

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

Regional Bench COURT-2

Customs Appeal No. 22104 of 2015

[Arising out of the Order-in-Appeal No. COC-CUSTOM-000-APP-122-2015-16 dated 07.08.2015 passed by the Commissioner of Customs (Appeals), Cochin-9.]

Ihs Trades International

48/1015-b, Karukapilly Jn,
Deshabhimani Road, Elamakkur
Ernakulam, Kerala – 682026

.....Appellant

VERSUS

Commissioner of Customs, Cochin

Custom House,
Kerala - 682009

..... Respondent

Appearance:

Mr. M. Balagopal, Advocate for Appellant

Mr. Neeraj Kumar, Authorized Representative for Respondent

Coram:

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

Hon'ble Mr. Pallela Nageswara Rao, Member (Technical)

FINAL ORDER No. 20888 of 2024

Date of Hearing: 20.03.2024

Date of Decision: 19.09.2024

Per: P.A. Augustian

The issue in the present appeal is regarding valuation of imported "Slat Wall with Aluminum Inserts" used for display in shops. At the time of import, Appellant had declared the value as Rs.4,63,321/-. However, Respondent loaded the value by 200%. Aggrieved by said order, appellant had made a request for reconsidering the same and also requested to extend opportunity for personal hearing. After protracted

communication with the Customs Authority, the appellant approached the Hon'ble High Court of Kerala and as per the judgment of Hon'ble High Court dated 19.08.2015 in WPC 24538/2015, the respondent released the goods on executing bond and bank guarantee and also on the payment of appropriate duty as per the declared value. However, there was undue delay in re-assessing the value, and in view of the demurrage charges being incurred, appellant cleared the goods as directed. Aggrieved by the order passed by Adjudication Authority, an appeal was filed before the Commissioner (Appeals). Even though the Appellate Authority admitted that there is a violation of natural justice in as much as the request of the appellant for personal hearing was not allowed, the Appellate Authority justified the reassessment of the goods on the ground that the valuation is done by adopting the value available on the NIDB data. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, Learned Counsel for the appellant submits that the method adopted by the respondent to assess the value is illegal as per the provisions of Section 12(2) of the Customs Valuation (Determination of Imported Goods) Rules, 2007 and is unsustainable. When the declared value is not acceptable, the assessing authority is bound to inform the importer in writing the grounds for doubting the truth and accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity for being heard before taking a final decision under the said rule.

3. The Learned counsel also drew our attention to large number of communications regarding request for release of goods as per the declared value and also the willingness of the appellant to execute bond

and bank guarantee over and above the custom duty payable as per the declared value. The Learned Counsel further submitted that at the time of filing the Bill of entry, appellant had produced sufficient documents to support the declared value like proforma invoice, sale contract, LC/ Bank Certificate data from E-com website etc., in support of the declared value. However, the Adjudication and the Appellate Authority has not considered the same.

4. The Learned Counsel further submitted that there is no data furnished regarding contemporaneous imports of similar or identical goods to compare the same with the value declared by the appellant. The impugned order-in-original is also silent as to the details of NIBD data relied by the appellate authority. Further lower Authority has not stated as to why transaction value cannot be accepted as per Rule 3(2) of the Customs Valuation (Determination of Value of Imported goods) Rules, 2007.

5. The Learned Counsel further submitted that as per the decision of the Tribunal in the matter of **Mark Auto Industries Vs. CC New Delhi reported in 2003 (162) ELT 261 (Tri-Del.)**, it is settled that transaction value is the value of goods under the assessment and not the transaction value of some other goods covered by some other transactions. The Learned Counsel relied on the decision of **Devika Trading Pvt. Ltd. Vs. CC reported in 2004 (167) ELT 75 (Tri-Mum.)**, **Basant Industries 1996 (81) ELT 195 (SC)**, where it is held that invoices of imports of same goods by other importer is not conclusive for determining that the goods are under-valued.

6. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and further submitted that the declared value appears to be low considering the value of constituent materials. On random weighment of one set, the ascertained weight was 37.29 Kgs/set (MDF of Weight 35.18 KGs and aluminum inserts of weight 2.11 Kgs). Thus, the enhancement of value by 200% is justified.

7. Heard both sides and perused the records.

8. We find that as per the impugned order-in-original, Adjudication Authority admits that the appellant had produced copy of Proforma invoice, bank statements and price list of goods originating from China obtained from website. They have also requested for finalization of the assessment after giving them an opportunity to hear in person. However, without extending any opportunity for personal hearing, the impugned order-in-original was issued on the ground the present case does not fall under any of those situations mentioned in Section 18(1) and therefore is not being considered. The Adjudication Authority. re-fixed value of goods imported in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported goods) Rules, 2007, accepting the value suggested by the proper officer after examination of the goods. Such method of valuation of imported goods is illegal and unsustainable. There is no reason forth coming in the impugned order to reject the transaction value and none of the parameters like quantity, quality and commercial level were considered for comparing the value of goods before relying on the NIDB data. Thus, enhancement of value without following the Customs Valuation (Determination of Value of

Imported goods) Rules, 2007, is unsustainable, Hence, declared value has to be adopted for assessment.

9. In view of the above discussion and in the facts and circumstances, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 19.09.2024)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar