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

CUSTOM APPEAL NO. 10940 OF 2021-DB

(Arising out of OIA-JMN-CUSTM-000-APP-035-21-22 dated 27/07/2021 passed by Commissioner of Customs-Ahmedabad)

FERN EXIM LLP ....**Appellant**
403 Nasir Apts Muslim Society, Navrangpura
Ahmedabad, Gujarat

Versus

C.C.-JAMNAGAR(PREV) ......**Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati,
Jamnagar, Gujarat

Appearance:
Shri Vikas Mehta, Consultant for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 11520/2024

DATE OF HEARING: **24/06/2024**
DATE OF DECISION: **10.07.2024**

RAMESH NAIR

The appellant filed bill of entry No. 7185573 dated 12.07.2018 with Custom House, Pipavav for clearance of imported goods, viz. 15,024 bottles of Polyurethane Sealant by declaring the transaction value of USD 0.25 per bottle.

1.1. Clearance was held back for over a week and the appellant was compelled to tender one letter dated 26.07.2018 requesting for assessment @ USD 1.25 per though no contemporaneous import at the price so high was available with department. Goods were released after enhancement of value (by citing appellant's acceptance of value enhancement) and imposition of fine as well as penalty vide Order-In-Original dated 31.07.2018. Ld. Commissioner

(Appeals) remanded the matter with a direction to issue speaking order. In remand proceedings, Ld. Additional Commissioner passed the order on the same lines as earlier.

1.2. The appellant again filed appeal before Ld. Commissioner (Appeals), who, vide impugned order has rejected the appeal by relying on appellant's letter dated 26.07.2018 accepting value enhancement. Therefore, the present appeal filed by the appellant before this Tribunal.

2. Shri Vikas Mehta learned Consultant appearing on behalf of the appellant at the outset submits that in the present case the value of imported goods was enhanced only on the basis of the appellant's acceptance letter whereby the price was enhanced 5 times of the declared value i.e. from 0.25 US $ to 1.25 US $.

2.1. He submits that the appellant was compelled to accept the price. He placed Reliance on the decision of the CMR Nikkei India Pvt. Ltd 2022 (8)TMI 114 - CESTAT-Ahmedabad that mere admission on behalf of the importer cannot be the sole reason for enhancement of the value. It is his submission that no contemporaneous import price was relied upon. Therefore, the enhancement of the value is illegal and incorrect.

2.2. He also placed Reliance on the decision of this Tribunal in the case of Century Metal Recycling Pvt Ltd, 2024 (3) TMI 1245 –CESTAT (New Del.).

3. Shri Sanjay Kumar, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He also placed reliance on the Tribunal decision in the case of Sukhdev Exports Overseas Vs. Commissioner of Custom (Preventive), New Delhi 2023 (384) ELT 573 (Tri.-Del.)

4. We have carefully considered the submission made by both sides and perused the records. We find that the value of imported goods has been enhanced solely on the basis of acceptance letter dated 26.07.2018 given by

the appellant. We find that this issue has been considered by this Tribunal in the case of CMR Nikkei India Pvt. Ltd (Supra) wherein the following order was passed :-

> *"8. Heard both sides and perused the records. We find that the dispute in the present case is regarding the valuation of the goods imported by the Appellant. The Assessing Authority re-assessed the imported goods at values higher than what was declared by the Appellant in the Bills of Entry for self-assessment. The Appellant accepted the enhanced value by submitting the consent letter. In spite of the acceptance before the Assessing Authority, the Appellant challenged the valuation/assessment of goods by filing appeals. The learned Commissioner (Appeals) upheld the impugned reassessment. The Commissioner (Appeals) has observed in the impugned orders that the Appellant had given their written acceptance of the enhanced value and thereby has forgone his right to speaking order under Section 17(5) of the Customs Act. We noticed that in view of such admission, no speaking order was issued as per requirements for Section 17(5) of the Customs Act. 1962*
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> *9. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step-by-step methodology to be adopted for re-determination of the assessable value in certain cases. The primary requirement for re-determination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the basis for arriving at the assessable value.*
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> *10. Perusal of the records of the case indicates that the only reason cited for re-assessment of value is that the Appellant has accepted the enhanced value. No doubt acceptance of the enhanced value in writing waives the requirement of the issue of speaking order under Section 17(5) ibid. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming from the record of the case that what is the basis for such re-assessment.*
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> *11. Revenue has vehemently argued that the department were justified in enhancement of value since the importer had accepted such enhancement. We note that in the present matter, other than the admission on the part of the importer, no basis for the adoption of the enhanced value is given. We find that the Appellant in their grounds of Appeals also submitted that the assessment orders have been passed in complete defiance of the provisions of Section 14 of the Customs Valuation Rules, 2011. Neither the provisions of Section 14 of the Customs Act dealing with "Valuation of Goods" nor the provisions of Customs valuation Rules, 2011 have been followed while assessing the impugned bills of entry. The assessment orders do not assign any reason for discarding the transaction value nor do they mention under which rule of Customs Valuation Rules, the value has been determined.*

> *12. Considering the above facts, we are of the view that, in spite of the admission on behalf of the importer, the Revenue is required to satisfy the requirements prescribed under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation.*
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> *13. In view of the above discussion, the matter is required to be remanded to the Original Assessing Authority for sharing the basis for such re-assessment with the importer/Appellant. Thereafter he will pass the speaking order after extending the sufficient opportunity the importer to rebut the basis for such enhancement. With this observation, we set aside the impugned order. Appeals are disposed of by way of remand to the assessing authority."*

4.1. In the above decision of this Tribunal Century Metal Recycling Pvt Ltd, 2024 (3) TMI 1245 –CESTAT (New Del.) relied upon by the learned Counsel was also considered. Accordingly, mere acceptance by the assesse the price cannot be enhanced. The revenue is required to follow the valuation rules for enhancing the value, if there is sufficient cause which indicate that the price declared by the appellant is not correct transaction value.

4.2. We further find that except the acceptance letter by the appellant no contemporaneous import price has been relied upon on the basis of documentary evidence. Therefore, there is no reason to enhance the value. Accordingly, both the orders of the lower Authorities are incorrect and illegal in the light of the settled legal position as cited above.

4.3. As regards the reliance placed by the revenue in the case of Sukhdev Exports Overseas Vs. Commissioner of Custom (Preventive), New Delhi 2023 (384) ELT 573 (Tri.- Del.), we find that in that judgment the fact is that the assesse had accepted the price in statement given under Section 108 of the Customs Act. However, there is no such statement under Section 108 recorded in the present case. Therefore, the decision of Sukhdev Exports Overseas Vs. Commissioner of Custom (Preventive), New Delhi 2023 (384) ELT 573 (Tri.- Del.) carrying different facts is not applicable in the present case.

5. In view of our above observation, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in the open court on **10.07.2024** *)*

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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