

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

REGIONAL BENCH COURT-2

Customs Appeal No 2292 of 2010

[Arising out of Order-in-Original No.12/2010 dated 04.08.2010
Passed by the Commissioner of Customs, Cochin.]

HAZEL MERCANTILE LTD.,
2 E/F, Chruch Square Building,
Cochin Blossom Road,
Kadavanthra, Cochin

.....Appellant

Versus

COMMISSIONER OF CUSTOMS
Custom House,
Cochin – 682009.

.....Respondent

Appearance:

Mr. Vinay Ansurkar For Appellant
Mr. K.A. Jathin Authorized Representative (AR) FOR Respondent

CORAM:

Hon'ble Mr. P. A. Augustian, Member (Judicial)

Hon'ble Mrs. R. Bhagya Devi, Member (Technical)

FINAL ORDER No. 20034 of 2024

Date of Hearing: 05.09.2023

Date of Decision: 09.01.2024

Per P. A. AUGUSTIAN:

1. The issue in the present appeal is regarding valuation of imported goods. Appellant herein had imported Methyl Phenyl Acetylene. The goods were imported from Singapore. At the time of the filing the bill of entry appellant declared the value as USD 1900 and the goods were released as declared by the Appellant.

Thereafter on post clearance audit, it is alleged that the same goods were cleared through Cochin Port by another importer manufactured by the very same supplier for a value of USD 2400 PMT. Based on the said objection, demand notice was made on the Appellant for loading the value to 2400 PMT and Appellant was directed to pay an amount of Rs. 5,56,198/- towards the differential duty with interest. Though Appellant submitted detailed reply, the Adjudicating authority vide Order-in-Original confirmed the demand of duty and aggrieved by the said order, appeal was filed before the Appellate authority who confirmed short levy of Rs. 5,56,198/- with interest as applicable. Aggrieved by this order, present appeal is filed.

2. When the appeal came up for hearing, counsel for the Appellant submits that they have imported more than 1000 containers per month across the country and payments are made through irrevocable letter of credit and that they have imported 5 FCL (85 MT) and also that a part shipment of part lot of 981 MT was supplied at Cochin and through other ports. The Learned Counsel for the Appellant also drew our attention to the copy of the sale contract dated 15.04.2008. Appellant had also imported the very same goods through Ahmedabad and Kolkata port as per the declared value. The Ld Counsel for the Appellant further submits that there is no reason or justification to reject the declared value. The Ld Counsel for the Appellant further submits that the Appellant had imported the goods, as sales contract entered on 15.04.2008 for a quantity of 350 MT whereas for alleging under valuation, the Adjudicating authority relied import of 176 MT which was imported in the month August, 2000 and same cannot be considered as contemporaneous import. Ld Counsel for the Appellant draw our attention to large number of decisions where it is settled that transaction value cannot be rejected without cogent evidence regarding contemporaneous

import and value of lowest among the contemporaneous import can only adopted in such case. There is no reason or justification to reject the transaction value. Ld Counsel for the Appellant relied following decisions:

- I. Eicher Tractors Ltd Vs CC Mumbai (2000 (122) E.L.T 321 (SC)
- II. Basant Industries Vs Addl. Collector of Customs, Bombay (1996 (81) E.L.T 195 (S.C)
- III. Mirah Exports Pvt Ltd Vs Collector of Customs (1998 (98) E.L.T 3 (S.C)
- IV. Finolex Industries Ltd Vs CCE, Pune (2004 (174) E.L.T 341 (Tri.Del)
- V. Devika Trading Pvt Ltd Vs CC, Mumbai (2004 (167) E.L.T 75 (Tri. Mumbai)
- VI. Mark Auto Industries Ltd Vs CC, New Delhi (2003 (162) E.L.T 261 (Tri. Del)
- VII. Andhra Sugars Ltd Vs CC Vishakhapatnam (2006 (193) E.L.T 68 (Tri. Bang)
- VIII. Varsha Plastics Pvt Ltd Vs Union of India (2009 (235) E.L.T 193 (SC)
- IX. Sounds N Images Vs Collector of Customs (2000 (117) E.L.T 538 (SC)
- X. Gupta Exports Vs CC Chennai (2002 (146) E.L.T 361 (Tri. Chennai)
- XI. Spices Trading Corporation Vs CC Madras (1998 (104) E.L.T 665 (Tri. Mad)

3. Ld DR submits that both the imported goods are very similar nature and country of origin is also same. Moreover there is significant difference between the value of the goods and the on the value of contemporaneous import. Moreover import was directly from the manufacturer in Thailand whereas as the import made by

the Appellant was from Singapore. Ld DR relied on judgment of this Tribunal in the matter of CC (Import Mumbai Vs Inox India Ltd (2009 (239) E.L.T 316) and relevant paragraph reproduce below:-

3. There is no material on record to establish that transaction value was arrived at on the basis of negotiation with the foreign supplier so as to apply the apex Court judgment in *Basant Industries v. Addl. Commissioner* - [1996 \(81\) E.L.T. 195 \(S.C.\)](#). Therefore, the Revenue is correct in its submission that the importers were offered a special discount which is not admissible under the law for arriving at the assessable value under Section 14(1) of the Customs Act, 1962 as held by the Tribunal in *Coimbatore Pioneer Mills Ltd. v. Commissioner of Customs* - [1991 \(56\) E.L.T. 858](#) (Tribunal) = 1991 (37) ECR 680. We also note that the importers confirmed having been offered the goods from various suppliers at higher price ranging from US \$ 1950 PMT CIF to US \$ 2260 PMT CIF from Korea and Japan. We, therefore, uphold the enhancement of the unit price of the imported material to US \$ 2200/- PMT CIF as ordered by the Adjudicating Authority, set aside the impugned order and allow the appeal.

4. Heard both sides. It is an admitted fact that the appellant is importing similar goods through various ports across India and produced Bills of Entry related to import of very same goods through Ahmedabad and Kolkata. Though the adjudicating authority as considered the Bill of Entry submitted before the Adjudicating Authority, there is no finding in the impugned order regarding the import made by appellant through other port. As held by Apex court in the matter of **Eicher Tractors Ltd (Supra)**, as per the Customs valuation Rule,

a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2). These exceptions are in

expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs authorities are bound to assess the duty on the transaction value. It is only when *the* transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules. In the Appellant case value declared at the time of import was accepted by the assessing authority and only when audit observed import of similar goods at higher rate, demand was made. The appellant categorically submit that the goods imported by the appellant cannot be considered as at par with the import made by the importer M/s. **Dimesco Footcare(India) Pvt. Ltd.** as alleged. Since times of import, quantity and country of import are different. As held by Apex court in the matter of **Basant Industries(Supra)**, a mere comparison of two invoices without anything more, it may not be correct to proceed on the premise that there is undervaluation. The relationship between the supplier and importer has also to be kept in mind because it is a matter of common knowledge that a price which is offered by a supplier to an old customer may be different

from a price which the same supplier offers to a totally new customer. Similarly, as held by Apex court in the matter of **Mirah Exports Pvt Ltd(Supra)** in the business world, considerations of relationship with the customer are also a relevant factor and the price offered by a supplier to an old customer may be different from a price which the same supplier offers to a totally new customer. Thus it is not unusual for a foreign supplier to give a higher discount to an importer who is importing a much larger quantity and merely because such a discount has been given by the supplier it cannot be said that there has been any undervaluation in the invoice.

5. Considering the above, We find no reason to confirm the demand of the differential duty on appellant. Hence the appeal is allowed with consequential relief, if any in accordance with law.

(Order pronounced in Open Court on ...09.01.2024.)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Ganesh