**(2021) 03 CESTAT CK 0089**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Customs Appeal No. 87075 Of 2013

Creation Student Stationery Pvt Ltd APPELLANT

Vs

Commissioner Of Customs (Imports) RESPONDENT

**Date of Decision :** 01-03-2021

**Acts Referred:**

**Citation :** (2021) 03 CESTAT CK 0089

**Hon'ble Judges :** Dr. D.M. Misra, J;C.J. Mathew, Technical Member

**Bench :** Division Bench

**Advocate :** Sanjay Dwivedi, Bhushan Kamble

**Final Decision :** Allowed

## Judgement

1. This is an appeal filed against Order-in-Appeal No. 112(Gr.VI)/2013/JNCH/IMP-102 dated 18th February 2013 passed by the Commissioner of Customs (Appeals), Mumbai - II, Nhava Sheva.

2. Briefly stated, the facts of the case are that the appellant had imported "Dustless Chalk White" against bill of entry No. 5089088 dated 02/11/2011 from M/s HEFEI Wentai Hexagon Trading Co. Ltd., China declaring the value as of US $ 11922.21 under invoice No. WT 11070 dated 28/09/2011. The department did not accept the transaction value on the ground that contemporaneous imports were made at a higher value. Consequently, the value was enhanced in the order recording as follows:

"4. The contemporaneous import data as discussed in Para (2) above for 100pcs. /set Chalk of Chinese origin from DOV was relied upon for arriving at the correct transaction value of Boxes of Dustless Chalk White with more no. of pcs. and price of Dustless colour Chalk 100 pcs./set taken to arrive at the colour Chalk of 300 pcs. Packing. Accordingly, the value redetermined is as shown in Table below:

Sr. No.

 

Description

Unit Price  Declared US$

Unit Price  Determined as per-Contemporary Imports Noticed US$

01

Dustless Chalk  White (144 pcs/set)

0.2954/SET

0.4608

02

Dustless Chalk  White (100 pcs/set)

0.2394/SET

0.32

03

Dustless Chalk  White (50 pcs/set)

0.15003/SET

0.16

04

White Chalk Bulk  Packing (750 Kgs) (3000 Pcs per CTN)

5.06/CTN

9.60

05

Dustless Chalk  Colour (144 pcs/set)

0.3635/SET

0.8496

06

Dustless Chalk  Colour (100 pcs/set)

0.3032/SET

0.59

07

Colour Chalk  Bulk Packing (750 Kgs) (3000 Pcs per CTN)

6.29/CTN

 

17.70

5. The DOV data and enhanced value was shown to importer's representative. The importer vide letter dt. 14.11.2011 requested for payment of duty at the value determined as per DOV data under protest. The B/E was assessed at the determined value and goods were released accordingly."

3. Consequently, the adjudicating authority rejected the transaction value and proceeded to determine the assessable value as per data of contemporaneous imports purportedly placed and accepted before the appellant during the course of personal hearing. However, aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who also on the same grounds upheld the adjudicating authority's order and rejected the appeal. Hence, the present appeal.

4. At the outset, Learned Advocate for appellant submits that they have never accepted the determined value but for clearance of the goods from customs paid the duty under protest. Also, they had not been provided with the DOV data and the respective bill of entry or any supporting documents. The transaction value was rejected by the department unilaterally and the duty was paid by them on the determined value, under protest. In support of their claim that the determined value was not accepted by them he has referred to letters submitted to the department on 9/11/2011 and 14/11/2011 annexed to appeal paper book. It is his contention that besides challenging the enhanced value, they have also raised certain other issues before the adjudicating authority which have not been addressed. He prays that the matter may be remanded to the adjudicating authority to decide the issue afresh after providing the details of DOV data with supporting records so as to make submission by them in support of their defence.

5. Learned Authorised Representative for Revenue reiterated the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions advanced by both sides and perused the records.

7. We find that the authorities below has decided the issue of valuation observing that the DOV data placed before the appellant during the course of hearing was accepted by them and differential duty was paid. However, on going through the communication dated 14/11/2011 addressed by the appellant to the Assistant Commissioner, Group VI, JNPT, Nhava Sheva, we find that they have only reiterated the transaction value and agreed to discharge the duty under protest. In these circumstances, we are of the view that the principles of natural justice has not been adhered to by supplying the details of DOV data relating to enhancement of assessable value after rejecting the transaction value declared in the respective invoices. Therefore, in the interest of justice, the matter should go back to the adjudicating authority to decide the issue of valuation afresh along with other issues that has been raised by the appellant in the present appeal after affording a reasonable opportunity of hearing to the appellant and providing

 

the DOV data with relevant supporting documents to support their defence on such data. All issues are kept open.

8. Appeal is allowed by way of remand to the adjudicating authority.

(Dictated and Pronounced in open Court)

 