

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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 11564 of 2018- DB

(Arising out of OIA-MUN-CUSTM-000-APP-460-17-18 dated 19/03/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Welspun Corp Ltd

Village-Jolva & Vadalda,
Nr. Dahej, Tal-Vagra,
Bharuch, Gujarat

.....Appellant

VERSUS

C.C.-Mundra

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

.....Respondent

APPEARANCE:

Shri, Vishal Agarwal & Ms. Dimple Gohil, Advocate appeared for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

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

Final Order No. 11569/2023

DATE OF HEARING: 23.06.2023
DATE OF DECISION: 24.07.2023

RAMESH NAIR

The brief facts of the case are that on carrying out weight of H.R. steel plates it was found that the physical weight is in excess to the weight mentioned in their import documents such as import invoices, Bill of lading etc. The case of the department is that the valuation of the goods should be enhanced to the extent there is excess weight as compared to the invoice weight of the goods accordingly, a demand of Rs. 4,37,481/- was confirmed on the excess undeclared 13.157 Metric tons of HR plates along with appropriate interest and the same was upheld by the Learned Commissioner (Appeals) therefore, the present appeal is filed by the appellant.

2. Ms. Dimple Gohil, Learned Counsel appearing on behalf of the appellant submits that the supplier at the time of billing calculate the theoretical weight of the goods on the basis of thickness, length and width of the HR steel plates and the billing was done on this basis. This is a universal practice in respect of similar type of goods globally traded.

2.1 She submits that it is obvious that when theoretical weight is taken and billing is made accordingly, the physical weight will always differ either lower side or higher side. However, the value of the goods is determined on the basis of the theoretical weight calculated on the basis of thickness, length and width of the HR steel plates, moreover there is no extra consideration even if a slight increase in the weight.

2.2 She submits that this issue is no longer res-Integra in the appellant's own case this Tribunal has decided the matter in their favour which is reported at Welspun Crops Ltd Vs. Commissioner of Customs Mundra 2019 (370) E.L.T. 874 (Tribunal Ahmedabad).

3. On the other hand Shri Ajay Kumar Samota, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perusal of records.

4.1 We find that there is no dispute that the weight of the HR steel plates is calculated on theoretical basis taking thickness, length and width of the HR steel plates and the supplier also issue invoices. Accordingly, there is no extra consideration if on this basis there is any increase in physical weight therefore, irrespective of minor difference in weight the value of the goods remain same. Therefore, in our opinion no value can be enhanced on the basis of the weight variation in the facts of the present case .This is an

international practice for calculating the weight of similar goods like HR steel plates in the present case. It is obvious that when a theoretical weight is taken by adopting a formula the same will never be matching exactly with the physical weight of the goods. Therefore, due to this minor increase or decrease in the weight valuation cannot be varied. The very same issue in the appellant's own case has been considered by this Tribunal, in the judgment cited above wherein the Tribunal has passed the following order:

"6. We have carefully considered the submissions made by both sides and perused the record, we find that the two primary issues that arise for our determination are whether :

(i) the department was right in demanding differential Customs duty by re-computing the assessable value in respect of the alleged un-declared excess weight to the tune of 2605.480 metric tones, in respect of the HR Plates imported by the appellant;

(ii) whether the alleged undeclared excess quantity of HR plates was liable to confiscation under Section 111(d), (j), (l), (m), (n), (o) of the Customs Act; and the appellant are liable to consequent penalties."

7. We are of the view that the demand for the differential duty is not sustainable both on facts and as well as in law. It is not in dispute that the transaction value as determined in terms of Section 14 of the Act, is required to be taken as the basis for computing the assessable value on which the duty is to be assessed. It is nobody's case that the importer has paid anything over and above the declared value for the goods in question. It is also nobody's case that any of the exceptions provided for in proviso to Rule 3(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are attracted to the facts of the instant case, thereby warranting rejection of the transaction value.

8. It is settled law laid down by the Hon'ble Apex Court in the case of Eicher Tractors Ltd. v. Commissioner of Customs reported in [2000 \(122\) E.L.T. 321](#) that it is only when the transaction value is liable to be rejected, based on the exceptions provided for in Rule 3(ii) of the erstwhile Customs Valuation Rules, 1988, could the assessable value be determined in terms of the valuation provisions. The relevant observations of the Apex Court are extracted for use of reference.

"13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined

under any of these provisions, the value is required to be determined under Rule 8 “using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India.” If the phrase ‘the transaction value’ used in Rule 4 were not limited to the particular transaction then the other Rules which refer to other transactions and data would become redundant.

14. It is only when the transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules.”

8.1 *The ratio laid down in the aforesaid judgment applies in all fours even under the amended Section 14 and the Customs Valuation Rules, 2007. Under the amended provisions the transaction value has been defined in Section 14 to mean the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. The transaction value so declared by an importer, is required to be adjusted in accordance with the provisions of Rule 10. The transaction value post its adjustment in terms of Rule 10 is required to be accepted as stipulated in Rule 3(2) subject to the exceptions provided for therein. It is nobody’s case that price is not the sole consideration or that any of the exception provided for in the proviso to Rule 3(2) are attracted, this being the case there is no basis for enhancing the value on an arbitrary basis without reference to the statutory provision of Section 14 and the provisions of the Valuation Rules, 2007.*

9. *In the instant case, we find that the adjudicating authority has not come to a conclusion that the transaction value as adjusted in accordance with the provisions of Rule 10, was incorrect or misdeclared and was required to be rejected and the assessable value re-computed under the Valuation Rules. The adjudicating authority has in a completely ad hoc and arbitrary manner, without any reference to any provisions of the law and as also without following the provisions of the Valuation Rules, which lay down a codified manner of re-computing the value, arrived at an assessable value which has no legal basis or sanctity. It is settled law laid down by the Apex Court in the case of CCE v. South India Television Pvt. Ltd. reported in [2007 \(214\) E.L.T. 3](#) that even if the declared value is to be rejected the department has to apply the Valuation Rules, sequentially and cannot arrive at the value in an arbitrary and ad hoc manner. The relevant observations of the Apex Court in this regard are extracted herein below for ease of reference.*

“8..... Lastly, it is important to note that in the above decision of this Court in Eicher Tractors (supra) this Court has held that the Department has to proceed sequentially under Rules 5, 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is. to be rejected under Rule 4. In the present case, the show cause notice indicates that the Department had invoked Rule 8 without complying with the earlier rules.”

9.1 *Even otherwise, the sole basis on which the Revenue has contended that the assessable value was to be enhanced and the matter taken up for adjudication, is the reliance on Public Notice No. 17/2010, dated 29-6-2010 and Public Notice No. 10, dated 17-6-2013. The impugned order has in Para 19.5, 19.6 and 19.12 placed*

reliance on the said Public Notice, the relevant extracts of which has been reproduced in the impugned order in Para 19.5, which reads as under :

“..... As per point 6(E) of the manual, if the deviation in the declared weight is not more than 1% or if the amount of duty involved on excess weight does not exceed Rs. 25/-, the declared weight may be accepted. As per point No. 10 of the said manual, when excess weight over prescribed allowance is noticed the weight and value of the consignment should be proportionately increased on the bill of entry and the license debited with the full rate or value so re-determined.

(iii) In view of the guidelines of the appraising manual, following practice will be followed in this Commissionerate.

(a) In all kinds of cargo, including scraps, no addition will be done upto 1% deviation in the actual height than the declared weight, but the value of excess goods will be loaded in the total assessable value and appropriate duties will be recovered.

(b) If the variation is above +/-1%, value will be loaded with adjudication with appropriate redemption fine and penalty.”

9.2 *It appears from the said Public Notices that the weight variation up to 1% is to be accepted and ignored irrespective of the nature and type of the commodity. We are unable to persuade ourselves to accept this proposition. In our view there cannot be a thumb rule in such cases. The extent of permissible variation between the declared and actual weight has to be with reference to the type of commodity qua which the said difference is being evaluated. For e.g. : a commodity like diamond, it would be impermissible to accept and ignore 1% difference between the declared and the actual weight. However for a commodity like HR steel plates, which is an over dimensional cargo having a length of approximately 12.5 metres and width of 3 to 4 metres and a surface area of above approximately 50 sq. metres, it is completely unreasonable and illogical to apply 1% as the acceptable difference between the declared and the actual weight. In coming to this conclusion we are guided by the Indian Standard specification 1852:1985 which provides the specification for rolling and cutting tolerance for hot rolled steel products.*

9.3 *The said standard in clause 1.1 while explaining the scope thereof states that the said standard lays down rolling and cutting tolerance for hot rolled structural steel, beams, channels, equal and unequal leg angles, Tee bars, bulb angles, round and square bars, flats, plates, strips and sheets rolled from structural steels including medium and high strength steel. Pvarart 7 of the said standard deals with rolling and cutting tolerance for plates. Clause 7.1 stipulates the tolerance with respect to the width of the plates; Clause 7.2 provides for the tolerance with respect to the length of the plates; Clause 7.3 provides for the tolerance with respect to the thickness of the plates. Clause 7.4 provides for the tolerance with respect to the weight of the plates and reads as under :*

“7.4 The consignment weight shall not vary from the theoretical weight specified in table 3 of IS:1730 (Part 1)-1974 by more than +5%/-2.5%”.

9.4 *It is an admitted fact that the theoretical weight is to be arrived at by taking the density of steel at 7.85 g/cm³. In other words the theoretical weight of the steel plates is to be computed by multiplying its volume (length × breadth × width) with its density. The said formula has been prescribed in Indian Standards*

specification 1730:1989 for steel plates, sheets, strips and flats for structural and general engineering purposes. The said formula also finds reference in Japanese Industrial Standards (G3193, Iron and Steel Handbook for ferrous materials and metallurgy issued by the Japanese Standard Association).

9.5 It is not in dispute that the contracts that the appellant had entered into with its overseas supplier provided for invoicing based on the theoretical weight basis of 7.85 kgs/m^3 . A copy of one such purchase order has been annexed at page 130 of the appeal memorandum. The supplier's invoice, Mill Test Certificate as also the bill of lading which are at pages 183, 184 and 185, have all arrived at the weight on the said theoretical basis by multiplying the volume (length $\times$ breadth $\times$ width) into density i.e. 7.85.

9.6 The weight of the consignment covered by the two notices in dispute is 72919.113 metric tonnes, which has been declared in the theoretical basis as envisaged in the supply contract as also in the Indian Standard specifications and the Japanese Standards specification. As against this, the alleged excess quantity arrived at on a physical weighment basis, is 2605.480 metric tonnes. In percentage terms the difference works out to 3.57% over the declared weight which is well within the prescribed standard variation of $+5\%/-2.5\%$ envisaged in the Indian Standard specifications.

10. In our view, undisputedly, when steel plates are globally traded based on their theoretical weight as has been contended by the appellant, which also appears to be the position as is evident from the Indian Standard specification as also the Japanese Standard specification, we feel that the weight tolerance envisaged in the trade notice referred to by the respondent in the impugned order qua such steel plates has to be taken at $+5\%/-2.5\%$ and not at 1% as has been adopted by the respondent. It is only in a case where the difference between the declared weight and the actual weight exceeds the tolerance limits prescribed in the Indian Standards specification can the matter be taken up for adjudication for examining whether any fine is leviable or penalty is imposable.

11. In the facts of the present case it is not in dispute that the difference between the theoretical weight that has been declared on the bill of entry vis-a-vis the weight that has been physically computed worked out to 3.57% and is well within the 5% tolerance provided for, in the Indian Standard specifications.

12. We also take note and find merit in the appellant's grievance to the effect that the manner of computing the physical weight was not the most scientific one inasmuch as the physical weight was arrived at by first arriving at the tare weight of the truck trailer and thereafter arriving at the weight of the truck trailer with the steel plates loaded on it. It is common knowledge that in addition to the weigh scale calibration error, the direction in which the vehicle is parked on the weigh scale, the breeze factor, the extent of fuel present in the vehicle, etc. can all play a role in causing a weight variation. In our view more scientific method could have been by placing the steel plates directly on the weigh scale and arriving at its weight, or verifying the length, breadth and width of the plates i.e. its volume and also verifying whether the density was 7.85 gm/cm^3 as has been mandated in the standards. If there was a difference either in the volume or the density it could have resulted in variation from the declared weight. In any case as long as the variation is within the permissible limits prescribed in the relevant standards the same cannot result in any customs proceedings for alleged misdeclaration of particulars.

13. We further find that the allegation of suppression arrived at by the respondent in Para 19.21 of the impugned order, on the premise that the difference between the declared and the actual weight being more than 1% would not have come to the notice had physical weighment had not been done, is completely untenable. We find that the documents filed along with the bill of entry such as the packing list, mill test certificate clearly state that the weight declared was a theoretical one. It is beyond our comprehension as to how suppression can be alleged when the importer has categorically declared that the

weight declared in the import documents is on a theoretical basis. Besides, as the alleged variation is within the permissible limits prescribed in the Indian Standards specification and there is no dispute as to the correctness of the transaction value, there was no cause for initiation of any adjudication proceedings either for enhancement of value and/or imposition of fine and penalty.

14. *We accordingly set aside the impugned order and allow the appeal with consequential reliefs if any, in accordance with the law.”*

5. In view of our above discussion and finding coupled with the judgment in the appellant’s own case cited (supra), the demand in the present case is not sustainable. Hence, the impugned order is set aside appeal is allowed.

(Pronounced in the open court on 24.07.2023)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**C.L.MAHAR
MEMBER (TECHNICAL)**