(2024) 03 CESTAT CK 0029

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 42120 Of 2014

M/S. Diamond International Inex Pvt. Ltd APPELLANT

Vs

Commissioner Of Customs RESPONDENT

Date of Decision : 20-03-2024

Acts Referred:

Citation : (2024) 03 CESTAT CK 0029

Hon'ble Judges : Sulekha Beevi.C.S, Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : S. Murugappan, Anoop Singh

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant filed Bill of Entry dated 18.02.2014 for clearance of goods declared as PVC Face Gypsum Ceiling Tile with aluminium foil in one side of two sizes viz., 595x595x8mm and 595x595x7mm imported for a total quantity of 45000kgs. The value declared was Rs.8.49/kg and classified under CTH 6809 1900. After examination, the Department was of the view that the value declared is very low. The Original Authority vide Order-in-Original dated 05.05.2014 rejected the declared value and enhanced the same to Rs.14.38/kg. The appellant preferred an appeal against such enhancement of value. The Commissioner (Appeals) upheld the order passed by the Original Authority. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. counsel Shri S. Murugappan appeared and argued for the appellant. It is submitted that the Original Authority has rejected the value declared by the appellant without any basis. The appellant had produced the invoice details, packing list, etc., along with the Bill of Entry which would show that the declared value is the consideration paid by the appellant to the foreign supplier. The value has been enhanced by the Department merely on the basis of NIDB Data. The

appellant has not been provided with the copy of details. There is no ground discussed in the order passed by the Original Authority as to the reason for rejecting the transaction value as well as for enhancement of the value. The enhancement of value is without basis, illegal and may be set aside. To support the argument that the NIDB Data cannot be accepted as the basis for enhancement of value. The Ld. counsel relied upon the decision in the case of Agarwal Foundries (P) Ltd. Vs. Commissioner of Customs [2020 (371) ELT 859 (Tri.- Hyd.)]. It is prayed that the appeal may be allowed.

3. The Ld. Authorised Representative Shri Anoop Singh appeared and argued for the Department. It is submitted that the Original Authority has considered the contemporaneous import vide Bill of Entry dated 25.01.2014 which showed that the value of the similar goods was Rs.14.38/kg. The Commissioner (Appeals) also has considered the issue as to contemporaneous import details available in NIDB Data. Therefore, the enhancement of value is legal and proper. It is prayed that the appeal may be dismissed.

4. On perusal of the Order-in-Original dated 05.05.2014, we are not able to find any justification rejecting the transaction value or for enhancing the value. It is merely stated that the value is too low. So also, the details of the Bill of Entry adopted from the NIDB data are not available in the order. The appellant has submitted that they have not been provided with the details of the contemporaneous import adopted by the Adjudicating Authority for enhancing the value. The Tribunal in the case of Agarwal Foundries (P) Ltd. (supra) has held that the NIDB data cannot be applied directly unless the value given therein falls within the parameters of identical goods or similar goods. The decision of the Tribunal was upheld by Hon?ble Apex Court as reported in Commissioner of Customs Vs. Agarwal Foundries (P) Ltd. [2020 (371) ELT A295 (SC)]. The relevant Paragraphs reads as under:-

?2. The appellant imported pig iron from various overseas traders for use in manufacture of billets. The declared value of pig iron varied from USD 229 per MT to USD 300 per MT. These values were rejected by the assessing officer who enhanced the value to USD 500 per MT based on the data available with the NIDB. NIDB is the data of the Customs Department which gives values of various commodities based on various transaction values of different goods. The question which falls for consideration is whether the invoice value can be rejected and the duty can be charged as per NIDB data without any specific evidence that the invoice values do not reflect actual transaction value. This issue was decided in respect of the same assessee vide Final Order No. A/30143-30156/2018, dated 29-1-2018. It has been held that the NIDB data can be a guideline for the customs to arrive at the value of the goods but the NIDB data cannot be applied directly unless the value given therein falls within the parameters of identical goods or similar goods. Relying on the decisions in the cases of Topsia Estates Pvt Ltd v. CC (Import-Seaport) Chennai [2015 (330) E.L.T. 799 (Tri. - Chennai)], CC New Delhi v. Nath International [2013 (289) E.L.T. 305 (Tri. - Del.), Impex

Steel & Bearing Co. v. CC Delhi-IV [2014 (302) E.L.T. 464 (Tri. - Del.)] and Eicher Tractors Ltd v. CC Mumbai [2000 (122) E.L.T. 321 (S.C.)] it has been decided that the department cannot reject the declared value and assess the goods as per the NIDB data.

3. We find that the issue in the present three appeals is identical to the aforesaid decision of this Bench and we find no reason to deviate from the same. Accordingly we set aside the impugned orders and allow the appeals of the appellant. Appeals are allowed and the impugned orders are set aside with consequential relief, if any.?

5. From the analyses above, we hold that the rejection of transaction value as well as the enhancement of value is without any basis and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential relief, if any, as per law.