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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 310 of 2012

[Arising Out Of OIO-10/COMMR/ICD-SABARMATI/DASHRATH/2012 Dated- 18/09/2012 Passed By Commissioner of CUSTOMS-AHMEDABAD]

Kiran Taxfab Pvt Ltd **.....Appellant**
315, Kamdhenu Market,
Near Fire Station, Panchkuwa,
AHMEDABAD, GUJARAT

VERSUS

C.C.-Ahmedabad **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH
CUSTOM Appeal No. 311 of 2012

[Arising Out Of OIO-10/COMMR/ICD-SABARMATI/DASHRATH/2012 Dated- 18/09/2012 Passed By Commissioner of CUSTOMS-AHMEDABAD]

Ramesh K Gidwani **.....Appellant**
Director Of Kiran Texfab Market, 315,
Kamdhenu Market, Near Fire Station, Panchkuwa,
Ahmedabad, Gujarat

VERSUS

C.C.-Ahmedabad **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. Nirav Shah, Advocate for the Appellant
Shri. Himanshu P Shrimali, Superintendent (AR) for the Respondent

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

FINAL ORDER NO.A / 10612-10613 /2024

DATE OF HEARING:28.02.2024
DATE OF DECISION:18.03.2024

SOMESH ARORA

The Appellant is a company incorporated under the Companies' Act carrying on business of trading in hot stamping foils. In their normal course of business, the Company sought to import the said product from China. The Appellants thus imported the following consignments of the quantity and value, as per table described below:-

S.No	Bill of Entry	Bill of Entry Date	Quantity	Value as Declared Per ton in US Dollar	Value as declared in Rupees
1.	2127128	25.7.2010	13.394	1050	672575.36
2.	2158103	5/8 /2010	13.500	1050	677898.11
3.	2183690	15/9 / 2010	13.550	1050	679072.09
4.	2377475	30/11/10	16.532	1050	787105 15
5.	2463584	21/12/10	13.394	1050	770935.57
6.	2559230	10/01/11	15394	1050	609320.88

2. The Appellants had imported first two cargos at ICD, Dashrath, Baroda. The said first and second consignments were supplied by M/s Zhejiang Yushi Packing Material Company Limited & M/s. Wenzhou City Huayi Laster Material Company Copies of commercial invoices of both these consignments were provided to the department. In both cases, the value of the cargo was USD 1050 per Metric Ton. As per the appellant, before the

import of aforesaid, the Director of the appellant-company had visited China and had met various manufacturers and had entered into negotiations with various parties. It is on the basis of such negotiations that took place that he entered into contract with the aforesaid two suppliers for supply of the said product. With the first party, an oral contract was entered into, for supply of 50 M. Tons at the aforesaid rate. With the second party, a written agreement was entered into for supply of 300 M. Tons to be supplied within one year, also at the same rate. It is in the course of supplies made by these parties that the first two consignments were imported.

3. A search was conducted at the appllant's premises on 15.09.2010. The director of the appellant Shri Ramesh Gidwani was called for interrogation on the next day i.e. 16/9/2010 at the office of DRI, Paldi, Ahmedabad. He remained present. The Director was again asked to come the next day i.e. 17/9/2010. He again remained present. Again on the 17th September, a statement was allegedly placed before him and his signature was sought on it. In the evening, he was given a summons to remain present before DRI, Surat. As per the appellant, the Director also remained present at Surat. The under valuation was accepted by the Director allegedly under coercion and a sum of Rs. 5.00 lakhs was also taken in his statement dated 13.10.2010. The appellant after his statement dated 13.10.2010 was recorded filed a sworn Affidavit dated 18th October 2010 which was sent to the DRI, Ahmedabad & Surat retracting various parts of the statement.

4. The Appellants also filed a writ petition being Special Civil Application No. 5168 of 2011 with the Hon. Gujarat High Court. Again, in light of the onerous order being passed for release of seized goods, the Appellants preferred appeals before the honourable CESTAT against the order of provisional release. These appeals were withdrawn as there was a issue with regard to maintainability of an appeal against provisional release. On 19/10/2010 a rebuttal letter to the affidavit was addressed by DRI. This was again replied by the Appellants by their letter dated 20/10/2010. While this investigation was going on, the other three consignments landed. The Appellants again filed bill of entries, as per their value. All these three consignments were also placed under detention and then seizure.

5. During the course of investigation, at the premises of appellant, the departmental officers had also found documents pertaining to import of polyester knitted fabrics. The department has also made out a case that the polyester knitting fabrics was also cleared by under valuing at the time of imports. Hence, duty was also sought to be recovered pertaining to under valuation of polyester knitted fabrics vide show cause notice dated 14/9/2010. In light of the aforesaid facts of the case, the appellant replied to the show cause notice in details to the Commissioner. As per the appellant, without considering any of the aspects of the matter, the learned Commissioner confirmed the allegations pertaining to under valuation of goods vide his order which is impugned herein and by which party is aggrieved.

6. The main plank of the appellant's submission is that the initial inculpatory statement (which is main basis of department's case) of Mr. Rameshbhai, director of the company was taken under duress. On record has been placed some medical evidence to support the coercion aspect. The statement was recorded on 13.10.2010 and rejection of the same by affidavit was done by the appellant on 18.10.2010 rebutting that statement having been taken under coercion was not fit for reliance. Same was rebutted by DRI vide its rebuttal letter dated 19.10.2010. Again appellant rebutted, the letter of DRI vide its letter dated October 22, 2010. The rebuttal of the party being to the effect that the statement on 13.10.2010 was taken under coercion when department had failed to get the statement desired by it. It also denied that the so called evidence recovered from their computer by the DRI had anything to do with the valuation of imported goods or that any additional consideration was ever sent by them. It also referred to man handling by the DRI officials. There is also reference to director being under treatment even in the rebuttal letter dated 22.10.2010. As per the appellants, after they were put under pressure while recording their statement, they approached Hon'ble High Court of Gujarat in special civil application. Same was decided on 12.05.2010 in which the Hon'ble Gujarat High Court permitted presence of advocate as and when interrogation is sought by the revenue authorities. The advocate was directed to remain within sight but not within hearing range. The Hon'ble High Court however, had not commented on the allegation of the petitioner

regarding coercion. It was appellant's case that whatever statements were recorded after the direction of Hon'ble High Court were clearly explaining their position and were not culpatory like their retracted statement of 13.10.2010. That both for fabrics as well as stamping foils which are the impugned goods, there was no under valuation and the proforma invoices stated to have been recovered from the computer of the appellants was in relation to 'A' grade stamping foils whereas the actual invoice was in relation to 'B' & 'C' grade of goods, which had in fact come and therefore proforma invoice in any case has no relevance to the goods imported and prices eventually negotiated by them. Regarding the textiles stated to be undervalued, it was submitted that the same were cleared only after satisfaction by the proper officer and they had submitted NIDB data in their support which were not considered properly by the lower authorities. Appellants also pleaded that the department had drawn samples of goods i.e. stamping foils and even on testing had found them to be 'B' & 'C' grade only. Therefore, request for dropping of the proceedings was made as same was without merit and statement recorded was not voluntary and the goods imported were as per transaction value, which was proper and justified by the contemporaneous invoices. In case of stamping foils, goods were clearly of different grade. Appellants also took various grounds regarding seizure and seizing process of documents being improper including resumption of documents from computer not being in accordance with law. They also pointed out that the proforma invoice of the foreign supplier had no relevance to their grade of stamping foils and even the unit of measurement in the quotation was on metre basis, whereas their value was on kg basis and there was no under valuation involved. Regarding scribling at the back of proforma invoice the appellant submitted that as mentioned in the statement, director had no knowledge and could not assign meaning to them. Regarding the evidence that insurance cover taken for CIF value for Bill of Entry No. 2158103 dated 30th August, 2010 was on the higher side. They submitted that 205 cartus were actually imported, however, the insurance policy relied upon by the Commissioner was in relation to 235 cartage and that Bills Of Lading was also not matching. They had produced 240 Bills of Entry assessed at or around same prices. However, Commissioner still held that identical goods are not available while applying valuation rules.

7. Learned AR on the other hand, relied upon Order-In-Original to state that statements were not recorded under duress and were corrected and retraction was delayed and not maintainable and that the adjudicating authority has correctly evaluated the whole evidenced. In rejoinder, appellant supported their submissions by case relied upon as follows:-

- 2007 (214) ELT 3 (SC)-COMMISSIONER OF CUSTOMS. CALCUTTA VS. SOUTH INDIA TELEVISION (P) LTD.
- 2019 (365) ELT 3 (SC)-C.C.E. & S.T., NOIDA VS. SANJIVANI NON-FERROUS TRADING PVT. LTD.
- 2018 (360) ELT A192 (Tri-Mum.) affirmed by SC reported at 2020 (371) ELT A249 (SC)
- 2021 (378) ELT 193 (Tri.-Del.) affirmed by SC reported at (2023) 3 Centax 195 (SC)

- 2016 (336) ELT 97 (Tri.-Mum.)-TELE BRANDS (INDA) PVT. LTD. VS. COMMISSIONER OF CUS. (INPORT), MUMBAI
- 2021 (378) ELT 155 (Tri.-Ahmd.)-AGARWAL METALS & ALLOYS VS. COMMISSIONER OF CUSTOMS, KANDLA
- (2023) 2 Centax 44 (Tri.-Ahmd)-NPT PAPERS PVT. LTD. VS. COMMISSSIONER OF CUSTOMS, MUNDRA
- 2018 (363) ELT 539 (Tri.-Chan.)-SARASWATI KNITWEARS PVT. LTD. VS. COMMISSIONER OF CUSTOMS, AMRITSAR
- 2016 (337) ELT 232 (Tri.-Chennai)-NATIONAL FRUITS AGENCY VS. COMMISSIONER OF CUS, (EXPORTS), CHENNAI
- 2016 (344) ELT 436 (Tri.-Mum.)- S.K. DHAWAN VS. COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI.

7.1 We have considered the rival submissions. It is seen that the department's case is based primarily on the evidence of retrieval of data from the hard disk seized from the premises of the appellant firm i.e. M/s. Kiran Texfab Pvt LTD (KTPL) under Panchanama dated 15.09.2010. Statements of Ramesh K Gidwani Director of M/s. Kiran Texfab Pvt LTD were also recorded on 13.10.2010 and thereafter on various other dates. In which, it was inter alia, initially agreed that the actual prices were as indicated in the resume files containing various pages. The impugned goods in the instant case were stamping foils imported during the August, 2010 of January, 2011 and in six consignments and polyester knitted fabrics in five consignments imported during the period June, 2010 of October, 2010 from China but intercepted by the department on 15.09.2010. It is stated that various import documents viz. Proforma invoices, Commercial invoices, packing lists of the shipping supplier firms justified their value. On the other hand, department has based its case on proforma invoice. This along with first admission statement of Shri. Ramesh K Gidwani of under valuation was the basis of the case made by the department. On the other hand, the appellant has indicated that statement relied upon by the department dated 13.10.2010 was recorded under duress or under coercion or undue influence. The director Shri. Ramesh K Gidwani could not have agreed to the proforma invoice being the actual price without pressure. As the proforma invoice was related to 'A' grade of goods whereas can be evidence of invoice, the goods were of 'B' and 'C' grade. Therefore, the testimonial evidence relied upon by the department does not merit any consideration, as the same was also retracted by them by way of an affidavit to AD, DRI mentioning the facts of coercion having been exercise while recording their statement on 13.10.2010. The date of such retraction was 19.10.2010 and thereafter, they were being consistently summoned even after their retraction to the office in Surat. That the appellant even took the recourse to intervention by Hon'ble High Court of Gujarat which permitted the recording of statement in presence of advocate in sought distance not hearable evidence. It was submitted by the appellant that the statement recorded thereafter were all ex-inculpatory, thus casting severe doubts on the authenticity of statement dated 13.10.2010. It was submitted by the appellant that attending circumstances have to be seen while examining any statement even under Section 108 and also there has to examination of the statement by the adjudicating authority and then cross of every statement recorded under Section 108, before relying upon the same. That they had also produced medical evidence of various injuries having been treated while making rebuttal of letter of investigating officer in response of their retraction. That the overall circumstances indicated that the statement was recorded under duress and inculpatory portion of statement dated 13.10.2010 deserved to be rejected. That proforma invoice cannot be equated with the real invoice and that there was a mismatch in description in relation to the grade of goods and the goods were 'B' & 'C' grade invoice whereas the same were A grade in the proforma invoice stated to have been recovered. It was specifically emphasized that the department had drawn samples of the impugned goods i.e. stamping foils and same did not indicate that the grade of the invoice goods was not 'B' & 'C'. It was also mentioned that in relation to polyester knitted fabrics, the price have been similarly treated as undervalued without any evidence and despite evidence to the contrary of goods having been cleared at the same price by the department. The rejection of valuation has not been done, as per Valuation Rules and proforma invoice could not be made as the basis for rejection of value. Even there were doubts about the statement recorded and also proforma invoice was for different grade.

8. Further the appellant vide their letter dated 11.03.2024 made following submissions:

8.1 It was submitted during the course of hearing that the Panchnama, which was drawn at the time of visit on 15.09.2010, itself raises suspicion.

The Pancha Witness, it appears, was changed at the last moment and correction is done after taking printout of Panchnama Proceedings from the Computer. This raises serious doubt whether the Pancha Witness was available during the entire Panchnama proceedings or had come at the last moment just to sign Panchnama. Hence, the search itself is vitiated by the alteration and amendments made in panchnama.

8.2 It was also submitted that during the panchnama proceedings, printouts were taken from the computer of present appellants. The same were kept in made up file and the documents were serially numbered from Sr. No. 1 to 277. However, when show cause notice was issued, these documents bearing sr. no. 1 to 277 were not provided and only documents bearing odd numbers were given. The appellants had specifically demanded documents bearing even numbers. However, the same were not provided. It was submitted to the Ld. Adjudicating Authority that the documents bearing even numbers were in favour of the appellants and hence, the same are not provided. However, this submission is not considered by the Ld. Commissioner and demand is confirmed without providing relied upon documents. Hence, the order is passed in gross violation of principles of natural justice and hence, not sustainable.

8.3 It was also submitted that though the hard disk of the computer of the appellant was seized, statutory requirements to record details pertaining to year of manufacture of computer, model number, the exact location of premises where the computer was kept, were not recorded and most importantly the statement of the person who operated the computer was also not recorded. Hence, the data obtained from such computer is in violation to the provisions of Section 138C of the Customs Act and cannot relied upon as tangible evidence. In this regard, reliance is placed on order of the Hon'ble Tribunal in the case of M/s. Jeen Bhavani International Vs. CC Nhava Sheva - III reported at (2023) 6 Centax 11 (Tri.-Bom) (Para-9). The aforesaid view of the Hon'ble Tribunal is affirmed by the Hon'ble Supreme Court in judgement reported at (2023) 6 Centax 14 (SC) CC Nhava Sheva-Ill Vs. Jeen Bhavani International.

8.4 It was also submitted that the statement of the Director was firstly recorded on 20.09.2010 and second statement was recorded on 13.10.2010. The Director was badly beaten by the Officers on 13.10.2010 and his statement was recorded under threat of arrest, duress and pressure by the Departmental Officers. The Director Shri Ramesh had swelling in his left eye and fracture in nasal bone. The Director had undergone various treatments immediately from 14.10.2010 with reputed doctors and also in the Civil Hospital and had retracted the statement immediately on 18.10.2010. In such facts, the statement could not have been relied. However, the Ld. Commissioner has observed that the same is filed after a delay of five days and hence, the same is afterthought and such belated retraction cannot be considered.

