CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20321 of 2021

[Arising out of No. Order-in-Appeal No.202/2021 dated 11/03/2021 passed by Commissioner of CUSTOMS (Appeals), BANGALORE]

M/s Bytesware Electronics
Sy No 101/P8 Doddakanelli Colony,
Ward-150, Gear School Road Carmelaram,
BENGALURU
KARNATAKA
560035

Appellant(s)

VS

The Commissioner Of Customs, Bangalore
C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
Bangalore
Karnataka
560001

Respondent(s)

Appearance:

Shri Pradyumna G.H., Advocate For the Appellant
Shri P.Gopakumar, Authorised Representative for the Respondent

CORAM:
HON'BLE SHRI, S.K. MOHANTY, JUDICIAL MEMBER
HON'BLE SHRI P.ANJANI KUMAR, TECHNICAL MEMBER

Final Order No.20281/2022

Date of Hearing: 29/04/2022
Date of Decision:10/08/2022

Per : P.ANJANI KUMAR

The appellants, M/s Bytesware Electronics, filed Bill of Entry No 9040630 dated 03-10-2020, for import of Integrated Circuits, at a declared assessable value of Rs 29,37,162, from the overseas supplier M/s Feiland Technology Limited, Shenzhen City, Guangdong, China; it appeared to the department that the value declared by the appellants was not correct as

compared to identical items imported earlier; queries were raised in the system; as the submission by the importer appeared to be without justification, it was proposed to assess the Bill of Entry in question as per Section 17(5) of the Customs Act, 1962; an opportunity of personal hearing was accorded to the appellants; order-in-Assessment dated 26-10-2020 was passed by the Assistant Commissioner of Customs, *inter alia,* holding that:

- the appellants had imported identical goods viz. Integrated Circuits in the past; unit price declared by the appellants in Bill of Entry No 8784248 dated 11-09-2020 was USD 29.20;
- the evidence furnished by the appellants in the form of technical data sheet, WhatsApp conversation etc cannot be considered as legal documents as the same had not uploaded in e-sanchit at the time of filing the Bill of Entry;
- value declared by the appellants was liable to be rejected as per Rule 12 of Customs Valuation (Determination) of Value of Imported Goods) Rules, 2007 and requires to be re-determined in terms of Rule 4 to Rule 9 of the said Rules sequentially.

Assistant Commissioner rejected the value of Rs 29,42,750.19 as and ordered for re-determination of the same as Rs 5,18,24,993.75 in terms of Section 14 of the Act read with Rule 4 of the said Rules. Aggrieved by the same, appellants preferred appeal before the Commissioner of Customs (Appeals) on various grounds; the Commissioner (Appeals) vide the impugned order has rejected the appeal filed by the appellants and upheld departments' appeal.

2. Shri Pradyumna G.H., Advocate, appearing for the Appellant, submits that the impugned order has been passed in a mechanical manner, without considering the written & oral submissions made by the appellants or the facts of the case or the statutory provisions; the order simply echoes the assessment order passed by the Assistant Commissioner and gives no independent findings on the submissions made. He submits that Apex Court in the case of Assistant Commissioner of Commercial Tax Department Vs Shukla & Brothers [2010 (254) ELT 6 (S.C.) held that a litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer; it is then alone, that a party would be in a position to challenge the order on

appropriate grounds. He submits that held in Vadilal Gases Ltd Vs Union of India 2016 (332) ELT 625 (Guj) the reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

3. Learned Counsel submits also that in response to the query raised citing Bill of Entry No 8784248 dated 11-09-2020 , the appellants uploaded the copy of the bank remittance details through e-Sanchit, indicating the actual transaction value; appellants submitted that the item imported by them vide Bill of Entry No 8784248 dated 11-09-2020 at a unit price of USD 29.29 was MLX90614-DCI IC Package TO-39 was meant for medical devices and only 25Numbers can be imported; impugned items were totally different functionally and quantity was 23750 Nos; the value of earlier consignment could not be adopted considering the quantity and the usage of the goods.

4. Learned counsel submits further that the orders passed by the lower authorities are totally vitiated and unsustainable for the following reasons.

- As per Section 14 of Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is the sole consideration for the sale; it is not disputed that the buyer and seller of the goods were not related persons and the price was the sole consideration for the sale of the goods; appellants had produced the evidence of remittance made to the supplier; nowhere in the proceedings it is alleged that the appellants had paid consideration to the supplier over and above the remittance made; this being the case no case is made out for rejection of the transaction value invoking Rule 12 of the CVR, 2007;
- It was wrongly held by the Assistant Commissioner that the description of impugned goods and those imported vide another Bill of Entry i.e. 8784248 dated 11-09-2020 is one and the same and hence, they are

identical; Integrated Circuit is a generic term and there are umpteen number of the said item depending upon the actual usage; evidence produced by the appellants in the form of WhatsApp conversation to indicate the actual usage of the item imported was overlooked; Assistant Commissioner had not made any independent enquiry with regard to the technical usage of the subject goods;

- Whereas only 25 numbers were imported vide B/e 8784248 dated 11-09-2020, at unit price of USD 29.29, 23750 numbers were imported vide impugned B/s; therefore, both the imports cannot be treated as identical for purpose of assessment under Rule 4 of CVR, 2007.

5. Learned counsel submits further that Hon'ble Supreme Court, in the case of Sanjivani Non-Ferrous Trading Pvt. Ltd 2019 (365) ELT 3 (SC), held that the rejection of the transaction value can only be for the cogent reasons arrived at by undertaking exercise as to on what basis of which it can be held that the price paid is not the sole consideration of transaction value. He submits that this judgment was referred and relied upon in the case of Century Metal Recycling Pvt Ltd 2019 (367) ELT 3 (SC), wherein it was ,held that transaction value of imported goods can be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 if the proper has doubt about its truth or accuracy; before rejecting the transaction value the importer must be asked to justify said value by submitting requisite information/documents; if the proper officer is satisfied with importer's explanation, transaction value must be accepted forthwith; if doubt persists due to 'certain reasons' as mentioned in explanation to the said Rule, the transaction value can be rejected; though the reasons as mentioned in the 'explanation' to Rule 12 (ibid), not exhaustive, could be higher value of identical similar goods of comparable quantities, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, mis-declaration on vital parameters or their non-declaration and fraudulent or manipulated documents; specific grounds of rejection are required to be intimated to importer in writing and order of rejection issued after hearing importer. He submits that for this reason the impugned order is liable to be set aside. He further relies on

(i). Nishant Enterprises Vs CC, Ghaziabad [2019 (370) ELT 1274 (Tri-All)]

(ii). Auto Creators Vs CC, Chennai [2020 (373) ELT 681 (Tri-Chennai)]
(iii). Guru Rajendra Metalloys India Pvt. Ltd Vs CC, Ahmedabad [2020 (374) ELT 617 (Tri-Ahmd)]
(iv). Ebro Armaturen India Pvt. Ltd Vs CCE, Bangalore-I [2021 (375) ELT 259 (Tri-Bang)]
(iv). Champion Photostat Industrial Corporation Vs CC, ICD, TKD, New Delhi [2021 (376) ELT 394 (Tri-Del)
(v). Supreme Industries Ltd Vs Central Board Indirect Taxes & Customs [2021 (377) ELT 698 (Bom)]

6. Shri P. Gopkumar, Learned Authorised Representative, appearing for Revenue, reiterates the findings of assessment order and the impugned order in original.

7. Heard both sides and perused the records of the case. The appellants assail the assessment order and the impugned order in this case on the grounds that the declared assessable value was rejected without giving any cogent reasons and the valuation was arrived at on the basis of the another bill of entry of the appellant holding that the goods are identical. The appellants have imported some integrated circuits and have declared value of Rs 29,37,162. The department attempts to re-value the goods on the basis of another bill of entry filed by the appellants in the past for integrated circuits. The appellants main contention is that the goods are functionally different and the quantity is not comparable; whereas, in the instant case they have imported 23750 Nos of ICs, they imported a meagre 13 No in the another B/e. They also argue that the declared value was transaction value for the purposes of Section 14 of the Customs Act, 1962; department has not made any case for rejection of value under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; the another imported goods being not identical and not in comparable quantity, valuation under Rule 4 of CVR, 2007 is not legally sustainable.

8. We find that the department has not given any cogent reasons for rejection of the declared value, except stating that the appellants have imported identical goods in the past at a higher price. Nothing is forthcoming in the impugned orders as to how they constitute identical goods except for the description. We find force in the contention of the appellants that the description IC is a generic one. We find that the department has not obtained

any technical opinion on the impugned goods so as to examine the identical nature of the products. Department has not even alleged that there was flow of extra consideration, than the declared value, form the appellant to the overseas supplier, leave alone any evidence to that effect. Moreover, we find force in the argument of the appellants that the quantity imported is not comparable. Department is attempting to compare the value at which 23750 Nos of ICs were imported, with the value at which a meagre 13 Nos were imported vide another B/e. Department overlooked the very common principles of business that the price is dependent on volumes. Therefore, we find that the invocation of, Rule 4 of CVR, 2007, after rejecting the declared value under Rule 12 ibid, though for no cogent reasons, is not legally sustainable.

9. We find that the findings of the impugned order are cryptic and not reasoned. We find that commissioner has based his conclusions on the basis of the business model of the appellants and the description of the item in Bills of entry. Learned Commissioner finds that the nature of his business suggests that there is no structured mechanism or book keeping of records and sometimes orders are also booked on the basis of WhatsApp conversations or messages; what is however, intriguing is that the sheer spread of coverage of his customer base; while on the one hand he contends that the items he imports are meant for students and hobbyists for projects and on the other hand he also contends that there are items declared to be temperature sensors for measuring the temperature of Covid 19 patients; interestingly enough, in both these cases the supplier is the same and based in China. We are of the considered opinion that there are no fixed business models that should be followed by all. We find that the ultimate use of the imported goods cannot be criteria for deciding the valuation. Every business man is free to adopt his own way of conducting business. In any case, this cannot be reason for rejecting the value of the impugned goods. In the absence of any technical opinion obtained, comparing the impugned goods with other goods, simply on the basis of description, is not acceptable. Moreover, as per Rule 4 of CVR, 2007 the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. In the instant case, the

comparison of the quantities, betrays a complete mismatch. Therefore, the valuation arrived on the basis of so called identical goods is not legally sustainable.

10. We further find that the cases relied on the appellant are squarely applicable in the facts of the case. We further find that in the case of NPT Papers Pvt Ltd & Others V. C. C. Mundra & Others , (MANU/CS/0120/2021) Tribunal, by following the judgments in Bayer India Ltd. V. Commissioner Of Customs, Mumbai [2006 (198) ELT 240], upheld by Hon'ble Supreme Court [2015 (324) ELT 17 SC] and Tele Brands (India) Pvt. Ltd. V. Commissioner Of Customs (Import) Mumbai reported in [2016 (336) ELT 97 (Tri.Mum)] held that there should be evidence on record to show that the importers have paid directly or indirectly any amount over and above the invoice value. Once it is proved that there is no evidence of extra remittance, transaction value cannot be discarded. In view of the above, we are of the considered opinion that the department has not made any case for rejection of the value declared by the appellants in the impugned Bill of Entry No 9040630 dated 03-10-2020 and therefore, the impugned order is liable to be side and we do so.

11. In the result, Customs Appeal No 20321 of 2021 is allowed with consequential relief, if any, as per law.

(Order pronounced in the Open Court on **10/08/2022**)

(S.K. MOHANTY)
JUDICIAL MEMBER

(P.ANJANI KUMAR)
TECHNICAL MEMBER