CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Custom Appeal No. 87420 of 2013

[Arising out of Order-in-Appeal No. 208 (Adjn.-Imp)/2013(JHCH)/IMP-157 dated 13.03.2013 passed by Commissioner of Customs (Appeals), Mumbai-II]

M/s. Citizen Scale (I) Pvt. Ltd. **Appellant**
Shop No. 3 Pushpanjali Gaushila Lane, Malad (E)
Mumbai- 400 097.
Vs.

Commissioner of Customs (Import)- Nhava Sheva **Respondent**
Jawaharlal Nehru Custom House, Post Uran,
Dist. Raigad, Sheva – 400 707.

<u>Appearance:</u>

Shri Anil Mishra, Advocate, for the Appellant
Shri Sai Krishna Hatangadi, Assistant Commissioner, Authorized Representative for the Respondent

<u>CORAM:</u>

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 19.04.2023
Date of Decision:19.04.2023

FINAL ORDER NO. A/85838/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against order-in-appeal no. 208 Adjn.-Imp)/2013(JHCH)/IMP-157 dated 13.03.2013. By the Impugned order held as follows:

'(1) I order that the classification of goods, imported vide Bill of entry No. 935942 dated 04.11.2010, be changed from declared CTH 84239020 to CTH 90610010; I reject the assessable value of Rs. 2,60,905, declared for the goods imported vide Bill of entry No. 935942 dated 04.11.2010, under Rule 12 of the Customs Valuation Rules2007; I order that the assessable value, of goods imported vide Bill of entry No. 935942 dated 04.11.2010,be re-determined at Rs. 4, 16,367 as detailed in Table-V under Para 3.1 of the Show Cause Notice; I order that an amount of Rs. 49,446, deposited by M/s. Citizen Scales India (P) Ltd vide TR-6 Challan No. 10860289 dated 10.3.2011, be appropriated towards the differential duty under section 28(8) of the Customs Act, 1962; I order that the bill of entry be accordingly finalized;

(ii). I impose a penalty of Rs 50,000(Rupees Fifty Thousands only) on M/s Citizen Scales India (P) Ltd under Section 112(a) of the Customs Act, 1962

27. (i). I order that the classification of goods, imported vide Bill of entry No. 682092 dated 09.06.2010, be changed from declared CTH 84239020 to CTH 90610010; I confirm differential Duty of Rs. 34,641 (Thirty Four Thousand six hundred and Forty One Only), as detailed in Table-VI under Para 3.2 of the Show Cause Notice, on the goods imported vide Bill of entry No. 682092 dated 09.06.2010, from M/s. Citizen Scales India (P) Ltd under section 28(8) of the Customs Act, 1962.

(ii). I order that differential duty as at 27 (1) above be paid along with the applicable interest under Section 28 AA of the Customs Act, 1962.

(iii). I order that the bill of entry No. 682092 dated 09.06.2010 be re-assessed accordingly.

28. (i). I order that the classification of goods, imported vide bills of entry nos. 929355 dated 25.7.2008, 779666 dated 11.2.2009, 883809 dated 20.4.2009, 885252 dated 6.5.2009, 674537 dated 11.9.2009, 918102 dated 26.2.2010, 726434 dated 7.7.2010 and 765186 dated 29.7.2010 as detailed in Table-VII under Para 3.4 of the Show Cause Notice, be changed from declared CTH 84336010 to CTH 84562000;

(ii). I confirm differential duty, amounting to Rs. 4,23,900 (Rupees Four Lakhs Twenty Three Nine Hundred only) (3,89,259 +34,641) on the goods imported, vide bills of entry nos. 929355 dated 25.7.2008, 779666 dated 11.2.2009, 883809 dated 20.4.2009, 885252 dated 6.5.2009, 674537 dated 11.9.2009, 918102 dated 26.2.2010, 726434 dated 7.7.2010 and 765186 dated 29.7.2010 under Section 28(8) of the Customs Act, 1962.

(iii). I order that interest at the applicable rate, be paid on the differential duty as at Para 28(ii) above, under Section 28AA of the Customs Act, 1962.

(iv). I impose a penalty, amounting to Rs. 4,23,900 (Rupees Four Lakhs Twenty Three Nine Hundred only) plus the applicable interest as at Para 28(iii) above, on M/s. Citizen Scales India (P) Ltd under Section 114A of the Customs Act, 1962.

(v). I order that the bills of entry, nos. 929355 dated 25.7.2008, 779666 dated 11.2.2009, 883809 dated 20.4.2009, 885252 dated 6.5.2009, 674537 dated 11.9.2009, 918102 dated 26.2.2010, 726434 dated 7.7.2010 and 765186 dated 29.7.2010 as detailed in Table-VII under Para 3.4 of the Show Cause Notice, be re-assessed accordingly.

29. I order that Rs. 5, 00,000, deposited by M/s. Citizen Scales India (P) Ltd vide TR 6 Challan no. HC 1461 dated 20.12.2010, be appropriated towards the liabilities as at Para 28(ii), (iii), (iv), Para 27(i), (ii) and Para 26(ii) above. I order that balance shall be paid by M/s. Citizen Scales India (P) Ltd.

30. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.'

2.1 Appellant has filed bill of entry no. 935942 dated 4/11/2010 for clearance of the goods consignment declaring goods as part of weighing scales on specific complain received that they were indulged in mis-declaration of description and value of the goods. Investigations were undertaken against the appellant. In the investigation it was found that appellant was not only engaged in importation of said goods but had also imported another category of goods namely Ultrasonic Cleaner.

B/Entry No. & Date	Description of goods & declared CTH	Qty Pcs.	Decl. A.V. (in $)	Assessed @%	Total decl. A.V (in Rs)	Duty Paid (in Rs)
929355 25.07.08	Ultrasonic Cleaner CD 4820 8433 60 10	150	42.833	BCD 7.5% CVD-Nil	291111	35032
779666 11.02.09	Ultrasonic Cleaner CD 4820 8433 60 10	100	42.6	BCD 7.5% CVD-10%	223511	53408
863809 20.04.09	Ultrasonic Cleaner 10L with heater & LCDU/ Cleaner-10L with Heater U/Cleaner-5L 8433 60 10	5 10 30	312 228 115	BCD 7.5% CVD-8%	383825	82609
885252 06.05.09	Ultrasonic Cleaner CD 4820 8433 60 10	150	41.6	BCD 7.5% CVD-8%	335426	72223
674537 11.09.09	Ultrasonic cleaner CD 4820-8456 20 00 CD 4800-8456 20 00 CD 3800A-8456 20 00 CD 4820-8456 20 00	175 50 25 50	41.6 34.6 18.4 41.6	BCD 7.5% CVD-8%	589156	126802
918102 26.02.10	Ultrasonic Cleaner CD 4820-84336010	150	41.6	BCD 7.5% CVD-8%	298403	64224
726434 07.07.10	Ultrasonic Cleaner YJ 5120-5L YJ 5200-10L 84336010	40 10	100 213	BCD 7.5% CVD-Nil	219589	35523
765186 29.07.10	Ultrasonic Cleaner CD 4820-8433 60 10	50	42	BCD 7.5% CVD-Nil	304533	36648
					Total	**506439**

2.2 On completion of the investigation a show cause notice was issued to the appellant asking them to show cause as to why:-

'*(i) The declared assessable value of Rs. 2,60,905/- of the goods imported under live B/E No. 935942 dated 04.11.2010, should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 and be finally assessed at Rs.416367.31 as per the assessable values arrived upon as shown at Table-V and the said Bill of*

Entry be finalised and the differential duty amount of Rs.49,446/- so recovered and deposited vide TR 6 Challan no 10860289 dated 10.03.2011, be appropriated accordingly.

