CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
Court-I
Appeal No. C/45 & C/226/2012

[Arising out of OIA No.172-183/Cus/Ldh/2011 dt.25.11.2011 and OIA No.35/Cus/Ldh/2012 dt.23.3.2012 passed by the CCE (Appeals), Chandigarh]

Date of Hearing/decision: 18.07.2018

M/s. Universal Traders **Appellant**

Vs.
CCE, Chandigarh **Respondent**

Present for the Appellant: Shri Sudhir Malhotra, Advocate
Present for the Respondent: Shri Tarun Kumar, AR

Coram: Hon'ble Mr.Ashok Jindal, Member (Judicial)
Hon'ble Mr.Devender Singh, Member (Technical)

FINAL ORDER NO. 62563-62564/2018

PER: DEVENDER SINGH

These appeals have been filed by the appellant against two different impugned orders. However, the issue being common in the two appeals, both the appeals are taken up together for disposal.

2. The facts leading to these appeals are that the appellant have imported dry dates of Sukkur variety from Pakistan during the period August, 2010 and September, 2010 (in appeal No.C/226/2012) and during the April, 2010 to June, 2010 (in Appeal No.C/45/2012). The declared value of dry dates as per invoices submitted was as USD 0.40 per Kg to USD 0.45 per kg. On the basis of an alert circular dated 5.2.2010 of Commissioner of

Customs, SIIB (Import), Nhava Sheva, the value was enhanced to USD 718 per MT. The appellant paid duty under protest and filed appeal against the order of the adjudicating authority. In appeal, the Commissioner (Appeals) rejected their appeal. Aggrieved from the same, the appellants are before this Tribunal.

3. Ld. Advocate for the appellants submits that enhancement has been done on the basis of an alert circular and there is no contemporaneous import. He argued that this Tribunal has held in the case of Saraswati Knitwears Pvt. Ltd. vide Final Order No.62124-62125/2017 dt.12.12.2017 that DRI alert cannot be the basis for enhancement of the value in the absence of evidence of contemporaneous imports. He also relied on the judgment of this Tribunal in the case of Sedna Impex India Pvt.Ltd. vs.CC-2017 (347) ELT 317 9(T) arguing that the transaction value first has to be rejected under Rule 12 of Customs Valuation Rules, which has not been done. In this regard, he invited the attention to the order of the adjudicating authority and contended that no basis for rejection of value has been given under Customs Valuation Rules. He also contended that the impugned order has been passed on the basis of information on the website and there are no comparable imports of this type of dry dates. Further contention is that the Commissioner (Appeals) has wrongly relied on the value meant for the purpose of refund of special additional duty under Notification No.102/2007-Cus.

4. Ld.AR reiterated the findings in the orders of the Commissioner (Appeals).

5. Heard both sides and examined the record.

6. We find that the value of imported goods has been rejected on the basis of SIIB alert circular for dry dates which emanated from the Commissioner of Customs, SIIB (Import), Nhava Sheva. In the order of the adjudicating authority and the Commissioner (Appeals), no contemporaneous imports of identical or similar goods have been mentioned. The goods were imported from a particular region from Pakistan but no contemporaneous imports of that variety of dry dates at higher prices is found in both the orders. The Commissioner (Appeals) has done his own research from various websites but the same cannot form the basis for enhancement of value in the absence of contemporaneous imports of identical or similar goods. Besides, it is not forthcoming from para 12 of the impugned order that the details of prices obtained from websites were ever provided to importers. From the adjudication order, we find that rejection of transaction value was not done according to the procedure laid down in Rule of Customs Valuation Rules, 2007. The sole basis of enhancement of value is the calculation chart appended with the Nhava Sheva alert circular. The enhancement of the value on the basis of SIIB alert circular without first rejecting transaction value as per procedure under Rule 12 of Customs Valuation Rules, is not legally tenable as held by this Tribunal in the case of Sedna Impex India Pvt.Ltd.(supra) wherein this Tribunal has held as below:-

> ***"8.*** *We find that initially there was DRI alert that the overseas suppliers are undervaluing the value of the goods in question, the same cannot be the reason for enhancement of the value without rejecting the transaction value. The Customs Valuation Rules deals with situation*

how to enhance the value of the imported goods. DRI have not concerned with the said Valuation Rules, therefore, the declared value cannot be enhanced on the basis of DRI alert".

7. We also find in the case of Saraswati Knitwears Pvt.Ltd while examining the enhancement of value on the basis of DRI alert, this Tribunal has held that DRI alert cannot be the basis for enhancement of the value by relying upon the Tribunal's judgment in the case of Artex Textiles Pvt.Ltd. vide Final Order No.A/1382-1390/13/CSTB/C-1 dt.27.06.2013 wherein the Tribunal has held that mere DRI alert is not sufficient to enhance the value and in the absence of any evidence of contemporaneous imports on record, the enhancement of value is completely unsustainable. We also find that the adjudicating authority has redetermined the value by resorting to Rule 7 of Customs Valuation Rules, 2007. However, as highlighted by Commissioner (Appeals) himself, in para 26 of the impugned order in appeal No.C/45/2012 and in para 33 of the impugned order in Appeal No.C/226/2012, the contemporary trends in wholesale prices were not ascertained by the adjudicating authority while re-determining the value under Rule 7 ibid. Further, we find that Ld. Commissioner (Appeals) has given a finding that higher value adopted by the appellant for the purpose of refund of special additional duty under Notification No.102/2007-Cus can be justified as value for the purpose of determining the transaction value under Section 14 of the Customs Act. We are not able to understand and appreciate such a reasoning given by Ld. Commissioner (Appeals). In our view, the value for purposes for

refund of special additional duty has no relevance for the purpose of Section 14 of Customs Act, 1962.

8. In view of the foregoing, we find that the impugned orders are not sustainable and the same are set aside.

9. In the result, the appeals are allowed.

(Operative part of order pronounced in the court)

ASHOK JINDAL **MEMBER (JUDICIAL)**	**DEVENDER SINGH** **MEMBER (TECHNICAL)**

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