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

DIVISON BENCH
COURT NO.1

Appeal No. C/59795-59799/2013

Sr. No	Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
1	C/59795/2013-DB	OIA-03-CUSTOMS-APPL-DLH-IV-2013	28/05/2013	Commissioner of CUSTOMS-DELHI-IV(Appeal)	Varun Overseas	C.C.E.-Delhi-iv
2	C/59796/2013-DB	OIA-08-CUSTOMS-APPEAL-DLH-IV-2013	26/06/2013	Commissioner of CUSTOMS-DELHI-IV(Appeal)	Varun Overseas	C.C.E.-DELHI-IV
3	C/59797/2013-DB	OIA-09-CUSTOMS-APPEAL-DLH-IV-2013	26/06/2013	Commissioner of CUSTOMS-DELHI-IV(Appeal)	Varun Overseas	C.C.E.-DELHI-IV
4	C/59798/2013-DB	OIA-10-CUSTOMS-APPEAL-DLH-IV-2013	26/06/2013	Commissioner of CUSTOMS-DELHI-IV(Appeal)	Varun Overseas	C.C.E.-DELHI-IV
5	C/59799/2013-DB	OIA-11USTOMS-APPEAL-DLH-IV-2013	26/06/2013	Commissioner of CUSTOMS-DELHI-IV(Appeal)	Varun Overseas	C.C.E.-DELHI-IV

Date of Hearing/Decision: 29.08.2018

Appearance

Shri. Abhas Mishra, Advocate- for the appellant
Shri. G.S. Dhillon, AR. - for the respondent

CORAM: Hon’ble Mr. Ashok Jindal, Member (Judicial)
Hon’ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: 63199-63203/2018

Per Ashok Jindal:

The appellant is in appeal against the impugned orders wherein the value of Ball Bearings imported by the appellants through filing bills of entry has been enhanced.

M/S VARUN OVERSEAS

S. NO.	APPEAL NO.	B/E No. & Date	Commodity	Declared Price	Assessed Price	Basis of Valuation	Import From	Differential Duty
1.	C/59795/2013	101937 Dt. 29.08.06 102366 Dt. 27.09.06 102448 Dt. 03.10.06	Ball Bearings	Price declared per unit @ .970, .610 Pg 37 & 45	Price assessed per kg @ 1.160 Pg 34	Mumbai Cus Guidelines dt. 12.12.2005	3 Different Manufacturers /Traders in China	3,49,688
2.	C/59796/2013	101521 Dt. 28.07.06	Ball Bearings	Price declared per unit @. 0.093 to 0.178 Pg 31 & 33	Price assessed per Kg @ 0.175 to 0.304 Pg 28-29	On the basis of Price List of Supplier and after 30% dis	Manufacturer of China	8,06,092
3.	C/59797/2013	110794 Dt. 21.05.09 110919 Dt. 28.05.08 111228 Dt. 23.06.08 111229 Dt. 23.06.08 111488 Dt. 10.07.08	Ball Bearings	Price Declared @ US $ .091, .065, .071, .081 and .057 Pg 37	Price Assessed @ US $ 2.12.per Kg Pg 17	Mumbai Cus Guidelines dt. 12.12.2005	Manufacturer Exporter	6,28,040
4.	C/59798/2013	111781 Dt. 29.07.08 111784 Dt. 29.07.08 112751 Dt. 25.09.08	Ball Bearing	Price Declared @ US $ .150, .110, .100, .120, .390, .490 Pg 39	Price Assessed @ US $2.84, 2.47 and 2.25 per Kg Pg 5	Mumbai Cus Guidelines dt. 12.12.2005	Manufacturer Exporter	9,61,136
5.	C/59799/2013	109756 Dt. 04.03.08	Ball Bearing	Price Declared @ US 0.077, 0.099, 0.076, 0.058, 0.111 per Piece Pg 37	Price Assessed @ US $ 1.160 per Kg	Mumbai Cus Guidelines dt. 12.12.2005	Manufacturer Exporter	3,61,385

2. The brief facts of the case are that the appellant imported Ball Bearing as per the above said table and declared the transaction value of the same. The said transaction value were rejected in terms of the Commissioner of Customs (Import) Mumbai’s Circular No. S/26/757/1997 VA dated 12.12.2005 which is having guidelines for valuation of Chinese origin ball bearings of unpopular brand and value required be enhanced @ US$1.60 per kg. It was also held that various consignments of ball bearing has been assessed @ US$ 1.60 per kg, therefore, the said goods are to be assessed at the enhancement of rate. Initially, the appellant paid the duty and cleared the goods to avoid detention and demerges charges. Later on, the appellant filed the appeal before the ld. Commissioner (A) who upheld the enhancement of value. Aggrieved from the said orders, the appellant is before us.

3. The ld. Counsel for the appellant submits that the enhancement of the value on the basis of the circular of Commissioner of Customs (Import) is not acceptable without rejection of the transaction value in terms of Section 14 of the Customs Act, 1962. It was also submitted that the assessed value cannot be the base to enhance the transaction value. To support this contention, he relied on the decision of this Tribunal in the

case of ***Sedna Impex India Pvt. Ltd. Reported in 2017 (347) ELT 317 (Tri. Chan.) and M/s Sanjivani Non Ferrous Trading Pvt. Ltd. Vide final order No. 71665/2018 dated 25.06.2018*** and prayed that the impugned orders are to be set aside.

4. On the other hand, the Ld. AR reiterated the finding of the impugned order. He relied on the decision of this Tribunal in the case of ***Singal Bearing co. reported in 2013 (293) ELT 284 (Tri. Del.)*** and appellant's own case reported in ***2011 (273) ELT 271 (Tri. Del.).***

5. We find that in the appellant's own case for the earlier period and Singal Bearing Co. (Supra), this Tribunal has not considered the issue of rejection of transaction value, therefore, the said decisions are not applicable to the facts of this case.

6. We further take note of the fact that the same issue came up before this Tribunal in the case of Sedna Impex India Pvt. Ltd. (Supra) and in the case of M/s Sanjivani Non Ferrous Trading Pvt. Ltd. (Supra) wherein both the cases, it was observed by this Tribunal that on the basis of DRI alerts valuation cannot be enhanced without following Customs Valuation Rules.

7. We find that for enhancement of value of imported goods, value is to be enhanced on the basis of Valuation Rules and DRI alerts cannot be relied upon. Further, we find that Revenue has not produced any evidence to show that in NIBD data, the value has been declared @ US$ 1.60 per kg for ball bearing imported from China. In fact, the authorities below relied on the assessment of enhancement value and the same cannot be relied to enhance the value of imported goods, therefore, relying on the decision of Sedna Impex India Pvt. Ltd. (Supra) and in the case of M/s Sanjivani Non Ferrous Trading Pvt. Ltd. (Supra), we hold that the value of imported goods cannot be enhanced, merely, on the basis of letter written by Commissioner of Customs (Import) Mumbai for enhancing the price of the ball bearing.

7. In view of this, we set aside the impugned orders and allow the appeals.

(Dictated and pronounced in the open court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

rt