**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH**
**BANGALORE**

Appeal(s) Involved:

**C/30/2005-DB**

[Arising out of Order-in-Original No. 34/2004-CUS dated 20/10/2004 passed by the Commissioner of Customs, Cochin]

**Jay Jagdamba International**
B-33, Elbee Apartments, Office Floor,
Ring Road, Surat – 395 003
Maharashtra

**Appellant(s)**

**Versus**

**C.C-Cochin**
Custom House
Cochin – 682 009
Kerala

**Respondent(s)**

**Appearance:**

None — For the Appellant

Shri Madhupsharan, Assistant Commissioner (AR) — For the Respondent

Date of Hearing: 15/02/2018
Date of Decision: 20/04/2018

**CORAM:**
**HON'BLE SHRI S.S GARG, JUDICIAL MEMBER**
**HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER**

**Final Order No. 20621 / 2018**

**Per : V. PADMANABHAN**

The appeal is filed against the Order-in-Original No. 34/2004 dated 20.10.2004. The appellants filed three shipping bills under the claim for

DEPB credit, declaring export of 100% Poly and Poly fabric. The goods were examined by the Customs Authorities, when it was noticed that the goods were of very low quality and the declared value of US Dollar 1.25 and 1.15 was unusually high. Samples of the fabrics were drawn and tested to ascertain the GSM of the fabric. On the basis of the said parameter, the total quantity of the goods entered for export was ascertained and it was found that the appellant had mis-declared the quantity as well as of the goods, with the intention to avail excess DEPB credit. Further investigations were undertaken by the jurisdictional Central Excise authorities in Surat where the appellant's factory was situated. Enquiries were conducted with several firms engaged in dealing with co fabrics in and around Surat and it was concluded by the Departmental Authorities that the maximum aggregate value of the goods exported would be only Rs. 30 per meter as against the declared value of Rs. 65 per meter. The information of the textile committee was also taken, when the price of similar goods were opined to be 10 per meter. After recording the statements of the concerned persons of the exporter and completion of investigations, show-cause notice was issued to the appellant and after the process of segregation, the impugned order came to be passed in which the adjudicating authority ordered that appellant had mis-declared the total value of the export consignment. By over valuing the export goods, the appellant was held to have claimed DEPB benefit fraudulently. Finally the adjudicating authority imposed a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on the appellant under Section 114(i) and 114 (iii) of the Customs Act 1962. Aggrieved by the impugned order, the present appeal has been filed.

2. When the appeal was called, none appeared on behalf of the appellant. Shri Madhupsharan who reiterated the findings of the adjudicating authority.

3. On perusal of record, we note that the allegation raised against the appellant is that the appellant mis-declared the value of the export goods, with a attempt to avail excess DEPB credit the Revenue concluded that the goods were overvalued on the basis of -

(i) Market enquiries conducted with other exporters of similar fabrics

(ii) The information of textile committee during the course of adjudication as well as in the appeal filed before us, such market enquiries, as a basis for determining over valuation has been assailed. The appellant has further raised his grievance that the basis for such market enquiry was not made available to the appellant and hence it is argued that such market enquiry cannot be used against the appellant.

It is settled position of law that value of transactions of export/import are required to be done on the basis of the transaction value, as per Section 14. Detailed proceedings are prescribed for not accepting the transaction value and in such cases, for redetermination of value, the Customs Valuation Rules are required to be followed.

4. In the present case, we find that reasons for deduction of transaction

value are not clearly forthcoming. It appears to us that the transaction value has been rejected only on the basis of the market enquiries conducted with other local exporters. This cannot be a basis for rejection of transaction value, particularly in view of the fact that the foreign importer has remitted the proceeds of the export goods in full. It is further seen that the consignments covered by the three shipping bills were already allowed for export by Customs authorities and hence the goods are no longer available to the adjudicating authority for confiscation.

5. In view of the above discussions, we set aside the impugned order and allow the appeal.

(Order pronounced in Open Court on **20/04/2018**)

**(V. PADMANABHAN)**
**TECHNICAL MEMBER**

**(S.S GARG)**
**JUDICIAL MEMBER**

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