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

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 231 of 2012-DB

(Arising out of OIA-71/COMMR-A-/JMN/2012 Dated- 18/07/2012 passed by Commissioner of CUSTOMS-JAMNAGAR(PREV))

C.C.-Jamnagar(prev) ....**Appellant**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

VERSUS

Ultra Tech Cement Limited ....**Respondent**
Corporate Finance Devision, Ahura Centre,
B Wing 2nd Floor, Mahakali Caves Road,
Andheri, East, Mumbai, Maharashtra

APPEARANCE:
Shri. G. Kirupanandan, Superintendent (AR) for the Appellant
Shri. Manish Jani, Advocate for the Respondent

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

Final Order No. A/ 10494 /2023

DATE OF HEARING: 13.03.2023
DATE OF DECISION:13.03.2023

SOMESH ARORA

The department is in appeal on the issue that the Commissioner (Appeals) has wrongly accepted the valuation given by the respondent in relation to Petcoke imported by them. The learned Commissioner (Appeals) while accepting the transaction value as per the department ignored various parameters like the imports of contemporaneous and similar imports were witnessed from the same party at the same port and the value difference in this instance was more than 20%.

2. Learned AR relying upon the case law in the matter of Rajkumar Knitting Mills (P) Ltd. vs Collector Of Customs, Bombay reported in 1998 (98) ELT 292 (S.C) supported the appeal filed by the department on the ground that the price has to be comparable with the imports made within a certain period of time coming from same point of provision and arriving at the same port. He also drew support from case law on the point, based on previous Section 14 (1)(a) prior to amendment of the Customs Act. to emphasize that the goods were similar and place and time of importation

were similar. As against this the learned advocate for the respondent relied upon the decision in the case of M/s. Agrawal industries-2011 (272) ELT 641 to emphasize that the quantum of goods is always a relevant consideration and cannot be ignored while comparing transaction value. He also emphasized that this factum was duly considered by the Commissioner (Appeals) while allowing the appeal.

3. Considered, We agree with the learned advocate the quantum has to be comparable, while all other factors as pointed by the leaned AR of time and place of import are also relevant. It is settled position that quantum of import cannot be ignored which in this case, it has been brought on record, was as high in weight as 180% between comparable imports. We also find that even in the decision relied upon by the leaned AR in para 9 the Hon'ble Supreme Court duly noticed the fact that larger quantity called for additional discount and the same was justified. We therefore are inclined to follow the case law cited by the learned advocate, as well as the ratio of the decision cited by the learned AR to hold that excess weight can justify differential in transaction values. We are inclined to uphold the order of Commissioner (Appeals) with consequential relief.

4. Appeal of the department is accordingly dismissed.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI