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Date : 10/09/2026

(2024) 03 CESTAT CK 0047

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.4108 Of 2012

M/s TDT Copper Limited — APPELLANT

Vs

Commissioner Of Customs, Delhi-III — RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 — Rule 1(2)(2), 12
Customs Act, 1962 — Section 111(M), 112(A)

Citation : (2024) 03 CESTAT CK 0047

Hon'ble Judges : S. S. Garg, Member (J);P. Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : Bipin Garg, Pawan Kumar

Final Decision : Allowed

Judgement

P. Anjani Kumar, Member (T)

1. M/s TDT Copper Ltd., the appellants, assails the order dated 25/09/2012 passed by Commissioner of Central Excise, Delhi-III.

2. Brief facts of the case are that the appellants imported a consignment of Copper Cathodes and filed a Bill of Entry No. 7443542 dated 20/07/2012 for a value of Rs. 2,31,35,872.20/-. On scrutiny of import documents, it appeared to the Revenue that the date of invoice was 14/05/2012 whereas, date of bill of lading was 18/03/2012;a price quoted in invoice was USD 8156.50 PMT, whereas, as per the price prevailing on the date of bill of lading was USD 8766.975 PMT on London Metal Exchange (LME). Accordingly, the importer/ appellant was asked to justify the variation in the price; under the reasonable belief that the declared value was not correct; the value was liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. On compilation of the proceedings, after according a personal hearing, Learned Commissioner:

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1. Confiscated the impugned goods under Section 111(M) of the Customs Act,1962; however, he gave an option to redeem the goods on a payment of a fine of Rs.5,00,000/-

2. Rejected the value declared of Rs. 2,31,35,872.20/- under Rule 12 of CVR, 2007 and ordered for re-assessment of impugned goods at a value of Rs.2,48,67,482/-

3. Imposed a penalty of Rs.10,00,000/- under Section 112(A) of the Customs Act,1962.

3. Shri Bipin Garg, learned Counsel for the appellant, submits that the appellants are regular importers of Copper Cathode; they imported impugned goods from M/ s Metal Corp. Trading AG, Switzerland as per contract dated 14/12/2011; He submits that during the personal hearing, they have submitted the copy of the contract and all the e-mail correspondence with the supplier. They explained to the Commissioner that in terms of the contract, during the period of contract, the buyer has option to choose the day for taking the LME price; In addition, a provision is made for a premium to be added to the invoice price; The contract further allows the Quotational Period (QP) to be extended to enable the buyer to place an order after the expire of QP; For the same, the supplier charges a ? Backwardation Cost? or ?Role Over Cost? per MT; this cost is fixed by the supplier. He submits that, in cases where QP is extended, the final value consists of LME quote, the premium and the BC. He submits that while the trade practice is in this manner, it is incorrect to reject the declared price more so, looking into the fact that the appellant is a regular importer and the supplier is a renowned dealer.

4. Learned Counsel submits that sub-clause (iii) of Clause(i) of the Explanation to Rule 1 2(2) of the CVR,2007 provides an illustrative list of reasons for which the proper officer could raise doubts on the truth or accuracy of the declared value the illustrative list includes;

(a) Significantly higher values of identical/similar contemporaneous goods;

(b) Abnormal discount/reduction from the competitive price;

(c) Special discounts to exclusive agents;

(d) Mis-declaration of the goods' description, quality, quantity, country of origin, year of manufacture or production;

(e) Non-declaration of the goods' brand, grade, specifications relevant to the value thereof;

(f) Fraudulent or manipulated documents

5. Learned Counsel further submits that, the import in question does not suffer from any of the flaws cited above; the price quoted was a competitive price without any discount; the averment of the Commissioner that the importer

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having accepted the value loading in the past has no reason for refusal in the intent case. Learned Counsel further submits that the issue is no longer res integra as this bench wide final order no. 60934 dated 12/07/2016 has decided the issue in favour of the appellants.

6. Shri Pawan Kumar, learned Authorized Representative for the Revenue, reiterates the findings of the impugned order and submits that in the earlier case before the bench, the rules for re-fixation of value for not followed sequentially unlike in the instant case; therefore, the facts of the cases being different cannot be given similar treatment.

7. Heard both sides, and perused the records of the case. We find that learned Commissioner finds that the date of invoice is later than the date of bill of lading; the appellants did not submit the original copy of the contract and therefore, there are reasons to believe that the transaction value is liable for rejection. On the other hand, learned Counsel for the appellants submits that, their business model was informed to the Commissioner and have produced the original contract along with bank payment remittance advice on 06/09/2012 and this being so rejection of the transaction value was incorrect; He further submits that none of the conditions illustrated under Rule 12 exist in the instant case and therefore, the rejection was not proper and legal. We find that Learned Commissioner finds that the importer was accepting the loaded value of the consignments cleared earlier and for that reason the importer does not have any reason for not accepting the loading of the value in the instant case.

8. We find that except for the fact that the bill of lading is earlier to the date of invoice, Learned Commissioner has not shown any reason to reject the declared value. On going through the explanation given by the appellants for deviation from LME price, we find that the same are normal in the trade. We find that this explanation given by the appellants was neither controverted with evidence, nor with any reasoning. It is also not explained as to how the situations illustrated under Rule 12 are existing and no case of payment of differential amounts through non-banking channels is alleged. Under these circumstances, we find that Revenue has not made any case for rejection of the transaction value i.e, the value declared by the importer.

9. We also find that acceptance of the loaded value, in the past, for whatever reason that maybe, cannot be a reason to accept the declared value in the impugned case. It is settled by the law that the principle of estoppel is not applicable to taxation matters. We further find that the bench has decided the issue vide final order no. 60934/2016 dated 12/07/2016. The bench held that Revenue sought to enhance the declared value on the basis of the standing instructions issued by the Commissioner of Customs, ICD, Tughlakabad that prices are to be accepted as per LME but, there is no other corroborative evidence of contemporaneous import produced by the Revenue. The bench held that the value cannot be enhanced in the light of various judicial pronouncements in the case of Palco Metals Ltd reported in 2009 (234) ELT 472

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(Tri. Ahmd.), Shiva Alloys Pvt. Ltd. reported in 2006 (196) ELT 212 (Tri. Del.) and Jindal Strips Ltd. reported in 2001 (133) ELT 570 (Tri. Del.) which has been affirmed by the Hon'ble Apex Court reported in 2003 (156) ELT A385 (SC).

10. In view of the above, we find that no case has been made for rejection of the declared value in the impugned case and therefore, the consequential redetermination of value, confiscation of the impugned goods and imposition of penalty are not proper and legal. For the above said reasons, the impugned order is set aside and the appeal is allowed.

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