

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, SOUTH ZONAL BENCH,
CHENNAI.**

COURT HALL No.III

CUSTOMS APPEAL No.40979 OF 2013

(Arising out of Order-in-Appeal No.05/2013 dated 28.01.2013 passed by
Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road,
Cantonment, Tiruchirappalli 620 001)

M/s.Gypsie Impex

Shop No.1/2/3, Phoolgali,
Inside Crawford Market,
Mumbai 400 001.

.... Appellant

Versus

The Commissioner of Customs,

Custom House, Tuticorin-628 004.

...Respondent

APPEARANCE :

Mr. B. Satish Sundar, Advocate
For the Appellant

Mr. Harendra Singh Pal, Assistant Commissioner (A.R.)
For the Respondent

CORAM :

**HON'BLE Mr. S.S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. AJIT KUMAR, MEMBER (TECHNICAL)**

DATE OF HEARING : 22.01.2024

DATE OF DECISION : 05.02.2024

FINAL ORDER No.40131/2024**ORDER : Per Shri S.S. GARG**

The present appeal is directed against the impugned Order No.5/2013 dated 28.01.2013 passed by the Commissioner (Appeals), Trichy whereby the Commissioner (Appeals) has rejected the appeal and upheld the order of the adjudicating authority.

2. Briefly, the facts of the present case are that the appellant filed Bill of Entry No. 2708858 dated 03.02.2011 for the clearance of 1337 cartons of 'Deodorants', declaring the value as Rs.16,27,025/-. Based on intelligence, the officers examined the imported goods on 04.02.2011 and found that the imported goods were deodorants of various brands like Lomani, Remi, Maxi and Santago. As per Board's Circular No.8/2010-Cus. dated 26.03 2010 the import of cosmetics through Tuticorin port is not allowed. The said Board's circular clearly specifies that 'the cosmetics shall be imported as per Rule 133 of the Drug and Cosmetics Act, 1945, no cosmetics shall be imported into India except through the points of entry specified in Rule 43-A of the said Rules'. The point of entry have been specifically mentioned in Rule 43A such as Chennai, Kolkata, Mumbai, NhavaSheva, Cochin, Kandla, Delhi, Ahmedabad, Hyderabad, Ferozepur Cantonment, Amirstar, Ranaghat, Bongaon

and Mohiassan Railway stations. Further, no MRP/RSP was affixed on the packages. The samples were drawn and sent to the Additional Drug Controller, Chennai for No objection certificate. The Additional Drug Controller, Chennai vide his report dated 07.02.2011 has granted NOC for release of the goods. Further, the appellant's declared values were also very low. From the above, it appeared that the goods have been imported in violation of Rule 43A of Drugs And Cosmetics Rules, 1945 and Standards of Weights & Measures (Packaged Commodities) Rules, 1977. It further appeared that the appellants have misdeclared the values of the imported goods to evade payment of appropriate Customs Duty in contraventions of the provisions of the Customs Act, 1962. After following due process of law, the lower authority rejected the declared value of Rs.16,27,025/-and re-determined the value at Rs.46,22,202/-. Confiscated the said goods and given option to redeem the same on payment of fine of Rs.2,00,000/-under Section 125 of Customs Act, 1962 and imposed penalty of Rs.5,00,000/-under Section 112(a) of the Customs Act, 1962. Aggrieved by the Order-in-Original, the appellant filed appeal before the Commissioner (Appeals) and the Commissioner (Appeals) rejected the appeal. Hence this appeal.

3. Heard both sides and perused the materials on record.
4. Ld. Counsel appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on the identical issue. He further

submits that the goods which were imported were available in stock lot and after hard and sustained bargaining, the supplier agreed to sell the imported goods at the price mentioned in the invoice; that the invoice value is the transaction value for the present case; that the lower authority has re-determined the value of the imported goods under Rule 5 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 based on the transaction value of similar goods. He further submits that the basis of such enhancement apparently has been the values declared by other importers in the Bill of Entry; that these Bills of Entry were not put to the appellant and the copies of those Bills of Entry were not furnished to the appellant, wherein the quantity of import, country of export, would have great impact on the price of the goods and therefore cannot be permitted to be used for the purposes of enhancement of value. On this score, the order of the lower authority deserves to be set aside. He further submits that the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 are self-contained and the procedure to be adopted has been categorically laid down in the said Rules; that the original authority vide its order dt. 29.06.2012 has rejected the declared value / unit price of the impugned goods under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 without any basis and re-determined the same without sequentially following the Rules 4 to 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and on this ground alone, the order of the lower authority enhancing the

declared values deserves to be set aside and that the goods under import are liable to be cleared on payment of appropriate duty alone, as they do not fall under the list of prohibited goods, further they have been allowed to clear their goods in the past on payment of duty, as such the Customs department cannot take different stands, according to their own whims and fancies, to the prejudice of the importer. He further submits that the goods imported by the appellant are not prohibited goods as per Rule 133 read with Rule 43-A of the Drugs & Cosmetics Rules, 1945 or any other law for the time being in force. The imported items are not intended for medical use and therefore covered under Schedule-D. He further submits that the Schedule-D covers all substances which are not intended for medical use and its scope cannot be given a restricted meaning to exclude cosmetics. He also submits that the rejection of the transaction value simply on the basis of NIDB data is not sustainable in law. In support of his submissions, he relied upon the following decisions :-

(i) Topsia Estates Pvt. Ltd. Vs CC (Import-Seaport), Chennai - 2015 (330) ELT 799 (Tri.-Chennai)

(ii) Varus Overseas Vs CCE New Delhi - 2019 (369) ELT 1239 (Tri.-Chan.)

(iii) Unit Traders Vs CC Tuticorin - (2023) 9 CENTAX 306 (Tri.-Mad)

5. Ld. counsel further submits that none of the Bills of Entry which were relied upon by the department was put to the appellant nor the appellant made aware as to the quantities of import and other parameters by which the said imports could be

made comparable to the import made by the appellant in the subject Bill of Entry.

6. Ld. counsel further submits that representative sample of the imported goods was accorded 'no objection' for clearance by the Assistant Drug Controller, indicating that the Department of Drug Control had no objection to their release. He further submits that the objection of the department that there was no affixation of M.R.P / R.S.P on the packages imported is a defect which is curable one and would not amount to contravention of Standards of Weights and Measures (Packaged Commodity) Rules, 1977. In support of this, learned counsel relied upon the circular of the Board No.19/2011 dated 15.04.2011 and also the following judgments :

- (i) ABB Ltd. Vs CC Bangalore - 2011 (272) ELT 706 (Tri.-Bang.)*
- (ii) High Link Exporters Pvt. Ltd. Vs CC New Dehi - 2020 (373) ELT 554 (Tri.-Del.)*
- (iii) Unik Traders Vs CC Tuticorin - (2023) 9 CENTAX 306 (Tri.-Mad.)*

7. Ld. counsel further submits that department's contention that the goods were inadmissible due to port restrictions is also a curable defect. Ld. counsel further submits that at that time Tuticorin was not a designated port for import of the impugned goods but now Tuticorin Port is designated for import of impugned goods.

8. On the other hand, Ld. A.R for the Revenue reiterated the findings in the impugned order.

9. After considering the submissions of both the parties and perusal of materials on record, we find that the goods imported by the appellant are, admittedly, not prohibited goods as per Rule 133 read with Rule 43-A of the Drugs and Cosmetics Rules, 1945 or any other law for the time being in force. We also find that representative samples of the imported goods were drawn and the Assistant Drug Controller has issued No Objection for the release of the said goods. Further, we find that the lower authorities have re-determined the value of the impugned goods based on the values declared by other importers without providing any basis for this decision and relying on certain imports which are clearly not contemporaneous in as much as the Bills of Entry pertaining to those imports were filed during the period November 2010, whereas the impugned import is of the year February 2011 and there is no material produced by the department that amounts over and above the invoice value were paid with respect to transaction value in question. It has been consistently held by the Tribunal that NIDB data alone is not sufficient for re-determination of value. In this regard, we may refer to the decision of this Tribunal in the case of *M/s.Shah B Impex Vs CC (Imports) Chennai* vide Final Order No.40917/2023 dt 12.10.2023 (Customs Appeal No.40823 of 2014), wherein also the Chennai Bench of the Tribunal has rejected the re-determination of value simply on the basis of NIDB data. Therefore, we hold that the enhancing the transaction value on the basis of NIDB data is not sustainable in law and hence we set aside the enhancement. As

far as the affixation of M.R.P and R.S.P price on the packages are concerned. We find that this defect is curable one and would not amount to contravention of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 as held in the case of *ABB Ltd.* and *High Link Exporters Pvt. Ltd* cited supra by the appellant.

10. As far as violation of the port restriction is concerned, we find that during the relevant time, the Tuticorin was not an authorized port for import of the impugned goods but subsequently, the said port has been authorized for import of the impugned goods. Therefore, there is a violation with regard to port restrictions. For that violation, we think it appropriate to impose a penalty on the appellant under Section 111 (d) of the Customs Act, 1962 amounting to **Rs.1,00,000/- (Rupees One lakh only)** and drop all other penalties and fine imposed by the impugned order. The present appeal is disposed of on above terms.

(Pronounced in court on 05.02.2024)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(S.S. GARG)
Member (Judicial)

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