CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>WEST ZONAL BENCH AT AHMEDABAD</u>

REGIONAL BENCH – COURT NO. 03

Customs Appeal No. 382 of 2009-DB
[Arising out of OIA-284/2009/Cus/Commr(A)/KDL passed by Commissioner of CUSTOMS-Kandla]

M/s. Chintan Aluminium Pvt. Ltd ……..**Appellant**
137, Adarsh Industrial Estate,
Near Chakudia Mahadev,
Rakhial, Ahmedabad.

VERSUS

C.C.-Kandla **………Respondent**
Custom House,
Near Balaji Temple, Kandla,
Gujarat

<u>APPEARANCE</u>:
Shri. S.J. Vyas (Adv.) for the Appellant
Shri. S.K. Shukla, Authorized representative for the Respondent

CORAM: **HON'BLE MR. RAMESH NAIR, Member (JUDICIAL)**
HON'BLE MR. RAJU, Member (TECHNICAL)

FINAL ORDER NO. <u>A/ 11131 /2019</u>

DATE OF HEARING: 13.05.2019
DATE OF DECISION: 16.07.2019

RAJU

This appeal has been filed by M/s Chintan Aluminum Pvt. Ltd. against order of Commissioner (Appeals) upholding revision of assessable value and consequent demand of Customs duty against appellant.

2. Ld. Counsel pointed out that the appellant had imported Aluminum foil scrap as per ISRI Specification three bill of entry No. 105345 dated 15.05.2006, 105750 dated 31.05.2006 and 105752 dated 31.05.2006 declaring assessable value on the strength of bill of entry no. 106096 dated 15.06.2006. the appellant challenged the said enhancement of value before the Commissioner (Appeals) who dismissed their appeal for failure to make the pre-deposit as directed by Commissioner (Appeals). However when the appellant approached the Tribunal, the matter was remanded back to the Commissioner

(Appeals) for order on merits vide Tribunal order No. A/1128/WZB/AHD/2008 dated 28.05.2008. In remand proceedings, Commissioner (Appeals) confirmed the order in original and hence this appeal.

2.1 Ld. Counsel pointed out that none of the exceptions laid down in Rule 4(2) of the Customs Valuation Rules, 1988 exist in the facts and circumstances of the case and hence the transaction value cannot be rejected. He argued that rejection of transaction value of relying on guidelines and LME prices are without authority. He further pointed out that the order in original has enhanced the value beyond the value earlier enhanced at the time of assessment of bill of entry. He pointed out that while assessment was done,

Bills of Entry No.	**Declared Value(USD)**	**Enhanced Value (USD)**
105345 dated 15.05.2006	600 PMT	1500
105750 dated 31.05.2006	700 PMT	1782
105752 dated 31.05.2006	700 PMT	1782

After in the final order the value for the bill of entry 105345 dated 15.05.2006 has been further enhanced from USD 1500 PMT to USD 1780 PMT.

2.2 Ld. Counsel pointed out that no SCN was issued in the instant case.

3. Ld. AR relied on the impugned order.

4. We have gone through rival submissions. We find that that the appellant had declared the price of imported Aluminum foil scrap of 'TESTY' grade at 600 PMT / 700 PMT. Order in original pointed out that during some period there were contemporaneous imports made at following rates.

Sr. No	BE No.	Date	Contemporaneous Import Value/Assessed Value (USD/MT)
01	105502	22.05.2006	2045
02	106096	15.06.2006	1780
03	106404	28.06.2006	2045

4.1 It is seen that the value declared by the appellant is to the range of 30% to the value of the contemporaneous import. It is seen that sub-rule 2 of rule 4 clearly prescribes the exception when the sale involves any abnormal discount or revision from ordinary competitive price. In the instant case it is seen that the sale involves almost 70% discount from the ordinary competitive price of contemporaneous imports. In view of above, we find that the there was a jurisdiction in rejection of the declared invoice value.

5. We however found that the original assessment in the case of bill of entry no. 105345 dated 15.05.2006 was done at USD 1500 PMT but after issuance of SCN the same was revised upwards to USD 1780 PMT. Both these orders were passed by the Deputy Commissioner of Customs. We do not find that permissible. In view of above, the value in bill of entry No. 105345 dated 15.05.2006 is fixed at 1500 USD PMT as was done in the original assessment. We find that Revenue has produced contemporaneous import data. Revenue has chosen to rely on value of the contemporaneous import and thus fixing of the assessable value at 1780 PMT in respect of bill of entry no. 105750 and 105752. Revision of value in these cases is upheld. Appeal is partly allowed in above terms.

(Order pronounced in the open court on 16.07.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Neha