Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench At Bangalore

REGIONAL BENCH COURT NO.1

Customs Appeal No.167 of 2012
(Arising out of OIA No.181-2011 dated 12.10.2011 passed by Commissioner of Customs-Cochin (Appeals))

HARIPRIYA TRADERS **……..Appellant**
Hill Produce Dealers,
Ariyannor P.O, Trissur,
Trissur- 680 102, Kerala

VERSUS

C.C.COCHIN-CUS **…….Respondent**
Custom House, Cochin- 682 009
Kerala

WITH

i. **Customs Appeal No.168 of 2012 (HARIPRIYA TRADERS)**
ii. **Customs Appeal No.23023 of 2014 (Firdouse International Trading Company)**
iii. **Customs Appeal No.23024 of 2014 (Firdouse International Trading Company)**
iv. **Customs Appeal No.23025 of 2014 (Shabeer Enterprises)**
v. **Customs Appeal No.23026 of 2014 (Mohammed Fariz and Co.)**
vi. **Customs Appeal No.23027 of 2014 (Mohammed Fariz and Co.)**
vii. **Customs Appeal No.23028 of 2014 (P K Traders)**
viii. **Customs Appeal No.23029 of 2014 (P K Traders)**
ix. **Customs Appeal No.23030 of 2014 (P K Traders)**
x. **Customs Appeal No.23031 of 2014 (P K Traders)**
xi. **Customs Appeal No.23032 of 2014 (P K Traders)**
xii. **Customs Appeal No.23066 of 2014 (Keveeyam Company Supariwala Pvt Ltd)**
xiii. **Customs Appeal No.23067 of 2014 (Keveeyam Company Supariwala Pvt Ltd)**
xiv. **Customs Appeal No.23068 of 2014 (Keveeyam Company Supariwala Pvt Ltd)**
xv. **Customs Appeal No.23069 of 2014 (Keveeyam Company Supariwala Pvt Ltd)**

(Arising out of OIA No.182-2011 dated 12.10.2011 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-398-13-14 dated 12.03.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-349-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-399-13-14 dated 12.03.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-350-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-351-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-343-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-342-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-344-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-346-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-345-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-348-13-14 dated 24.02.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-395-13-14 dated 12.03.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-397-13-14 dated 12.03.2014 passed by Commissioner of Customs-Cochin (Appeals))

(Arising out of OIA No. COC-CUSTM-000-APP-396-13-14 dated 12.03.2014 passed by Commissioner of Customs-Cochin (Appeals))

APPEARANCE:
Shri Karunakaran & Shri M.S. Sajeev Kumar, Advocates for the Appellants

Shri P. Gopakumar, Additional Commissioner (AR) &
Smt. D.S. Sangeetha, Additional Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. P. ANJANI KUMAR

Final Order No. 20241-20256 /2022

DATE OF HEARING: 31.03.2022
DATE OF DECISION: 12.07.2022

RAMESH NAIR

The present appeals is one among batch of appeals, challenging valuation, confiscation of goods, consequential demand of duty, imposed by

the Adjudicating Authority, which was confirmed in appeal by the Commissioner of Customs (Appeals), in relation to the import of betel nuts made by the Appellant. Since the subject matter involved in all appeals are identical in nature, except the quantity of import consignments, common orders are being passed.

1.1 The brief facts of the case are that Betel nuts imported by the Appellant through the port of Kochi, during the period October 2010 to January 2011 were subjected to adjudication proceedings by the Revenue Authorities under the Customs Act, 1962, alleging undervaluation and violation of EXIM Policy. As per Notification No.49 (RE-2006)/2004-2009 dated 20.02.2007, issued by the DGFT, import of betel buts was allowed only through the port of Mangalore. In addition to this, as per Notification No. 15 (RE-08)/2004-09 dated 04-06-2008, DGFT fixed Minimum Import Price for import of Betel Nuts. Appellant challenged this Notification before the Hon'ble High Court of Kerala in W.P.C No. 9624 of 2007 but pending disposal of the case, the said notification pertaining to port restriction was withdrawn. In the said Writ Petition, Department filed clarification petition and secured orders from the Hon'ble High Court of Kerala, to assess goods independently, keeping the policy aspect aside. Accordingly, the Original Authority conducted assessment and passed Order-in-Original, rejecting the transaction value under Rule 12 (1) and re-determining the same under Rule 5 of the Customs (Determination of Value of Imported Goods) Rules 2007. Challenge against the Order-in-Original was dismissed by the Commissioner of Customs (Appeals), which resulted in this batch of appeals.

2. Shri C.K. Karunakaran, Advocate assisted by Adv. Shri M.S. Sajeev Kumar, made the following submissions;

(i) That Orders-in-Appeals under challenge in Customs Appeals Nos. 167 and 168 of 2012 relate of Haripriya Traders, which were passed by the

Commissioner (Appeals), holding the office of the Commissioner of Appeals on 12-10-2011.

(ii) That Orders-in-Appeal under Challenge in all other appeals were passed by another officer holding office of the Commissioner of Customs (Appeals) on 24-02-2014 and near dates.

(iii) That the period of import in all these cases is October 2010 to January, 2011. The commodity imported is Betel Nuts and the country of import is Indonesia. The declared values are USD 300 per M.T. The revenue had issued SCN in all cases, and after adjudication, rejected the declared values and had fixed the values variously as Rs.34/-, Rs.35/- and Rs.36/- per kg., which approximately worked out to USD 650 per MT.

(iv) That the 1st Appellate Authority, while passing the impugned order had not applied his mind at all. The 1st Appellate Authority simply reproduced the contentions of the Appellants and the findings of the Adjudicating Authority and merely agreed with the findings of the original authority.

(v) That the 1st Appeal is a statutory right of the Appellants. In the 1st Appeal, the Appellate Authority is expected to apply his mind to the facts involved, the documents relied upon by the Appellants, the grounds raised by the Appellants, the grounds on which the adjudicating authority had decided the case against the Appellants. After such an examination and due consideration, the 1st Appellate Authority is expected to record his findings.

(vi) That while the 1st Appellate Authority could agree with the findings of the original authority, detailed reasons for such agreement have to be recorded. Without such reasons, the Appellants have no way of knowing the reasons, based on which, the 1st Appellate Authority had come to the conclusion. The findings of the 1st Appellate Authority could be challenged before this Hon'ble Tribunal by the Appellants only if the reasons for passing the 1st Appellate order are discernible from the Order-in-Appeal, but the order -in- appeals do not reveal such reasons.

(vii) That the Hon'ble High Court of Delhi, after considering various definitive pronouncements by the Hon'ble Supreme Court had held in Ranjana Mitra V. Ashok Kumar Mazumdar (MANU/DE/1538/2021) that "it is crystal clear from a mere reading of the impugned judgment that except for citing the submissions made by the parties, the findings and the conclusions of the Trial Court, the First Appellate Court has not dealt with the contentions raised by the Appellant and has not even given any 'reasons' for concurring with the findings of fact and law given by the Trial Court, as also the reasons why the contentions of the Appellant challenging the judgment of the Trial Court were devoid of merit".

(viii) That although the above judgment relates to a civil case, the ratio holds good even in the case of consideration of cases under the Customs Act, 1962. Appellants approached the Appellate Authorities/Tribunals being aggrieved by orders passed which have serious civil consequences to them. The authorities have to bestow the same level of care and diligence while dealing with cases, as they are quasi-judicial authorities vested with powers under the Statute. They are not different from Civil Courts, except the absence of some of the trappings/formalities of a Civil Court. In the scheme of the Customs Act, (as could be the case under CPC) the orders passed by the 1st Appellate Authority as well as this Hon'ble Tribunal could end up in the High Courts and/ or the Supreme Courts as Customs Appeals/SLP etc. Therefore, the various case laws cited are applicable in this case also.

(ix) That the Hon'ble High Court of Kerala, in a recent judgment (in Asokan and Ors .v. The State of Kerala (MANU/KE/2873/2021) has followed the dictum laid down by the Apex Court in Maharashtra State Board of Secondary and Higher Education V. K.S Gandhi, that "it is settled law that the reasons are harbingers between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or

conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it effects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative, fair play requires recording of germane and relevant precise reasons. The recoding of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the appellate or revisionary authority or the supervisory jurisdiction of the High Court under Article 226 or the Appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to meet out justice to the aggrieved person".

(x) That the periods of import in all these cases correspond to the period in Global Industries case (Annexure 7 in the Notes of C/Appeals/21003 -21006). The binding ratio in the Global Industries case was not followed.

(xi) That this Hon'ble Tribunal, in Global Industries case had specifically held that the ratio in Punjab Processors case was not good law as the Apex Court itself had held so in J.D. Orgochem Ltd case (paragraph 15 of Global Industries order), yet the 1st Appellate Authority chose to ignore the findings of this Hon'ble Tribunal and chose to agree with the order-in-original, which had followed the judgement in Punjab Processors case to decide the matter against the Appellant. The order in LeGrand (India) (P) Ltd (2007(216)ELT 678 (Bom), in Videocon International Ltd. case (2010 (261) ELT 220 (T-Mum), in VAG Valves (I) (P) Ltd (2007(212) ELT 90 (T-Chennai), the judgment in Motor Industries Co.Ltd (2009 (244) ELT 4 SC) etc.. were placed before the 1st Appellate Authority, along with a detailed Note, but were ignored. This Hon'ble Tribunal in Global Industries case held that the ratio of the judgment in Radhey Shyam Ratan Lal (2009) 13 SCC 157 was not applicable on the facts of that case. Yet, the 1st Appellate Authority had approved the Order-in-Original which had relied on the ratio of the judgment in Radhey Shyam case. Evidence of bank remittances, and copies of audited

balance sheet and P & L were produced, which again were ignored for no reason. In this is nothing short of judicial indiscipline.

(xii) That the Original Authority had valued the goods under Rule 5 of CVR after recording that there were contemporaneous goods imported at higher value through other ports. However, the objections raised by the Appellants before the original authority was not considered.

(xiii) That without testing the samples, in an agricultural commodity, similarity cannot be established.

(xiv) That there was nothing on record to show that the values of contemporaneous imports were declared as mandated in DGFT Notification (which had fixed a minimum FOB value of Rs.36 per kg for all varieties of imported Betel Nuts. This notification was stayed by the Hon'ble High Court of Kerala at the relevant time and valuation in these cases were done under the Customs Act, 1962 and the CVR).

(xv) That the original authority was doing indirectly what could not be done directly in view of the restraining order of the Hon'ble High Court interdicting the DGFT Notification. Valuation under Customs Act 1962 has to necessarily follow the mandates of section 14 and CVR. In this case, that was not done.

(xvi) That there was nothing on record to show that the alleged contemporaneous imports were not under advance licenses or any other scheme without payment of duty.

(xvii) That the appellants were regular importers from Indonesia, they imported unprocessed, ungarbled Betel Nuts and do the processing and value addition at their facilities in Kerala. As the demand for Betel Nuts in India was far in excess of production, import was necessary. Through import of unprocessed Betel Nuts, the Appellants were feeding their industry and giving employment, this aspect was not considered.

(xviii) That the Commissioner of Customs, Cochin had held (in Orders-in-Original under challenge in Customs Appeals 21003/2016 to 21006/16), that

there were no similar or identical goods imported through other ports and had therefore rejected resorting to Rules 4 and 5. However, in the same Commissionerate, a Lower Authority, had relied on Rule 5 of CVR to assess the value. Valuation is an objective exercise and is based on objective criteria and data. In this case, it is clear that the valuation done by the Original Authority, which was agreed to by the 1st Appellate Authority (without stating reasons) was arbitrary, baseless and unsustainable.

(xix) That in National Steel and Agro Pvt. Ltd .v. Commissioner of Customs, Mumbai I (MANU/CM,0014/2022), the Hon'ble Tribunal had examined the scope of section 14 of Customs Act, (before and after the amendment in 2007) and had followed the dictum laid down by the Apex Court in various previous cases. For holding that Rule 5 was applicable, the onus of establishing the import of contemporaneous goods was on the revenue. In the light of the nature of the goods imported by the Appellants, it was for the Revenue to establish that the goods imported contemporaneously through other ports were unprocessed and ungarbled goods. This burden has not been discharged at all by the revenue.

(xx) That by merely providing NIDB data (which is the value on which duty was paid) and copies of some BEs, the above onus is not discharged. In the case of agricultural produce such as Betel Nuts, quality, time of crop, time of import, age of the goods (in Betel Nuts older/drier nuts obtain higher value), level of processing etc., impact the value/price. These factors could be determined only through testing. None of the contemporaneous goods and no imported goods were tested. Therefore, to invoke Rule 5 of CVR for rejecting the declared value and assessing the goods at higher values was clearly arbitrary and unsustainable.

(xxi) That in all these cases, goods were cleared after paying 50 % of differential duty and providing Bank Guarantee for the remaining value. The Appellants had suffered huge loss by having their essential working capital

tied up in the above manner for a period in excess of 11 years. The entire business of the Appellants have collapsed and their processing facilities have shut down.

03. Smt. D.S. Sangeetha, Additional Commissioner (Authorised Representative) made the following submissions;

a) That the Adjudicating Authority has rightly rejected the transaction value and re-fixed the same under Rule 5 of the Customs Valuation Rules, 2007;

b) That similar goods were cleared through Chennai and Nhava Sheva in the price range of Rs.34 to 37 per Kilogram and therefore the same being evidences of contemporaneous import, the Adjudicating Authority adopted the lowest of the contemporaneous import price. The Appellate Authority, after finding merits in the order passed by the original authority, rejected the appeal filed by the Appellants;

c) That Department has made correspondence with other ports such as Chennai, Nhava Sheva and Calcutta and confirmed that in cases of fully assessed bills of entry, the declared value were in the range of USD 650/MT to USD 800/MT. Therefore, Learned AR subjected that the arguments of the Appellant against the rejection of transaction value is unsustainable;

d) That the Adjudicating Authority has rightly found that the subject goods being agricultural commodities, value cannot be fixed under Rule 4 of the Customs Valuation Rules, 2007 and therefore valuation under Rule 5 was adopted, especially in the presence of contemporaneous import data of similar goods for higher rates.

e) Learned AR has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Punjab Processors Pvt Ltd, reported in 2003 (157) ELT 625 (SC).

04. We have carefully considered various submissions advanced by both sides and perused the records. We find that the Adjudicating Authority, by Order-in-Original rejected the transaction value under Rule 12 (1) of the Custom (Determination of Value of Imported Goods) Rules 2007 and re-determined the same under Rule 5, after discussing non-adoptability of valuation under Rule 4 of the Customs Valuation Rules 2007, finding contemporaneous imports during more or less same period on higher value. Appeal against the Order passed by the Original Authority was dismissed, without modifying the original order. Since rejection of transaction value and its re-fixation is made under Rule 12(1) and 5 of Customs Valuation Rules 2007, we are reproducing the relevant rules as follows;

> ***Rule 12:- Rejection of declared value***. *- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
> *(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*
> *Explanation.-(1) For the removal of doubts, it is hereby declared that:-*
>
> *(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*
>
> *(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*
>
> *(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -*
>
> *(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
>
> *(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

RULE 4 :-Transaction value of identical goods-

(1) (a) Subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;
Provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962.
(b) In applying this rule, 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.
(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.
(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5. Transaction value of similar goods.-
(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2)The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Note to rule 5 says;

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.

2. All other provisions contained in note to rule 4 shall mutatis mutandis also apply in respect of similar goods.

> *3. In the case of Commissioner of Customs Calcutta Vs. South India Television P. Ltd. 2007 (214) ELT 3 (SC), Hon'ble Supreme Court held as follows;*
> *"before rejecting the invoice price Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of <u>identical goods or similar goods</u> at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under- valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries; collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods.*

4.1 Betel nut being an agricultural product, similarity and identical nature of goods can be ascertained only by quality assessment, as the price of betel nuts are largely depended on grade, quality, time of yield, age of the product, level of processing, time of import etc.. Even though Revenue has placed reliance on betel nuts imported through the ports of Chennai and Nhava Sheva, no quality test report is available on records. Even the Betel nuts imported by the Appellants are not tested to ascertain its grade and quality. In the absence of any quality assessment test reports, the contemporaneous nature of goods cannot be ascertained. NIDB data and the documents relied upon by the Department are not made available to the Tribunal and the same is not seen part of the Order-in-Original. Therefore,

there is no clarity and specificity on the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. The Commissioner of Customs (Appeals) has also passed an order without discussing the merits of the case, arguments advanced by the Appellant and without evaluating the evidences available on records. In view of the judgment of the Hon'ble Supreme Court, referred above, the findings of the Original Authority as well as Appellate Authority cannot sustain in the eyes of law.

4.2 In the present case, Department has rejected transaction value under Rule 12 (1) and re-determined under Rule 5 of the Customs (Determination of Value of Imported Goods) 2007, finding that there are contemporaneous imports through the ports at Chennai and Nhava Sheva on higher transaction value. Rules are very clear to the extent that, in order to invoke Rule 5, evidences of similar goods at the same commercial level and in substantially the same quantities, as the goods being valued are required and in the absence of the later, conditions contemplated under Sub Rule (1) (c) of Rule 4 has to be followed. In so far as the present case is concerned no evidences are available on records to prove that the relied upon contemporaneous imports through Chennai and Nhava Sheva were similar goods at the same commercial level and in substantially the same quantities. In the absence of any evidence, we are of the considered view that the Order in Original as well as Order in Appeal failed to meet the necessities mandated under Rule 5 of the Customs Valuation Rules 2007. Reliance is placed on the judgments of Hon'ble Supreme Court in Commissioner of Central Excise and Service Tax, Noida V. Sanjivani Non-Ferrous Trading Pvt. Ltd. (2019) 2 SCC 378.

4.3 In view of the non-availability of evidence of identical or similar goods of same quantity and at same commercial level, the suspicion casted by the

Original Authority, leading to the rejection of transaction value is also incorrect. Therefore rejection of transaction value, even at the first place, is misplaced. In the case of M/s Century Metal Recycling Pvt. Ltd. V. Union of India and Ors [2019(367) ELT 1(SC)] Hon'ble Supreme Court held that

> *"a doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere prediction on grounds and material in the form of 'certain reasons' and not mere ipse dixit. Subjecting imports to enquiry on mere suspicion because one is distrustful and unsure, without reasonable and certain reasons, would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of goods.*

4.4 In the case of Global Industries Vs. Commissioner of Customs, Cochin [2011(272)ELT724 (Tri. bang)] it was held that in the absence of data relating to the imports of goods of same quality, quantity and commercial level with higher transaction value, contemporaneous import cannot be accepted. In this instant case, Revenue has not placed any data to evidence contemporaneous imports; rather the Adjudicating Authority found that there are no contemporaneous imports.

4.5 We find that both Original Authority as well as Appellate Authority have not applied their mind in as much as rejection of transaction value and its re-fixation has been made without following the mandates of Rules as well as decisions of Hon'ble Supreme Court.

4.6 The term "identical goods" is defined under Rule 2(d) of the Customs (Determination of Value of Imported Goods) 2007, which means imported goods-

> *(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;*
> *(ii) produced in the country in which the goods being valued were produced; and*
> *(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,*
> *but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed*

directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(e) "produced" includes grown, manufactured and mined.

The term **"similar goods"** is defined under Rule 2(f) of the Rules supra, which means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

4.7 A plain reading of the definition of the term " similar goods" makes it clear that the goods being compared must have like characteristics and like component material, which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality and reputation. This *iposo facto* makes quality assessment compulsory to ascertain the comparable and interchangeable nature of goods under comparison. In the absence of any material to prove its legal comparison, its contemporaneous nature fails, resulting in non-adoptability of Rule 5. We find that in the instant case, Revenue has not come with any evidence, either in the nature of any reports or documents to meet the standards prescribed under Rule 5 supra. Therefore we are unable to uphold the orders passed by the Original Authority as well as Appellate Authority. Before concluding, we may observe that the both Original order and Appellate Orders places no reliance on Rule 4, even though it applied *mutatis mutandis* to Rule 5. Even in the absence of such reference, we find that Rule 4 (1) (b), (c), 4(2) and 4(3) also speaks about applicability of this

rule in cases of identical goods in a sale/or not and its cost component, at the same commercial level and in substantially the same quantity. We have already discussed in the foregoing paragraphs and found that identical nature of the goods, compared in this case, are not proved in the manner established under law and therefore applicability of this rule and sub rule *mutatis mutandis* to Rule 5 also fails.

4.8 During the course of arguments, Learned Authorised Representative submitted about the minimum import price (herein after referred to as MIP) by the Director General of Foreign Trade for all imports pursuant to Notification No. 15 (RE-08)/2004-09 dated 04-06-2008. The question with regard to M.I.P has already travelled to Hon'ble High Court and the same is not the subject matter of this appeal. Therefore, we are not passing any orders observations about it.

05. In view of the discussions and decisions cited supra, appeals are allowed with consequential reliefs.

(Pronounced in the open court on 12/07/2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Mehul