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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 10796 of 2023-DB

[Arising out of Order-in-Appeal No. AHD-CUSTM-000-APP-142-23-24 dated 14.08.2023 passed by Commissioner (Appeals), Commissioner of Customs, Ahmedabad]

METALLOYS RECYCLING LIMITED **.... Appellant**

12, Niraj Industrial Estate, Off Mahakali Caves Road,
Andheri (East), Mumbai – 400093

VERSUS

Commissioner of Customs, Ahmedabad **.... Respondent**

4th Floor, Hudco Bhawan, Ishwar Bhuvan Road,
Navarangpura, Ahmedabad -380009

WITH

CUSTOMS Appeal No. 10797 of 2023-DB

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AND

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APPEARANCE :

Shri Harishankar Adhyaprasad Pandey, Sr. Legal Officer for the Appellants
Shri Rajesh R. Kurup, Superintendent for the Respondent

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

DATE OF HEARING : 25.04.2024
DATE OF DECISION: 25.07.2024

FINAL ORDER NO. 11639-11641/2024

RAMESH NAIR :

The facts of the case in brief are that the appellant had imported Aluminium Scrap and filed Bills of Entry No. 2200633 dated 01.01.2021 and Bill of Entry No. 2200628 dated 01.01.2021, Bill of Entry 2014687 dated 18.12.2020 and BE No. 9985145 dated 16.12.2020 (Appeal No. C/10797/2023) and Bills of Entry 2200633 and 2200628 dated 01.01.2021 (Appeal No. C/10798/2023). During the course of verification of the Bills of Entry it was noticed that the declared value of imported goods was lower than the contemporaneous import of similar goods at various ports during relevant period. Accordingly, query was raised informing the appellant that the declared value of the goods could not be accepted in light of Customs Valuation (determination of value of imported goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. In reply, the Appellant had submitted previous Bills of Entry. However the assessing officers had observed that the same did not substantiate their declared value. Therefore, the assessing officers re-assessed the imported goods on enhanced value on the basis of contemporaneous import data of similar goods. The Adjudicating authority, after considering the evidences available on record upheld the orders of assessing officers enhancing the assessable value of imported goods vide orders-in-original dated 07.01.2021 and 14.01.2021. Being aggrieved with the impugned orders appellant filed appeals before the Commissioner (Appeals). The Ld. Commissioner (Appeals) vide impugned orders–in-appeal No. AHD-CUSTM-000-APP-142-23-24 and No. AHD-CUSTM-000-APP-143-23-24 both dated 14.08.2023 upheld the rejection of declared value and enhancement of assessable value in the Bills of Entry Nos. 2200633 dated 01.01.2021, 2014687 dated 18.12.2020 and BE No. 9985145 dated 16.12.2020 and set aside the enhancement of assessable value in case of Bill of Entry No. 2200628 dated 01.01.2021 and upheld the declared value. Being aggrieved, appellant filed the present appeals.

2. Shri Harishankar A Pandey, Senior Legal Officer of the appellant company appearing on behalf of the Appellant submits that the B/E under appeal is against the import of Aluminium Scrap Zobra from TSR Metal GMBH, Germany under contract No. 2008-957-0246 dated 24.08.2020 but the Ld. Commissioner (Appeals) failed to appreciate the evidence submitted before him i.e. B/E No. 9425094 dated 3.11.2020 under the same contract, at the same declared value, of the same materials of the same origin, from the same supplier. Appellant besides the above BE had also submitted other evidence with copies of BEs of the contemporaneous imports from the EU origin. There were several other imports as recorded in NIDB data of EU & other origins which were assessed at lower and equivalent values including other supplies from the same supplier. On this ground alone, the re-assessment at the enhanced price deserves to be set aside.

3. He also submits that even Rule 5(1) ibid also clearly provided that subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods imported at or about the same time as the goods being valued. Further it is settled position lf law that value can be discarded only in the circumstance provided under sub-rule (2) of Rule 3 ibid.

4. He also submits that appellant declared transaction value at the time of filing bills of entry and satisfied all the ingredients in Section 14(1) of the Customs Act. A query was raised expressing doubt on the Declared Value of BE No. 2200633 dated 01.01.2021@US $1275/MT to be very low. The Appellant promptly justified the declared value by submitting their own previous BEs, which the proper officer rejected. The BE relied upon by the proper officer was with a biased mind selected BE of higher value of import by a pick-and –choose method overlooking the Customs Act, 1962 and CVR, 2007. He placed reliance on the following judgments.

(i) Sedna Impex India P Ltd. vs. Commissioner of Customs, Faridabad -2017(347) ELT 317.

(ii) Agarwal Foundries P. Ltd. vs. Commissioner of Customs-2020(371)ELT 859.

(iii) Sai Exports Vs. Commissioner of Customs, Tuticorin - 2019(370)ELT 398 (Tri. Chennai)

(iv) Puspak Metal Corpn. Vs. Commissioner of Customs, Kandla - 2014(312)ELT 381 (Tri.- Ahmd)

5. On other hand Shri R.R. Kurup, Ld. Superintendent (AR) appearing on behalf of the revenue reiterated the finding of impugned order.

6. We have carefully considered the submissions made by both the sides and perused the records. The valuation in Customs is governed by Section 14 of Customs Act, 1962 which provides that :

> (1) For the purpose of the [Customs Tariff Act, 1975] (51 of 1975) or any other law for the time being in force whereunder a duty of Customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are, ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale' provided that such price shall be calculated with reference to rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of expert as the case may be, is presented under Section 50;
>
> (1A) [Subject to the (1A) provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

7. We also find that the Hon'ble Supreme Court in the case of *Eicher Tractors Ltd.*2000 (122) E.L.T. 321 (S.C.) (supra) held that –

> "The transaction value would have to be accepted unless to show the importation fell within the proviso to sub-rule (2) of Rule 4 of the Customs Valuation Rules."

8. As provided by Section 14 of Customs Act, 1962, the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not sole consideration or if the buyers and sellers are related persons then after establishing that the price is not sole

consideration the transaction value can be rejected and taking the other evidences into consideration the assessable value can be arrived at. Such exercise has not been done in these cases on hand.

9. We also find that the Ld. adjudicating authority has rejected the value in case of disputed Bill of Entry as per the provisions of Rule 12 and re-determined the value under Rule 5 of Customs (Determination of Value of Imported Goods) Rules, 2007 (CVR in short). However Rule 12 does not automatically empowers the Assessing Officer to reject the transaction value. It does not *per se* provide method for determination of value. It only provides for mechanism and procedure for rejection of declared value which is clear from explanation to the Rule reproduced hereunder :-

> **Explanation.** - (1) For the removal of doubts, it is hereby declared that -
>
> (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
>
> (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
>
> (iii) the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
>
> (a) the significantly higher value at which identical or similar goods imported at or about the same time incomparable quantities in a comparable commercial transaction were assessed.
>
> (b) the sale involves an abnormal discount or abnormal reduction from the ordinarily competitive price
>
> (c) the sale involves special discounts limited to exclusive agents.
>
> (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
>
> (e) the non-declaration of parameters such as brand, grade specifications that have relevance to value;
>
> (f) the fraudulent or manipulated documents.

10. The lower authorities have re-determined the value in terms of Rule 5, the said provisions are reproduced here under:

> **Rule 5. Transaction value of similar goods.** - (1) Subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods for export to India and imported at or about the same time as the goods being valued :
> Provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962.
>
> (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of Rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

11. The provisions referred in sub-rule (2) to Rule (5) are reproduced hereinunder :-

> Rule 4(1)(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and insubstantially the same quantity as the goods being valued shall be sued to determine the value of imported goods
>
> (c) where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

12. The above provisions not only provides how the value is to be determined as per Rule 5, it also provide ingredients for the contemporaneous import. So far as the contemporaneous import is concerned the department has relied upon Bills of Entry wherein the Aluminium Scrap Grade 'Zobra' is assessed. We find that in the present matter appellant also produced the evidence of contemporaneous imports at lower price of similar goods, even from the same supplier, of the same EU origin. In the instant case the department could not show any evidence that the transaction value declared by the appellant was not price actually paid and that buyer and seller of the goods are related persons and the price was

not a sole consideration. Besides, we also noticed that no evidence has been led by the Revenue in the instant case to counter the Appellant's contention that the transaction value declared by them, as evident from the documents is the real transaction value.

13. On the identical issue, in the case of *CC, Calcutta* v. *South India Television Pvt. Ltd.* [2007 (214) E.L.T. 3 (S.C.)] endorsed the same views as under:

> "Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, 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. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. 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."

14. In this case, there is no finding of the Ld. Authorities that the invoices issued by suppliers are fake or fabricated and that the transaction value shown therein has not been actually paid by the Appellant. Since the transaction value is determinable under Section 14 of the Customs Act, 1962, read with Rule 3(1) of the Valuation Rules, the question of resorting to assessment under Rule 5 does not arise. The transaction value declared in the instant case has been rejected without the sanction of law, hence not sustainable.

15. Further we also find that in number of case it was held by the Tribunal and courts that only NIDB data cannot be a basis for enhancement of value. It has been held that the NIDB data can be a guideline for the customs to

arrive at the value of the goods but the NIDB data cannot be applied directly unless the value given therein falls within the parameters of identical goods or similar goods. In this context we find the supports from the decisions in the cases of *Topsia Estates Pvt Ltd* v. *CC* (Import-Seaport) Chennai [2015 (330) E.L.T. 799 (Tri. - Chennai)], *CC New Delhi* v. *Nath International* [*2013 (289) E.L.T. 305* (Tri. - Del.), *Impex Steel & Bearing Co.* v. *CC Delhi-IV* [*2014 (302) E.L.T. 464* (Tri. - Del.)] , *Eicher Tractors Ltd* v. *CC Mumbai* [*2000 (122) E.L.T. 321* (S.C.)] ,*CC (Import), Nhava Sheva* v. *Bharathi Rubber Lining & Allied Services P. Ltd. - 2013 (287) E.L.T. 124* (Tri. - Mum.) and *Om Drishian International Limited* v. *Commr. of C. Ex Delhi-IV - 2015 (315) E.L.T. 441* (Tri. - Del.)

16. In these circumstances, we find that the rejection of the transaction value and enhancement of the value by the department in this case are not sustainable in law. Therefore, the impugned orders are set aside and the appeals are allowed with consequential relief.

(Pronounced in the open court on 25.07.2024*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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