CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 3588 Of 2012

[Arising out of OIA No.96-95/CUS/APPL/DLH-IV/2012 dated 28.08.2012 passed by the Commissioner of Central Excise (Appeals), Delhi-IV, Faridabad]

M/s Welco Overseas Pvt. Ltd. : **Appellant**
C-204, Naraina Industrial Area,
New Delhi-110028

VERSUS

The Commissioner of Customs, Delhi-IV : **Respondent**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001

WITH

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[Arising out of OIA No.96-95/CUS/APPL/DLH-IV/2012 dated 28.08.2012 passed by the Commissioner of Central Excise (Appeals), Delhi-IV, Faridabad]

Jaspreet Singh Batra, Director : **Appellant**
M/s Welco Overseas Pvt. Ltd.
C-204, Naraina Industrial Area,
New Delhi-110028

VERSUS

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AND

Customs Appeal No. 3590 Of 2012

[Arising out of OIA No.96-95/CUS/APPL/DLH-IV/2012 dated 28.08.2012 passed by the Commissioner of Central Excise (Appeals), Delhi-IV, Faridabad]

Jaspal Singh Batra, Director : **Appellant**
M/s Welco Overseas Pvt. Ltd.
C-204, Naraina Industrial Area,
New Delhi-110028

VERSUS

The Commissioner of Customs, Delhi-IV : **Respondent**
New CGO Complex, NH-IV, NIT, Faridabad,
Haryana-121001
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APPEARANCE:
Shri Prabhat Kumar, Advocate for the Appellant
Shri Pawan Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINALORDER Nos.60153-60155/2024

DATE OF HEARING: 14.03.2024
DATE OF DECISION: 28.03.2024

PER: P. ANJANI KUMAR

M/s Welco Overseas Pvt. Ltd., A-41, Naraina Industrial Area, Phase-II, New Delhi-110028, the appellants (in C/3588/2012), also referred to as M/s WOPL and ShriJaspal Singh Batra(appeal No. C/3590/2012)and Shri Jaspreet Singh Batra (appeal No. C/3589/2012) the directors of the appellant challenge the Order-in-Appeal, dated 28.8.2012, passed by Learned Commissioner (Appeals), Faridabad.

2. Brief facts of the case are that the appellants are importers of second-hand printing machines; the appellants imported consignments of second-hand machines; submitted Chartered Engineer Certificates (CE Certificate) at the time of clearance; the proper officer had rejected the CE Certificates furnished by the suppliersand called for local Chartered Engineer to inspect the machines and to issue fresh valuation certificate in respect of the machines and enhanced the value declared thereof; declared value of the one machine was also enhanced by the proper officer at the time of import without calling forlocal Chartered Engineer. Subsequently, acting on an information officers of SIIB, ICD, Tughlakabad, New Delhi investigated the machines imported by M/s

WOPL,vide bill of entry No. 642833 dated 01.11.2007, ashow cause notice, dated 4.10.2010 and separate proceedings are going on.

2.1. Meanwhile officers of SIIB also searched the office premises of M/s WOPL on 16.11.2007 and detained 22 old and used printing machines, Imported by the appellants; out of the said 22 machines, 13 old and used printing machines, cleared under 07 bills of entry (Nos 000164/19.01.2006, 102081/11.09.06, 103074/17.11.2006, 100825/30.05.06, 000355/08.02.2006, 104175/15.02.07 &102849/31.10.2006,were subsequently seized on 31.12.07 under Section 110 of the Customs Act, 1962; they were provisionally released on execution of Bond for Rs.2,85,00,000/- and Bank Guarantee for Rs.6,40,000/-.

2.2. On completion of investigation, a show cause notice, dated 19.1.2011, was issued proposing to reject the declared value of these 13 machines under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 1998) ; proposing to re-determine the same at Rs.78,01,549, under section 14 of the Customs Act, 1962 read with rule 8 of the CVR, 1998; demand differential customs duty of Rs 22,81,831 along with interest and proposing to impose Penalty on the appellant and their directors, under Section 112(a) and/or Section 114A of the Customs Act, 1962. The proposals in the Show cause notice were confirmed by Additional Commissioner, Faridabad, vide Order-in-Original dated 28.11.2011, confirming the redetermination of value; differential duty of Rs.22,81,831; imposing penalty of Rs.22,81,831 on the appellant; appropriating Bank Guarantee of Rs Rs.6,40,000 and imposing penalty on the directors of the appellant. Learned Commissioner (Appeals), Faridabad, vide impugned order, rejected the appeals filed by appellants and their directors and upheld the order of the Lower authority.

3. Shri Prabhat Kumar, Learned Counsel for the appellants submits that the impugned order is improper and illegal and as cross examination of the CE, which is vital to the defence of the appellant, was not allowed, is in violation natural justice and hence, bad in law; proceedings have been violated as facts on record havealso been relied upon in the absence of cross-examination. He places reliance is placed on the following case laws

- 2000 (122) ELT 641 (SC)-Swadeshi Polytex Ltd Vs CCE, Meerut
- 2006 (205) ELT 1146 (Tri. - Mumbai) --Wings Electronics Vs CC, Mumbai
- 2006 (193) ELT 300 (Tri. - Mumbai)-Deendayal Didwania Vs CC. Mumbai

4. Learned Counsel submits further that all the necessary and required documents were produced by the appellant at the time of import; the goods were assessed properly at the time of import; 100% examination was conducted in each case of import; Chartered Engineer's Certificate was produced in each case of import; wherever the assessing authorities were not satisfied with the declared transaction value of the goods, the same was enhanced; in many cases, machines were more than two decade old and had but junk value. He submits that rejection of transaction value and re-determination of value on the basis of Board's Circular on depreciation is not sustainable as per the following.

- 2019(366) ELT 326 (Tri. - Bang.) –CCE, Cochin Vs Print Tools Corporation
- 2023 (383) ELT 190 (Tri. - Mumbai) -Sachin K shirsagar Vs CCE, (Import-I), Mumbai
- 2023 (383) ELT 144 (SC) --CCE, (Import-I)Vs Offshore Pvt Ltd.

5. Learned Counsel submits further that the Circular of the Board no longer relevant for assessment after amendment in law and is not in conformity with the settled law and hence cannot be relied upon; Apex Court in the case of Tolin Rubbers Pvt Ltd Vs CC, Cochin – 2004(163) ELT 289 (SC) relying on their earlier judgment in case of Eicher Tractors 2000 (122) ELT 321 (SC) held that the depreciation method was not applicable when the transaction value was available. CESTAT has held similarly in

- Veekay Surgicals (P) Ltd Vs CC, Faridabad 2009(245) ELT 501(Tri-Del)
- Maharashtra Services VS CC, Trichy 2009 (245) ELT 830 (Tri. - Chennai)
- CC, New Delhi Vs Swan Press, 2005 (184) ELT 93 (TRI-DEL).
- Peerles Pack Ltd., reported in 2003 (157) ELT177 (Tri.)

6. Learned Counsel submits that CESTAT accepted declared value of import of second-hand machinery in the following cases--

- Omax International vs. CC, Chennai - 2007 (216) ELT 248
- Balaji Office Equipment vs. CC, Chennai-2007 (216) ELT 611
- 2006 (209) ELT A115; 2007 (208) ELT 507; 2006 (198) ELT 240
- Victory Press Pvt Ltd Vs CC, Cochin- 2006 (205)1125
- Madhu Industries Ltd Vs CC, Ahmedabad2008 (232) ELT 575 (Tri)

7. Learned Counsel submits also that the declared value was enhanced at the time of import in respect of all the impugned machines

and the same were released after examination and assessment; declared values were either enhanced on the basis of local Chartered Engineer's Certificate or on own accord of the proper officer; re-enhancement of value not sustainable under the CVR, as value has already attained finality; he relies on the following decisions: -

- CC (Imports), Mumbai Vs Lord Shiva Overseas 2005 (181) ELT 213 (Tri. - Mumbai)
- Mohan Meakin Ltd Vs CC, Kochi 2000 (115) ELT 3 (SC)-
- Hitaishi Fine Kraft Indus PvtLtd Vs CC, West Bengal 2002 (148) ELT 364 (Tri. - Kolkata)

8. Learned Counsel submits also that valuation must be determined in accordance with legal provisions; re-determination of value based on Chartered Engineer Certificate dated 20.12.2007 is not proper and legal and hence order-in-appeal is liable to be set aside; valuation based on Chartered Engineer Certificate was held to be not admissible in the following cases.

- Indowind Energy LtdVs CC (Sea Port-Import), Chennai2005 (179) ELT 421 (Tri. - Chennai) –
- Iquira Inc Vs CC, Chennai 2004 (170) ELT 583 (Tri. - Bang.)
- New Techno Graphics Vs ADC, Hyderabad-II 2008 (222) ELT 260 (Tri. - Bang.)
- Balaji Office Equipment Vs CC, Chennai 2007 (216) E.LT. 611 (Tri. - Chennai)

9. Learned Counsel submits that enhancement of value based on Chartered Engineer's Certificate is not admissible in law as held in the following.

- Motor Industries Co. Ltd Vs CC 2009 (244) ELT 4 (SC)
- Asia Impex Vs CC, Amritsar 2011 (267) ELT 138 (Tri. - Del.)
- Indowind Energy LtdVs CC (Sea Port-Import), Chennai 2005 (179) ELT 421 (Tri. - Chennai)

- Bosch Ltd VersusCC(Appeals), Chennai 2009 (236) ELT 275 (Tri. - Bang.)-

10. Learned Counsel submits that Rule 10 of Customs Valuation Rules, 1988 cannot be used for rejection of declared value; authorities must proceed sequentially under the CVR; assessment cannot be challenged except by way of appeal and the transaction value cannot be rejected unless any of the circumstances mentioned in Rule 4 (2) is present, the transaction value as declared in the Bill of Entry has to be accepted as held in the following cases:

- CC, Mumbai Vs Bureau Veritas 2005 (181) ELT 3 (SC)-
- Vadilal Dairy International Ltd Vs CC, Mumbai2005 (180) ELT 436 (SC)
- Commissioner Vs Jindal Strips Ltd 2003 (156) ELT A385 (SC)
- Commissioner v. Venus Insulation Products2003 (153) ELT A172 (SC)
- CC Chennai Vs Forte Garments2002 (150) ELT 622 (Tri. - Chennai)
- Commissioner Vs Balkishan Dass & Sons 2001 (133) ELT A164 (SC)
- Mirah Exports Pvt Ltd Vs CC, 1998 (98) ELT3 (SC)
- Om Shiv Enterprises Vs. CC, Chennai2003 (160) ELT 202 (TRI.).
- Jindal Strips Ltd Vs CC, New Delhi2001 (133) ELT 570 (TRI.)

11. Learned Counsel submits that reliance on the statement dated 22-11-2007 of Shri Jaspal Singh is misplaced and the statement of Jaspal Singh Batra dated 10.1.2008 pertains to B/E No.642833 dated 1.11.2007, which was settled by order of Settlement; moreover, statement alone cannot be relied upon for enhancement of declared value. -Reliance is placed on the following cases.

- Orient Enterprises, New Delhi Vs CC, Cochin 1986 (23) E.LT. 507 (Trib) affirmed by Hon'ble Supreme Court 1997 (92) ELT A69 (SC)

- Paper Suppliers Vs CC, Kandla 2002 (147) ELT 101 (Tri. - Mumbai)
- Metplast India Vs CC, Nhava Sheva 2004 (173) ELT 59 (Tri. - Mumbai)
- Galaxy Fun world Pvt Ltd Vs CC, Mumbai 2007 (220) ELT 332 (Tri. – Mumbai)
- Munna Gift Centre Vs CC, Chennai2004 (178) ELT 310 (Tri. - Bang.)

12. Learned Counsel submits that no cash was recovered; remittances were only through banking channels; there was no evidence of extra remittances; no allegation of under invoicing can be alleged against the noticee merely on the basis of certain documents which are not authentic as held in Taito Watch Manufacturing Industries Vs CC., Jaipur – 2004(173) ELT 17 (Tri. - Del.); transaction value cannot be discarded in this case and Customs Valuation (Determination of Price of imported Goods) Rules are not applicable to the facts and circumstances of the present case.

13. Learned Counsel submits that the show cause notice hit by limitation as it was badly delayed; extended limitation of time is not applicable as no fraud or collusion or wilful misstatement or suppression of facts or intent to evade payment of duty is involved; no penalty is imposable when demand of duty itself is not sustainable; no specific role has been established on the part of Directors and penalty imposed on Jaspal Singh Batra and Jaspreet Singh Batra is not sustainable.

14. Shri Pawan Kumar, learned Authorised Representative reiterates the findings of the impugned order.

15. Heard both sides and perused the records of the case. The issue that requires decision in this case is as to whether the re-determination of value of second-hand machines imported by the appellant, is correct and legal. The appellants imported a consignment of used printing machinery vide Bill of Entry No.642833 dated 01.11.2007; the importer/ appellant submitted a Chartered Engineer certificate; the proper officer subjected the impugned goods for examination and ordered for a re-valuation of the machines by another Chartered Engineer; as per the recommendation of the Chartered Engineer, the value declared was enhanced and the goods were cleared; the value of one machine, however, was loaded without referring to a Chartered Engineer; search was conducted on the premises of the appellants on 16.01.2007 and six machines were detained; Revenue obtained another certificate from a Chartered Engineer and accordingly opined that the value of the imported consignment of seven machines was under-declared. Show-cause notice was issued and confirmed confiscating the goods and enhancing the value of the goods declared and imposing penalty on the appellant and their directors.

16. We find that Revenue attempts to sustain the allegations on the Chartered Engineer certificate obtained for the second time; the Board’s Circular dated 19.11.1987; the evidence in the form of an insurance policy in respect of some other consignment and the statements of the Director Shri Jaspal Singh Batra. Learned Counsel for the appellants submits that the cross-examination of the Chartered Engineer was not given; Board’s Circular was not relevant and the statement of the Directors was misconstrued. We find that Department relies upon

evidence gathered during the investigation in respect of some other machine, which the appellants have settled as per the directions of the Settlement Commission. We find that once the goods have been cleared from the Port of import after examination and enhancement of the value. We are of the considered opinion that the Department cannot re-assess the impugned goods for the second time. We find that the investigating officers did not question the Chartered Engineer, who issued the certificate on import and have also not questioned the proper officers, who allowed the clearance of Bill of Entry after the initial re-assessment. Department has not brought forth any omission or commission on the part of the Chartered Engineer or the proper officer so as to necessitate the revision of the assessment order passed in respect of the impugned goods. The assessment orders, which have attained finality, have also not been challenged; the same were neither stayed nor set aside by a competent higher forum or authority. Under these circumstances, we find that the Department is not within their right to subject same machines to another examination and assessment.

17. We find that learned Counsel for the appellants has listed various aberrations in the impugned order. He submitted a plethora of judgments wherein it was held that the Board's Circular cited supra is no longer relevant with the introduction of new Customs (Valuation) Rules 2007; method of assessment of second-hand machinery by following the depreciation method was incorrect [in view of the Hon'ble Apex Court in the case of M/s Tolin Rubbers Pvt. Ltd. (supra)]; re-enhancement of value which was already enhanced at the time of import is not permissible as the value attained finality in terms of CVR 2007 and that

insurance memo was not relevant for determining the value. We find force in the arguments of the learned Counsel in view of the judgments cited supra. He further submits that as no allegation of extra remittances were made, re-valuation is not permissible on the basis of certain documents which are not authentic.

18. In view of the above, we find that Department has seriously erred in re-determining the value of the impugned goods; the value of which is already enhanced at the time of import. We find that CVR 2007 does not give any scope for such re-assessment particularly when there was no challenge to the assessment made at the time of import by way of filing any appeal. Moreover, we find that whatever is construed as evidence in the impugned case pertains to import of some other machine albeit by the same importer. We find that evidence in one case cannot be a basis for confirmation of offence in some other case; such a confirmation defies all established principles of law. The impugned order passed without giving an opportunity to the appellants to cross-examine the Chartered Engineer is a serious violation of principles of natural justice. An order passed in this manner cannot be held to be legal, proper and justified. We find that the Revenue has not made out any case for re-determination of the declared value which was already enhanced at the time of import. Therefore, there is no violation of any of the provisions of the Customs Act by the appellant-importer and thus, the goods are not liable for confiscation and no differential duty is payable by the appellant-importer. Consequentially, no penalty is imposable either on the appellant-importer or their directors.

19. In view of the above, the impugned order is set aside and the all the appeals are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on 28/03/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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