

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No.10903 of 2022

[Arising out of Order-in-Original/Appeal No JMN-CUSTOM-000-APP-117-22-23 dated 25.08.2022 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/11108 / 2023

DATE OF HEARING: 17.01.2023
DATE OF DECISION: 03.05.2023

RAJU

This appeal has been filed by M/s. Kumar Impex against re-determination of the assessable value of the goods imported by them.

2. Learned Counsel appearing on behalf of the appellant pointed out that appellant had imported "Polyester Knitted Fabric" with following details vide Bill Of Entry No. 2720081 dated 11.02.2021, are as under:

BE No. & Date	Description of Goods and CTH	Decl ared Rate	Qty	Declared total Value (Exchanged Rate 1 USD= Rs. 73.80/-)		Declar ed Total Duty (Rs.)
		USD /KG	KG	USD	INR	
2720081/ 11.02.2021	"Polyester Knitted Fabric	1.2	21540	25848	1907582	53603 1

	(As per Invoice, P/ List & BL), CTH-60063200					
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2.1 Twice query was raised through EDI module to the appellant seeking reasons for unusually low price. The impugned order observed that no proper response was given by the appellant and therefore the system sent the Bill of Entry to the Port Assessment Group. The Appraising officer at the Port Assessment Group, therefore to give further opportunity to the appellant and raised the following query:

"As per as RMS instruction, it is requested to comply the value justification of the subject bill of entry when compare with the value of BE No. 2455445 dt. 22- Jan-21 of location INNSAI, where the Unit Price (Invoice Value) of referred item is 2.85 USD per KGs and total quantity is 7950 KGs. And value of BE No. 9692766 dt. 24- Nov, 20 of location INNSA 1 Inv. No. 1 item no. 1, where the unit price (invoice value) of referred item is 2.8 USD per Kgs and total quantity is 2514.5 Kgs."

2.2 In response the appellant pointed out that involved smaller quantity as compared to the quantity import by the appellant. The Appraising Officer gave one more opportunity to appellant to justify the lower declared quantity as compared to the contemporaneous import. The appellant were requested for personal hearing, in response the appellant sought the following from the Revenue:

"(i) Reasons for rejection of declared value as per rule 12 of CVR 2007 and,

(ii) Provide the evidence (Soft copies of RUDs other than screen shots) for re-determination of valuation viz. copies of the B/Es and related invoices."

2.3 Thereafter, two more bills of entry bearing No. 2198984 and 2198928 both dated 01.01.2021, for the same item, same country of origin and similar commercial quantity were retrieved from NIDB data and the video link were provided to the appellant through E-mail and personal hearing was fixed thereafter.

2.4 During the course of assessment, the risk management system issue alerts and referred two bills of entry for comparison with the value declared by the appellant. At the time of assessment the Assessing officer had following bills of entry for his reference:

Sr. No.	Bill of Entry No. & Date	Description of Goods/CTH No	Qty (in Kgs)	Declated Price in USD/Kg.	Country of Origin	Remarks
1	9692766 / 24.11.20	Polyester Knitted Fabric/60063200	2514.5	2.80	China	Referred by RMS
2	2455445 /22.01.21	Polyester Knitted Fabric/ 60063200	7950	2.85	China	Referred by RMS
3	2198984 / 01.01.201	Polyester Knitted Fabric/ 60063200	239052	2.10	China	Taken from NIDB where price is in Rs. 156.35/- Kgs. And it is converted into USD at the exchange rate of that period (Ecchange Rate 1USD=74.45Rs.)
4	2198928 01.01.21	Polyester Knitted Fabric/ 60063200	24265	2.10	China	----Do----

2.5 On noticing that the declared price significantly lower than the price of goods with similar description and similar commercial level at or around the similar time. it was decided that there is reason to doubt the truth or accuracy of value declared by the appellant. Consequently the declared price was rejected in terms of 12(1) CVR, 2007. The details of contemporaneous import reproduced in para_2.4 above were also given to the appellant by the assessment group and also the Port assessment group in EDI. It has been observed in the impugned order that the goods imported under Bill Of Entry No. 2198984 dated 01.01.2021 described as "Polyester Knitted Fabric" were similar goods imported at the price of USD 2.10/-Kg.. Similarly vide Bill of Entry No. 2198928 dated 01.01.2021 24265 kgs. of "Polyester Knitted Fabric" falling under heading 60063200 were imported at USD 2.1/-kgs, as per imported data recovered from NIDB. Therefore, the assessing officer by applying Rule 4(3) CVR, 2007, re-assessed the Bill of entry and enhanced the value mentioned in the table given in para 2.4 above at USD 2.1/- kg.

