Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS APPEAL NO. 10564 of 2023-DB

(Arising out of Order in Appeal AHD-CUSTM-000-APP-1 TO 15-23-24 dated 19/04/2023 passed by Commissioner (Appeals) Customs, Ahmedabad)

Dharmendra Vora **........Appellant**
Proprietor of M/s. DNV Engineers,
83/B "Nirav", Mahila Welfare Society,
Vidyanagar, Bhavnagar-364002

VERSUS

Commissioner of CUSTOMS –
Customs Ahmedabad **......Respondent**
1st Floor, Custom House,
Opp. Old High Court,
Navrangpura, Ahmedabad-380009

WITH

(i) Customs Appeal No. 10565 of 2023-DB (Dharmendra Vora)
(ii) Customs Appeal No. 10566 of 2023-DB (Dharmendra Vora)
(iii) Customs Appeal No. 10567 of 2023-DB (Dharmendra Vora)
(iv) Customs Appeal No. 10568 of 2023-DB (Dharmendra Vora)
(v) Customs Appeal No. 10616 of 2023-DB (Yasar Kathiwala)
(vi) Customs Appeal No. 10617 of 2023-DB (Yasar Kathiwala)
(vii) Customs Appeal No. 10618 of 2023-DB (Yasar Kathiwala)
(viii) Customs Appeal No. 10619 of 2023-DB (Yasar Kathiwala)
(ix) Customs Appeal No. 10621 of 2023-DB (Yasar Kathiwala)
(x) Customs Appeal No. 10677 of 2023-DB (Maulik K Shah)
(xi) Customs Appeal No. 10678 of 2023-DB (Maulik K Shah)
(xii) Customs Appeal No. 10679 of 2023-DB (Maulik K Shah)
(xiii) Customs Appeal No. 10680 of 2023-DB (Maulik K Shah)
(xiv) Customs Appeal No. 10681 of 2023-DB (Maulik K Shah)

APPEARANCE:
Shri Karan Parekh, Chartered Accountant & Shri Manish Jain, Advocate appeared for the Appellant
Shri Rajesh R Kurup, Superintendent (AR), appeared for the Respondent

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

Final Order No. 11847-11860/2024

DATE OF HEARING: 29.04.2024
DATE OF DECISION: 29.08.2024

RAMESH NAIR

These appeals are directed against the order of the Commissioner (Appeals) wherein the Commissioner (Appeals) upheld the penalties imposed upon the appellant by the Adjudicating Authority under Section 114 and 114 AA of the Customs Act, 1962 on the alleged offence that the appellant were involved in over valuation of export goods namely parts of Ship Engine (old and used cylinder head N-21 and M-220) . The entire case of over valuation was made out on the basis that one Shri Dharmendra Vora proprietor of M/s. DNV Engineers , Chartered Engineer, Valuer & Technical Consultant issued a Chartered Engineer Certificate certifying the value of the goods at Rs. 18,00,000 & Rs. 17,50,000/- respectively. On the contrary , the customs officers having doubt about the value got the valuation done from Shri B.G Bhatt, the Government approved Chartered Engineer according to him the value of cylinder head N-21 and M-220 is Rs. 3,80,000/- & Rs. 4,14,000/- respectively. On the representation of the exporter, another Chartered Engineer, Shri D.P Jani, the government approved chartered engineer has also given a certificate. According to him, the value of cylinder head N-21 and M-220 is at Rs 4,28,000/- & Rs. 4,28,000/- respectively. Thus, both the lower authorities have come to the conclusion that the exporter have attempted to export the goods by over valuation of the same, Therefore, the penalties under Section 114 and 114 AA were imposed upon the appellant.

2. On behalf of Shri Maulik Shah and Shri Yasar Kathiwala, Shri Manish Jain, Learned Counsel appeared and on behalf of Dharmendra Vora, Shri Karan Parekh, Learned Chartered Accountant appeared.

3. Shri R.R Kurup, Learned Superintendent appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that entire case of over valuation was made out by the department on the basis of Chartered Engineer Certificate issued by Shri Dharmendra Vora and contrary to that the Chartered Engineer Certificate issued by Shri B. G Bhatt and by Shri D.P Jani. As per the submission of the appellant, both the chartered engineers are not government approved valuer but in the orders of the lower authorities they were considered as Government valuer, therefore, the certificate cannot be relied upon. This contention of the app engineer goes in the root of the case because the department has considered them a Government approved valuer whereas as per the submission of the appellant they are not, therefore, the entire case needs to be re-examined.

4.1 We also find that on behalf the appellant Shri Maulik Shah and Shri Yasar Kathiwala, the learned Counsel Shri Manish Jain has made multiple submissions which appears to have not been considered by the Adjudicating Authority. It is the submission of Learned Counsel for the appellant that the submission has not been properly considered by both the lower authorities. It is also a submission of the appellants that the exporters have not claimed any export incentives, therefore, there is no reason to over valuing the goods , consequently the over valuation will not benefit to any of the exporters. In these circumstances we are of the view that the entire case needs to be re-looked by considering detailed submission made by the appellant and the same needs to be re-considered by the adjudicating authority.

5. Accordingly, the impugned orders are set aside, Appeals are allowed by way of remand to the adjudicating authority to re-consider the entire matter a fresh. The appellants may be given sufficient opportunity for making their defence submission and attending the personal hearing.

(Pronounced in the open court on 29.08.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha