CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85057 OF 2014

[Arising out of Order-in-Appeal No: 930 & 931 (GR.III)/2013(JNCH)/IMP-714-715 dated 25th September 2013 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Mohini Fibers Pvt Ltd
105 Apollo Avenue, 30-B Old Palasia, Indore - 452018 … ***Appellant***

versus

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

APPEARANCE:

Shri Ashwani Prabhakar, Advocate for the appellant

Shri Ranjan Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 87413/2024

DATE OF HEARING: 04/06/2024
DATE OF DECISION: 03/12/2024

PER: C J MATHEW

This appeal of M/s Mohini Fibers Pvt Ltd lies against order[1] of Commissioner of Customs (Appeals), Mumbai – II rejecting their

[1] [order-in-appeal no. 930 & 931 (GR.III)/2013(JNCH)/IMP-714-715 dated 25th September 2013]

challenge to the detriments in the order of the original authority who had, for the reason that goods were found to be in excess and not conforming to the declaration in bill of entry no. 7391048/16.07.2012 for 4118.70 kgs of ‘warp knitted polyester fabric’ valued at US $ 25124.70, revised assessable value to ₹ 25,33,908.40 with consequential differential duty of ₹ 3,24,625 and, in addition, after confiscation under section 111 of Customs Act, 1962 permitted to be redeemed on payment if ₹ 4,00,000 under section 125 of Customs Act, 1962 while imposing penalties on them and their customs broker, M/s Movar Logistics Pvt Ltd.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

3. The first appellate authority upheld resort to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for enhancing the assessable value on the ground that the test report indicated the goods to be articles manufactured out of entirely different fabric besides being in excess. With the report not being challenged, this finding of the first appellate authority cannot be faulted except to the extent that recourse to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which was challenged for not having placed the appellant on notice of the proposed addition to the assessable value was ignored in the

impugned order. There is no doubt that the appellant herein had waived right to be issued notice but that did not privilege the original authority not to provide necessary information and documentation that was intended to be used to their disadvantage.

4. Furthermore, it is also on record that the appellant had claimed both before the original authority and before the first appellate authority, that they have sought amendment of the bill of entry as the goods did not conform to the order placed by them; this plea has been casually disregarded on the finding insufficient *bonafides*. The lower authorities failed to consider the circumstances in which consignment was subjected to first-check with inherent the presumption is that the importer was not likely to be aware of the contents.

5. Failure to consider their pleas, which may have had consequence to the outcome of the proceedings, is violation of principles of natural justice. Accordingly, the matter is remanded back to the original authority to re-determine the dispute afresh and in conformity with the principles of natural justice.

6. The appeal is allowed by way of remand,

(Order pronounced in the open court on 03/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*