8.5 In this regard, reliance is placed on order of the Hon'ble Tribunal in the case of M/s. Jeen Bhavani International Vs CC Nhava Sheva - III reported at

(2023) 6 Centax 11 (Tri.- Bom). In the aforesaid order, in para 14.1 it is observed that the statements were recorded on different dates in a span of 3 years. However, copies of the same were not furnished to the appellant immediately on completion of the summon proceeding. Upon receipt of the SCN dated 05.07.2007 together with RUD's, copies of statement were provided. The retraction was filed by letter dated 05.09.2019. It is observed by the Hon'ble Tribunal that such retraction is within the reasonable time and it cannot be said that there is inordinate delay in filing the retraction letter. Hence, the Hon'ble Tribunal has held that retraction, even if done after issuance of show cause notice, cannot be considered delayed or afterthought. The aforesaid view of the Hon'ble Tribunal is affirmed by the Hon'ble Supreme Court in judgement reported at (2023) 6 Centax 14 (SC) CC Nhava Sheva-Ill Vs. Jeen Bhavani International. The Hon'ble Supreme Court has dismissed Civil Appeal and has held in para 3 that they do not find any merit in these appeals and the same accordingly stand dismissed.

8.6 Reliance is also placed on order of the Hon'ble Tribunal in the case of M/s. Tele Brands (India) Pvt. Ltd. vs. CC Import, Mumbai reported at 2016 (336) E.L.T. 97 (Tri.-Mumbai) wherein in para 3.3 it is observed that statements dated 19.04.2006, 03.05.2006 and 29.06.2006 of Shri Prakashchandra Pandya were recorded, which were retracted vide letter dated 31.07.2006 (para-7). It is observed that such statements having been retracted cannot be considered as confessional statements and cannot be accepted as evidence. Relying on the aforesaid judgements, it is submitted that the retraction of the Director dated 18.10.2010 cannot be held as belated or afterthought and order confirming demand on the basis of statements without considering retraction is bad in law and requires to be quashed and set aside.

8.7 Reliance is also placed on order of the Hon'ble Tribunal in the case of M/s NPT Papers Pvt. Ltd. vs. CC Mundra reported at (2023) 2 Centax 44 (Tri. Ahmd). In the aforesaid order, in para 6.8, this Hon'ble Tribunal has held that once retraction is filed with the Adjudicating Authority, it was incumbent upon the authority to call the person for cross examination with regard to statement made by him. The Adjudicating Authority is first required to examine the person making statement and after conducting his examination-in-chief decide whether statement was voluntary or not and could be admitted as evidence. If this was not done, the statement cannot be relied. Hence also it is submitted that the order confirming demand on retracted statements is bad in law and requires to be quashed.

8.8 It was also submitted that the demand is confirmed on the basis of Proforma Invoices recovered from the computer of the appellants. It was submitted that the aforesaid Proforma Invoices are of A Grade Goods (Table at Page 282), however, the appellants had imported 'B' and 'C' grade goods. Hence, the Proformas cannot be relied for enhancing value of goods. It was also submitted that 4 consignments of goods imported after investigation were seized and samples were drawn vide Panchnama dated 08.10.2010, 22.12.2010, 09.02.2011 and 11.02.2011. The same were sent for testing and analysis to the Central Excise and Customs Regional Laboratory, Vadodara and the report (Page No. 280 Para 8.6) obtained by the department confirmed that the samples have got characteristics of Hot Stamping Foil and does not dispute 'B' and 'C' grade declared by the appellants. Hence, it was submitted that the goods was admittedly of B & C grade and the Proforma invoices of A Grade goods cannot be considered for enhancement of value.

9. Non consideration of contemporaneous import data

9.1 It was submitted that the appellants had produced voluminous data pertaining to contemporaneous import of Hot Stamping Foil as well as Polyester Knitted Fabric at or around same price during the period of import. However, the same was not considered and the value is enhanced solely on the basis of Proforma Invoices for A grade goods. It is consistently held by Hon'ble Apex Court as well as Hon'ble Tribunal that the charge of under invoicing has to be supported by evidence of prices of contemporaneous import of like goods. It is for the department to prove that the declared value is not the real. Before rejecting the import price, the department has to give cogent reasons for such rejection. Before rejecting the transaction value, the department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time, Unless the evidence is gathered, in that regard, the question of importing section-14 (1A) does not arise, In the absence of such evidence, invoice price has to be accepted as the transaction value. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. It is submitted that in the present case, no evidence is produced showing contemporaneous import at higher price. On the contrary, the appellants have provided contemporaneous imports data of other importers and also supply details from the same supplier to other importer in India during the period of importation. The department has not rebutted aforesaid contemporaneous data. Hence, the demand confirmed without considering contemporaneous data is bad in law and requires to be quashed and set aside. For the purpose, reliance is placed on following judgements:

(i) CC Calcutta vs. South India Television Pvt. Ltd. reported at 2007 (214) E.L.T. 3 (S.C.)

(ii) CCE & ST Noida vs. Sanjivani Non-ferrous Trading Pvt. Ltd. reported at 2019 (365) E.L.T. 3 (SC)

(iii) Sarto Electro Equipments Pvt. Ltd. vs. Com. reported at 2018 (360) E.L.T. A192 (Tri. Mumbai) affirmed by Hon'ble Supreme Court reported at 2020 (371) E.L.T. A249 (S.C.)

(iv) H.S. Chadha vs. CC (Prev.), New Delhi reported at 2021 (378) E.L.T. 193 (Tri. Del.) affirmed by Hon'ble Supreme Court reported at 2023 (384) E.L.T. 129 (SC)

(v) Saraswati Knitwears Pvt. Ltd. vs. CC, Amritsar reported at 2018 (363) E.L.T. 539 (Tri. Chan.)

(vi) National Fruits Agency vs. CC (Exporters), Chennai reported at 2016 (337) E.L.T. 232 (Tri. Chennai).

In all these judgements, Hon'ble Supreme Court has consistently held that quotations/parallel invoices/ proforma invoices cannot be relied for enhancement of value and the department has to provide data pertaining to contemporaneous import for enhancement of value.

10. No proof of extra payment to foreign supplier

10.1 It was submitted that though the department had extensively investigated the matter and had also seized hard disk of the computer, they could not find any details of extra payment apart from invoice value. The Hon'ble Tribunal has consistently taken a view that undervaluation cannot be established unless remittance is proved. The statement of the Director was recorded on various dates and not a single question pertaining to remittance of extra amount was put to the Director. Thus, department has at all not given any evidence pertaining to extra payment. Hence, it is submitted that charge of undervaluation cannot be sustained in absence of proof pertaining to additional payment apart from invoice value. For the aforesaid proposition, reliance is placed on following orders:

(i) Tele Brands (India) Pvt. Ltd. vs. CC Import, Mumbai reported at 2016 (336) E.L.T. 97 (Tri. Mumbai)

(ii) NPT Papers Pvt. Ltd. vs. CC Mundra reported at (2023) 2 Centax 44 (Tri. Ahmd)

(iii) S.K. Dhavan vs. CC Import, Mumbai reported at 2016 (344) E.L.T. 436 (Tri. Mumbai)

11. The adjudicating authority has further relied upon insurance policy for enhancement of value. In this regard, it was submitted that the appellants have imported goods on CIF basis and they have no concern with the insurance policy being taken by the supplier. The supplier may have taken insurance of higher value for purpose best known to him. In this regard, reliance was placed on order of the Hon'ble Tribunal in the case of M/s. Agarwal Metal & Alloys vs. CC Kandla reported at 2021 (378) E.L.T. 155 (Tri. Ahmd) in para 11.7, it is held that insurance policies cannot be relied up for confirmation of demand.

Relying on aforesaid, it is submitted that order enhancing the value on the basis of proforma invoices is not sustainable and the adjudicating authority ought to have considered the contemporaneous import data pertaining to same goods during relevant period. Further, in absence of proof pertaining to extra payment to foreign supplier, the invoice value could not have been discarded. Hence, the order is bad in law and requires to be quashed and set aside.

12. On the basis of various submission of the appellant viz-a-viz contrarian of the AR, we find that in this case, burden of proof of undervaluation by evidence or information about comparable goods was on the department and same is not adequately discharged as indicated in the ratio of Commissioner of Customs, calcutta vs. South Indian television (P) Ltd., as reported in 2017 (214) ELT (3) (S.C.).

13. We have considered the overall circumstances in which the statement of director Shri. Ramesh K Gidwani was recorded and pattern of the same including the content of the initial statement which while indicating proforma invoice to be correct value did not mention the relevant grade of stamping foils also. The medical evidence about injuries and their treatments were mentioned while rebutting letters of the department in their retraction. We also find that though the Hon'ble High Court of Gujarat has not specifically dealt with the fact of coercion while granting relief of presence of advocate. The series of statements recorded thereafter of the directors are ex-culpatory. It is thus clear that they were serious doubts on record as to the nature of initial statement and the onus clearly shifted on the department to indicate that the initial statement dated 13.10.2010 was voluntary and same should have been subjected to examination-in-chief by the adjudicating authority, at least in the factual background of the matter before placing reliance on the same.

13.1 Considering all the aspects and facts of the matter, we find that when statement was retracted, the investigating officer instead of pronouncing his own version as to why the statement was voluntarily, should have instead of left this job to be done by the adjudicating authority while adjudicating the matter. Another opportunity before higher officer can be an apt course of action to follow in such situation. We therefore, find that initial statement dated 13.10.2010 could not have been relied upon without discharge of burden by the department of same being voluntary by examination of the entire statement of director by the adjudicating authority. Apart from above, we also find that there is no evidence on record of any excess payment having been made of excess remittance, and admission of the same. We also find that reliance on the decision OF H. S CHADHA VS. CC (PREV) NEW, DELHI, (cited supra) specially in Para 18 and 19 reproduced below is correct:-

> *"18. We also find that there is no mention regarding which rule of the Customs Valuation Rules, 2007 has been applied to arrive at the re-determined value and there is also no sequential application of Rules. We find that it is trite law that there has to be sequential application of rules to re-determine the value as has been held by the Hon'ble Apex Court in Eicher Tractors Pvt. Ltd. v. Commissioner of Customs Mumbai - 2000 (122) E.L.T. 321. Merely based on some emails, the transaction value cannot be disputed and negated without any cogent material.*
>
> *19. Further we find that no copy of the emails on which the Department seeks to rely has been made as RUDs. Emails and other electronic evidence cannot be relied upon to prove undervaluation in absence of compliance of provisions of Section 138C of the Act ibid as held by Anvar P.V. (supra) and S.N. Agrotech (supra). It is trite law that statements can be relied upon only if they are voluntary and true. It can be seen from above that all the statements of the Director Shri H.S. Chadha recorded on 16-7-2014, 25-8-2014, 24-9-2014, 26- 9-2014, 12-11-2014, are conflicting. There are many such instances in the statements of the appellants which have been brought to our notice by the Ld. Counsel but the Department has picked only those which support it while discarding those which support the appellant. Thus statements of Shri H.S. Chadha cannot be relied upon and given credence to substantiate the Department's claim of undervaluation without any corroborative evidence and the charge of undervaluation cannot be made out on mere assumptions and presumptions especially since he himself has stated on various occasions that there is no undervaluation and these are quotations. Tyres are regularly imported all over the country and therefore the Department could have easily garnered evidence of contemporaneous imports which it admittedly did not do. Otherwise also, Mr. Chadha has not been examined by the Adjudication Authority before placing reliance on his statements, which was mandatorily required to be observed in compliance of Section 139 of the Customs Act. It is also trite law that quotations cannot be the basis for re-determining the value of goods as held by Ld. CESTAT in Nava Durga Enterprises v. Commissioner of Customs (Sea Import) - 2013 (295) E.L.T. 277. Thus the allegation of undervaluation is not proved."*

From the above, it is clear that not only Customs Valuation Rules have to be sequentially followed but also that the electronic evidence can only be relied upon by the department as per provision of Section 138C which lays down various conditions in sub clause (2) about which there is no mention of the same having been followed.

13.2 We therefore hold that in the facts and circumstances of the matter enhancement of value as well as appreciation of evidence has been improperly done in the impugned order. Appellants are therefore entitled to relief prayed for.

14. The impugned order is therefore, set aside with consequential relief. Appeals allowed.

(Pronounced in the open Court on 18.03.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi