CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89425 OF 2014

[Arising out of Order-in-Appeal No: 2679 (Gr.IIG)/2014(JNCH)/IMP-2548 dated 4th July 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Suzlon Energy Ltd
Survey No. 282, Vill: Chadvel, Tal: Sakri
Dist: Dhule - 424305 … ***Appellant***

versus

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

APPEARANCE:

Ms Anjali Hirawat and Ms Antara Bhide, Advocates for the appellant

Shri Deepak Sharma, 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: 87436/2024

DATE OF HEARING:	06/06/2024
DATE OF DECISION:	05/12/2024

PER: C J MATHEW

M/s Suzlon Energy Ltd manufactures 'wind operated electric generators' and for their processing procures huge quantities of imports with substantial implications of revenue. They had, against bill of entry no. 7960388/17.09.2012, imported 'tacky tapes' admeasuring 249786.65 meters with declared value of ₹ 5,07,275.67 on which basic customs duty of ₹ 25,363, additional duty of customs amounting to ₹ 63,916 and other duties totaling to ₹ 1,15,928 was duly discharged. The discharge of such duty liability on invoice value US$ 7493.60 was found to be inappropriate and the proper officer of customs directed that the per unit rate of US$ 0.033 per meter should be applied on the total quantity for levy of differential duty of ₹ 1,15,928 besides subjecting the imported goods to confiscation under section 111 of Customs Act, 1962 with option to redeem on payment of fine of ₹ 50,000 and penalty of ₹ 40,000 imposed under section 112 of Customs Act, 1962 which, *vide* order[1] of Commissioner of Customs (Appeals), Mumbai – II, Jawaharlal Nehru Customs House, Nhava Sheva, was upheld leading to this challenge.

2. The order has been impugned before us solely for setting aside of the confiscation and imposition of penalty on the ground that there was no mis-declaration on their part warranting recourse to section 111(m) of Customs Act, 1962.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

4. It would appear that the purchase order pertaining to the import of, *inter alia*, the impugned goods indicated the value of US$ 33 per

---

[1] [order-in-appeal no. 2679 (Gr.IIG)/2014(JNCH)/IMP-2548 dated 4th July 2014]

1000 meter for procurement of 50,000 meters. It transpires that the present consignment is slightly less than half *i.e.* 249786.65 meters which is 213.25 meters short of the midway mark of the order intended. Consequently, the price should have been roughly about US$ 8,250 against which price of US$ 7,493.60 had been declared. According to Learned Counsel for the appellant, the discrepancy is attributable to the requirement of computation in accordance with per unit price, *i.e.* in terms of per meter, which would thereby be rounded off to US$ 0.03 per meter. The case of the customs authorities is that adjustment to the 'third decimal' would imply addition of another 10% thereof with the consequence of roughly about US$ 750 in value over the entire consignment and hence duty not discharged to that extent. Appellant remitted differential duty liability arising therefrom on value of ₹ 5,07,275.67 assessed at the applicable exchange rate of ₹ 56.2000 per US$ and this is where the crux of the dispute lies.

5. The exchange rate for US$ is stipulated, under section 14 of Customs Act, 1962, by the Central Board of Indirect Taxes and Customs (CBIC) upto two decimal points for the foreign currency and four decimal points for the Indian currency. Despite this, the customs authorities concerned with the clearance of the impugned goods found it more appropriate to take the computation of the import price in US$ terms to the third decimal which is inconsistent with not only with currency systems of the world but also the practice adopted by the

Central Board of Indirect Taxes and Customs (CBIC). No justification has been offered for this anomaly in computation of the transaction value.

6. Before the lower authorities, the importer claimed that the automated system of the supplier limited the record to two decimal places which is nothing but the norm as 100¢ is equivalent to US$1. The question that arise therefrom is whether the importer had mis-declared the goods or not. In terms of convention relating to currency, and the practice adopted by Central Board of Indirect Taxes and Customs (CBIC) for designated foreign currency, it would appear not. In any case, the enhanced duty liability arising therefrom is not under challenge. There is not an iota of evidence that the goods do not correspond in respect of value with the entry made under this Customs Act, 1962. Consequently, there is no scope for invoking section 111(m) of Customs Act, 1962. With that, the scope for invoking section 112 of Customs Act, 1962 also fails.

7. In the light of the above facts and circumstances, we find no reason to sustain the confiscation and imposition of penalty. These are set aside to allow the appeal.

(Order pronounced in the open court on 05/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)