Customs, Delhi Vs. Hanuman Prasad(supra)* after analyzing the principles of law on the subject held that importer cannot go back on such acceptance and be allowed to dispute the re-determined value, when the same was categorically accepted by him. It has observed as: -

> *"35. The following position emerges from the aforesaid decisions of the Tribunal:*
>
> > *(i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation;*
> >
> > *(ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and*
> >
> > *(iii) The burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntarily accepted.*

9. Applying the said principle to the facts of the present case, we do not have an iota of hesitation to arrive at the conclusion that in the present case also, the proprietor of the appellant

categorically accepted the re-determined assessable value on the basis of market survey carried out in his presence vide statement dated 20.01.2010, which has never been retracted, therefore, the same is binding on him. However, we do not find merit in the order of the authorities below in mechanically imposing fine and penalty on the appellant. In the order of the adjudicating authority, no justification has been recorded for imposition of penalty and directing confiscation of the goods. Also, we do not find any circumstances brought on record to show that the value declared by the appellant is intentionally manipulated or suppressed; the Department has re-determined the value on the basis of market survey after rejecting the transaction value declared by the appellant. Therefore, in our opinion, the re-determined value being in excess of the declared value *ipso facto* cannot be construed as ground warranting confiscation and imposition of penalty on the appellant in absence of reasons and evidences justifying the said action which are missing in the orders of the authorities below.

10. In the result, the impugned order is modified to the extent of setting aside fine and penalty and the Appeal is partly allowed to the said extent.

(Operative portion of the order pronounced in court)

(C.J. Mathew)
Member (Technical)

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

Sinha