(ii) Penalty under Section 112(a) and 114AA of the Customs Act, 1962 should not be imposed for their acts of commission and omission in respect of import made under Bill Entry No. 935942 dated 04.11.2010 for live consignment of Electronic Scales.

(iii) Differential Duty of Rs. 34,641/- in respect of B/E No. 682092 dated09.06.2010 as indicated in Table VI should not be demanded from them under section 28(4) of the Customs Act 1962 and along with the applicable interest under Section 28 AA of the Customs Act 1962.

(iv) Differential duty for the past import of goods (Ultrasonic Cleaners) vide fight bills of entry as mentioned under Table-VII, totally amounting to Rs 3,89,259/- should not be demanded from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act 1962.

(v) Rs 4, 23,900 (Rs. Four Lakh eighty-nine thousand two hundred fifty-nine only) short paid, as indicated in Table VI & Table VII should not be demanded from them under Section 28 (4) of the Customs Act 1962 along with interest under Section 28 AA of the Act ibid, on the duty short paid should not be demanded and recovered from them.

(vi) The above said amount of differential duty should not be appropriated and adjusted against the sum of Rs. 5,00,000/- deposited as R.D. with the department vide TR 6 Challan no. HC 1461 dated 20.12.2010.

(vii) Penalty under Section 114A of the Customs Act, 1962 should not be imposed on them for the acts of omission and commission in respect of the past imports made by them.'

2.3 The show cause notice has been adjudicated by the impugned order. Aggrieved appellant have filed this appeal.

3.1 We have heard Shri. Anil Mishra, Advocate for the Appellant and Shri. S K Hatangadi, Assistant Commissioner, for the Respondent.

3.2Arguing for the appellant Learned Counsel submits that

- on instructions he do not dispute any other issue decided by the impugned order except for valuation of Ultrasonic Cleaners.
- The valuation of Ultrasonic Cleaners that has been determined by applying deductive value method. Whereas in his submissions the

value should be on the basis of the transaction value as per Section 14 of the Customs Act, 1962.

- The goods are complete goods which are imported by them on the basis of transaction value without challenging the set transaction value applying deducted value method (Rule 7 of Customs Valuation Rule,2007). In the present case since transaction value is available and not contradicted by value and has been determined accordingly.
- The bank guarantee filed by them for provisional release of the goods covered by Bill of entry no. 935942 dated 4/11/2010 seized on 2/2/2011 be released to them as they have paid the entire amount and there was no order for confiscation or redemption made.

3.3 Learned AR reiterates the findings recorded in the appeal.

4.1 We have considered the Impugned order along with the submissions made in the appeal during the course of arguments.

4.2 In the impugned order findings recorded in case of Ultrasonic Cleaners is reproduced below:

'21. As far as the classification of the goods imported under the Bill of entry detailed above is concerned, I find that clearance of all the goods, claimed as Ultrasonic Cleaner, except Bills of entry no. 674537 dated 11.09.2009 of the table, have been claimed under CTH 84336010. In case of Bills of Entry No. 674537 dated 11.09.2009 goods have been classified under CTH 84562000. I find that the CTH 84336010 is for "Harvesting and threshing machines, including straw or hay mowers, Machines for cleaning, sorting or grading eggs, fruits or other agricultural produce, other than machinery of heading 84.37" It is apparently clear that this CTH cover those machine which are connected to Agriculture and Horticulture. CTH 84336010 covers machines for cleaning, sorting or grading eggs fruits or other agriculture produce. The Ultrasonic cleaner in not for cleaning, sorting or grading eggs, fruits of other agricultural products. It appears that the importer, apparently, cleared the said goods describing the same as "Machines for cleaning under the said CTH wherein the goods were assessed to "Nil" CVD. The imported goods were nowhere connected with the agriculture produce. I find that the said goods are classifiable under CTH 8456 20 00. Tariff heading 8456 covers goods of description "Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic beam or plasma arc process". The imported goods had the description as Ultrasonic Cleaner, thus, correctly classifiable under CTH 8456 20 00. Director of the firm Shri Sanjay C Shah in his statement dated 19.04.2012 also accepted

that these goods had been wrongly classified under CTH 8433 wherein he agreed that correct classification of the goods "Ultrasonic Cleaner " is 8456. I also find that in the past also they have cleared one consignment of Ultrasonic Cleaner vide Bills of Entry No. 674537 dated 11.09.2009 under CTH 8456, which clearly indicates that importers were aware of the correct classification of the goods but they deliberately classified the goods under CTH 8433 to evade payment of applicable Customs duty.

22. I find that the goods imported have been declared as "parts of Balance "and found to be the Balance in CKD condition. Therefore, there is reasonable belief that the declared value of the goods also been misdeclared and hence cannot be accepted as true transaction value. In terms of decision in case of M/s. Varsha Industries (1996(82) E.LT. 225) and Nidhi industries 1996(88)ELT 5611, declared value cannot be considered as the true transaction value under Rule 12 of the Customs Valuation(Determination of value of the imported goods) Rules, 2007, and hence the transaction value is rejected. As the value of the subject goods cannot be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules 2007, the same is required to be re-determined by sequentially in terms of Rule 4 to Rule 7of the Customs Valuation Rule 2007. As the contemporaneous import data of the identical or similar goods of same description, brand, make, model, country of origin could not be found, therefore re-determination of value of the Balance imported could not be done under Rule 4 and 5 of the Customs Valuation Rule 2007. Hence in terms of Rule 6 of the CVR, value had to be re determined under Rule 7 of the Customs Valuation Rule 2007. In these circumstances find that re determination of the value of the goods has been done correctly by deductive method, based on the data available in India. find that the assessable value of the goods Imported vide Bills of Entry No. 935942 dated 4.11.2010 and 682092 dated 09.06.2010 has correctly been re calculated as Rs.4, 15,600 and Rs.4, 63,000 respectively as calculated above, on the basis of the sales invoice, after allowing the deduction on the account of stamping charges, calibration charges, miscellaneous expenses, profit and duty etc.

23. I further find that the importer has purposely misdeclared the Ultrasonic cleaner and misclassified the same under wrong CTH a sole intention to evade the proper customs duty. This fact has been accepted by the importer in his statement dated 17.04.2012. Therefore there is reasonable belief that truth and accuracy of the transaction value of the imported goods for the goods imported as well as past consignments. Therefore feel that, the same is liable for rejection under Rule 12 of the Customs Valuation (Determination *of Value of Imported Goods), Rules, 2007 for suppression of type, specification and models of different types of Ultra Sonic Cleaners, which has a material bearing on the valuation. Hence, feel that transaction value of the goods needs to be re determined and duty difference of Rs. 3, 89,259 has been correctly calculated as discussed above.'*

4.3 No reason has been given in the Impugned order for rejecting the transaction value except stating that the goods were miss-classified. It is settled law that miss classification of the goods cannot be the reason for rejection of the declared value which is determine on the transaction value between the supplier of the goods and the receiver in the course of international trade.

4.4 Hon'ble Supreme Court has consistently held that the proper reason for rejection of the transaction value needs to be recorded. It is not even the case that these Ultrasonic Cleaners were not complete or sold in the market for addition of some other value. Hence the deducted value as per Rule 7 of Custom Valuation Rules method applied by the revenue without rejecting the transaction value cannot be justified.

4.5 Following the decision of Hon'ble Apex court we hold that in respect of Ultrasonic Cleaners imported by the appellant the value should have been as per the declared transaction value.

4.6 Appellant does not dispute any other part of the order. Reassessment order as per (V) of the impugned order should be done on the basis of the transaction value declared by the appellant at the time of assessment.

5.1 With the notification impugned order is upheld. Appeal partly allowed to the extent as indicated above.

5.2 Bank guarantee as paid by the Counsel if not released should be released to the appellant at the earliest.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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