CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85479 of 2023

(Arising out of Order-in-Original No. 25 & 26 (Gr. III{FAG}/2023 (JNCH)/Appeals dated 30.01.2023 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Global Impex **.... Appellant**
258, Yusuf Meharally Road,
Masjid Bunder, Mumbai-400003.

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Taluka – Uran,
Dist. Raigad, Maharashtra - 400707

WITH

Customs Appeal No. 85480 of 2023

(Arising out of Order-in-Original No. 25 & 26 (Gr. III{FAG}/2023 (JNCH)/Appeals dated30.01.2023 passed by the Commissioner of Customs (Appeals), Mumbai-II)

M/s Global Impex **.... Appellant**
258, Yusuf Meharally Road,
Masjid Bunder, Mumbai-400003.

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
JNCH, Nhava Sheva, Taluka – Uran,
Dist. Raigad, Maharashtra - 400707

Appearance:

Shri Chirag Shetty, Advocate for the Appellant

Shri S. K. Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86164 – 86165/2023

Date of Hearing: 26.07.2023

Date of Decision: 26.07.2023

Per: S.K. Mohanty

Briefly stated, the facts of the case are that the appellants herein M/s Global Impex has imported a consignment of 'Polyester Fusible Interlinking width 60" (66 GSM)' from M/s Zhejiang Kingsafe Interlining Company Ltd., China. The Bills of Entry were self-assessed by the appellants in terms of Section 17 of the Customs Act, 1962. However, the assessment wing at Kolkata did not accept the value declared by the appellants in respect of the imported consignments and accordingly, rejected the declared value in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Subsequently, the value was re-determined @ Rs.33.94 (i.e., 0.4323 USD/SQM) under Rule 5 *ibid,* vide order dated 08.07.2022. Against the said assessment order, the appellant had filed appeal before the learned Commissioner (Appeals), Mumbai-II, which was disposed of by the Order-in-Appeal dated 29.09.2022, in remanding the matter back to the original authority for consideration of the contemporaneous import price, in order to arrive at the correct assessable value. Pursuant to the remand directions contained in order dated 29.09.2022, the original authority took up the *de novo* adjudication proceedings and passed the order dated 23.11.2022, in confirming the same demand, which was confirmed in the earlier order dated 08.07.2022. The contemporaneous import price referred to in the earlier order has also referred to in the present order dated 23.11.2022 passed by the original authority. Feeling aggrieved with the said order dated 23.11.2022, appellants have preferred appeal before the learned Commissioner (Appeals), which were disposed of vide the impugned order dated 30.01.2023, in upholding rejection of the declared value and accepting the contemporaneous import price indicated in the original order. Being dissatisfied with the impugned order, appellants have preferred these appeals before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that the contemporaneous import considered by the original authority vide order dated 08.07.2022 was also repeated and referred to in the subsequent order dated 23.11.2022 passed by him. In this regard, he submitted that the learned Commissioner (Appeals) had remanded the matter back to the original authority for consideration of other

data in order to reject the declared value and since, the same was not adhered to by the original authority in proper perspective, both the original as well as the appellate order passed by the lower authorities cannot be sustained. He further submitted that initially the Order-in-Appeal dated 29.09.2022 passed by the learned Commissioner (Appeals) in remanding the matter back to the original authority has not been challenged by the Revenue by way of filing appeal before the higher appellate forum. Further, he submitted that the said order having been attained finality, the directions contained therein have to be complied with by the original authority. Thus, he submitted that the impugned order passed in this case cannot be sustained for judicial scrutiny. He has relied upon the order of this Tribunal in the case of *Kushalchand & Co. Vs. CCE – 2011 (265) ELT 109 (Tri.),* to state that non-compliance of remand direction contained in the appellate order by the original authority, is not proper and justified and as such, confirmation of the demand cannot also be sustained. He further submitted that the order of the Tribunal in the case of *Kushalchand& Co. (supra)* has also been upheld by the Hon'ble Supreme Court, reported in *2015 (325) ELT 813 (SC).*

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and examined the case records.

5. We find that against the initial order dated 08.07.2022, the appellants had preferred appeals before the learned Commissioner (Appeals) and in remanding the matter back to the original authority for a fresh fact finding, the learned Commissioner (Appeals) has recorded the following observations in the order dated 29.09.2022: -

> *"7. I find that the appellant is challenging the re-determination of value done by the original Authority in the impugned bills of entry. The adjudicating authority has rejected the declared value stating that the declared prices of the impugned goods are low as compared to the data of contemporaneous import of similar goods. In this case the OA relied upon NIDB data of similar goods cleared at different ports for re-determination of the value of the impugned goods under Rule of 5 of CVR, 2007. On perusal of the said data/ Bills of Entry relied upon by the Original Authority for re-determining the value, it is found that other important details of contemporaneous goods, viz. quantity, composition, GSM, quality, size etc; which are the essential parameters of similar goods under Rule 2(f) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have not been taken care while deciding the re-determined price of the goods.*

> *Therefore the said relied upon bills of entry cannot be considered as contemporaneous import of similar goods under rule 5 of CVR, 2007 for rejection and re-determination of the import of similar goods under rule 5 of CVR, 2007 for rejection and re-determination of the value, for lack of such complete details and hence the same are not sustainable in law."*

6. On going through the remand directions contained in paragraph 7 in the order dated 29.09.2022, we find that the direction is specific with regard to consideration of contemporaneous import afresh, without referring to the import referred to earlier by the original authority. However, on examination of the *de novo* adjudication order dated 23.11.2022, we find that the original authority had referred to the self same contemporaneous import in order to reject the declared value and to re-determine the value in terms of Rule 5 *ibid*. Insofar as non-compliance of the order of the higher authority in the remand proceedings, the law is well settled that the authority to whom the matter has been remanded, should strictly follow the procedure and abide the contents in the appellate order. We find that the original authority in the remand proceedings had not complied with the requirement of order dated 29.09.2022 passed by the learned Commissioner (Appeals). In this context, the Hon'ble Supreme Court in the case of Kushalchand & Co. (supra) have held as follows:-

> ***"5.*** *It is pertinent to mention that in spite of particular conclusion which was arrived at by the Tribunal that "Cocoa Powder" was 'Flour' and covered under the description of the license, the Department did not choose to challenge this finding by filing any further appeal, therefore, at least inter se between the parties, the said issue attained finality and this finding was binding on the Commissioner and, therefore, it was not open to the Commissioner to re-visit the issue all over again and come to a contrary finding.*
>
> ***6.*** *The learned Attorney General made an endeavour to show that "Cocoa Powder" would not be covered by the term 'Flour'. In view of the aforesaid facts emerging from the records, we refrain from going into the issue at all. Thus, insofar as the facts of this case are concerned, since the earlier order of the Tribunal was not challenged by the Department, the impugned order warrants no interference. We, thus, dismiss this appeal."*

7. In view of the fact that the remand direction of the learned Commissioner (Appeals) is not at all complied with by the original authority and without any basis, the appeal of the appellants was dismissed by the learned Commissioner (Appeals), we do not find any substance in the orders passed by the lower authorities in support of confirmation of the adjudged demands.

8. Therefore, the impugned order passed by the learned Commissioner (Appeals) is set aside and appeals are allowed in favor of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha