

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

REGIONAL BENCH- COURT NO.1

Customs Appeal No.11767 Of 2014

(Arising out of OIA-64-66/2014/CUS/COMMR-A-/AHD dated 29/01/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

C.C.-Ahmedabad

.....Appellant

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

Shree Electro Polytex

.....Respondent

301, Ashwamegh Complex,
Near Mithakhali Under Bridge, Navrangpura,
Ahmedabad, Gujarat

WITH

Customs Appeal No.11768 of 2014

(Arising out of OIA-64-66/2014/CUS/COMMR-A-/AHD dated 29/01/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

C.C.-Ahmedabad

.....Appellant

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

Virenbhai Chinubhai Modi

.....Respondent

Partner Of M/S, Shree Electro Polytex, 301,
Ashwamegh Complex,
Near Mithakhali Under Bridge,
Navrangpura, Ahmedabad
Gujarat

AND

Customs Appeal No.11769 of 2014

(Arising out of OIA-64-66/2014/CUS/COMMR-A-/AHD dated 29/01/2014 passed by Commissioner of CUSTOMS-AHMEDABAD)

C.C.-Ahmedabad

.....Appellant

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

VERSUS

Ketan Sheth

.....Respondent

Partner Of M/S, Shree Electro Polytex, 301,
Ashwamegh Complex,
Near Mithakhali Under Bridge,
Navrangpura, Ahmedabad
Gujarat

APPEARANCE:

Sh Himanshu P Shrimlai, Superintendent (Authorized representative) for the Appellant

Sh. S J Vyas, Advocate for the Respondent

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

Final Order No. A/ 11692-11694 /2023

DATE OF HEARING: 10.08.2023

DATE OF DECISION: 14.08.2023

SOMESH ARORA

These appeals by the Department have been filed against order of Commissioner (Appeals) relating to issue of valuation of goods. He upheld the value declared by the three Respondents and reversed the order of adjudicating authority through his order. The relevant portion of findings of the Commissioner (Appeals) are as follows:

"6.7 As per the said rule 9, under residual method, the value is required to be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. The adjudicating authority has not put on record where any such data for the contemporaneous import goods was available on otherwise to determine the value of the impugned goods in such circumstances. This aspect has been observed earlier in this order. It is evident that the said residual method further provides 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. There has not been any attempt to look at any contemporaneous import as per record placed before me. I have also examined sub-rule [2], which provides for certain basis which are not to be applied under the provisions of rule 9 for determination of value. Having specific analysis of clauses (el) and (v) of sub-rule 2 of Rule 9. I find that though there is no specific exclusion for price of goods for export to India', the settled legal position, as discussed, supra, is unambiguous to hold that export value of another country cannot be adopted as direct basis for determination of value under residual method. I find from the records that the adjudicating authority has directly and hastily relied on the quotations as found from the personal computer or laptop to

determine the value of the impugned goods and thus rejected the declared value and re-determined the value on the basis of the same evidences which cannot be countenanced. Ideally, he should have inquired into contemporaneous import of identical or similar goods, which. I find, has not been attempted, In light of the discussions hereinabove. I hold that determination of valuation on basis of the type of evidences placed on record cannot be sustained and therefore the quoted value as well as value declared to Hong Kong Customs by the supplier cannot be used to reject and redetermine value under CVR, 1988 as well as CVR 2007 in the circumstances any evidence of flow back of the transactions, could have fortified case of respondent, but the same is not available. Hence the declared value cannot be rejected and thus the same will have to be accepted. In view of the discussions made, supra. Hold that the adjudicating authority has erred in rejecting and then enhancing the transaction value on the basis of Caveat Free documents and copy of offer letter / proforma invoice extracted from the laptop/personal computer of the appellants.

7. Having held that the declared values in respective assessment are required to be accepted. I hold that the allegation and decision regarding undervaluation has crumbled and so has, as an obvious corollary, the decisions adjudging actions under section 11 of the Customs Act 1962. Further consequence that follows is that since there is no case for misdeclaration and confiscation: no penalty is imposable under section 112 and section 114A of the Act on appellant No. 1. From the above, it further follows that the penalties imposed on the appellant No. 2 and 3 are also not sustainable and are liable to be set aside. I am not delving into the other arguments of the appellants on the question of penalty.

8. Accordingly. I set aside the impugned orders and allow the three appeals, with consequential relief, if any."

(Emphasis supplied)

1.1 These appeals were taken up for hearing and it was found that the relevant SCN along with relied upon documents including correspondence with Hong Kong- Customs, on the basis of the department's case have not been placed on record. Accordingly, vide order sheet dated 29.05.2023 as well as order sheet dated 04.07.2023, following orders were passed:

- Order-sheet dated 29.05.2023:

"The matter was heard briefly. It is noticed that the show cause notice and relied upon documents specially the correspondence between the Customs, DRI and the Coin Officers posted in the Hong Kong, is not available. The revenue is directed to produce all these documents. The appeals may be listed on 4th July, 2023. A copy of the said documents may be provided to the learned Counsel of the Respondent in advance."

- Order-sheet dated 04.07.2023:

"On 29 May, 2023, a direction was issued to the department to provide certain documents. The documents have not been provided. Learned AR informs that despite their communication, no reply has been received.

2. We note that the Jurisdictional Commissioner is taking matters very lightly and not taking due care in dealing with these matters. We direct the Commissioner (AR) to pursue the matter with the Jurisdictional Commissioner. In case they are unable to provide these documents by 10 August, 2023, adverse conclusion will be drawn against the Department. Copy of the order may be sent to Chief Commissioner (AR) as well as Chief Commissioner of Customs."

In Response the office of AR produced following reply dated 09.08.2023,
which has been taken on record:



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद, "सीमा शुल्क भवन", पहली मंजिल,

पुराना हाई कोर्ट के सामने, नवरंगपुरा, अहमदाबाद -380 009.

दूरभाष : (079) 2754 4630 फैक्स : (079) 2754 2343 ई - मेल :

customsrraahmedabad@gmail.com

09-08-2023

To

The Superintendent(A.R)
CESTAT
Ahmedabad

Sub: Appeal No.C/11767-11768-11769/2014 in case of M/s Shree Electro polytex and others-m/r

Please refer to your letter F.No.C/11767—11768-11769/2014 dated 13.07.2023 on the above subject matter.

2. In this regard it is to inform that the subject file is not traceable by the field formation. As and when the the file is traced out, the documents will be submitted.
3. This is for information and necessary action at your end please.

[Signature]
8/8/23

RITA NAIR
SUPERINTENDENT

The Superintendent thus has only come forward with an open ended assurance for future on behalf of the department. Respondents too have expressed inability to the Bench.

2. We find that the rejection of value by the Adjudicating Authority, and also the basis of setting aside of the order-in-original by the Commissioner (Appeals), has neither been made available by the department nor was filed by the department. It is therefore, for the concerned administrative authorities to take remedial action to ensure that Show Cause Notice and R.U.D's are filed in departmental appeals. Even the grounds of appeal taken by the department indicate that they are relying upon inquiry report received from Hong Kong through the mutual assistance agreement from the department of justice

Hong Kong vide letter dated June, 18 2009, but still appeal has been filed without even providing the same alongwith other documents and copy of the SCN. And now at this stage same documents are untraceable.

2.1 We are perplexed to note that the appeal has been filed by the department after review and authorization by Committee of Commissioners, but even the basic documents like SCN and RUDs including the relevant correspondence has not been put on record. In the absence of such documents having not been made available by the department despite opportunities given, we are constrained to agree with the findings of Learned Commissioner (Appeals) and hold the same as correct based upon evidence on record. It pains us to note that documents which are obtained through international co-operation are so casually dealt with by the department in its own litigation. Copy of this order be sent to Member (legal) for taking up corrective administrative action in C.B.I.C formations, so that legal records are properly kept and handed over/taken over on transfers.

3. Impugned order and its findings are upheld and appeals of the department are rejected.

(Pronounced in the open court on 14.08.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK