(2022) 01 CESTAT CK 0015

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 52212 Of 2019

Commissioner Of Customs APPELLANT

Vs

M/s Uniexcel Polychem Pvt. Ltd. RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:
Customs Valuation Rules, 2007 — Rule 9, 12

Citation : (2022) 01 CESTAT CK 0015

Hon'ble Judges : Anil Choudhary, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The issue involved in this appeal by Revenue is whether the Commissioner (Appeals) have erred in allowing the appeal of the Respondent-importer, wherein he has been pleased to set aside the enhancement in the transaction value for the purpose of collection of duty, wherein such enhancement is made on the basis of DRI alert with reference to some NIDB data.

2. Brief facts of the case are that the appellant is a regular importer of 'Polyester Knitted Fabric'. With respect to seventeen bills of entry during the period 13.10.2011 to 07.12.2011, the Revenue had objected to the declared transaction value and proposed enhancement in view of DRI alert - vide DRI F. No. 23/13/2011-DZU dated 09.05.2011, suggesting therein that as per indepth investigation with various importer of goods, the import price of 'Polyester knitted Fabric' should be in the range of US$2.80 to 05.15 per kg. As the respondent –importer objected to such valuation, the Revenue made 'provisional assessment' and drew samples and sent the same to CRCL for finding the nature of composition, and also whether the goods fall under any of the category as mentioned in DRI alert circular. Subsequently, finalisation of assessment was taken up after receipt of the test report from CRCL. The Order-in-original states that three opportunities for personal hearing was given vide common notice, wherein date was fixed but the importer did not appear. Thereafter, as is evident

from the order-in-original, without giving a copy of the documents to the assessee/ importer, on the basis of which Revenue sought to finalise the enhancement of value by rejecting the transaction value, the assessment of bills of entry was finalised with respect to seventeen bills of entry vide order-in-original dt. 19.12.2016, relying on the DRI alert circular and also alleging that there is absence of further inputs from the importer and hence the transaction value is rejected under Rule 12 of Customs Valuation Rules, 2007, and thereafter relying upon Rule 9 - residual method, and DRI alert circular, the enhancement of value as in provisional assessment was finalised, wherein the transaction value of $1.60 per kg. was enhanced to US$2.80 per kg.

3. Being aggrieved, the appellant preferred appeal before the Commissioner who has been pleased to allow the appeal setting aside the enhancement, holding that the declared transaction value is required to be accepted as correct. The Commissioner (Appeals) also gave directions to the original authority to pass speaking order, on the issue of concessional CVD in view of the ruling of Hon’ble Supreme Court in the case of SRF Limited vs. CCE.

4. Being aggrieved, Revenue is in appeal inter-alia on the ground that the importer inspite of giving notice of personal hearing at the finalisation stage, did not bring any additional information on record. Hence, the transaction value was rightly rejected and the value enhanced on the basis of DRI alert circular, which is based on contemporaneous import being NIDB data prevailing at the time of provisional assessment. It is further urged that the learned Commissioner (Appeals) have erred by not bringing on record the relevant import data before setting aside the appeal. It is further urged that in the matter of VSM, wherein this Tribunal has allowed the appeal on 25.10.2018, the Revenue have preferred appeal before the Hon’ble Supreme Court, filed vide Dy. No. 15298/2019 dt. 25.04.2019. He further urged that the appellant-assessee has not protested the proposed enhancement at the stage of finalisation, inspite of opportunity given, and thus, there is deemed admission on their part to the enhancement made at the time of provisional assessment.

5. Learned Counsel for the respondent- importer relies on the impugned order and opposes the appeal of Revenue. He further urges that the respondent – importer was not even given proper notice by serving the copy of material/ NIDB data based on which Revenue has proposed, to finalise the assessment. Accordingly, he prays for dismissing the appeal.

6. Having considered the rival contentions, we noticed at the time of hearing that Revenue has not served the copy of relevant material, it wanted to use against the respondent –importer, for enhancement in the transaction value. Thus, we find that respondent / importer had no opportunity to meet the allegations of Revenue, for finalisation of the proposed enhancement made at the time of provisional assessment, even at the finalisation stage of the same. We find such action of Revenue is totally against the principles of natural justice and the same is in the teeth of the ruling of Hon’ble Supreme Court in the case of Dhakeswari

Cotton Mills vs. Commissioner of Income Tax - 26 ITR 775 (SC), wherein the Hon’ble Supreme Court have laid down in its ruling that the Adjudicating Authority, if it wants to use any material collected behind the back of the assessee for the purpose of assessment, the Authority is bound to put assessee to notice by serving copy and giving sufficient opportunity to rebut the same. In absence of such notice the assessment order was held to be untenable and set aside. We find that in the facts and circumstances of the present case, the ruling of Hon’ble Supreme Court in the case of Dhakeswari Cotton Mills (supra) is squarely applicable.

7. Accordingly, we dismiss appeal of the Revenue and uphold the impugned order-in-appeal. The respondent –importer shall be entitled to consequential benefits, in accordance of law.

(Operative part of the order pronounced in open Court).