
(2023) 08 CESTAT CK 0037

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.75278, 75279 Of 2016

Rajib Saha

APPELLANT

Vs

Commissioner Of Customs (Preventive), Shillong

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Finance Act, 2011 — Section 27, 128

Citation : (2023) 08 CESTAT CK 0037

Hon'ble Judges : R. Muralidhar, Member (J);Rajeev Tandon, Member (T)

Bench : Division Bench

Advocate : H. K. Pandey, S. Debnath

Final Decision : Allowed

Judgement

R. Muralidhar, Member (J)

1. The Appellant is engaged in import and export business through land borders in the state of Tripura. He imported OPC/PPC Cement in 50 Kg. PP woven bags, through Srimantpur L.C.S. from Bangladesh, during the period 17.03.2012 to 31.10.2014 . As the product was subject to levy of Additional duty of Customs (CVD) on MRP basis, the Appellant asked the exporter from Bangladesh to print the MRP on the bags.

2. The Appellant was issued Show Cause Notice dated 12.11.2014 alleging that he has evaded Additional duty of customs amounting to Rs.65,741/- by way of undervaluation in as much as cement from the same manufacturer in Bangladesh imported through Agartala L.C.S. was having a higher MRP of Rs. 305/- per bag of 50 Kg.

3. The Adjudicating Authority vide Order-in-Original dated 21.09.2015, confirmed the demand of duty along with interest and imposed penalty. However, the goods were not confiscated, as the same were not available for confiscation.

4. Aggrieved against the said Order-in-Original, the Appellant filed appeal before

the Commissioner (Appeals) Guwahati, on the ground that the impugned Bills of Entry which were self-assessed were not challenged by the department and hence they became final. The Commissioner (Appeals) vide Order-in-Appeal dated 18.01.2016, upheld the Order-in-original and rejected the appeal filed by the Appellant. Aggrieved by the impugned Order, the Appellant has filed the present appeal.

5. In their submissions, the Appellant stated that different lots of the impugned goods were imported by different importers through different land ports though the goods were manufactured by the same manufacturer in Bangladesh. The MRP printed on the goods imported through other ports can be different, as the Place of importation itself was different and hence difference in MRP is quite natural. It is not a case that more than one MRP were printed on every bag. Only one MRP was printed on one lot which was independent of the other. MRP on the same item is decided in consideration of a number of factors besides landing cost and duty element. In the instant case goods being imported through different ports was the obvious reason for the difference in MRP. There is no evidence to suggest that the goods so imported through different ports under different MRP were sold at the same price. Thus, they contended that the authority has erred in observing different prices printed on different consignments as one and the same. In absence of any evidence that the goods were being sold at a higher price than MRP, allegation of undervaluation for the purpose of levy of CVD is unfounded and not tenable under law.

6. The Appellant contended that the impugned Bills of Entry duly self-assessed were not challenged by the department and hence became final. As held by the Hon'ble Supreme Court in the case of ITC Ltd, unless the original Assessment by the assessing officer is challenged, the department cannot demand differential duty subsequently by issuing a demand Notice.

7. The Appellant cited the decision of the Hon'ble Supreme Court in the case of I.T.C. Vs. Commissioner of Central Excise, New Delhi [2019(368) ELT 216 (SC)] wherein it has been held that the department cannot demand differential duty without challenging the selfassessment made by the importer. Accordingly they contended that the impugned order is not sustainable.

8. The Ld A.R reiterated the findings in the impugned order

9. The issue involved in the present appeals are undervaluation of cement imported from Bangladesh .The department alleged that the declared MRP of the cement imported by the Appellant was much less as compared to the MRP declared on the cement imported from the same manufacturer through other ports. We observe that different lots of the impugned goods were imported by different importers through different land ports though the goods were manufactured by the same manufacturer in Bangladesh. The Appellant stated that the MRP printed on the goods imported through other ports can be different as the Place of importation itself was different and hence difference in MRP is

quite natural. We observe that MRP on the same item is decided in consideration of a number of factors besides landing cost and duty element. In the instant case the goods were imported through different ports. That itself is a valid reason for the difference in price. There is no evidence to suggest that the goods so imported through different ports under different MRP were being sold at same price. Hence, the price difference cannot be attributed to suppression of the value by the Appellant. Accordingly, we hold that the demand is not sustainable.

10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd, has held as under:

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also.

12. In view of the above decision, we set aside the impugned order and allow both the appeals filed by the Appellant.