(2021) 03 CESTAT CK 0112

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 10131 Of 2021

A K Fashions — APPELLANT

Vs

C.C.-Jamnagar (Prev) — RESPONDENT

Date of Decision : 08-03-2021

Acts Referred:

Citation : (2021) 03 CESTAT CK 0112

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Advocate : H. K Hirani, R.K Bhashkar

Final Decision : Allowed

Judgement

1. This appeal was filed against the order of Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal on the ground

that as regard enhancement of the custom value of the imported goods, the appellant has given their consent to enhance the value to US $ 0.86.

Therefore, the Learned Commissioner (Appeals) has not given any findings on merits.

2. Shri H.K Hirani, Learned Consultant appearing on the behalf of the appellant submits that though the consent was given only for clearance of the

goods but the enhancement was challenged by filing a letter for passing a speaking order and on the letter for request of the speaking order the

assessing officer has passed the speaking order dated 15.05.2019. It is his submission that before passing the speaking order neither any documentary

evidence, supporting the enhancement of the value was given nor any hearing was given therefore the speaking order was passed in gross violation of

principles of natural justice. He also submits that after the faceless assessment was introduced the department has accepted the declared value and no

objection was raised, therefore, in principle the value declared by the appellant has been accepted by the department. He further submits that for the

clearance of the goods only, giving the consent for enhancement of the value, the assessee cannot be deprived of challenging the valuation as held in

the following judgments.

SIGMA POWER PRODUCTS PVT. LTD Vs. CC (Port)-2017 (350) E.L.T 510 (Cal)

CC, DELHI Vs. MARUTI FABRICS IMPEX -2016(343) E.L.T 963 (Tri. Del.)

SEDNA IMPEX INDIA PVT LTD. Vs. CC, FARIDABAD â?" 2017(347) E.L.T 317(Tri. Chan)

SUNLAND ALLOYS VIDE FINAL ORDER NO 11030 â?" 11080/2020 dated 01.06.2020

GURU RAJENDRA METALLOYS INDIA PVT LTD VIDE FINAL ORDER NO 10889-11025/2021 dated 29.05.2020

3. Shri R.K Bhashkar, Learned Superintendent (Authorized Representative) appearing on the behalf of the revenue submits that the enhancement of

the value was made on the consent of the appellant. Therefore, the appellant has no locus-standi for challenging the enhancement of the value. He

placed reliance on the judgment of Principal Bench in case of CC vs. HANUMAN PRASAD AND SONS-2021-TIOL-30- CESTAT-DEL.

4. We have heard both sides and perused the records. We find that though the appellant, at the time of clearance of the goods, given consent for the

enhancement of the value, however at the same time they have protested the enhancement by requesting for speaking order vide letter dated

14.05.2019 and a reminder letter dated 27.05.2019. Thereafter, the assessing authority i.e Deputy Commissioner of customs passed a speaking order

dated 15.05.2019. In these circumstances the appellant has right to appeal against the speaking order. Therefore, it cannot be said that only because

the appellant has given the consent, appellant cannot challenge the enhancement of value. However, it is observed that the Adjudicating Authority/

Assessing Authority while passing the speaking order neither supplied any documentary evidences in support of enhancement of the value to the

appellant nor given any personal hearing to the appellant. Therefore, there is a clear violation of principles of natural justice on the part of the

assessing authority. The speaking order, which was passed in violation of principles of natural justice, will not sustain. Accordingly, we set aside both

the orders of the lower authorities and remand the matter to the Adjudicating Authority for passing a de- novo speaking order after providing all the

necessary documents in support of enhancement of the value and granting the appellant sufficient opportunity of personal hearing. Appeal is allowed

by way of remand in the above terms.

5. Since there are other cases in the pipeline as submitted by the learned consultant we direct the Adjudicating Authority to expedite and pass the de

novo order within a period of 3 months from the date of this order.

(Dictated and pronounced in the open court)