2.6 It has been argued that in the appeal memorandum that the copies of Bill of Entry No. 2198984 dated 01.01.2021 and 2198928 dated 01.01.2021 and invoices thereof were provided. It has been argued that it is mandatory to provide the copies of bills of entry and invoice which are relied upon for the purpose of re-determination of value under Rule 4(5) of Customs Valuation Rules, 2007.

2.7 It has been argued that it is mandatory for Assessing officer to pass speaking order within 15 days and failure to pass such order makes the order liable to be set aside, reliance was placed on the decision of Hon'ble High Court of Cal. Sigma Power Products Pvt. Ltd- 2017 350 ELT 510.

2.8 It has been argued that enhancement of transaction value is against provisions of Section 14 customs Act and Customs Valuation Rules, 2007. It has been argued that no reason has been assigned for rejecting the declared transaction value and the rule under which the same re-determination has not been mentioned. It has been argued that unless there is additional consideration, involved the transaction value cannot be rejected.

2.9 It was further argued that it is mandatory to issue notice under Rule 12(2) of Customs Valuation Rules, 2007, before proceeding to re-determine the value under CBR, 2007. It has been argued that the notice needs to be issued communicating the reasons for rejection of declared value. It has been argued that as per Rule 12(2) the proper office at the request of importer is bound to intimate the importer in writing the grounds for doubting the truth for accuracy of the value declared in relation to goods imported and provide reasonable opportunity of being heard before taking final decision under sub rule 1. It was argued that the appellant was not informed the reason for rejecting the declared value. It was further argued that transaction value cannot be rejected without evidence of payment of extra amount to the

supplier. The reliance was on the decision of Tribunal in the case of Maruti Febrics Impex- 2016 (343) ELT 963 (Tri.-Del.). Reliance was also placed on the decision in the case of Sedna Impex India Pvt. Ltd.-2017 (347) ELT 317(Tri.-Chennai) to assert that DRI alerts cannot be a reason for rejection of transaction value.

2.10 It was further argued that the proper officer has referred to very few entries of NIDB data where the declared value was higher. It was argued that revenue cannot choose only the high value documents for comparison.

3. Learned AR relied on the impugned order, he argued that all the due diligence has been done as can be seen from the order in original and the impugned order in appeal. He pointed out that opportunity of personal hearing was given and was attendant by the appellant.

4. We have considered rival submissions, we find that the order in original records, the following action taken after the said bill of entry under self-assessment was filed.

2. During the course of assessment of the Bill of Entry, the Faceless Assessment Group (hereinafter refereed as 'FAG') has observed that the goods have been self assessed under section 17(1) of the Customs Act, 1962 and have been classified under CTH 60063200 declaring the goods as "Polyester Knitted Fabric". They Further observed that the declared value of the goods i.e Polyester Knitted Fabric is lower than the contemporaneous import of identical/similar goods, therefore the FAG has given query through EDI module as under:-

"Please give amplified declaration w.r.t. nature of pile fabric; knitted. crocheted; width, make, source & end-use of fabric; % of electrometric yarn; warp knit; dyeing, printing & bleaching etc. Declared value of your consignment i.e. USD 1.2/kg which is lower than contemporaneous import of identical/ similar goods which is USD 1.85/kg CIF. Evidences bill of entry 8065835 dtd. 03.07.2020, 8065808 dtd. 03.07.2020, 8128505 dtd. 10.07.2020, 7752927 dtd. 26.05.2020. The quantity in all cases is comparable with your imported quantity and all import are from china. Hence, under the provisions of sub-rule (2) of rule 12, you are being intimated the grounds for doubting the truth or accuracy of

the value declared. Please state why the declared value of the goods should not be rejected and re-determined under customs valuation rules, 2007 read with section 14 of the customs act, 1962. You are requested to submit evidences like payment details, manufacturers' invoice, negotiation details, email exchanges etc to substantiate your declared value. Clearly submit whether you agree for value enhancement."

3. In response to the above query raised by the FAG, the importer has replied as under:

**Please refer your query to be 2720081 dtd. 11.02.2021 it is to submit that we had filed bill of entry under self assessment under self assessment regulation 2011 and valuation of goods is governed by provisions of section 14(1) of customs act 1962 read with CVR 2007. Please specify how amplified declaration will affect classification and rate of duty. Bill of entry numbers provided without giving its import locations & hard copy as contemporaneous evidence is irrelevant & it is of more than six months old. Please specify reason for rejection of declared value since contemporaneous import price can not be reason for rejection of declared value. Value of imported goods is correctly declared as per commercial invoice and other related documents under rule 14(1) of CA. 62. Transaction value of goods cannot be loaded as per group practice/ contemporary Import data/Alert/DGOV circular/ LME etc. Or any other method and it is not prescribed under CVR, 2007 since matter is already decided in Honorable CESTAT & Supreme Court. It is further requested strictly to follow CBIC circular 55/2020-Customs dtd. 17.12.2020. We do not agree to enhance value arbitrarily. Please expedite the assessment / verification at declared value as per submitted invoice and other related documents in view of Supreme Court and CESTAT Judgements on similar ground and hierarchy of supreme should be maintained".*

4. Further, the FAG has raised another query as "Reply is elaborated but not specific. Department has reason to doubt your value as it has been found on lower side than contemporaneous import value: Please justify your value wrt comparable quantity of import as per CVR07, Polyester knitted fabric is a generic description which needs further clarification that why amplified declaration has been sought (Dyed, Undyed, Printed etc). In support of your claim of your value please upload sales contract, remittance proof also. In response to this query the Importer did not give any response nor added any further details.

5. In the absence of the proper response from the importer, the FAG has sent back this Bill of Entry to the Port Assessment Group (hereinafter referred to as the PAG) at local Port ie Pipavav Port mentioning the comment as "Return BE from Virtual Assessment to Local Assessment, Not able to assess as proper reply not received from importer".

6. The Appraising officer at the PAG (Local Port) has noticed and observed that the importer has not made any response to the second query raised by the FAG, therefore to give a further opportunity to the importer, they raised a query through EDI as "Please refer to your reply vide which you have submitted that bill of entry numbers provided without giving its import locations & hard copy as contemporaneous evidence is irrelevant & it is of more than six months old?. In this regard as per RMS instruction, it is requested to comply the value justification of the subject bill of entry when compare with the value of BE No. 2455445 dt. 22-Jan-21 of location INNSA1, where the Unit Price (Invoice value) of referred item is 2.85 USD per KGS and total quantity is 7950 KGS and value of BE No 9692766 dt. 24-Nov,20 of location INNSAI Inv. No. 1 item no. 1, where the unit price (invoice value) of referred item is 2.8 USD per Kgs and total quantity is 2514.5 Kgs".

7. In response to the above query the importer has replied as "Please refer your second query raised on 25.02.2021 to BoE 2720081 dtd. 11.02.2021. Bill of Entry referred in query is of small qty. As compared with our import quantity. The value of Polyester Knitted Fabric cannot be compared since there is wide variation. The value depends on type, quality, size, design, make and thickness etc; you are requested to check NIDB data of similar/identical quantity and do the needful accordingly. It is further to submit that as per provisions of rule 4(3) of CVR 2007. In applying this rule if more than one transaction value of identical goods is found the lowest of such value shall be used to determine the value of imported goods. In view of the above facts & circumstances & in response to first reply to query it is requested please expedite the assessment/verification at declared value as per submitted invoice and other related documents.

8. As the importer did not agree to the above referred Bills of Entry, the appraising officer has given one more opportunity following the Principal of Natural Justice and ask the importer that the NIDB data also shows that the declared value is lower than the contemporaneous import. Therefore, please inform why the bill of entry should not be assessed as per contemporaneous import price. Further, if they want any PH the same may please be informed to this office.

9. In response to this query the importer has replied and requested this office to supply the following information via given e-mail to our authorized consultant and to us in the matter before conducting personnel hearing for giving comments during PH and to submit their view points. (i) Reasons for rejection of declared value as per rule 12 of CVR 2007 and (ii) Provide the evidence (Soft copies of RUDs other than screen shots) for re-determination of valuation viz copies of the B/Es and related invoices etc. which is relied upon in re-determination of value and (iii) provide Video link to e mail id hkhirani@hotmail.com under intimation to e mail id muneeshkohli@yahoo.in at the earliest. It is further to submit that as per provisions of rule 4(3) of CVR 2007, in applying this rule if more than one transaction value of identical goods is found the lowest of such value shall be used to determine the value of

imported goods, else please expedite the assessment/verification at declared transaction value as per submitted invoice and other related documents & replies made to queries.

10. As replied by the importer, two more Bills of Entry bearing no. 2198984 and 2198928 both dated, 01.01.2021, for the same item, same country of origin, similar commercial quantity taken from the NIDB and the video link as requested, were provided to the importer through e-mail given by them and fixed the date of PH at 05.00PM on 02.03.2021.

4.1 It is noticed that personal hearing was attended by the appellant. It is noticed that no where in the act or rules is there any requirement that the bill of entry and the invoice in their contemporaneous import needs to provide. It is seen that the NIDB data is based on actual documents and it is computerised data. The data given to the appellant was extracted form NIDB data and therefore the demand of providing actual bill of entry and invoices is not required to be fulfilled.

4.2 Section 17(4) of the Customs Act, 1962 are reproduced as follows:

"(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re assess the duty leviable on such goods."

It is seen that once the assessing officer reaches a conclusion that the self-assessment has not been done correctly than he may proceed with re-assessment in terms of said Sub- Section 17(4) of the Customs Act. In the instant case it is seen that the proceeding subsection 17(4) have culminated into the OIO dated 08.03.21. It is seen that before this order which is a speaking order the appellant has been provided opportunity of personal hearing. The NIDB data based on which re-assessment was done has been provided to the appellant. In this circumstances, the objections raised by the appellant do not hold ground. The decision in the case of Sigma Power

Products Pvt. Ltd. relied by the appellant is of no avail as in the instant case the re-assessment itself was done by a speaking order.

In the instant case it is seen that all the doubts raised by the revenue were communicated to the appellant before the final decision was taken. The requirement of Rule, 12(2) of the CVR, 2007 is satisfied in the instant case. Moreover, there is no record of any request be made by the appellant for intimation in writing of ground of doubting the truth or accuracy of the value declared by the appellant.

4.3 It is seen that the explanation to Rule 12 of the Customs Valuation Rules, 2007 reads as under:

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 mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production; (e) the non-declaration of parameters such specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

4.4 Clause iii (a) of the said explanation clearly prescribes that wherever a significantly higher value of identical or similar goods is noticed in comparable transactions at roughly the same time the declared value can be rejected. In the instant case it is notice that the declared assessable value was USD 1.2/-kg and contemporaneous imports were noticed that USD 2.1 to 2.85 USD kg. As can be seen from the tables in para 2.4 above.

4.5 It is also notice that the products has been described as Polyester Knitted Fabrics in all these entries in table in para 2.4. The quantity imported by the appellant is 21540 kgs., and the quantity imported against bill of entries No. 2198984 dated 1.01.2021 and 2198928 dated 01.01.2021 is 23905 kg., and 24265 kg., is comparable. All the imports were made from China. In this background, we find that the imports are comparable in all respects.

5. In the above factual scenario, we do not find any error in the impugned order rejecting the declared value and accepting the lowest of the contemporaneous import value of identically described goods falling under the identical heading imported at roughly the same time. The appeal is consequently dismissed.

(Pronounced in the open court on 03.05.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

PALAK