IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/70347/2017-CU[DB]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-1720-16-17 dated 23/02/2017 passed by Commissioner (Appeals), Central Excise & Customs, Noida)

Commissioner of Customs, Noida	**Appellant**
Vs.	
M/s Ankita Enterprises	**Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt.) AR	for Appellant
Absent on Call	for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	20/07/2018
Date of Decision	:	20/07/2018

FINAL ORDER NO. - **71795/2018**

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal, we have heard Shri Pawan Kumar Singh learned A.R. appearing for the Revenue, nobody appeared for the respondent.

2. As per the facts on record, the appellant imported a consignment of pre-workout Food Supplements from

Dubai and declared the value of the same as per the purchase Invoice. The said value was rejected by the Assessing Officer, who enhanced the same based upon NIDB data.

3. On appeal of Commissioner (Appeals) took into consideration the Hon'ble Supreme Court decision in the case of Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai 2000 (122) E.L.T. 321, laying down the provisions leading to the assessment of the imported goods for the purposes of Customs duty. It was held that Department is bound to assess the duty, on transaction value unless the price actually paid for all the transactions falls within the exceptions mentioned in Rule 4(2)(c) to (h). By taking note of the said decision the Appellate Authority allowed the appeal by observing as under:-

> *"In the instant case, it is not alleged that the appellant has mis-declared the price actually paid, nor was there a mis-description of the goods imported. It is also not the case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Specified Officer for rejecting the transaction value under Rule 4(1) except that the value of the impugned goods was not in accordance with the identical goods imported*

at the same time. The data of contemporaneous import taken from Zauba.Com are also not with same description and quantity. In doing so, the Specified Officer not only ignored Rule 4(2) but also acted on the basis of the Zauba.Com with different description and quantity ignoring invoice price which is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value."

4. Revenue in their Memo of Appeal has not disputed the transaction value and has not adduced any evidence to show that the price paid for the consignment of imported goods was more than the transaction value. It is well settled law that enhancement cannot be done based upon the NIDB data, unless the transaction value is proved to be incorrect. Inasmuch as there is no evidence for rejection of the transaction value, we find no reasons to interfere in the impugned order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks