

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No.139 of 2010

(Arising out of Order-in-Original No.Kol/Cus/Port/11/10 dated 10.03.2010 passed by
Commissioner of Customs (Port), Kolkata)

M/s Karan International

100-A, Varinder Nagar, New Delhi-110058

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

15/1, Strand Road, Kolkata-700001

Respondent

WITH

Customs Appeal No.194 of 2010

(Arising out of Order-in-Original No.Kol/Cus/Port/17/10 dated 26.02.2010 passed by
Commissioner of Customs (Port), Kolkata)

M/s Karan International

100-A, Varinder Nagar, New Delhi-110058

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

15/1, Strand Road, Kolkata-700001

Respondent

APPEARANCE :

Shri R.K.Hasija, Advocate for the appellant

Shri M.P.Toppo, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO...75132-75133/2023

DATE OF HEARING : 28 .02.2023

DATE OF PRONOUNCEMENT : 21ST March, 2023

Per Rajeev Tandon :

The impugned two appeals have been filed by M/s Karan International against the orders passed by the Commissioner (Port), Kolkata vide Order-in-Original No.Kol/Cus/Port/11/10 dated 10.03.2010 & Order-in-Original No.Kol/Cus/Port/17/10 dated 26.02.2010.

2.1 The Ld.Commissioner vide impugned orders has enhanced the value of the imported goods i.e. "Enamelled Aluminum Wire" of various dias imported vide Bill of Entry Nos.436074 dated 13.10.2008 and 441097 dated 10.11.2008 weighing of 14859.42 kgs and 14550 kgs. of the same respectively consigned from China. The Ld.Commissioner vide impugned orders while rejecting the transaction value declared in terms of Section 14 of the Customs Act, 1962 read with Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, has re-determined the assessable value thereof under Rule 5 read with Rule 8 of the Customs Valuation Rules, 2007 demanding payment of differential duty, confiscating the said goods under Section 111 (m) of the Customs Act, 1962, releasing them on redemption fine under Section 125 of the Customs Act, 1962 and also imposing penalty on the importer under Section 112 (a) of the Customs Act, 1962.

2.2 Briefly stated the facts of the case are that the importers have contested the uploading of the assessable value of the imported goods declared by them. It is their case that the said re-determination of the transaction value based on the LME price has resulted in excess payment of duty as was paid by them at the time of provisional release of the goods. It is their case that consequently the confiscation, provisional release and imposition of penalty upon them is also not maintainable.

2.3 The importer, M/s Karan International, New Delhi, the appellant herein, imported two consignments of Enamelled Aluminum Wire while one import was effected from M/s Gaungdong Metal & Minerals Import & Export Group Corporation, China vide Invoice No.2008M6-J-

0403 dated 16.08.2008 of Dia 0.15, 0.21, 0.23, 0.25, 0.29 & 0.37 mm under cover of Bill of Entry No.441097 dated 10.11.2008 classifying the goods under Chapter 76052990 as "Enamelled Aluminum Wire", the second shipment was imported from Balaji Exports, Hongkong vide Invoice No.BE-140-08 dated 17.08.2008 said to be manufactured by M/s Hungyang Bronze Company Limited, China & billed to M/s Balaji Exports under cover of Invoice No.HY080723A in respect of said goods of Dia 0.15, 0.23 & 0.27mm classifying the said goods as Enamelled Aluminium Wire as stated hereinabove.

2.4 On the basis of visual examination while the goods were found to be of the sizes and in the quantity as declared, the Department, however, claimed that the imported goods were Enamelled Copper Clad Aluminium Wires. Under the circumstances, the impugned goods were allowed provisional clearance. The goods were subjected to chemical test and the appellants also submitted the test certificate in respect of the imported goods. The impugned goods were also got tested by Shri Ram Institute for Industrial Research, Delhi, wherein the copper content was found to be less than 0.01 percent by weight. The said test report thus substantiated the appellants' contention that the goods imported were Enamelled Aluminum Wire. In support of their contention, the importer also furnished certificate from the manufacturers, namely, Gaungdong Metals & Minerals Import & Export Group Corporation, 774 Dongfeng Road (East), Gaungzhou, China and Huangyang Bronze Co.Ltd., Huangyang Industrial District, XIangcheng, Xuchang, Henan, China.

2.5 Show-cause notice dated 08.12.2008 was however issued by the Department imputing that the classification claimed by the importer under Customs Tariff Heading 7605, 2990 was inappropriate and the imported goods were properly classified under Chapter Tariff Heading 8544 attracting Adv. Rate of duty at 7.5% and not 5%. Show-cause notice also proposed to enhance the value of the imported goods from US\$ 1.9 per Kg. to US\$ 8.40 per Kg.

2.6 In the adjudication proceedings, the Ld.Commissioner has taken cognizance of the test report given by the Chemical Examiner,

Customs Laboratory, Customs House, Kolkata and dropped the allegation of mis-declaration in the description of the goods. He, however, held that the imported goods were under-valued and rejected the transaction value declared and sought its re-determination in terms of Rule 5 of the Rules of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, based on the stated contemporaneous import vide proforma Invoice No.643 dated 19.08.2008 of M/s Yash Ceramics Private Limited imported from M/s Zhejiang Kaile Metalwork Company Limited describing the imported goods as "Braiding Wire of Al Alloy 0.115 MM". The Ld.Commissioner also sought to determine the value of the imported goods in terms of Rule 8 based on the LME price and thus arrived at US\$ 4.5 per kg as re-determined value. Thus, in respect of the goods imported vide Bill of Entry No.436074 dated 13.10.2008, he upheld the demand for differential duty of Rs.5,59,557/-. Upon confiscation of the said goods, however, released them provisionally upon payment of redemption fine of Rs.4,75,000/-. He also imposed personal penalty of Rs.1.50 lakhs on the importer under Section 112 (a) and ordered accordingly.

2.7 In so far as the goods imported vide Bill of Entry No.441097 dated 10.11.2008, are concerned, the Ld.Commissioner similarly re-determined the transaction value and ordered for payment of differential duty of Rs.4,54,824/- and upon confiscation, released the said goods on payment of Rs.3,08,000/- besides imposing a penalty of Rs.1,54,000/-.

2.8 Orders to the aforesaid effect, were passed by the Ld.Commissioner upon finalization of the said provisional assessment.

3. It is the case of the appellant that though the Ld.Commissioner dropped the charge of mis-declaration, he ought to have taken cognizance of the fact that the imported goods were not manufactured out of prime materials, Certificate to which effect was tendered by the manufacturers and therefore, the uploading of value of imported goods based on the basis of LME price, was inappropriate.

3.1 It is also their case that NIDB comparison offered by the Ld.Commissioner was not with respect to the identical goods inasmuch as NIDB data comparison pertained to Braiding Wire of Aluminium Alloy. Furthermore, the said comparison was on the basis of a mere proforma invoice and not actual imports made.

4. Heard both sides and considered the rival submissions.

4.1 We find that the impugned orders passed by the Ld.Commissioner suffer from legal infirmity inasmuch as the comparison offered based on NIDB Data is with reference to an altogether different product viz. Braiding Wire of Aluminium Alloy and therefore, it certainly cannot be considered as identical or similar goods, viz. Enamelled Aluminum Wire. Also reliance placed by the Ld.Commissioner on NIDB Data relating to import of some Aluminium Magnesium Alloy Wire imported at Nhava Sheva can also not offer a realistic comparison of identical goods as they do not match in terms of the description and quantity. The manufacturers' Certificate state that Enamelled Aluminum Wire under import was manufactured out of scrap. The said Certificates are reproduced hereunder :

For Bill of Entry No.441097 dated 10.11.2008

Manufacturer : Gaungdong Metals & Minerals Import & Export Group Corporation, 774 Dongfeng Road (East), Gaungzhou, China

CERTIFICATION

"TO : KARAN INTERNATIONAL

We certify that our Enamelled Aluminium Wire is manufactured of Aluminium scrap and so the aluminium price is not based on the London Metal Exchange.

We supply you the enameled aluminium wire size 0.15 mm, 0.21mm, 0.23mm, 0.25mm, 0.29mm, 0.37mm and shipped on 5 September 2008".

For Bill of Entry No.436074 dated 13.10.2008

Manufacturer : Huangyang Bronze Co.Ltd., Huangyang Industrial District, XIangcheng, Xuchang, Henan, China

"We are one of the largest manufacturer for Enamelled Aluminium Wire from China. We product in different sizes and qualities of Enamelled Aluminium Wire as per customers requirements.

We certify that our Enamelled Aluminium Wire is manufactured by Aluminium Scrap and so the Aluminium price is not based on London Metal Exchange.

We hereby Certify that the goods shipped under our Invoice No.HY080723A to Balaji Export Hongkong for Karan International, New Delhi, goods are of Enamelled Aluminium Wire diameter 0.15 mm, 0.23 mm and 0.27 mm. Further we also certify that this is made of Aluminium Scrap."

4.2 We find that in view of the manufacturers certification provided at the time of import and with no claim to doubt the veracity of the said contention, the test results as offered by the CRCL and the Sriram Institute for Industrial Research, New Delhi, the Department's claim of disputing the description and valuation of the import goods is bereft of any merit. Also the comparisons offered of allegedly similar goods either by way of proforma invoice of NIDB data are also without any merits as they cannot stand legal scrutiny. The Department's contention of taking LME prices as the bench mark price is not on a sound footing in view of the certification from the manufacturers that the import goods were produced out of scrap. Therefore to contend the valuation of import goods based on the value of prime material holds no legal substance and is liable to be quashed as the said imported goods viz. Enamelled Aluminium Wire are not the products of virgin material but manufactured out of scrap. The findings of the Id.Commissioner are therefore based on incorrect facts and assumptions rather than cogent and reliable evidence.

4.3 It is our considered view that it would not be appropriate to allege mis-declaration on the part of importer either for the description of the goods or for their valuation as the comparison rendered by the Department cannot be upheld under the facts and circumstances herein. The price of the import product based on the price of prime virgin material does not withstand scrutiny in view of

the explanation and contention offered by the manufacturers, which has not been disputed by the Department.

5. This Tribunal in the case of B.B.M.Impex Private Limited Vs. Commissioner of Customs (Preventive), New Dehi reported in 2021 (376) ELT 743 (Tri.-Del.) has held that NIDB Data cannot be relied upon when it is relating to different quantity and quality of goods. The test report and the manufacturer's certificates have not been contested by the Department. The contemporaneous evidence cited in support by the Department, are not inconsonance with the description of the goods under import. Obviously, proforma invoice can form no sustainable basis for enhancement of value and furthermore, in the present case, the description of the goods thereof also does not tally. The enhancement of value based on computation by the Id.Commissioner based on the LME prices, is also not tenable in view of the unambiguous Certificates from the manufacturers of the impugned goods, tendered by the appellants.

6. Following the law laid down by the Hon'ble Supreme Court in the case of CCE & S.Tax, Noida Vs. Sanjivani Non-Ferrous Trading Pvt. Limited reported in 2019 (365) ELT 3 (S.C.) and in view of our deliberations we set aside both the impugned orders herein and allow the two appeals with consequential relief, if any.

(Pronounced in the open court on. 21st March, 2023.)

Sd/-

P. K. Choudhary)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

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