CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
1st Floor, WTC Building, FKCCI Complex, K. G. Road,
BANGLORE-560009

COURT-2

Customs Appeal No.20180 of 2016

[Arising out of the Order-in-Appeal No.COC-CUSTM-000-APP-324/2015-16 dated 21.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.]

AND

Customs Appeal No. 20183 of 2016

[Arising out of the Order-in-Appeal No.COC-CUSTM-000-APP-325/2015-16 dated 18.12.2015 passed by the Commissioner of Customs (Appeals), Cochin.]

M/s. Jai Hind Traders **....Appellant**
29/621 K, Jain Tower
Vytilla
Cochin – 682 019.

Vs.

The Commissioner of Customs **....Respondent**
Customs House
Willingdon Island
Cochin - 682 009.

Appearance:

Mr. M. Balagopal, Advocate **....For Appellant**

Vs.

Mr. P. Saravana Perumal,
Addl. Commissioner (AR) **.... For Respondent**

CORAM:

HON'BLE MR. P. A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Date of Hearing: 20.07.2023

Date of Decision: 26.07.2023

FINAL ORDER No. 20744 - 20745 of 2023

Per R. BHAGYA DEVI:

The appellant M/s. Jai Hind Traders, filed Bills of Entry No.8586103 dated 13.3.2015 and 8508852 dated 6.3.2015 for the clearance of 'Galvanised Steel Hollow Sections' from China. At the time of assessment, Revenue had enhanced the declared value and the same was accepted by the appellant and the goods were cleared on payment of duty. Later on, the appellant asked for a speaking order which was rejected by the original authority stating that the appellant had consented for the value enhancement and duty was paid without any protest, hence, no speaking order would be issued. The party filed an appeal before the Commissioner (A). The Commissioner (A) in the impugned order dated 18.12.2015 stated that as per Section 71 of the Customs Act, 1962, the importer has to self-assess the duty and pay duty accordingly. In the instant case, since the appellant accepted the enhanced value vide their letter dated 13.3.2015 and cleared the goods on payment of duty, they cannot request for an assessment order under Section 17(5) of the Customs Act, 1962. The Commissioner (A) held that the assessment is deemed to have reached finality and admitting an appeal without a speaking order is not legal and proper. Accordingly, the appeal filed by the appellant had been dismissed.

2. The learned counsel on behalf of the appellant has submitted that they had imported 'Galvanised Steel Hollow

Section' from China. Since the department insisted for enhancement of the declared value and to avoid delay, detention and demurrage charges, they accepted the enhanced value and paid the duty accordingly. Appellant also enclosed a copy of the letters dated 19.3.2015 and 26.03.2015 wherein they have stated that they had agreed for the enhanced value only to avoid detention and demurrages on the clearance of the goods. The declared value was Rs.35,202/- and the enhanced value was Rs.42,243/-/ They also stated that the declared price was the price in international market during the relevant period of time.

2.1 Appellant also vide letter dated 31.3.2015 requested for issuance of speaking order which was rejected by the Deputy Commissioner vide dated 21.4.2015. It is their submission that quoting Section 17(5) of the Customs Act, 1962, they have submitted that nothing prevents the proper officer from passing a speaking order even in cases where the parties have accepted the reassessment. It is also their submission that the authorities have rejected the transaction value without giving an opportunity to the appellant to place on record their views and objections based on the documents, which is in violation of principles of natural justice. As per the Customs Valuation (Determination of value of imported Goods) Rules, 2007, as per Rule 3, if the declared value of the goods is not acceptable, proper officer have to reject the transaction value of the goods by observing the procedures laid down in Rule 12. If their value cannot be determined under the provisions of Rule 3(1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of the Customs Valuation Rules. In the present case, they were neither given an opportunity nor the procedures laid down as per the Valuation Rules has been followed. They requested for setting aside the impugned order and to allow their appeal.

3. Learned Authorised Representative reiterated the findings of the lower authorities, submitted that once the enhanced value is admitted by the importer, as per section 17(5) of the customs act 1962 the authorities are not bound to issue a speaking order specifying the reasons for enhancing the value.

4. The impugned order is not a speaking order as the Commissioner has summarily dismissed stating that no speaking order can be issued in as much as the original authority has not issued a speaking order. The question whether the appellant can ask for a speaking order with cogent reasons for enhancement of the value in spite of the fact that the enhanced value is accepted only for avoiding the demurrage and other charges.

5. The Hon'ble Supreme Court in the case of **ITC Ltd. Versus Commissioner of Central Excise, Kolkata-IV 2019 (368) E.L.T. 216 (S.C.)** held that:

25. Section 17 as amended by Finance Act, 2011 is extracted hereunder:

> **"17. Assessment of duty.** - (1) An *importer* entering any imported goods under Section 46, *or an exporter* entering any export goods under Section 50, shall save as

otherwise provided in Section 85, *self-assess the duty, if any, leviable on such goods.*

(2) The *proper officer may verify* the self-assessment of such goods and for this purpose, *examine or test any imported goods or export goods* or such part thereof as may be necessary.

[(3) *For verification* of self-assessment under sub-section (2), the proper officer *may require* the importer, exporter or any other person *to produce any document or information*, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) *Where it is found on verification*, examination or testing of the goods or otherwise that the *self-assessment is not done correctly, the proper officer* may, without prejudice to any other action which may be taken under this Act, *re-assess the duty leviable on such goods*.

(5) Where any *re-assessment done under sub-section (4) is contrary to the self-assessment done* by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said *re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill*, as the case may be.

(6) *Where re-assessment has not been done or a speaking order has not been passed on re-assessment*, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under Section 46 or an exporter has entered any export goods under Section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of Section 17 as it stood immediately before the date on which such assent is received.]

43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression

'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no *lis*, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in *Escorts".*

6. Similarly in the case of **Century Metal Recycling Pvt. Ltd. Versus Union of India: 2019 (367) ELT 3 (SC),** the apex court in similar facts and circumstances of the present case observed that:

"20. ------------ This letter exposits the predicament faced by the appellants as it states that the appellants were in urgent requirement and wanted clearance of the goods. Pertinently, the appellants had earlier written several letters, including communications dated 22nd December, 2016 and 4th March, 2017 requesting for clearance of the imported consignment of aluminium scrap on the declared transaction value pointing out therein that on account of delay in the clearance of the imported consignments, the appellants and its sister concern had been compelled to pay excess duty of over Rs. 25 crores from August 2013 onwards. It is unfortunate and has to be accepted that the respondent authorities had compelled and forced the appellant to furnish the letter dated 6th March, 2017 thereby waiving of its right to provisional assessment and accepting valuation in terms of Rules 4 to 10.

As per sub-rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.

21. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, *albeit* it has been read by us by implication in Rule 12. Being conscious that this mandate if applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case to case basis, depending upon the factual matrix and considerations like whether the importer has asked for 'certain reasons', whether the reasons were not communicated, whether 'certain reasons' can be deciphered from the assessment/valuation order, whether misdescription or false declaration was apparent, etc.

24. Therefore, in the facts and circumstances of the present case, it has to be held that the adjudication order in original is flawed and contrary to law for it does not give cogent and good reason in terms of Section 14(1) and Rule 12 for rejection of the transaction value as declared in the bill of entry. The order in original is not in accordance with Section 14 and Rules 3 and 12 as the mandate of these provisions has been ignored. The Assistant Collector has rejected the transaction value as declared in the bill of entry which, as noticed above, is clearly and fundamentally erroneous besides being contradictory. In the aforesaid circumstances, we do not think that the order in assessment dated 7th April, 2017 can be sustained and upheld. It is set aside and quashed.

25. ------- Declared valuation can be rejected based upon the evidence which qualifies and meets the criteria of 'certain reasons'. ----These reasons are to be recorded and if requested disclosed/communicated to the importer."

7. In view of the above as per Section 14 (valuation of goods) read with Rule 12 (2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which read as under:

> 12 (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

8. In view of the above Rule, the Proper officer has to provide cogent reasons for rejecting the declared value and the appellant

has to be given an opportunity to be heard before enhancement of the declared value. Moreover, in the present case, the appellant had vide letters dated 19.3.2015 and 26.03.2016 had agreed for the enhanced value only to avoid detention and demurrages on the clearance of the goods and also vide letter dated 31.3.2015, appellant had requested for issuance of speaking order.

9. Therefore, in view of the above discussions and the observations by the apex court, the impugned order is legally not sustainable and is set aside. The issue stands remanded to the original authority for passing a speaking order on merits after hearing the appellant.

10. Appeals are allowed by way of remand.

*(Order pronounced in open court **26.07.2023**.)*

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI
MEMBER (TECHNICAL)

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