CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 21732 OF 2016

(Arising out of Order-in-Appeal No.104/2016-17 dated 30.08.
2016 passed by the Commissioner of Customs (Appeals), Cochin)

M/s. Proxima,
Door No.KP. X/289,
Kunhimangalam Road,
Payannur, Kannur-670 327. **........Appellant(s)**

VERSUS

Commissioner of Customs,
Customs House, Willingdon Island,
Cochin-682 009. **.......... Respondent(s)**

WITH

Customs Appeal No. 21733 of 2016

(Arising out of Order-in-Appeal No.105/2016-17 dated 20.09.2016 passed by
the Commissioner of Customs (Appeals), Cochin)

M/s. Proxima,
Door No.KP. X/289,
Kunhimangalam Road, Payannur,
Kannur-670 327. **.........Appellant(s)**

VERSUS

Commissioner of Customs,
Customs House,
Willingdon Island,
Cochin-682 009. **........Respondent(s)**

APPEARANCE:

Ms. Devika, Advocate for the Appellant
Mr. K. A. Jathin, Deputy Commissioner (AR) for the Respondent

Coram:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 22160-22161 /2025

Date Of Hearing: 07.04.2025
Date Of Decision: 07.04.2025

Per: Pullela Nageswara Rao

These 2(two) appeals are filed against the Orders-in-Appeal No. 104-105/2016 dated No. 31.08.2016 passed by the Commissioner of Customs (Appeals) Cochin.

2. The issue involved in both the appeals is enhancement of transaction value by the Respondent on the goods imported by the appellant.

3. The brief facts are the appellant imported "PVC Profile with Holes" and declared the assessable value of Rs. 43.53/- to Rs. 118.869/- per kgs in bill of entry no. 4237392/12.02.2016 (Appeal No. C/21732/2016) and Rs. 43.85/- to Rs. 119.72/- per Kgs in Bill of Entry No. 4401242/27.02.2016 (Appeal No. C/21733/2016). The original authority, relying on the National Import Data Base (NIDB) data rejected the transaction value and re-fixed the same at Rs. 70/- per Kg in both the Bills of Entry under Rule 5 of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007. This has resulted in an excess payment of duty of Rs. 3,17,335/- and Rs. 4,44,651/- in the respective bills of entry. Aggrieved by the order of the original authority, the appellant preferred appeals before the First Appellate authority who in turn upheld the orders and as per the appellant without considering the grounds taken by the appellant contesting the enhancement of value. Assailing the impugned order these appeals are filed before the Tribunal.

4. The learned counsel for the appellant during the hearing reiterated the submissions in the Appeal Memorandum and further submitted that; as per Section 14 of the Customs Act, 1962 for the purpose of valuation of imported goods, the value of imported goods shall be the transaction value of such goods, i.e. the price actually paid

or payable for the goods when sold for export to India for delivery at the time and place of importation; both the authorities below are not having a case that the value declared in the Bills of Entry is not the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation; there is no allegation of flow back of funds; no allegation that the importer and the exporter are related parties; it is a settled law that transaction value cannot be rejected solely on the basis of National Import Data Base (NIDB) data without any supporting evidence of extra payment over and above the declared value; in the issue involved in Appeal No. C/21732/2016 appellant had imported a total quantity of 58,483.14 Kgs of PVC Profiles having value ranging from Rs. 43.53 to Rs. 118.869 per Kg; however, in the Orders-in-Original dated 08.03.2016 and 29.03.2016, the quantity imported vide the relied upon contemporary import data is not shown; in the issue involved in Appeal No. C/21733/2016, the appellant had imported a total quantity of 58,241.58 Kgs of PVC Profiles having value ranging from Rs. 43.85 to Rs. 119.72/- per Kg; however, contemporary import data taken for comparison are of much lesser quantity ranging from 123.13 Kgs to 16,252 Kgs; the quantities taken for comparison are not at all comparable; in both the bills of entry the Country of Origin (COO) of the goods taken for comparison is not mentioned; in both the Bills of entry the quality of the goods imported taken for comparison are not mentioned; this attains significance as it is evident from the appellant's declared value that the goods are available in the market at different price ranges depending upon the quality; in both the cases, neither the bills of entry nor the commercial levels have been placed on record by both the authorities below; since the documents were not supplied prior to the issuance of the Orders-in-Original, the appellant was not in a position to defend his case which is in violation of Rule 4 (b) & (c) of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007, wherein it is categorically stated that the transaction value of identical goods shall be at the same commercial level and in substantially the same quantity as the goods being valued; as per sub-

Rule (2) of Rule 5, the above provisions of Rule 4 shall mutatis mutandis apply in respect of similar goods; the sale price is not subject to some condition or consideration for which the value cannot be determined or no part of the proceeds of any subsequent resale disposal or use of the goods by the buyer will accrue directly or indirectly to the seller; therefore, the transaction value declared by the appellant need to be accepted; CESTAT's Final Order No. 20499/2024-CUS(DB) dated 12.06.2024 in Appeal No. C/22346/2015 squarely covers the issue.

5. The learned counsel further relied on the following case laws;

i. Commissioner of Customs, Mumbai Vs. Mahalaxmi Gems [2008 (231) E.L.T. 198 (S.C.)]

ii. Commissioner of Customs, Mumbai Vs. J.D. Orgochem Ltd. [2008 (226) E.L.T. 9 (S.C.)]

iii. Commissioner vs. Sarto Electro Equipments Pvt. Ltd. [2019 (365) E.L.T. A43 (S.C.)]

iv. Commissioner vs. Century Metal Recycling Ltd. [2020 (373) E.L.T. A119 (S.C.)]

v. Commissioner vs. Agarwal Foundries (P) Ltd. [2020 (371) E.L.T. A295 (S.C.)]

vi. Commissioner of Customs, Ahmedabad Vs. Chandan Exports [(2024) 15 Centax 75 (S.C.)]

vii. Baba Baidyanath Trading Company Vs. Commissioner of Customs (Port), Kolkata [(2024) 23 Centax 320 (Tri.-Cal)]

viii. Sai Exports vs. Commissioner of Customs, Tuticorin [2019 (370) E.L.T. 398 (Tri.-Mad)]

ix. Marvel Agencies Vs. Commissioner of Customs, New Delhi [2017 (348) E.L.T. 534 (Tri.-Del)]

x. X. Agarwal Marbles India (P) Ltd. Vs. Commissioner of Customs, Jaipur [2017 (350) E.L.T. 262 (Tri.- Del)]

6. The learned Authorised Representative (AR) for Revenue reiterated the finding in the impugned order of Commissioner (Appeals).

7. Heard both sides and perused the records.

8. We find the issue in these 2(two) appeals is regarding enhancement of the value of the goods imported vide the respective bills of entry based on the NIDB data. The learned counsel contends that the price of the goods as per section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of price of imported goods) Rules, 2007 is the price paid for the imported goods at the place and time of importation and price is the sole consideration.

9. The value was enhanced based on the contemporaneous imports at Cochin port as per the NIDB data. However, the quantities in the compared imports are much lower and the quantities in the impugned bills of entry, further the value adopted was at Rs.70/- per kg irrespective of the type of profiles, wherein the prices would differ. We find that the declared prices in both the consignments range between Rs. 43.53/- to Rs. 118.869/- per kgs and Rs. 43.85/- to Rs. 119.72/- per Kgs. Therefore, adopting per kilogram value of Rs. 70/- based on average value of similar imports at the port of Cochin, for all types of profiles is arbitrary and not in accordance with the provisions of Customs Valuation (Determination of Price of imported goods) Rules, 2007.

10. In the above facts of the case, enhancement of value based on the material cost of per kg, irrespective of the quality, quantity and the type of profiles is untenable. Hence the impugned orders are liable to be set aside. We also find that the appellate authority did not consider the submissions and the case laws relied upon by the appellant. Further the determination of value is not in accordance with the provisions of Customs Valuation (Determination of Price of imported goods) Rules, 2007 and the Customs Act, 1962 and a bench mark average cost of the material per kilogram was adopted without considering the other attributes of the impugned goods, these aspects were not discussed in the impugned order and the appellate authority has passed a cryptic order. Therefore we find that the matter is required to be remitted

back to the appellate authority to examine these aspects and decide the matter denovo as regards the valuation of the impugned goods.

11. Accordingly, the impugned orders are set aside, and the appeals are remanded to the appellate authority. Needless to mention that the appellant be afforded a reasonable opportunity to be heard. The matter to be decided within 3(three) months from the receipt of this order.

(Operative portion of the order was pronounced open court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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