(2024) 04 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No: 86457 Of 2019

Mineral Technologies India Pvt Ltd — APPELLANT

Vs

Commissioner Of Customs — RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:

Customs Valuation (Determination Of Value Of Imported Goods) Rules, 2007 — Rule 10(1)(c)
Customs Act, 1962 — Section 14, 17, 18, 28, 128

Citation : (2024) 04 CESTAT CK 0002

Hon'ble Judges : C J Mathew, Member (T);Ajay Sharma, Member (J)

Bench : Division Bench

Advocate : Sanjay Singhal, D S Mann

Final Decision : Allowed

Judgement

C J Mathew, Member (T)

1. The appellant, M/s Mineral Technologies India Private Limited, is before us with the grievance that the first appellate authority overturned a decision of the original authority in their favour with potential of severe detriment to them by directing the addition of royalty of 5%, emanating from 'licence agreement' dated 10th July 2012 between M/s Speciality Minerals (SM-Michigan) and themselves, paid or payable to assessable value of imported goods under the empowerment of rule 10(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 with the direction that

'7..... the exact quantum of addition of royalty in the value of the imported goods shall be calculated by the original authority concerned. The respondent for the purpose of this calculation shall cooperate with the original authority and provide the necessary documents/records for proper quantification...' in order of Commissioner of Customs (Appeals), Mumbai Zone-I which is impugned here.

2. We have heard Learned Counsel and Learned Authorized Representative at

length.

3. It appears to us that the impugned order has directed addition to assessable value to the extent of 5% of 'net sale price' of 'precipitated calcium carbonate' supplied to M/s West Coast Paper Mill at Dandeli and that the actual addition thereby, with consequent duty liability, was unknown to first appellate authority as well as the original authority which is surprising because even if the original authority had dropped proceedings for recovery, it was incumbent for such enhancement to have been made with reference to proposal in show cause notice issued for the purpose. However, there is no notice under section 28 of Customs Act, 1962 for this proposed addition to declared value by recourse to rule 10(1)(c) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is found to be stemming from, and erected in the impugned order, upon the foundation of the appellant being related to the other party in the 'licence agreement' through M/s Minetel Technology Inc., USA of which both are subsidiaries. The order is, therefore, devoid of details of imports which throws light on the cause of directed remand to the original authority and, absent show cause notice setting out the circumstances justifying recovery that is predicated upon relationship of two entities which are claimed not have engaged in cross-border trade transaction, the addition of a payment, ascertainable only upon sale of a manufactured product to a particular customer subsequent to import, calls into question the authority for such enhancement and, that too, under a provision which has nothing to do with relationship of the two parties to the agreement.

4. This curious concoction of layered thinking in appellate proceedings is so bizarre as to prompt delving into the jurisdiction that legally permitted it to do so. We find that the order impugned before the first appellate authority has its origins in a peculiar institution of customs administration, viz., Special Valuation Branch (SVB) or GATT Valuation Cell (GVC), found in some of the older customs houses with specific remit to ascertain valuation of goods transacted between related persons. This arises from a provisioning in section 14 of Customs Act, 1962 for assessable value to take into consideration the reality of relationship having affected price arrangement in a transaction and, in the early years of international convergence upon a common valuation system for customs assessment, attributable to the frailty of expression in articulating the neutralization of deviation from several aspects of qualification for 'assessable value' as set out in section 14 of Customs Act, 1962. More importantly, this branch was not the 'proper officer', envisaged under section 17 or section or section 28 of Customs Act, 1962, and, therefore, not empowered to fasten such enhancement to value for assessment of goods. Nor was it competent for the originator of the proceedings to comply with the order of the first appellate in the absence of 'empowerment' to assess imported goods to duty under section 17 of Customs Act, 1962, to finalise assessment upon triggering of the contingency that prompted 'provisional assessment' under section 18 of Customs Act, 196 or to recover duty short-paid under the authority of section 28 of Customs Act,

1962. At best, the Special Valuation Branch (SVB) may have advisory competence which could not be allowed to influence the 'quasi-judicial' determination of duty liability or recovery subsequent to clearance for home consumption.

5. Furthermore, from the absence of show cause notice, as well as submission on behalf of appellant, it is again clear that such imports that are subject to Special Valuation Branch (SVB) oversight are, invariably, kept provisional for finalization to be undertaken upon completion of ascertainment by Special Valuation Branch (SVB). Therefore, at this stage, the quantification ordered by the first appellate authority pertains to finalization under section 18 of Customs Act, 1962 devolving on 'proper officer' that Deputy Commissioner, Special Valuation Branch (SVB) is not. As appeal has not been directed before first appellate authority against order of such 'proper officer', it transgresses the remand jurisdiction of such appellate authority to issue directions to 'proper officer' who has yet to complete the process of finalization. Direction to the ostensible 'original authority' is an exercise in futility and direction to the 'proper officer', and the statutorily empowered potential 'original authority', is beyond appellate jurisdiction of Commissioner of Customs (Appeals) before whom the order impugned did not challenge a 'yet to occur' assessment.

6. In these circumstances, it behoves us to focus on the competence of the reviewing authority to have gone before the first appellate authority against the opinion of the Deputy Commissioner, Special Valuation Branch (SVB) that there was no need to add the 'royalty' to assessable value. Section 128 of Customs Act, 1962 stands on two limbs – decision being that of officer below the rank of Commissioner of Customs and from the decision causing a grievance. The author of the order impugned before the first appellate authority is certainly subordinate to Commissioner of Customs. However, as pointed out above, that opinion was not even persuasively binding on the 'proper officer' who, as assessing authority and obliged to issue speaking order, is required to arrive at assessment uninfluenced, even if not uninformed, by external sources. Therefore, there was no cause for grievance to initiate appellate remedies. Such opportunity would have presented itself after finalization. Implicit in acknowledgement of appellate remedy against 'advisory' of Special Valuation Branch (SVB) is another round of appeal through the first appellate authority on the same goods and facts which does not sit well with the principle of comety of courts. The appeal before the first appellate authority was, thus, premature. This aspect of disposal of the appeal within the scheme of Customs Act, 1962 and the role of Deputy Commissioner, Special Valuation Branch (SVB) within it was not evaluated by the Commissioner of Customs (Appeals).

7. Considering the legal and jurisdictional impediments noted by us supra, we set aside the impugned order and restore the appeal to first appellate authority to dispose off the pleas of the appellant-Deputy Commissioner in accordance with the scheme of Customs Act, 1962. Appeal is, thus, allowed by way of remand.