

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

REGIONAL BENCH – COURT NO.2

Customs Appeal No.233 of 2011

(Arising out of Order-In-Appeal No. KOL/CUS/CKP/126/2011 dated 11/04/2011 passed by the Commissioner of Customs (Appeals), Kolkata.)

M/s. India Potteries Ltd.

(91, Dharmatala Street, Kolkata-700013)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

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

FINAL ORDER NO.77142/2023

Date of Hearing : 21 September 2023

Date of Decision: 21 September 2023

PER R. MURALIDHAR:

This Appeal has been filed in 2011 and several adjournments have been granted to the Appellant. In spite of the Hearing Notice issued for today, no one has appeared. However, in the interest of justice, the Appeal was taken up for disposal on merits with the help of the Learned AR

2. The Appellant had imported a second hand machinery known as "NETZSCH, DE-AIRING PUGMILL MODEL V35 COMPLETE WITH NECESSARY ELECTRICAL PANEL, SWITCH , etc. from Germany. They filed the Bill of Entry No. 168061 dated 11.11.2010 enclosing therewith commercial invoice raised by the foreign supplier showing the value of the second hand machinery as Euro 15506. After examination of the commercial invoice and the Certificate issued by the Chartered Engineer, engaged by the exporter. The Department

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proposed for enhancement of the declared value of the second hand machinery. The Department enhanced the value to Euro 28,280. On this value, the Customs Department has worked out the differential duty which was confirmed. Being aggrieved, the Appellant is before the Tribunal.

3. On going through the facts of the case, it emerges that the Appellant along with Invoice issued by the overseas exporter had also submitted copy of the Chartered Engineer's Certificate dated 28/07/2010 (annexed at Page 48 of the Appeal Book). The Chartered Engineer has certified that the gross value of the machinery if purchased as new, to be Euro 84,500. He has also certified that if old machinery is purchased, the value of overhauling would be to the tune of Euro 7,000/-.

4. The Learned AR submits that the Board vide Circular No. 4/2008-Cus dated 12/2/2008 has specified that when the accuracy of value is doubt, the value should be adopted as per the Rule 12 of the Customs Valuation (Determination of value of imported goods), Rules, 2007. Vide Circular No. 493/124/86-Cus, Vi dated 19/11/1987, the Directorate General of Valuation has clarified that in case of the second hand machinery, the maximum depreciation allowed would be to the tune of 70%. The AR produced copy of the Circular dated 12/02/2008 and Circular dated 19/11/1987. He submits that the lower authorities have correctly enhanced the value to EURO 28,280/- after following the instructions contained in these Circulars. He submits the value adopted is after taking into account the fact that the Chartered Engineer himself has certified all the relevant values including that of the overhauling charges. Therefore, the AR submits that there is no error in the Orders passed by the Lower Authorities.

5 After going through all the documentary evidence and the Appeal Papers, we find that the Chartered Engineer of the overseas exporter has given the Test Certificate/Certificate of Inspection dated 28/7/2010 along with the value of equivalent machinery in the

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International market and the value towards overhauling in case of second hand machinery.

6. The Board Circular cited by the Revenue clarifies that in case of second hand machinery, the maximum allowable limit of depreciation is 70%. The Adjudicating Authority has followed this circular and arrived at the enhanced value of Euro 28280. The Appellant in his submissions has not brought in any evidence to rebut the valuation certified by the Chartered Engineer.

7. In view of the foregoing, we do not see any merit in the Appeal filed by the Appellant. Accordingly, the Appeal stands dismissed.

(operative part of the order was pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(Rajeev Tandon)
Member (Technical)

Pooja