(2023) 10 CESTAT CK 0030

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 20546 Of 2012

Commissioner Of Customs APPELLANT

Vs

M/S. Suvee Impex (P) Ltd RESPONDENT

Date of Decision : 16-10-2023

Acts Referred:

Citation : (2023) 10 CESTAT CK 0030

Hon'ble Judges : Dr. D. M. Misra, Member (J);R. Bhagya Devi, Member (T)

Bench : Division Bench

Advocate : Neeraj Kumar, V. M. Doiphode

Judgement

R. Bhagya Devi, Member (T)

1. The respondent M/s. Suvee Impex (P) Ltd. (importer) had imported 'Glass Beads Chaton' vide Bill of Entry No.2902691 dated 25.02.2021. Assessing Officer rejected the declared value and reassessed the goods by loading the value as per the contemporaneous imports of identical goods which was done on the ICES EDI System. Aggrieved by the above assessment order, the respondent preferred an appeal before the Commissioner (A) submitting that though they had requested in writing for a personal hearing, their request was not considered and the goods were reassessed without following the principles of natural justice. The Commissioner (A) allowed the appeal observing that:

"5. At the outset, it has been emphatically stated that going ahead with the assessment carried out, without giving an opportunity to the appellant to be heard is a definite violation of the principles of natural justice. Furthermore, given the fact that earlier imports from the same supplier of Glass Beads Chatons, have been accepted by the Department (B.E. No.3636934 dated 20.4.2021) and also taking due note of the fact that imports of the same goods, namely Glass Beads Chatons, have also been assessed at other ports like Kolkata based on the declared value and also cleared without any loading, gives credence to the fact that there has been an element of inconsistency and arbitrariness on the part of the respondent and leads me to the inescapable conclusion that the appeal has strong merits and the assessment carried out on the aforementioned B.E. deserves to be set aside."

And accordingly, the Commissioner(A) allowed the appeal by setting aside the enhancement of value. Aggrieved by this order, the Revenue is in appeal before us.

2. The Revenue is aggrieved on the ground that in the EDI system at Mumbai port under Faceless Assessment, the declared value was not accepted and accordingly a query was raised in the system requesting the importer to furnish the documents and their email ID for providing them a virtual personal hearing. Though the respondent had provided the documents by way of reply, no email ID was provided to conduct virtual personal hearing. Therefore, based on the documents on record, the assessing authority assessed the Bill of Entry by enhancing the value. However, the Commissioner (A) had wrongly observed that personal hearing was not granted and thus, principles of natural justice is not being followed. Consequently, the Commissioner (A) has relied on a Bill of Entry No.3636934 dated 20.04.2021 which was subsequent to the import of the present consignment but however states that based on the earlier imports' enhancement is not in order, which is factually incorrect. Accordingly, Revenue requests for remanding the matter back to the original authority for deciding the assessment afresh.

3. Today, the learned Authorised Representative on behalf of the Revenue submitted the copies of the clearances made of all dated 25.02.2021 on the EDI system which clearly shows that they had directed the importer to file documents in their favour and to provide an email ID for personal hearing and from the reply by the importer, it is seen that they had uploaded certain documents such as GST invoices, e-way Bill, etc., which was not satisfactory by the assessing authority.

4. The respondent submits that since the subsequent imports of the same item from the same supplier have been cleared without any enhancement of value, the appeal may be dismissed and valuation made by the respondent may be upheld.

5. Heard both sides and on perusal of all the records, it is on record that under EDI system, the assessing officer had made a query and also requested for certain documents and also email ID for conducting personal hearing but the respondent had replied to the query and provided certain documents but did not provide email ID for conducting personal hearing. Therefore, the Commissioner (A) was wrong in stating that the principles of natural justice was not followed. Moreover, the evidences provided before the Commissioner (A) vide Bill of Entry 3636934 dated 20.04.2021 was a Bill of Entry cleared subsequently to the item imported vide Bill of Entry No.2902619 dated 25.2.2021. Therefore, the Commissioner (A)'s observation that on "given the fact that earlier imports from

the same supplier of Glass Beads Chatons” have been accepted by the Department was incorrect and baseless.

6. In view of the above, the impugned order is set aside and the matter is remanded back to the original adjudicating authority for deciding the matter afresh. The fact that the subsequent imports were cleared without enhancement of value may be taken on record before deciding the assessment of Bill of Enry in question. It is needless to say that a personal hearing may be granted to the respondent and may decide the mater within four weeks from the date of receipt of this order.

