

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI  
[COURT : Division Bench B1]**

**Appeal No.: C/40299/2013**

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[Arising out of Order-in-Appeal C. Cus. No. 1349/2012  
dated 29.11.2012 passed by the Commissioner of Customs  
(Appeals), Custom House, Chennai]

**M/s. Numerical Analytics Instruments Pvt. Ltd., : Appellant**  
33, Kittu Complex, I Floor,  
Giriappa Road, T. Nagar,  
Chennai – 600 017

**Versus**

**The Commissioner of Customs, : Respondent**  
60, Rajaji Salai, Custom House,  
Chennai – 600 001

**Appearance:-**

Shri. N. Viswanathan, Advocate  
for the Appellant  
Ms. T. Usha Devi, DC (AR)  
for the Respondent

**CORAM:**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**  
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing/Decision: **10.12.2018**

Final Order No. **43136 / 2018**

**Per P. Dinesha :**

The appellant had imported financial calculators  
manufactured in China, supplied to them by a dealer in Malaysia.

Accordingly, they filed Bill of Entry No. 441811 dated 23.02.2010 for  
clearance of 84 PCS of "TI-BA II Plus Financial Professional

Calculator” & 300 PCS of “TI-BA II Plus Financial Calculator” declaring the value at USD 3108 (C&F), the unit price of which was declared as USD 12 & USD 7 respectively. The RSP declared by the assessee for the above items was Rs. 1,800/- and Rs. 1,050/- respectively.

2. Vide Order-in-Original dated 30.03.2010, the adjudicating authority/Additional Commissioner records *inter alia*, on the first item, that the subject calculators manufactured by Texas Instruments, USA, were high-end calculators; that it was seen from the internet that the price quoted was around USD 39.99 as against USD 12 declared; that NIDB data revealed that the same was cleared at an average price of Rs. 1914.79 (equivalent to USD 40.48 and RSP of Rs. 3450/-); that on the second item since there was no NIDB data, the internet price was USD 31.82; that there was a huge difference in the value declared and therefore, it appeared that the assessee-importer has mis-declared the value of the goods, etc., rejected the declared value and re-determined the value of the same in terms of Rule 9 of the Customs Valuation (Determination of Price of imported goods) Rules, 2007. He also ordered confiscation of the impugned goods but, however, with a redemption option on the payment of fine in terms of Section 125 of the Customs Act, 1962

and also imposed penalty under Section 112(a) of the Act *ibid.* While doing so, he ignored the plea of the appellant that there was already a delay in supplying the calculators to the students for which reason they had to accept the enhanced value. On appeal before the first appellate authority, the Commissioner of Customs (Appeals), Chennai vide impugned Order however gave a partial relief of reducing the fine as well as penalty. Aggrieved by the sustenance of enhanced valuation, the appellant has filed the present appeal.

3.1 Today when the matter came up for hearing, Ld. Advocate Shri. N. Viswanathan appearing on behalf of the assessee/appellant contended that the goods were held up before clearance which was causing unnecessary delay in supplying the imported calculators to the students, which forced the appellant to write two letters dated 17.03.2010 and 30.03.2010 seeking adjudication Order without issuance of Show Cause Notice.

3.2 He also submitted that at no stretch of imagination could the price reflected on the internet be adopted since the law recognizes evidence by an expert in the term of expert opinion and not the data available on the internet and thus contended that the authorities below have gone beyond the very provisions of valuation

prescribed in the statute and the rules relating thereto. He also relied on a plethora of judgements/Orders including that of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has laid down guidelines especially when it comes to the valuation of imported goods.

4. *Per contra*, Ld. DC (AR) Ms. T. Usha Devi appearing for the Revenue supported the findings of the lower authorities.

5. We have heard the rival contentions and perused the documents placed on record.

6.1 Admittedly, there is no documentary evidence placed on record or any contemporaneous import relied on by the lower authorities, to justify valuation at a much higher rate. It is a settled position of law that the law only recognizes an expert's opinion as an evidence and undoubtedly, data available on the internet is not the one. The Hon'ble Supreme Court in the case of *Commissioner of Customs, ICD Vs. Polyglass Acrylic Mfg. Co. Pvt. Ltd. – 2015 (322) E.L.T. 794 (S.C.)* has ruled as under :

*“ The respondent-importer had filed the Bills of Entry in respect of the imported goods declaring the value at US \$ 305 PMT. The Department was not happy with the aforesaid valuation and thus issued show cause notice stating that the value should be US \$ 450 PMT. This demand under the show cause notice was confirmed. Against this order the respondent filed appeal which has been allowed by the Tribunal, inter alia, making the following observations :*

*“We have heard both the sides. We find that the Department has not relied upon any contemporaneous import of similar or identical goods to justify enhancement and what has been relied upon for enhancement is the report of fair value of such goods imported through various major Indian ports.”*

2. *Learned counsel for the appellant could not place any material to rebut the aforesaid observations of the Tribunal. In the absence of any documents or material showing the value of the import as claimed by the Department, at that time, the Department was not justified in demanding the value of the imported goods at US \$ 450 PMT.*

3. *We are thus in agreement with the view taken by the Tribunal and as a consequence thereof this appeal is dismissed.”*

6.2 Similarly, in the case of ***Gira Enterprises Vs. Commissioner of Customs, Ahmedabad – 2014 (307) E.L.T. 209 (S.C.)***, the Hon’ble Supreme Court has laid down as under :

*“24. In the absence of any material produced by the Revenue in proof of the alleged comparable imports at a higher value, the impugned order which eventually confirmed the original order of assessment by the Assistant Commissioner of Customs dated 31-3-2001 cannot be sustained for two reasons - (1) the mere existence of an alleged computer printout is not proof of the existence of comparable imports; (2) assuming such a printout exists and the contents thereof are true, the question still remains whether the transaction evidenced by the said computer printout are comparable to the transaction of the appellant. The appellant will have to be given reasonable opportunity to establish (if he can) that the transactions are not comparable.*

*25. The impugned order and the original assessment order are therefore, set aside. However, it will be open to the respondent (revenue) to proceed against the appellants herein pursuant to the show cause notice dated 25-9-2000 in accordance with law.”*

7. From the above, we find that the law is clear: the Revenue can rely on contemporaneous imports alone and since the same having not been done, the impugned Order becomes unsustainable and

liable to be set aside being contrary to the settled position of law and therefore, the same is set aside.

8. The appeal is allowed with consequential benefits, if any, as per law.

*(Operative part of the order was pronounced in open court)*

**(P Dinesha)**  
Member (Judicial)

**(Madhu Mohan Damodhar)**  
Member (Technical)

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