

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

Regional Bench - Court No. 2

Customs Appeal No. 21029 of 2019

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-18-2019-20
dated 07.06.2019 passed by the Commissioner of Customs (Appeals),
Cochin.)

M/s. K V Joshy & C K Paul

VI/510-511, Kattoor PO,
K V Joshy S/o Velayudhan,
9/178 Kattungal House,
Illikkad, Kattoor PO,
Thrissur – 680 702.
Kerala.

.....Appellant

VERSUS

Commissioner of Customs (Appeals),

Customs House,
Willingdon Island,
Cochin – 682 009.

.....Respondent

APPEARANCE:

Mr. M.S. Sajeev Kumar, Advocate for the Appellant.

Mr. P. Saravana Perumal, Addl. Commr. (AR) for the Respondent.

CORAM:

HON'BLE MR. C. J. MATHEW, MEMBER (TECHNICAL)

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

Final Order No. 20531 / 2025

DATE OF HEARING: 12.03.2025

DATE OF DECISION: 30.04.2025

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding valuation of imported goods. Appellant had imported refillable plastic gas lighter from China and filed Bill of Entry for its clearance. Considering the discrepancy in the documents submitted by the Appellant, proceedings were initiated and it is found that that Appellant had made four more import of similar goods in the

past. Accordingly, investigation commenced and statement was recorded from the Partners of the Appellant. Though the Appellant had requested for cross examination during personal hearing, it was denied on the ground that there is nothing wrong in denying such examination that will delay the proceedings. Thereafter Adjudication authority confirmed the alleged undervaluation and imposed penalty. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order, partially modified the order by setting aside the penalty imposed under Section 114AA of the Customs Act, 1962. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the Ld Counsel for the Appellant submits that the Appellant had never imported Assorted Electronic lighter as shown in relied proforma invoices and no evidence available on record to prove that such an import took place. The goods imported by the Appellant have specific brand name and Appellant had produced commercial invoices to support the declared value. The email communication relied by the Respondent cannot be considered as admissible evidence, since it is relied without complying with the provisions of Section 138C of the Customs Act, 1962. As regarding the merit of the case, the Ld Counsel submits that Adjudication authority has placed reliance on proforma invoice pertains to the brand name Long LF 588 and Adjudicating Authority has placed reliance on Proforma Invoice pertaining to the brand "BAIDA" and Long Feng- LF-588 and LF-5820 to reject the declared transaction value and to re-determine the value of the imported goods. Ld Counsel further submits that the brand imported by the Appellant is Maharaja Brand [MR-588 and MR-5820], which is totally different from Long Feng, LF-588 and LF-5820. Both being different in quality, gas used in container, on-off button etc., can't be compared with each other.

3. The Ld Counsel also draw our attention to the Order-in-Original No. COC-CUSTOM-000-COM-021-16-17 dated 19.07.2016 where the Respondent had considered the very same issue regarding valuation of very same goods which was imported by M/s Sarathi Impex. Ld. Counsel also draw our attention the reference regarding the import made by the Appellant in the said order where it is stated that "meanwhile a similar consignments of gas lighters was imported by M/s KV Joshy and CK Paul vide B/E No. 8950081 where in the invoice value of the refillable gas lighter was declared lighter MR 588 was declared USD 20/carton anti refillable plastic gas lighter with white LED torch with MR 5820 as USD 25/carton. As the value declared is low in comparison with similar consignment, consignment was taken for detailed investigation". The Ld Counsel for the Appellant further submits that after detailed discussion regarding the method of valuation adopted in the show cause notice, the Adjudication authority in the above import held that "the short question to be decided whether there has been any undervaluation in import of Baida brand refillable plastic lighters by the importer. It is not in dispute that the plastic refillable gas lighters imported by the importer are of Baida brand bearing model numbers K8X and K5820. It is also not in dispute that the IPR for Baida brand of gas lighters is held by M/s. Krishna Impex, who in turn had permitted import of the said brand gas lighters by the importer. It is also a fact that investigation has not thrown up any direct evidence of undervaluation by M/s. Saradhi Impex in the form of documentary evidence or admission statements; nor has the investigation been successful in bringing any evidence in the form of payments, over and the above what has been stated in the invoice submitted before Customs department, to the overseas supplier." Accordingly respondent had dropped the proceedings initiated against the importer M/s Sarthil Impex.

4. The Ld Counsel further submits that as far as the impugned order is concerned, the Lower authority is silent about the parameters adopted by the Lower authority for re-determining

the transaction value. Rule 5 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 prescribe different methods to be adopted for valuation under said Rule and therefore the Rule as such cannot be adopted in totality for the purpose of re-determination of value. Respondent while passing the impugned order is legally required to state the specific parameters adopted by them. Ld Counsel also draw our attention to Rule 5 of the CVR where it is specifically stated that transaction value of identical goods sold at the same commercial level and in the substantially the same quality has to be relied as identical goods. The Ld Counsel further submits that the issue regarding allegation of undervaluation was considered by the **Hon'ble Supreme Court in the matter of Commissioner of Customs (Import) Vs. Adani Power Maharashtra Ltd., [2023 5 Centax 116 (S.C.)/2023 (384) E.L.T 642 (S.C.) and also in following cases :-**

- (i) Global Industries Vs. Commissioner of Customs, Cochin [2011 (272) E.L.T. 724 (Tri. – Bang.)]**
- (ii) Commr. of Customs Vs. South India Television (P) Ltd., [(2007) 6 Supreme Court Cases 373].**
- (iii) Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs Mumbai [2000(122) ELT321 (SC)]**

5. The Ld AR reiterated the finding in the impugned order and submits that the Adjudication authority has considered the entire issue in detail and higher value was adopted based on the documents recovered during the investigation in the form of email communication, proforma invoices etc., which clearly reveals the existence of a higher value for the MR 588 and MR 520 model lighters which had been imported under Bill of Entry No. 8950081 dated 17.04.2015. The learned AR further submits that the statements recorded under Section 108 of the Customs Act, is an admissible evidence and retraction alone does not invalidate voluntary statements unless backed by evidence. Support the same, Learned AR relied on the following decisions:-

- (i) Telestar Travels Pvt. Ltd., Vs. Special Director of Enforcement, 2013**
- (ii) Surjeet Singh Chhabra Vs. UOI [1997 (89) ELT 646]**
- (iii) K.T.M.S Mohd. Vs. Union of India [1992 (3) SCC 180]**
- (iv) Naresh J Sukhwani Vs. UOI, 1996**

6. As regarding denial of cross examination, learned AR submits that principles of natural justice do not mandate cross examination in quasi-judicial proceedings. To support the same, the Learned AR relied on the following decisions :-

- (i) Kanungo & Co. Vs. CC, Calcutta [1983 (13) ELT 1486 SC]**
- (ii) 2024 (11) TMI 1354 – Cestat Chennai Malaram Bishnoi Vs. Commissioner of Customs, Chennai**

7. As regarding penalty under Section 112(a) Customs Act, 1962. Learned AR submits that "person" includes individuals and entities involved in customs fraud. Partners are liable for firm's acts (Section 140, Customs Act). Penalties are valid.

8. Heard both sides. As regarding valuation, law is well settled that 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. On perusal of the documents relied by the Adjudication Authority and considering the finding given by the respondent in the Order-in-Original No.COC-CUSTM-000-COM-021-16-17 dated 19.07.2016 on the very same issue regarding valuation of very same goods which was imported by M/s. Sarathi Impex Ltd, there is no admissible evidence to compare the goods imported by the appellant with the Proforma Invoice pertaining to the brand "BAIDA" and Long Feng- LF-588 relied by adjudication

authority to reject the transaction value. Considering the same, we hold that there is no material on record or comparable imports to reject the transaction value. Accordingly, appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 30.04.2025.)

(C J Mathew)
Member (Technical)

(P. A. Augustian)
Member (Judicial)