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

**C/411/2010**

[Arising out of Order-in-Original No. 12645/2010 dated 16.08.2010 passed by the Commissioner of Customs (Seaport-Export), Chennai).

M/s. Star Fish Trading Appellant

Versus

CC (Port-Import), Chennai Respondent

Appearance:

Shri S. Murugappan, Advocate,
For the Appellant

Shri R. Subramaniyam, AC (AR)
For the Respondent

**CORAM :**

**Hon'ble Smt. Archana Wadhwa. Member (Judicial)**
**Hon'ble Shri V. Padmanabhan, Member (Technical)**

Date of Hearing: 13.03.2018
Date of Pronouncement: 17-04-2018

**FINAL ORDER No. 41275/2018**

**Per V. Padmanabhan**

The present appeal is against the Order-in-Original No. 12645/2010 dated 16.08.2010. The appellant filed two shipping bills No.3649783 and 3649784 both dated 19.02.2010 and cleared the goods for export as follows:-

| S.No. | Shipping Bill | Item declared in the Shipping Bill | Per Unit value US$/KG |
|---|---|---|---|
| 1 | 3649783 dt. 19.02.2010 | 1) Dried Edible Shark fins 10 cms below<br>2) Dried Edible Shark, and Ray Fish Skin processed | 85.00<br>27.50 |
| 2. | 3649784 dt. 19.02.2010 | 1) Dried processed and Trimmed Edible Shark bones | 60.00 |

The FOB value of the export goods were declared accordingly @ Rs. 2,02,79,546/- and DEPB benefit was claimed on such export amounting to Rs. 8,11,180/-. The Customs authorities suspected that the export goods were over-valued with the intention of claiming undue benefit of DEPB credit and investigated the allegation of over valuation. Local market enquiries indicated that value declared by the exporter was not correct. Samples of the export goods were drawn and sent to Marine Products Exports Development Authority (MPEDA) for their opinion on the value of the export goods. The MPEDA indicated only the average export price over a large period of 10 months and suggested to the Customs authorities to approach the Madras Research Centre of Central Marine and Fisheries Research Institute (CMFRI), Chennai, for ascertaining the value of the export goods. Accordingly samples were sent to CMFRI. The CMFRI in their response dated 01.04.2010 identified the nature of the body part of the fish in the export consignment and indicated price structure of local market for such goods. On the basis of such details, the customs department proceeded to reject the transaction value declared in the shipping bills, seized the impugned goods and proceeded to adjudicate the alleged offence. The appellant waived the issue of SCN but filed written submissions supporting their stand. During the personal hearing, the adjudicating authority permitted the cross-examination of the Principal Scientist (CMFRI), who had given the report to the customs authorities. The Principal Scientist deposed that the value of various parts of the shark fish were indicated by CMFRI on the basis of approximate price in the local market. He clarified that such prices do not represent competitive selling price in International Commercial Trading.

2. The appellant argued before the adjudicating authority that the customs authorities had rejected the transaction value without any concrete data or evidence to show that the goods of the same kind and quality have been exported at a lesser price. He further submitted that various edible products from shark arises out of different spices of shark and the prices are determined by seasonal demand and may vary. It was submitted further that the same appellant carried out several exports which sale proceeds have been realized in full. Such export prices are comparable to the present export for consignments. The appellant further contended before the adjudicating authority that CMFRI have indicated the local prices without referring to the specific kind and quality of the goods in

comparable situation and hence such data has no relevance for export valuation.

3. The adjudicating authority vide the impugned order rejected the declared transaction value and ordered the export goods for confiscation under Section 113 (i) of the Customs Act, 1962. The goods were allowed for redemption on payment of fine of Rs.10.00 lakhs and penalty of Rs. 5.00 lakhs. Further, a penalty of Rs. 5.00 lakhs was also imposed on Shri B. Faizul Ahamed, Proprietor of the appellant under Section 114 (iii) and Section 114 AA of the Customs Act, 1962. Aggrieved by the impugned order, the present appeal has been filed.

4. We have heard Shri S. Murugappan, Ld. Advocate for the appellant as well as Shri R. Subramaniyam, AC (AR) for the Revenue.

5. The Ld. Advocate for the appellant argued that the department was not justified in rejection of the transaction value declared for the export goods. Such rejection has been ordered on the basis of market enquiry as well as the opinion regarding such local market value by CMFRI. He further argued that the market value cannot be the basis for rejection of transaction value and confiscation of the export goods. He further argued that the appellant themselves carried out earlier exports through Air cargo complex, Chennai, for which the export proceeds have been received in full and such export values can be comparable

to the value declared in the present consignments. The following are various case laws relied on by the Ld. Advocate:-

1. *Jayesh Bhavsar Vs. CC, Mumbai*
   2017 (358) ELT 778 (Tri.-Mum.)

2. *Nazir Makda Vs. CC, Mumbai*
   2017 (345) ELT 674 (Tri.-Mum.)

6. The Ld. DR justified the impugned order. He submitted that the goods have been over valued with the specific intention of claiming ineligible DEPB credit.

7. Heard both sides and perused the records.

8.1 After filing of the shipping bills for export of various shark products, the customs authorities suspected over valuation of the goods for claiming undue DEPB benefit. Market enquiries indicated the possibility that the transaction value declared was on the higher side. Enquiries with CMFRI were made. On the basis of the report from CMFRI, it appeared to the department that the market prices were much lower than the transaction value declared. Accordingly, the adjudicating authority has proceeded to reject the transaction value and the value was re-determined from Rs. 2,02,79,546/- to Rs. 15,92,400/-. Accordingly, DEPB benefit was also restricted from the claimed amount of Rs. 8,11,180/- to Rs. 63,696/-.

8.2. The valuation of export goods are required to be made normally on the basis of transaction value. The Customs

Valuation (Determination of Value of the Export Goods) Rules, 2007, provided for the basis for determination of the value of the export goods. These Rules provide that the proper officer shall have the power to raise doubt on the declared value based on certain reasons which may include:-

a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

b) the significantly higher value compared to the market value of goods of the kind and quality at the time of export.

c) the mis-declaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

8.3 While the above Rules empower the proper officer to doubt the declared value, arriving a revised value is to be done on the basis of the value at which the goods of like kind and quality exported at about the same time in comparable quantities in comparable commercial transaction. In the present case, we note that the transaction values have been rejected only on the basis of a market enquiry carried out with a trader and on the basis of the inputs given by CMFRI. The Principal Scientist of CMFRI has deposed in the cross examination that the prices indicated by them were on the basis of enquiries made in the local market.

8.4 We have referred to various case laws relied on by the appellant, in which a similar issue of over valuation of export gods have been considered. In the case of JayeshBhavsar (supra), the Tribunal observed as under:-

> “**5.** We have gone through the rival submissions. We find that the ld. counsel has primarily challenged the method adopted for obtaining the market value of the goods. The principle argument has been that it has not been done in their presence or in the presence of any panchas. No detail description of the product is mentioned in the two reports relied upon by DRI in respect of the wholesale price of the goods. Admittedly, the value of garments depends on various factors like design, size, fabric construction, fabric weight, etc. The market survey dated 10-10-2002 made by the DRI does not contain the specifics of products for which the said market report was obtained. Similarly, the report of RB textile mills is also not very precise. In any case, the domestic market value of goods can only be used to curtail the drawback or DEPB admissible to the appellant in terms of Section 76 of the Customs Act. The domestic market value of the goods cannot be used to determine the FOB value of the export goods. Ld. AR has pressed hard on the facts that the appellants had admitted to the overvaluation and no immediate retraction, if any, was made. In these circumstances, the statements became admissible evidence. This assertion of the ld. AR is misplaced. It is seen that there is no evidence on record to show that the entire sale proceeds of the earlier export have not been brought back to the country or that the export FOB of similar goods was different at the material time. Mere admission of Cenvat credit based on domestic market enquiry is not sufficient to discharge the obligation of revenue. Apex Court in *Om Prakash Bhatia* - 2003 (155) E.L.T. 423 has observed as follows :-
> “19. Learned Senior Counsel Mr. Dave submitted that in some cases, exporter may get much higher value of the goods than the market price prevailing in the country and therefore, merely because higher export value is mentioned, it cannot be inferred that it is not the true sale consideration. In some cases, this hypothetical contention may be right. However this would depend upon facts and circumstances as well as evidence on record in each case. If the goods are easily available in the

market, then it would be difficult to arrive at the conclusion that a foreign buyer - a prudent businessman would pay ten times more than the prevailing market price of readymade clothes, particularly, in the days where information is easily available through internet or various other sources. In any case, when margin of profit appears, on the face of it, unreasonable, it is for the exporter to establish that it was true export value stated in the shipping bill. Section 14 itself contemplates that the price at which such or like goods are ordinarily sold or offered for sale in the course of international trade would be the value of the goods."

**6.** In the instant case, the declared value was @ USD 8.9 per pc which comes to approx ` 430 per pc. in respect of Dyed 5% polyester/35% viscose woven P/L EMBD Ladies- maxi dress - 720 pcs @ USD 8.90 per pc FOB. The declared value in respect of Dyed cotton woven P/L embd ladies garments - maxi dresses- 1232 pcs @ USD 11.00 per pc FOB comes to ` 525 per pc. The market enquiry conducted by Revenue showed that market price of said goods was ` 100/- and ` 275/- respectively. In the case of market prices have been obtained from RB textile mills of domestic market price ` 90/- and ` 250/- respectively. It is seen that market enquiry has been done without any involvement of the exporter or CHA. The description taken for exploring the price of the goods is also without any specifics. The difference in value is not so significant. The value of garments depends on the kind of fabric, the nature/count/denierage of yarn, the print/colour and size, etc. Any comparison without all these factors is not a fair comparison. In view of above, the said market enquiry cannot be given any credence. These market enquiry reports cannot be relied to discard the export value."

8.5 In the facts of the present case which are similar to the case law cited above, we note that the transaction value stands rejected on the basis of the market value of similar goods. The CBEC vide Circular No. 56/2002-Cus. dated 09.09.2002 has directed that the present market value shall be the basis for granting DEPB benefit. But we are of the view that such a situation cannot be used to reject the transaction value. The circular can only be used for calculating/restricting the DEPB benefit.

9. In view of the above discussions, we are of the view that the evidence gathered by the department can at best raise doubt about the declared value. But such evidence cannot be used to reject the transaction value and redetermine the same in the case of the present case. By following the earlier decision of the Tribunal in the case of Jayesh Bhavsar (supra), we set aside the confiscation of the export goods as well as the penalties imposed on the appellant as well as on Shri Faizul Ahamed, Proprietor.

10. In the result, appeal is allowed.

(Order pronounced in the open court on 17-04-2018)

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| **(V.PADMANABHAN)** | **(ARCHANA WADHWA)** |
| **Member (Technical)** | **Member (Judicial)** |

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