(2023) 09 CESTAT CK 0039

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 76063 Of 2014

Rightex Comerce APPELLANT

Vs

Commissioner Of Customs (Admn. & Airport), Kolkata RESPONDENT

Date of Decision : 27-09-2023

Acts Referred:
Customs Valuation Rules, 2007 — Rule 12, 12(4)

Citation : (2023) 09 CESTAT CK 0039

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

Bench : Division Bench

Advocate : V. N. Dwivedi, S. Debnath

Final Decision : Allowed

Judgement

R. Muralidhar, Member (J)

1. The Appellant has imported glass chatons classifiable under CTH 70181090 from China. They have filed the Bill of Entry dated 16/01/2012. The rate adopted by the Appellant is as under:-

SI No.

Variety

Rate in USD per

gross

1.

PP-21

0.124

2.

PP28

0.206

3.

PP32

0.246

The Appellant was issued Show Cause Notice as to why the value adopted by them should not be rejected in terms of Rule 12 of the Customs Valuation Rules, 2007.

The Department went on to revise the rate as per the following table:-

SI

No.

Variety

Rate in USD

As per Appellant

Rate in USD

As per Department

1.

PP-21

0.124

0.262

2.

PP28

0.206

0.285

3.

PP32

0.246

0.368

The OIO was passed after enhancing rate as per the above Table.

Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that proper procedure was not followed in enhancing the value. He submits that the

Department did not go into the contemporaneous imports done at that particular point of time nor did they consider the NIDP data to enhance the value. They have adopted a different method by sending two of their officials to gather market information about the goods being traded in India. The officials have given their Markets Survey Report on 2/11/2011. The average price mentioned on this rate has been worked out and the enhanced value has been arrived at for charging the Customs duty. The Learned Advocate also submits that such procedure is not specified anywhere in the statute and hence, he prays that the present Appeal may be allowed.

3. The Learned AR reiterates the findings of the lower Authorities. He submits that the officials had gathered information about the purchase and sale of identical products within India and then prepared Market Survey Report. Based on the value arrived at in this Report, the Adjudicating Authority has correctly used the same to enhance the value of the imported consignment. He justifies the enhance Customs Duty demand on the Appellant.

4. Heard both sides and perused the documents.

5. It is seen from the documentary evidence produced by the Appellant that during the period in question, there were several imports of identical goods from China as can be seen from Page 8 of the reply to Show Cause Notice filed by the Appellant. Inspite of having such data, still the Department has sent their officials to conduct the Market Survey. It is not known as to how this market survey was conducted. The survey report submitted by them does not give the detail of any purchase or sale Invoice which has been taken as part of the evidence to arrive at the average price as has been given by the team. Further on this average price, 60% discount has been given to arrive at assessable value. There is no legal provision for adopting such adhoc practice in the matter of the Customs valuation.

6. First of all, the Appellant has not been put to notice as to why the transaction value cited by him is not acceptable to the Department. After this, Rule 4 to Rule 12 of CVR, 2007 have to be followed sequentially to arrive at the value of the imported consignment. In this case, this procedure also was not followed. The NIDP data gathered by the Appellant for such identical/similar goods shows that the price adopted by the Appellant is actually more than the price at which the other importer has imported the goods.

7. In view of the detailed factual matrix discussed above, we do not find that the value arrived at by the Revenue is a realistic and legally sustainable value. Therefore, we set aside the impugned Order and allow the present Appeal, with consequential relief, if any, as per law.

