

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

**CUSTOMS Appeal No. 10904 of 2022**

[Arising out of Order-in-Original/Appeal No JMN-CUSTOM-000-APP-114-22-23 dated 23.08.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

**KVS TRADERS**

**...Appellant**

5328 Hardhiyan Singh Road Karol Bhag  
New Delhi-110005

*VERSUS*

**C.C.-JAMNAGAR(PREV)**

**...Respondent**

Sharda House...Bedi Bandar Road,  
Opp. Panchavati, Jamnagar  
Gujarat

**WITH**

**CUSTOMS Appeal No. 10905 of 2022-DB**

[Arising out of Order-in-Original/Appeal No JMN-CUSTOM-000-APP-115-22-23 dated 23.08.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

**A K FASHIONS**

**...Appellant**

5328 1st Floor Hardhiyan Singh Road Karol Bhag  
New Delhi-110005

*VERSUS*

**C.C.-JAMNAGAR(PREV)**

**...Respondent**

Sharda House...Bedi Bandar Road,  
Opp. Panchavati,  
Jamnagar,  
Gujarat

**AND**

**CUSTOMS Appeal No. 10906 of 2022-DB**

[Arising out of Order-in-Original/Appeal No JMN-CUSTOM-000-APP-116-22-23 dated 23.08.2022 passed by Commissioner of CUSTOMS-AHMEDABAD]

**KUMAR IMPEX**

**...Appellant**

4/5203 Krishna Nagar Karol Bhag New Dehli  
New Delhi-110005

*VERSUS*

**C.C.-JAMNAGAR(PREV)****...Respondent**

Sharda House...Bedi Bandar Road,  
Opp. Panchavati,  
Jamnagar,  
Gujarat

**APPEARANCE:**

Sh. H. K Hirani, Consultant for the Appellant  
Sh. Vijay G. Iyengar, Superintendent (Authorized representative) for the Respondent

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

**Final Order No.\_A/11104-11106 / 2023**

DATE OF HEARING: 17.01.2023  
DATE OF DECISION: 03.05.2023

**RAJU**

These Appeals have been filed by M/s. KVS Traders, A K Fashions, Kumar Impex., against rejection of declared transaction value.

2. The Appellant had imported "PU Coated Fabric" from china and declared the transaction value as USD 0.82 Per Square Meter. The said declared transaction value was rejected. Assessment value was done USD 0.86 as Per Square Meter.

2.1 The Assessing officer raised query that value appears at lower side as compared to the NIDB data of similar imports at other ports and also contemporaneous import at the same port. The appellant in response to the said query replied as under:

*"Value declared as per transaction price u/s 14 (1) of Customs Act 1962. You may load the value as per CVR 2007 on the basis of contemporaneous import of identical / similar goods at your port. We agree to assess the value as per group practice to save from demurrage and detention charges"*

2.2 The value declared in bills of entry filed by the appellant was rejected and value order enhanced without passing any speaking order. The appellants took the matter to Commissioner (Appeals), after hearing the appellant remanded the matter back to the original Adjudicating Authority for passing a speaking order under Section 17(5) of the customs act, 1962.

2.3 Thereafter, the Original Adjudicating Authority after going through the RMS instructions, the valuation Study No. 17 dated 05.03.2020 issued by the Director General of valuation and Letter dated 08.09.2017 issued by Deputy Director, DRI, Regional, Gandhidham and letter dated 12.09.2017 issued by DC(SIIB), Customs House, Mudra regarding import of PU leather Cloth/Fabric arrived at the conclusion that the average price of USD 0.86 for PU Coated Fabric having thickness of 0.50mm per meter. Thereafter, in terms of Section 17(4) and Section 17(5) of the Customs Act, 1962. Relying on the consent letter given by the importer held that there is no need to pass a speaking order in all the cases.

2.4 The said order in original was upheld by the impugned order of Commissioner (Appeals), While upholding the said order the Commissioner (Appeals) has come to the conclusion that once the enhanced value has been accepted and duty has been paid by importer than the assessment cannot be challenged. While doing so he relied on the following cases:

- M/s. Chaudhary International.-1999 (109) ELT 371, wherein para 73 following has been observed:

*"73. Ld. Counsel has pleaded vehemently that right of appeal is a substantive right which cannot be taken away by consent. It is required to be remembered in this connection that it is not a natural right, but one conferred by a statute; it is not an absolute right but one which is available subject to fulfillment of conditions laid down in the statute and one of the conditions in the Customs Act (Section 1294) is that the person desirous of appealing must be an aggrieved person and as we have seen above once a person*

*become a party to a consent and the order is passed on that basis he could not claim himself to be an aggrieved person anymore."*

2.5 He also relied on the decision of Tribunal in the case of M/s. Hanuman prasad and Sons in Customs Appeal No. C/51601/2019, wherein following has been observed:

*"The very fact that the importers had agreed for enhancement of the declared value in the letters submitted by them to the assessing authority, itself implies that the importer had not accepted the value declared by them in the Bill of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importers had accepted the enhanced value, it was really not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under rule 3(1) for the reason that the declared value has been rejected under sub rule 2, that the value of the imported goods is required to be determined by proceeding sequentially through rule 4 to 9. As noticed above, the importers had accepted the enhanced value and there was, therefore, no necessity for the assessing officer to determine the value in the manner provided for in rules 4 to 9 of the Valuation Rules sequentially"*

2.6 Reliance has also been placed on the decision of Tribunal in the case of Advance Scan Support -2015 (326) ELT 185 (Tri.-Del.), wherein it has been held that once express consent to the value proposed by the revenue has been given and the appellant has consented to waive SCN or personal hearing then it is not necessary for revenue to establish the value any further. Reliance is also placed on the decision of Tribunal in the case of M/s. Vikas Spinners reported at 2001 (128) ELT 143 (Tri.-Del.), wherein following has been observed:

*"In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants. This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 07.05.1999 having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally stopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest*

*that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in *Sund N. Images. (supra)* is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/ Special Attorney and paid the duty thereon according."*

- Reliance was also placed on the decision of Tribunal in the case of *M/s. Gandian Plasticote Ltd.- 2008 (223) ELT 605 (tri.-Kol.)* wherein following has been observed:

*"The learned Advocate also cited the decision of the Tribunal in the case of *M/s Vikas Spinners V. CC., Lucknow 2001 (128) ELT. 143 (Tri-Del)* in support of his arguments. We find that the said decision clearly holds that enhanced value once settled and duty having been paid accordingly without protest, importer is stopped from challenging the same subsequently. It also hold that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden the department to establish declared value to be incorrect. In view of the fact that the Appellants in this case have not established that they had loaded any protest and as per systems report clearly points to acceptance of the enhanced value by them, the cited decision advances the cause of the department rather than that of the Appellants contrary to the claim by the learned Counsel."*

2.7 In the instant case, we notice that the appellant has replied to the query of the Assessing officer in following terms:

*"Value declared as per transaction price u/s 14 (1) of Customs Act 1962. You may load the value as per CVR 2007 on the basis of contemporaneous import of identical / similar goods at your port. We agree to assess the value as per group practice to save from demurrage and detention charges."*

From the above declaration it is apparent that the revised valuation has been accepted under duress just in order to save detention charge. It cannot be treated as a voluntary consent. In this circumstances the right of appellant challenge the assessment cannot be disputed. It is seen that the case law relied by the Commissioner (Appeal) in the impugned order is only in respect

of cases where there was voluntary acceptance of the enhancements of value. The said case laws cannot be applied to the facts of the case where there is apparent protest. From the impugned order, it is noticed that it has not examined the contemporaneous NIDB data, but relies solely on various letters of different authorities, like directorate of valuation, DRI or DC (SIIB). Such reports cannot be any basis of rejection of declared value in terms of rule 12 of the Customs Valuation Rules, 2007. The rejection can only be done on the basis of data of contemporaneous imports.

3. In this circumstances, we cannot uphold the impugned order and the same is set aside. The appeals are allowed.

(Pronounced in the open Court on 03.05.2023)

**RAMESH NAIR**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

PALAK