CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT No.2

Customs Appeal No.283 of 2009

(Arising out of Order-in-Original No.47/2009 dated 06.03.2009 passed by Commissioner of Customs, Cochin)

M/s Aftab Exports .....**Appellant**
107, Kadri Apartments,
New Hall Road, Kurla West, Mumbai-400070
Represented by Touseef Ahmed Mohimtulay

VERSUS

Commissioner of Customs, Cochin ....**Respondent**
Customs House, Cochin-09

APPEARANCE:

Shri Reginald Valsalan for the Appellant
Mrs. D.S. Sangeetha, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.20776/2023

DATE OF HEARING : 27.03.2023

DATE OF DECISION : 26/07/2023

PER: P.A. AUGUSTIAN

The appeal is regarding valuation of imported goods. The Appellants had imported goods like Plates, Dinner Set, Bowls, Kitchen Ware, Glassware, Home Appliances etc. and on arrival of the goods filed Bill of Entry No.226908 dated 07.07.2008. Alleging that the goods were imported by undervaluation, investigation was commenced by the respondent and on completion of the investigation, show cause notice was issued. During investigation it is found that few items in the lot include "Corelle and Corningware" products and based on the said finding, vide letter dated 22.07.08, matter was taken up with the Territory Manager, Ernakulum of the official importer of Corelle and Corningware" products M/s OM House Hold Appliances, Mumbai. Vide communication dated 22.07.08, the Territory manager of M/s OM House Hold Appliances, informed that they have visited the CFS, Peta and confirmed that material are original Corelle and Corningware" products. They have also confirmed that they are official importers of said brand and expressed their wiliness to furnish details of import cost of such products. However, in the impugned order no reliance was placed on the import price furnished by M/s OM House Hold Appliances.

2. In the meantime, appellant had approached the Hon'ble High Court of Kerala for provisional release of goods. When Customs Authority made a submission that there is a disparity between the items packed and the item declared in the bill of entry, to find out the facts, the Hon'ble High Court appointed an Advocate Commissioner vide order dated 19.09.2008. The Advocate Commissioner conducted inspection of the goods and submitted a report. The Customs authority proceeded with the valuation through chartered engineer and on completion of the inspection, show cause notice was issued on 13.01.2009.

3. Heard both sides and perused the records.

4. The learned Counsel submitted that without considering the submissions made by the appellant, the impugned order is issued. The learned counsel for the appellant further submitted that there is no reason or justification to allege undervaluation. The goods imported by the appellant are of assorted size and as per the communication received by the Department during investigation, import value of even the branded goods imported by official dealer of the manufactures are available. However Adjudication Authority relied on the valuation report submitted by the chartered engineer, where the chartered engineer stated that he had adopted the value by visiting the local markets and collected data from the Malls and such method of valuation is unsustainable. Learned counsel further submitted that the Customs Authority failed to discharge the burden of proof with cogent evidence and rejection of transaction value is illegal and unsustainable. The report of chartered engineer is warranted only on those cases, where machineries are imported and not while assessing value of cutlery and home appliances. The appellant had at the initial stage of investigation, itself submitted that the goods were purchased as a stock lot in a clearance sale by the Dubai based company and in such cases, the actual transaction value would be depreciated value and not as per the price list of brand-new cutlery and Home appliances.

5. Regarding value, learned counsel submitted that though there is a finding in Para 17 of the impugned order, initially the investigation commenced regarding undervaluation and matter was taken up with official dealer. But thereafter no reliance was

placed on the data furnished by the Authorized dealer of such brand or from the data bank maintained by the Department. Adjudication Authority adopted the valuation report furnished by the chartered engineer as stated in Para 17 & 18 of the impugned order. Learned counsel further submitted that though during personal hearing, the counsel for the appellant relied on the judgement of the Hon'ble Supreme Court in the Case of **Commissioner of Customs, Calcutta Versus South India Television (P) Ltd. reported as 2007 (214) E.L.T. 3 (S.C.)** the Adjudication Authority has not considered the law laid down by the Hon'ble Supreme Court. Learned counsel draws our attention to Para 6 & 8 of the judgement which is reproduced below:-

> *"6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and*

Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. 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. Under-valuation has to be proved. If the charge of under-valuation 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 under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' *proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."*

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8. Before concluding, we may point out that in the present case at the stage of showcause notice, the Department invoked Rule 8 on the ground that the invoice submitted by the importer was incorrect. In Eicher Tractors (supra) this Court observed that Rule 4(1) of the Customs Valuation Rules refers to the transaction value. Utilization of the word 'the' as definite article indicated that what should be accepted as the transaction value for the purpose of assessment under the Customs Act is the price actually paid by the importer for the particular transaction, unless it is unacceptable for the reasons set out in Rule 4(2). In the said judgment, it has been further held that, the word 'payable' in Rule 4(1) also refers to the "transaction value" and payability in respect of the transaction envisaged a situation where payment of price stood deferred. Therefore, this decision of the Supreme Court directs the Revenue to decide the validity of the particular value instead of rejecting the transaction value. We wish, however, to clarify that it is still open to the Department based on evidence, to show that the declared price is not the price at which like goods are sold or offered for sale ordinarily, which words occur in

> *Section 14(1). Lastly, it is important to note that in the above decision of this Court in Eicher Tractors (supra) this Court has held that the Department has to proceed sequentially under Rules 5, 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is to be rejected under Rule 4. In the present case, the show cause notice indicates that the Department had invoked Rule 8 without complying with the earlier rules."*

6. Learned counsel further submitted that the method of valuation adopted by the adjudication authority based on the report of chartered engineer is illegal and unsustainable. Learned counsel draw our attention to finding of this Tribunal in the matter **Al Riyaz Implex Versus Commissioner of Customs, Cochin reported in 2011 (267) E.L.T. 543 (Tri.-Bang.)** where it is held that this kind of valuation of imported goods is unsustainable. Learned counsel also drawn our attention to the order of this Tribunal in the case of **New Techno Graphics Vs. Addl. Commr. of Customs & C.Ex., Hydrabad reported in 2008 (222) E.L.T. 260 (Tri. Bang.), Commissioner of Customs, Calcutta Vs. South Indian Television reported in 2007 (214) E.L.T. 3 (S.C.), Rabindra Chandra Paul Vs. Commissioner of Customs (Preventive), Shillong reported in (2007) 3 Supreme Court Cases 93, Varsha Plastics Private Limited and Another Versus Union of India and others reported in (2009) 3 Supreme Court Cases 365 and Gajra Bevel Gears Vs. Collector of Customs, Bombay reported in (2000) 10 Supreme Court Cases 215.**

7. Learned DR or Revenue submitted that based on the intelligence report gathered by Special Intelligence and

Investigation Branch, the goods were detained and on inspection of the goods, consignment and the packing list showed considerable discrepancy and also undervaluation. During investigation matter was taken up with the Authorized importer of Corelle brand items. The scrutiny of the prices confirmed that the goods were grossly undervalued. The Learned AR for the Revenue, further submitted that only on reasonable belief that the goods are undervalued, the investigation commenced and the method of valuation adopted by the adjudication authority is proper.

8. We have considered the contentions made by both the parties. On perusal of the impugned order, as submitted by Learned AR, the goods were detained on reasonable believe that they are illegally imported by mis-declaring the value and description of the goods. Preliminarily, when details were sought, manufacturer of the goods informed that the value of the imported goods are lower than the market value of the goods. Based on the above email and data from Internet, further investigation was carried out. However, on inspection of the goods by Advocate Commissioner appointed by the Hon'ble High Court of Kerala, it was found that there is no such mis-declaration regarding quantity as alleged. There is no such finding in impugned order as well.

9. Regarding the valuation, as per Para 15 of the impugned order, during investigation, matter was taken up with the Authorized importer of Corelle brand items to disclose the import price of the said goods, when imported by them and they have furnished the same. However, without considering this value, respondent took assistance from Chartered Engineer. Regarding

the report submitted by the Chartered Engineer, the Chartered Engineer relied on the market value of similar indigenous items in India to ascertain the assessable value. In view of above facts, the method adopted by respondent to reject the transaction value based on such report of Chartered Engineer seems to be without any legal basis.

10. As per the law laid down by the Apex Court in the matter of **Eicher Tractors Ltd. Versus Commissioner of Customs, Mumbai reported in 2000 (122) E.L.T. 321 (S.C.)** and also in the case **of Commissioner of Customs, Calcutta Versus South India Television (P) Ltd. reported as 2007 (214) E.L.T. 3 (S.C.)** what should be accepted as transaction value for the purpose of assessment under Customs act is the price actually paid by the importer for the particular transaction unless it is unacceptable for the reasons set out in Rule 4, thus the Hon'ble Supreme Court directs the customs authority to decide the validity of the particular value instead of rejecting transaction value. In the impugned order there is no reference to transaction value and the value paid by the importer for procurement of the goods. Further, if the transaction value is found not acceptable, the customs authority is bound to proceed sequentially under rule 5 to 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with the Rule 5, 6 and 7 even in the cases, where the transaction value is to be rejected under Rule 4. However, in the present case, the transaction value is rejected without considering the law laid down by the Hon'ble

Supreme Court and without following the Customs Valuation Rules, 2007.

11. In our considered view, this kind of valuation of the imported goods is incorrect and an improper appreciation of the Customs Valuation Rules, 2007. In view the above, appeal is allowed with consequential relief, if any.

(Order pronounced in the Open Court on 26.07.2023)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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