

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

REGIONAL BENCH- COURT NO.3

CUSTOMS Appeal No. 11758 of 2017-DB

[Arising out of Order-in-Original/Appeal No MUN-CUSTOM-000-APP-099-100-17-18 dated 04.07.2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Italik Metalware Pvt Ltd

G-212-215, Lodhika Gidc, Kalawad Road, Metoda,
Rajkot
Gujarat-360021

...Appellant

VERSUS

C.C.-Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch
Gujarat-370421

...Respondent

WITH

- i. **Customs Appeal No. 11759 of 2017 (Italik Metalware Pvt Ltd)**
- ii. **Customs Appeal No. 11760 of 2017 (Italik Metalware Pvt Ltd)**
- iii. **Customs Appeal No. 12127 of 2016 (Italik Metalware Pvt Ltd)**
- iv. **Customs Appeal No. 12128 of 2016 (Italik Metalware Pvt Ltd)**
- v. **Customs Appeal No. 11097 of 2018 (Italik Metalware Pvt Ltd)**

APPEARANCE:

Sh. Anil Gidwani, Advocate for the Appellant

Sh. Himanshu P Shrimali, Superintendent (Authorized representative) for the Respondent

**CORAM: HON'BLE MEMBER (TECHNICAL), RAJU
HON'BLE MEMBER (JUDICIAL) ,SOMESH ARORA**

Final Order No. A/ 11464-11469 /2023

DATE OF HEARING:07.07.2023

DATE OF DECISION:07.07.2023

SOMESH ARORA

The Learned Advocate for the appellant submits that the case pertains to rejection of transaction value on the basis of certain NIDB data

and resort having been taken to Rule 12 of Customs Valuation Rule, 2007 by the department to decide the issue. His submission was that there was no reason at all and simply the higher value was resorted in relation to bill of entry only, while doing assessment. The department was given an opportunity to indicate on what basis the rejection of the transaction value was done and whether any SCN was issued after seeking documents or information from the importer while rejecting the transaction value by department under proviso and explanation to Rule 12. We have received communication through AR from the department indicating from Commissionerate, that the matter being very old and records untraceable, they can only state on the basis of order-in-original that waiver of SCN and personal hearing in the case to issue speaking order and decide the case on merit was passed. In nutshell, the department's contention is that appellant has waived the SCN.

2. The learned Advocate for the appellant relied on 2018 (359) ELT 262 (Tri-Del.), in the matter of Sarda Energy and Minerals Ltd Vs. Commr. C. EX, Raipur.

3. Learned AR reiterates the findings of the lower authorities.

4. Considered. We have gone through the judgment relied upon by the Learned Advocate, we find that para 6 deals with all that is required for implementation of provision of Rule 12 of Customs Valuation Rules, 2007.

The *Para 6* is reproduced below:

"6. In this connection, we have perused the provisions of Rule 12, which enables the rejection of declared assessable value. The said rules provide for proper officer seeking clarification from the importer to provide further information to satisfy the correctness of the declared assessable value. In the present case, the

appellants did submit the invoice, purchase order and supporting contract documents with reference to the impugned consignments. Nothing more is required with the importer to further substantiate the value. In such situation, it is for the assessing officer to discount the documents with valid reasons in order to reject the declared value and thereafter to proceed with the re-assessment, after due enhancement. Explanation (1)(i)(iii)(a) in Rule 12 appears to be applicable to the present case. In other words, the assessing officer having noticed higher value of contemporaneous import raised the doubt regarding the correctness of declared value. The legal provisions mentioned in the Explanation clearly stipulates that the contemporaneous value should be significantly higher for identical or similar goods at or about the same time, in a comparable commercial transaction. We find in the present case due examination about this crucial aspect has not been done by the assessing officer and comparison based on the contemporaneous import is not proper. Further, the contractual arrangements and invoices should not be rejected in the absence of any evidence to question their authenticity. As submitted by the appellants, NIBD data is a guidelines and an indicator for the assessing officer and it cannot be a substitute for assessable value. The assessable value for imported items has to be invariably arrived at applying Section 14 read with Customs Valuation Rules, 2007."

5. In short, the rule empowers proper officer to seek various invoices, in case the value is doubted by him. Such documents, *inter alia*, can be invoices, purchase order or any supporting contract and this depends upon whatever was duly given by the appellant. The decision also requires if such documents are available, then it is for the Assessing Officer to indicate as to why he is not convinced, despite such documents and given reasons for the same. We find that even if the waiver of SCN has been granted by the appellants in this case, still it was incumbent upon the authority passing the original order, to give its reason as to why the documentary evidence by way of invoice, packing list, Certificate of origin or whatever was available had to be rejected. We find that the reasons in

this case, are not available therefore, there is a breach of provision of Rule 12 of Customs Valuation Rules, 2007. In the instant case, the decision cited (supra), is therefore squarely applicable. We therefore agree with the appellant's submissions.

6. Accordingly, we allow the appeals. Appeals are allowed.

(Dictated & pronounced in the Court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)