

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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10463 of 2021

(Arising out of OIA-MUN-CUSTM-000-APP-177-180-20-21 dated 22/03/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

HINDUSTAN UNILEVER LTD

Unilever House B1 4047 Taxation Dept,
B D Sawant Marg Chakala Andheri East
Mumbai
Mumbai, Maharashtra

.....Appellant

VERSUS

C.C.-MUNDRA

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat – 370421

.....Respondent

WITH

Customs Appeal No. 10464 of 2021

(Arising out of OIA-MUN-CUSTM-000-APP-177-180-20-21 dated 22/03/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

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Customs Appeal No. 10462 of 2021

(Arising out of OIA-MUN-CUSTM-000-APP-177-180-20-21 dated 22/03/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

P B BALAJI

EX CFO OF HINDUSTAN
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.....Appellant

VERSUS

C.C.-MUNDRA

Office Of The Principal Commissionerate Of Customs,
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Kutch, Gujarat – 370421

.....Respondent

APPEARANCE:

Shri M.H Patil & Shri T.C Nair, Advocates and Shri Bibhas Kumar, Senior Manager (Indirect Tax) for the Appellant
Shri Ajay Jain, Special Counsel for the Respondent

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

Final Order No. A/ 11131 – 11133 /2023

DATE OF HEARING: 10.01.2023
DATE OF DECISION: 02.05.2023

RAMESH NAIR

The present appeals are filed against the Order-In-Appeal No. MUN-CUSTM-000-APP-177-180-20-21 dated 22.03.2021 passed by the Learned Commissioner(Appeals), Ahmedabad.

1.2 Briefly stated facts of the case are that the appellant had filed Bills of Entry for clearance of goods declared as Chips of Sodium Isethionate /Chips of Sodium Isethionate HEBE. The said goods were imported from M/s Unilever Deutschland GmbH, Germany/M/s Unilever Supply Chain Company AG, Switzerland. It appeared that the appellant was related to the said overseas suppliers in terms of Rule 2(2) of the Customs Valuation (Determination of Price of Import Goods) Rules 1988 and the relationship influenced the value of imported goods. Therefore the matter was referred to Special valuation Branch, Mumbai and the Bills of Entry were assessed provisionally. The matter of import of chips of Sodium Isethionate/ Chips of Sodium Isethionate HEBE was investigated by DRI, Mumbai. As per the investigation reports of DRI and Special Valuation Branch, Mumbai the value of imported items were found to be mis-declared as the imported items found to be 'soap noodles' and also the unit price was required to be enhanced by 153%. Accordingly show cause notice was issued by Additional Commissioner of Customs, Mundra and it was adjudicated by Order-I-Original dated 16.01.2020 by which the declared value was rejected and re-determined and differential customs duty was confirmed. The subject goods were held liable for confiscation, but no fine was imposed. Penalty was imposed on the Appellant under Section 112(a) of the Customs Act 1962. In addition, penalty of Rs. 5 crore each was imposed under Section 112(a) and 114AA of Customs Act 1962 on Shri P.B. Balaji, Chief Financial Officer of the Appellant. Vide Order-In-Original dated. 10.02.2020, Deputy Commissioner of Customs, Mundra had also re-determined the value of goods imported by

enhancing the unit price by 153% in respect of Bill of Entry No. 6583766 and 6583922 both dated 22.01.2020. In Appeals both the Orders-in-Original were upheld by Commissioner (Appeals) vide impugned order-in-appeal dated 22-3-2021. Against this order of the Commissioner (Appeals), the present appeals have been filed.

2. Shri M.H. Patil, Learned counsel along with Shri T.C Nair, Learned Advocate and Shri Bibhas Kumar, Senior Manager (Indirect Tax) appeared on behalf of the Appellants. Shri M.H Patil submits that the allegation/observation of the DRI and Special Valuation Branch, Mumbai (SVB) and Learned Adjudicating Authority is that the Appellant has mis-declared "Dove Soap Noodles" as Chips of Sodium Isethionate" are incorrect, as interchangeable use of term "Chips of Sodium Isethionate (CSI)" for "Dove Noodles" was well within the knowledge of the Customs Authorities for the past more than 15 years. The valuation adopted by Unilever-group companies for export of CSI, based on transfer pricing method was scrutinized and accepted by the SVB/Customs Authorities and therefore there was no mis-declaration or suppression. In documents like purchase orders, transfer certificates both items i.e. Chips of Sodium Isethionate (CSI) and Dove Noodles, were mentioned in the very same page. Import of Dove Soap during the year 1998 and its valuation based on transfer pricing method was questioned by SVB-Mumbai and after detailed scrutiny of various documents, the valuation based on transfer pricing method was accepted. Due to change in business model of Unilever Group, the Appellant started importing CSI through a trading outfit, viz., Unilever Supply chain company, AG, Switzerland (USCC), Unilever -Mannheim dispatched goods directly to HUL, but raised invoices upon USCC and USCC raised Commercial Invoices upon the Appellant. In a nutshell, transaction was "bill to ship to" basis and ultimate sales price of USCC (i.e. transfer price of Unilever - Mannheim plus mark-up of USCC) was considered for payment of import duties. Based on the SVB order dated 27.02.2007, Appellant continued to import CSI from Unilever- Mannheim on transfer pricing basis. The transfer pricing was determined on the basis of cost of all raw materials, manufacturing cost and margin of profit. The prices were certified by Unilever -Mannheim on quarterly basis and appropriate duties were also paid based thereupon. The description of the product (CSI) mentioned in the Bills of Entry was based on the documents like export invoices, Bill of Lading, Country of Origin Certificate, transfer pricing certificate, etc., received from Unilever group companies which specifically mentioned the description of the

products as "Chips of Sodium Isethionate" (CSI) and therefore, there was no mis-declaration by the Appellant.

2.1 He also submits that SLI-exported by Galaxy Surfactants to Unilever - Buxtehude was not used by Unilever-Mannheim nor can it be used in the manufacture of CSI/Dove Noodles. This fact is also evidenced from the Bills of materials and transfer pricing certificate, wherein there is no mention of SLI -80 as raw material. Therefore, the cost of SLI-80 exported by Galaxy to Unilever -Buxtehude for use in manufacture of liquid body wash has no relevance, whatsoever, for the valuation of CSI imported by the Appellant from Unilever -Mannheim. When ingredients like Sodium Isethionate, Dove Coconut Fatty Acid, Zinc Oxide and vegetable Stearic acid are reacted in a Reactor Vessel, during the course of manufacture of CSI in a continuous process, an in -process product called Directly Esterified Fatty Isethionate (DEFI) emerges in-situ at intermediate stage. The said in-situ intermediate product is referred to and accounted as "DEFI" and/or "Sodium Cocoyl Isethionate (SCI)" and/or "Sodium Laurel Isethionate (SLI)" by Unilever groups in their records, although the product remains one and the same. It is emphasized that it is not a case that the said in-situ product emerged at Unilever-Mannheim termed as "DEFI/CSI/SLI" and "SLI-80" exported by Galaxy to Unilever-Buxtehude is one and the same product, as erroneously claimed and trying to make by the department. From the process flow-chart submitted by Galaxy Surfactants to DRI ,which is forming part of the DRI's investigation report, it is understood Galaxy is manufacturing inter-alia-SLI-80 as a final product and not as an intermediate product for manufacturing of some other product in a continuous process. The raw materials used by Galaxy Surfactants for manufacture of their "SLI-80" are Sodium Isethionate, Lauric Acid, Recovered Fatty Acids and Distilled Fatty Acids, which are totally different from the raw materials used by Unilever-Mannheim for manufacture of in-process SCI/SLI.

2.2 He further submits that the fundamental difference between SLI-80 and SCI-SLI-emerged in situ is that SLI-80 is made from Lauric Fatty Acid whereas SCI/SLI is emerged out of reaction of Distilled Cocoyl Fatty Acid and Vegetable Steric Acid. SLI-80 is not used nor can it be used for the type of CSI/Dove Noodles being manufactured by Unilever group of companies. Further, the following differential feature of SLI-80 of Galaxy and SCI/SLI emerged as an intermediate product at Unilever -Mannheim would evidence that SLI-80 of Galaxy cannot be used and is not at all used in the manufacture of CSI exported by Unilever-Mannheim and /or PT. Unilever - Indonesia.

2.3 He also submits that in the Appellant's own case pertaining to classification of Dove Soap/Bar – [reported at 2000(121) ELT451(T)] , the tribunal has noted that one of the constituents of Dove Soap is Sodium Cocoyl Isethionate which is used as OSSA for the function as cleaning and foam is not contained in Dove Soaps, it is not understood as to how SLI-80 was assumed to have been used or present is CSI/Dove Noodles imported by the Appellant from the very same group company, who supplied Dove Soaps, when the quality and specifications of dove soaps remain the same, whether, it is manufactured in Germany or in India. This itself evidence that the term "SCI" and "SLI" is used interchangeably for the in-situ material emerging at intermediate stage while manufacturing CSI at Unilever-Mannheim. In the present matter department has not brought in any plausible evidences to disprove the aforesaid contention of the Appellant, except bare statement on imagination that SLI-80 and/or similar SLI was used as an input for manufacture of CSI, which statements is contrary to the evidences like Bills of materials, transfer pricing certificate, etc listing down the ingredients used in the manufacture of CSI. To supper their contention that SLI-8- imported by Unilever -Buxtehude from Galaxy and SCI/SLI emerged in situ during the manufacture of CSI at Unilever -Mannheim are two distinctly different products and CSI/Dove Noodles cannot be manufactured from SLI-80 of Galaxy, as the carbon chain and fatty acid contents are not at all suitable for use in manufacture of CSI, he submitted Opinions/ Certificates/ Test reports from renowned Experts.

2.4 He also submits that the entire case of the Department proceeds with a wrong understanding that SLI-80 exported by Galaxy to Unilever -Buxtehude is an ingredient used in the manufacture of CSI by Unilever -Mannheim, which is factually incorrect. Further, Export price of Galaxy's SLI-80 is not relevant for valuation of CSI imported prior to the period of commencement of export of SLI-80 by Galaxy. According to department, Galaxy started exporting SLI-80 to Unilever-Buxtehude in June 2014. Therefore, for the imports of CSI for the period prior thereto, the enhancement of declared value is incorrect and unsustainable.

2.5 He also submits that Appellant's request for cross-examination of persons also not considered by the Department in the present case.

2.6 He further argues that as per the interpretative Notes to Rule 8 of Customs Valuation Rules " *Goods of the same class or Kind*" mentioned therein must be from the same country, as the goods being valued. As per Rule 13 of Customs Valuation Rules, the interpretative notes specified in the

Schedule to those rules shall apply for the interpretation of the said rules. Therefore, legally export price of SLI-80 from India cannot be invoked for the purpose of valuation of CSI exported from Germany. The genuineness of the transaction value adopted for import of CSI/Dove Noodles from Unilever-Mannheim and PT. Unilever, Indonesia, would get substantiated from transfer pricing method adopted for exports, not only the Appellant in India, but also to other Unilever group companies located in other countries. Therefore, valuation based on such transfer pricing method should be accepted, in the absence of any contrary evidence adduced by the Department. He placed reliance on following judgements.

- Century Metal Recycling – 2019(367) ELT 3 (SC)
- Sanjivani Non-Ferrous Trading- 2019(365)ELT 3 (SC)
- South India Television – 2007(214)ELT 3 (SC)

2.7 He also submits that under Rule 12 of valuation Rules, the Proper officer can reject the declared value when there is reasonable doubt about the truth or accuracy of the value declared in the Bills of Entry. In the present case, sub-clause (d)(e) & (f) of clause (iii) of Explanation to Rule 12 of valuation Rules have been invoked. It is submitted that none of the said sub-clauses would apply to the present case, as the appellant has not mis-declared the goods in parameters, such as description, etc., as it is not the case that what was declared in the import documents was found to be different.

2.8 He further submits that Appellant had classified the disputed product under Tariff item 340220 10/ 3402 2020 under a bona fide belief and understating that the disputed goods fall thereunder. Claiming classification of a product under particular heading/ sub-heading /tariff items cannot be termed as misclassification or mis-declaration and extended period and penal provisions not invocable in the present matter. He placed reliance on the following judgments.

- Denson Pultretaknik – 2003(155) ELT 211 (SC)
- Lewek Altair Shipping – 2019(366) ELT 318 (T)
- Mittal International – 2018 (359) ELT 527 (T)
- Indabrador Ltd. -2000 (118) ELT 649 (T)

2.9 He also submits that imported goods were cleared after provisional assessment without any encumbrances and, therefore, the provisions of Section 111(m) are not attracted and, accordingly, the same are not liable to confiscation. Once the goods are not available for confiscation, the same are not liable to confiscation.

3. On the other hand Shri Ajay Jain, Learned Special Counsel appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that it is admitted fact that the description of goods in the Bills of Entries was declared as "Chips of Sodium Isoethionate". The Investigation has revealed that the goods were actually Dove Soap Noodles, which comprise of 51% SLI and only 4.9% Sodium Isoethionate. The item Sodium Isoethionate is a chemical having distinct CAS number. The SLI is also distinct product and having a different CAS number. The terminology used in the Bills of Entry i.e. CSI is neither used in any literature nor in their statutory records. In the factory of HUL, only colour and fragrance is added and process of mixing, bar cutting, stamping and packing is undertaken. There was a discrepancy of the goods before German Customs, before Indian Customs and the statutory records maintained by the Appellant. Thus there was a misdeclaration of description of goods imported in the import declaration.

3.1 He also submits that goods were misdeclared in respect of description, the declared value is liable to be rejected in terms of Rule 12(2)(iii) (d) of CVR, 2007 which covers mis-declaration of goods in parameters such as description, quality, quantity etc. The contention of the Appellant that the export price from India of SLI-80 cannot be taken as the basis for valuation of import price in India is not correct. First of all, the export price from India is to a group company of Unilever in Germany and becomes the raw material cost in Germany. Taking raw material cost in Germany is permissible under Rule 8 of CVR, 2007. The fact that this was not directly used in manufacture of CSI will not have much impact on costing as the process of manufacture and the raw materials used by Galaxy as well as by Unilever, Mannheim are the same.

3.2 He also submits that it is not mandatory for the adjudicating authority to permit cross examination in each and every case.

4. We have carefully considered the submission of both sides and perused the records.

4.1 We find that the revenue has rejected the declared value on the ground that the goods i.e Sodium Chips of Isethionate (CSI) has been imported from related person Unilever - Manneheim and hence the declared price are not acceptable. They have taken the export price of SLI-80 which was exported by M/s Galaxy Surfactants to M/s Unilever – Buxtehude which is used by them in manufacture of Dove Liquid Wash as a basis for valuation of Chips of Sodium Isethionate (CSI) and is used for manufacture of Dove

bathing Bar/ Soap. We find that first of all SLI – 80 is neither used nor is usable in manufacture of Dove Bathing Bar/ Soap. It is all together a different product than Chips of Sodium Isethionate (CSI) which was imported by Appellant. The Appellant has produced the list of ingredients used for manufacture of CSI/ Dove Noodles which are Sodium Isethionate, Zinc oxide, Dove Cocount Fatty Acid, Vegetable Stearic acid, Vegetable Soap base, CAPS – Triglyceride Route, Sodium Chloride, Coated Titanium Dioxide, EHDP 60% Solution, Tetra Sodium EDTA Low Formadehyde and in support of same the appellant had produced the specimen copies of Bills of material of Unilever – Manneheim, Bill of material pertaining to PT. Unilever Indonesia forming part of CA certificates all dt 03.12.2019 for different quarters which clearly substantiate that SLI – 80 is never used in the manufacture of CSI. They also produced buying specification of Unilever - Buxtehude for SLI – 80 from M/s Galaxy Surfactants mentioning quality specifications and it also shows the different carbon chain C12 required for manufacture of Liquid Body wash. Thus it is very clear that SLI – 80 is not usable for manufacture of CSI. Further from the Flow Chart submitted by M/s Galaxy it also appeared that M/s Galaxy were manufacturing SLI – 80 as a final product and not intermediary product for manufacture of some other product in continuous process. The appellant has produced detail chart showing key difference between SLI – 80 and SCI/ SLI- 80 as under :

Key difference between SLI-80 supplied by Galaxy India vs SLI emerged in situ during manufacture of CSI at Unilever Mannheim and/or PT. Unilever-Indonesia:

<u>S. No.</u>	<u>Particulars</u>	<u>Galaxy's SLI-80</u>	<u>SCI/SLI emerged <i>in situ</i> at Unilever Mannheim</u>	<u>Remarks</u>
<u>1.</u>	Ingredients	A Sodium Isethionate (SI) B. Zinc Oxide (ZnO) C. Laurie Acid C12 D. Fatty Acid C8, C10	A: Sodium Isethionate (SI) B: Zinc Oxide (ZnO) C: Stearic Acid D: Distilled Coconut Fatty Acid (C8-C18)	Significant difference in the input raw materials in C & D
<u>2.</u>	<u>Manufacturing process</u>	<u>As per the process flow diagram</u>	<u>As per the process flow diagram</u>	<u>Process differ based on input raw materials & intermediate reactions and chemical processes</u>

3.	Fatty Acid content [Carbon chain]	C8: 2.15% C10: 1.97% C12: 95.75% Balance - refer analysis report	C8: 2.7% C10: 4.13% C12: 37.12% C14: 11.49% C16: 26.12% C18: 18.1% Balance - refer analysis report	Results are shown in Lemnos report
4.	Purity level	80% (as declared by Galaxy)	Exact purity of the material is not known as it is only an intermediate material	
5.	Form of the product	Solid needles/Flakes	No specific form can be ascribed as it is a reaction intermediate	Significant difference in form
6.	Major difference in technical and chemical characteristics	Both materials differ in carbon chain as well as their finished form as explained in point 1, 2, 3 & 5		
7.	Quantity exported by Galaxy to Unilever Buxtehude	400 MTs/annum	Nil	When the SLI-80 export is only 400 MTs/annum by Galaxy it is absolutely impossible to manufacture One Lac tonnes of CSI that too supplied only to India by Unilever Manheim. Hence, it is conclusively proved that SLI-80 never ever used in the manufacture of CSI
8.	Quantity imported from Unilever Mannheim Germany	Nil;	100000 MTs	
*Data source: DRI report dated June 2017				

The above chart clearly shows that SLI – 80 is altogether different product having different use. Hence being not at all comparable/similar or identical goods there is no ground to make the export value of SLI- 80 as basis to reject the declared value of CSI. We find that the appellant since very long was declaring the goods on the basis of transfer pricing and such method is accepted valuation method under all financial and taxation laws in case where the goods are bought from related person, only in a particular case where there is any doubt that such transfer pricing can be rejected. However in the present case we find that there is no such reason or place of doubt.

4.2 Even otherwise also we find that the revenue has adopted very strange method of valuation i.e the revenue considered that CSI comprises of 51% of Sodium CocoylIsethionate (also called as SLI) and 49% of other substances. It considered Galaxy's SLI – 80 price converted it to 100% and adopted 49% of the value as declared by Unilever – Mannehim and arrived at assessable value. This was done inspite of the Appellant's contention that M/s Unilever – Mannehim the supplier never used SLI – 80 in the manufacture of CSI, that it cannot be used for manufacture of Soild bar because of its different carbon chain and hence the price of SLI – 80 is totally irrelevant for arriving at assessable value. Further when the appellant furnished technical evidence certified from experts and offered them for cross examination and also requested for cross examination of deponents and officials of Galaxy, the same was never considered. In such case the procedure and methodology adopted by the revenue is wholly incorrect. The SVB also ignored earlier orders of SVB for the imports made during years 2004 and 2005 and loaded 153% to the declared value. The procedure adopted for arriving at assessable value is nowhere to be found in Customs Valuation Rules. The Appellant has been consistently since last 15 years declaring the value of imported material bases upon cost of raw material, manufacturing cost and margin of profit/ mark up. These prices were revised every quarter depending on the change in cost of raw materials or cost of manufacture/mark up and the value was always found to be correct. The description in Bills of Entry was based upon the export invoices, Bill of Lading, Country of origin certificate, transfer pricing certificates and none of them was found to be doubtful. No new evidence was unearthed by the revenue which can doubt or dispel the genuineness of above documents. It is to be considered that the Customs Valuation Rules 4 to 9 during the relevant period read as under :

“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.

RULE 6. Determination of value where value can not be determined under rules 3, 4 and 5. — If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8 :

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

RULE 7. *Deductive value. — (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -*

(1) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India,

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

RULE 8. *Computed value. — Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of :-*

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

RULE 9. Residual method. — (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India :

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of :-

- i. the selling price in India of the goods produced in India;
- ii. a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- iii. the price of the goods on the domestic market of the country of exportation;
- iv. the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- v. the price of the goods for the export to a country other than India;
- vi. minimum customs values; or
- vii. arbitrary or fictitious values.”

4.3 However we find that none of the above valuation rules was resorted to while rejecting the declared price. No comparable goods, quantity, same country for contemporaneous imports were brought on record. Even as per explanation to Rule 9 of the Customs Valuation Rules itself discards the price of the goods exported to a country other than India hence any arbitrary value adopted by the revenue in this case is absolutely illegal. In such case transaction value mentioned in Bill of Entry cannot be discarded as held by the Hon’ble Apex Court in case of Century Metal Recycling P. Ltd. 2019 (367) ELT 3 (SC), Sanjivni Non- Ferrous Trading – 2019 (365) ELT 3 (SC) and South India Television (P) Ltd. 2007 (214) ELT 3 (SC). We find that the method of valuation to enhance the value of the product in question i.e Chips of Sodium Isethionate (CSI) is wholly erroneous and has no basis and hence is not sustainable.

4.4 We also find that no conduct or intent of the Appellant is found to be malafide as they submitted all the information and also the information required during assessment. Hence the demand raised for the period

26.11.2013 to 04.08.2015 covered under 106 Bill of Entry out of 886 are barred by limitation and considered to be assessed finally. The goods were not found to be different than declared and the value was based on transfer pricing and hence provisions of Section 111 (m) is also not applicable. The remaining BEs were cleared by the customs after verification and scrutiny of goods and import documents and hence the same also do not come under the purview of Section 111 (m). Looking to the facts that the Appellant has rightly declared the goods and undervaluation is not sustainable, the duty demand is not sustainable taking support of the cases of Densons Pultretaknik 2003 (155) ELT 211 (SC), Lewek Altair Shipping Pvt. Ltd. 2019 (366) ELT 318 (T) as upheld by the Apex Court reported in 2019 (367) ELT A – 328 (SC), Mittal International 2018 (359) ELT 527 (TRI), Indabrador Ltd. 2000 (118) ELT 649 (T). For the same reason we do not find any reason to impose penalty on any of the Appellants.

5. We thus set aside the impugned order and allow the appeals with consequential reliefs.

(Pronounced in the open court on 02.05.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)