CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2

CUSTOM APPEAL NO. 12479 OF 2018-DB

(Arising out of OIA-AHD-CUSTM-000-APP-079-18-19 dated 23/07/2018 passed by Commissioner of Customs-Ahmedabad)

Paramount Clearing And Shipping Services ....**Appellant**
403, Aaron Residency, Nr. Gandhigram Rly. Station, Ashram Road,
Ahmedabad, Gujarat

Versus

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

WITH

CUSTOM APPEAL NO. 10173 OF 2019-DB

(Arising out of OIA-AHD-CUSTM-000-APP143-18-19 dated 18/10/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Ahmedabad)

Cosmos Water Solutions Pvt Ltd ....**Appellant**
207, Ashirwad Paras, Corporate Road,
Prahladnagar, Ahmedabad, Gujarat

Versus

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

Appearance:

Shri Hardik Modh, Advocate for the Appellant
Shri Rajesh K Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. 11479-11480/2024

DATE OF HEARING: **27/03/2024**
DATE OF DECISION: **02.07.2024**

RAMESH NAIR

The Brief facts of the case are that the appellant has imported engineering goods viz. 9000 Nos. spares of water filters-75 GPD water pumps by classifying it under Chapter Heading No. 84219900 of the Customs Tariff Act by declaring unit price @ US$ 5.50 per piece and 3000 Nos. spares for water filters TFC GPD Dry Membrane by classifying it under Chapter Heading No. 84219900 by declaring unit price US$ 5.00 per piece. The Appellant imported the above referred goods from M/s Shanghai Emate Industrial Co. Ltd., China under invoice No. CW 141227 dated 30.01.2015 and filed Bill of Entry No. 8622876 dated 17.03.2015. The Customs Authorities received a letter from Directorate of Revenue Intelligence, Central Zone Unit, Chennai that the importers of the goods indulged in evasion of customs duty by gross under-valuation and the customs officer examined consignment of the goods imported under Bill of Entry No. 8622876 dated 17.03.2015. On examination, it was reported that the goods as flora diaphragm RO pump, Model No. 8809, Voltas-24VCD, Work Processor - 70 PSI, Sectron Height 2M, Flora Membrane Reverse Osmosis etc. packed in cartons. Since the Invoices issued by the supplier declared general description of the goods, the Deputy Commissioner seized the imported goods which were allowed to clear it on provisional basis.

Based on the intelligence received from the Additional Director General about under-valuation of goods across India, the Preventive Wing of the Customs, Ahmedabad conducted the market survey of the said products from M/s. Lotus located at 21 Dharnidhar Apartment, 204 Nehru Park, Near SBI, Vastrapur, Ahmedabad and obtained price list showing the price of the Booster Pump - 75 GPD was of Rs. 730 per unit. Meanwhile, the Preventive Wing of Customs also received a letter dated 19.03.2015 from the supplier viz. Shanghai Emate Industries Co Ltd. clarifying that they manufactured the pump and the cost of this pump was approximately US$ 7 but having good relationship with the

Appellant for long time, they sold the said products at US$ 5.50 per piece to the Appellant. The Preventive Wing of Customs also obtained quotation from M/s Hi-Tech Sweet Water Technologies (Pvt) Ltd located at Surat, about the price of the RO Pump Hi-Tech 100 GPD. After detailed investigation and obtaining the details of import the investigation was culminated into issuance of the Show Cause Notice No. VIII/48-46/ICD-Khod/Cosmos/O&A/2015 dated 07-10-2015 whereby it was proposed to finalize the provisional assessment of Bill of Entry No. 8622876 dated 17.03.2015 by enhancing the value and it was also proposed to enhance the value of the imported goods in past. The show cause notice also proposed to deny benefit of Notification No. 12/2012- Cus dated 17.03.2012. Accordingly, the differential duty demand was proposed to be recovered. The adjudicating authority namely Additional Commissioner of Customs vide Order-in-Original No. 19/ADC/MSC/ICD/KHOD/O&A/2017 dt.15-11-2017 confirmed the charges levelled in the Show Cause Notice on the following grounds :-

(1) The appellant disclosed only general disclosure of the imported goods without mentioning description in detail as required for the imported goods.

(2) Relied upon the price as the issued by M/s. Lotus and M/s. Hi Tech Sweet Water Tech (P) Ltd., Surat and the letter issued by the M/s. Shen Zhen Feyian Water Treatment Tech Co. Ltd China for rejection of the goods imported by the appellant. Relied upon the letter dated 23.10.2014 issued by ADG Chennai for enhancement of the value of imported goods. The said Order-In-Original was challenged by filing an appeal before the learned Commissioner (Appeals) who vide the impugned order rejected the appeal of the appellant hence, the present appeals have been preferred by the appellants.

2. Shri Hardik Modh, learned Advocate appearing on behalf of the appellant submits that investigation of custom did not discharge its burden to prove that the appellant imported goods at lower price.

2.1. He submits that as per Rule 12 of Custom Valuation Rules proper officer can reject the value when he has reason to doubt the truth and accuracy of value in relation to the imported goods. The Investigating Authority and the Additional Commissioner did not discharge their burden to prove that the value declared by the Appellant was not correct and therefore, the impugned order is erroneous and contrary to the provisions of law.

2.2. He submits that Value declared by the Appellant cannot be enhanced merely on assumption and presumption basis. The lower authorities relied upon the price list and quotation of the domestic suppliers for rejection of value. In the absence of any tangible evidence to prove that the Appellant violated the provision of Section 14, declared value ought not to have been rejected on assumptions and presumptions basis as held in the following decisions:

a. Vijay Leather Stores Vs. C.C.- reported in 2007 (215) ELT 304 (T);

b. Adani Exports Ltd. Vs. C.C. reported in 1999(111) ELT 143)(T) maintained by the Hon'ble Supreme Court in 2004 (167) ELT 131 (SC)

2.3. He submits that Section 14 of the Customs Act deals with valuation of the imported goods, which provides that the value of imported goods should be transaction value of the goods. The appellant complied with all the conditions of Section 14. it is not the case of the lower authority that the price declared by them was not at the time and place of the importation as well as there was flow back of the money. In the absence of any such finding in the impugned order, value declared by the appellant ought to have been accepted as held in the following cases :-

a. Impex Steel 2 Bearing Co Vs. CC 2014 (302) ELT 464(T)

b. Deeplalit Enterprise P Ltd Vs CC 2024 (2) TMI 662 (T)

2.4. He further submits that on the basis of domestic market inquiry the value of the imported goods cannot be enhanced as held in the following Judgments:-

a. Commissioner Of Customs Vs. Khushi Time Impex Pvt Ltd -2017 (348) ELT 691 (T)

b. Apar Industries Ltd. Vs. Commissioner Of Customs – 2009 (246) ELT 340 (T)

c. Priti International Vs. Commissisioner Of Customs – 2001 (137) ELT 184

2.5. He also submits that the price list or quotation is not the final price as it is always open for negotiations. Merely price of the similar material of the imported goods are available in domestic market at higher price, it does not mean that the Appellant mis- declared the value of the imported goods.

2.6. He further submits that the sales price of the imported goods in the domestic market of the Appellant is a comparable price with the value of imported goods in dispute. It is the submission that sales made by the Appellant, they made a profit of approx. 10% to 15% of landing cost, depending upon various market exigencies. From the local sales price of products, as borne out by the sales to buyers of the Appellant, if all the expenses incurred post importation including sale profit are deducted, the CIF value declared by the Appellant at the time of the import of the goods in dispute can be arrived. He submits that the Working Sheet showing the value at which the said goods were sold to local buyers and the CIF value declared in Bills of Entry has already been enclosed with the Appeal as Annexure L.

2.7. He further submits that it is settled law that transaction value cannot be enhanced based on DRI alert on undervaluation of imported goods by overseas suppliers as held in the following cases:

a. Sedna Impex India Pvt Ltd - 2017 (347) ELT 317 (T); (Page No.39 to 40)

b. Dev Tek India Vs C.C - 2016 (338) ELT 331 (T); (Page No. 41 to 42)

c. C.C Vs Maruti Farics Impex 2016 (343) ELT 963 (T); (Page No. 43 to 44)

d. PNP Polytex Pvt Ltd Vs C.C 2015 (318) ELT 649; (Page No. 45 to 49)

2.8. He further submits that once the transaction value of the goods has been discarded, the determination of value was required to be done by sequentially following Rules 4 to 9 of the said Rules. Rule 4 of the said Rule mandates that the value of the 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. In this connection, it is submitted that the other importer imported identical goods as imported by the Appellant by many other importers across India. The Revenue has not challenged the valuation of other imports at all. The Ld. Commissioner (Appeals) erred in not considering data submitted by the Appellant through a copy of Compact Disc (CD) received from M/s. Info Drive. It provides the information about each of the quality of the pumps and membranes was being regularly imported into the country at or about the same prices at which the Appellant imported the same. As regards the penalty imposed under Section 114A and 114AA he submits that for the reasons set out hereinabove, the entire demand itself is unsustainable as there is no liability of customs duty. Hence, the demand for interest and penalty cannot be sustained. He placed reliance on the following Judgments :-

- CCE Vs. HMM Ltd. Reported in [1995 (76) ELT 497 (SC)] And Jindal Praxair Oxygen Co. Ltd Vs. CCE, Belgaum, 2007 (208) E.L.T. 181 (Tri.- Bang)

2.9. He submits that Section 114AA of the said Act was introduced through the Taxation Laws (Amendment) Act 2006 with effect from 13.07.2006. While introducing this provision, the Taxation Laws (Amendment) Bill 2005 introduced in Lok Sabha in 2005 was referred to the Committee on 13.05.2005 for examination and report thereon. The object for introduction of Section 114AA was to impose penalties on those persons who involved in paper transactions without actually movement of goods. The purpose of Introduction was to cover up transactions related to fraudulent exporter where exports were shown only on papers and not cross the Indian Territory.

2.10. As regards appeal of M/s. Paramount Clearing and Shipping Services Custom Appeal No. 12479 OF 2018, Learned Consultant on record Shri K J Kinariwala has submitted written submission dated 27.03.2024 which is taken on record.

3. Shri Rajesh K Agarwal, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the record. We find that entire case of under valuation was initiated on the basis of alert notice issued by DRI. The said notice was issued on the doubt that the similar goods were being imported by various importers across the country by resorting to the under valuation of the goods. However, merely on the basis of alert notice the value cannot be enhanced. Though the Department has adduced certain evidence such as marketing enquiry, correspondence with foreign supplier etc. However, the appellant by making application obtained various documents. We find that documents obtained under RTI are vital documents. However, the appellant was not put to notice with these documents in the show cause notice. The appellant have obtained these documents after the adjudication order was passed. It is also observed that the appellant have given Compact Disk (CD) giving the details of working of price between the domestic and imported goods. The appellant have also

provided the contemporary import data but both the lower authorities have not given any heed to the said vital documents. Therefore, the orders passed by both the lower authorities are in violation of principles of natural justice. In this circumstances we do not have option except to remand the matter to the Adjudicating Authority for examining and reconsidering over all case on the basis of various additional documents which were obtained under RTI by the appellant.

5. Accordingly, the impugned order is set aside. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on **02.07.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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