CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

COURT HALL - I

CUSTOMS APPEAL No.41712 of 2014

(Arising out of Order-in-Original No.24730/2014 dated 17.04.2014 passed by the Commissioner of Customs,(Seaport-Export) Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.Navakar Impex Pvt. Ltd., **...Appellant**
No.21, Vathiar Kandan Pillai Street,
Choolai,
Chennai – 600 112.

Versus

The Commissioner of Customs
(Seaport-Export) **...Respondent**
Custom House,
No.60, Rajaji Salai,
Chennai - 600 001.

With

CUSTOMS APPEAL No.41713 of 2014

(Arising out of Order-in-Original No.24730/2014 dated 17.04.2014 passed by the Commissioner of Customs,(Seaport-Export) Custom House, No.60, Rajaji Salai, Chennai 600 001)

Shri Tarachand L.Shah, **...Appellant**
27-37-1/A, Bunder Road,
Opp.Leela Mahal,
Vijayawada,
Andhra Pradesh 520 002.

Versus

The Commissioner of Customs
(Seaport-Export) **...Respondent**
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

And

CUSTOMS APPEAL No.41714 of 2014

(Arising out of Order-in-Original No.24730/2014 dated 17.04.2014 passed by the Commissioner of Customs,(Seaport-Export) Custom House, No.60, Rajaji Salai, Chennai 600 001)

Shri Anuj Kumar Jain, **...Appellant**
11/27/5-2 (I Floor),
Mahavir Mansion
Manikonda Vari Street,
Vijayawada – 520 001.
Andhra Pradesh

Versus

The Commissioner of Customs
(Seaport-Export) **...Respondent**
Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE:

Shri S.Sankaravadivelu, Advocate
For the Appellant

Shri M.Ambe, Deputy Commissioner
For the Respondent

CORAM:

HON'BLE SHRI P.DINESHA, MEMBER (JUDICIAL)
HON'BLE SHRI M.AJIT KUMAR, MEMBER (TECHNICAL)

DATE OF HEARING : 15.12.2023
DATE OF DECISION : 29.05.2024

FINAL ORDER No.40590-40592/2024

Per Shri P. Dinesha

The appellant is one of the importers of Glass sheets of various types, colours and thickness. It appears that the Officers of Directorate of Revenue Intelligence (DRI), Chennai, searched office and go-down of the appellants under the pretext of undervaluation, based on intelligence inputs.

2. It appears that there were cases of rampant undervaluation in the import of Sheet Glass/ Reflective Glass from various Chinese suppliers and other importers in India. Some of the importers appear to have declared higher values while some of the other importers were alleged to have maintained parallel invoices and, that appears to be the reason for search in the case of the appellant before us. The appellant was thus alleged to have indulged in the undervaluation of imports in question.

3. During the relevant period, the appellant had imported 94 consignments of Clear Drawn Sheet Glass/Reflective Sheet Glass of various sizes between May 2006 to June 2008; and the declared price was as under:-

(i) for both 1.8 mm and 1.69 mm clear drawn sheet glass was US$0.57/ Sq.Mtr.;

(ii) Cleared 4 mm reflective glass sheet of different colours at US$1.52 to 2.92/Sq.Mtr.;

3.1 The Directorate of Revenue Intelligence (DRI) appears to have inferred based on the alleged contemporaneous imports (from NIDB data): -

(i) Clear Drawn Sheet Glass sizes 1.69 mm and 1.8 mm were declared @ $0.57/SQM during the period from May 2006 to June 2008, whereas, the actual prices were ranging between $0.92 to $1.45 per SQM and other importers were also clearing at a higher value than that declared by the appellants; and

(ii) In respect of 5 mm Reflective Glass, the appellants had imported at USD 4.68/SQM from M/s.T.G.Changjing Glass Co. Ltd., China whereas, from other suppliers, the appellants have imported at USD 2.17/SQM to USD 2.92/SQM.

3.2 It was the further case of the revenue that the evidences in respect of import of 5 mm Reflective Glass from other Chinese suppliers revealed that the actual rate was ranging between USD 3.2/SQM and USD 4.34/SQM.

4. Thus, the above was pointed out in the Show Cause Notice dated 04.05.2011 issued by the revenue, thereby proposing to reject the declared/transaction value of the

appellant and, consequently, to re-determine the same by invoking larger period of limitation. In so far as 2nd and 3rd appellants are concerned, it was proposed to levy penalty under Section 112(a) ibid. The authority issuing the SCN has relied upon a number of documents, as could be seen from the Annexure – I to the SCN (page No. 58 of the appeal memo).

5. It appears that the appellant filed a detailed counter thereby justifying the declared value, with a further request for the supply of relied upon documents from the revenue. The Adjudicating Authority having considered the counter filed by the appellant in adjudication, passed the Order-in-Original No. 24730/2014 dated 17.04.2014 wherein, he has confirmed the demands proposed in the Show Cause Notice. He has also imposed penalty under Section 112(a) on the 2nd and 3rd appellants of Rs.5,00,000/- each. It is against this common Order-in-Original that the appellants have filed the present appeal before this forum.

6. Shri S.Sankaravadivelu, Learned Advocate appeared for the Appellants and Shri M.Ambe, Learned Deputy Commissioner represented the Revenue.

7. At the outset, the Learned Advocate contended that the period involved in the present *lis* is from 16.05.2006 to 14.05.2008 for which the SCN dated 04.05.2011 issued is barred by limitation, as the revenue has nowhere established fraudulent act or suppression or mis-declaration of facts by the appellant to justify the invocation of larger period of limitation. He would also contend that the Original Authority has invoked extended period of limitation for the reasons of huge differences between the declared value and the comparable prices (with NIDB) alleged to have been found during investigation, but however, no evidence is placed on record, to justify as to how the value declared by the appellant was incorrect. He would also contend that in most of the cases of imports by other importers which has been relied upon by the revenue,

copies of relied upon documents like bills of entry were not provided to the appellants. In this regard, he has relied on the decision of Hon'ble Supreme Court, in the case of;

(1) **Commissioner of Customs Vs.M/s. M.M.K. Jewellers [2008 (25) ELT 3 (SC)]** where in it is held that, "in view of the clear legal position crystallized by a series of judgements that in case where the assesses are not guilty of suppression of facts, collusion or wilful misstatement of facts, therefore, the extended period of limitation cannot be invoked under proviso to Section 28(1) of the Customs Act, 1962 in the instant appeal and the other connected appeals. Consequently, this appeal and other connected appeals filed by the appellant have to be dismissed being time barred".

(2) In **M/s.Uniworth Textiles Vs. Commissioner [2013 (288) ELT 161 (SC)]** it has been held that, "in view of the settled position of law and in view of the fact that the Department has not brought on any iota of evidence of the involvement of the importer/appellants in the fraudulent activities, concerning collusion, wilful mis-statement and suppression of facts with reference to value of imported goods, in our considered view, the demand could not have been issued for extended period. In the case in hand, it is an admitted fact that the show cause notice has been issued beyond the period of one year from the date of filing of Bills of Entries and payment of duty on the declared value. Thus, the proceedings are wholly barred by limitation of time as per the dictates of Section 28 ibid";

8. Without prejudice to the above, he has contended that:

(i) Non-supply of relied upon documents,

(ii) Non–appearance of appellant/ representative cannot be a reason for non-supply of relied upon documents, and

(iii) Parallel invoices of other importers were not relevant in so far as the imports in question of the appellants are concerned. Transaction value could only be rejected as per the provisions of Section 14 of the Customs Act, 1962 read with Rule 10A of Customs Valuation Rules, 1988/2007. Having rejected the transaction value, the same could be re-determined by applying the sequential proceeding from Rule 5 *ibid,* whereas the authority has applied Rule 8 *ibid* which is against the statute.

9. He would thus request for setting aside the value as re-determined by the Adjudicating Authority. He would also contend on merits of the case that:

(i) There was no evidence to show that the appellants themselves have imported 3.5mm Dark Grey Glass Sheets in March, 2007 at a higher price. However, in the Annexure to the Show Cause Notice (Sl.No.1, 71, 72, 75, 76, 81 and 82 under 2007), the prices at which some other importers(like M/s. Lakshminarayana etc.,) are said to have imported, is relied upon. The copies of such Bills of Entry are also not provided to the appellant for rebuttal;

(ii) Though there is an allegation of mis-declaration, there is nothing on record to prove that the Revenue had recovered any documents/evidence to show that the prices declared in the Bills of Entry were wrong/false.

(iii) Out of the 45 Bills of Entry of other importers relied upon, copies of only 14 Bills of Entry that too, without the covering invoices were provided. Copy of one Bill of Entry provided related to import of 'poly carbonate'. The learned Original Authority has recorded as if 17 Bills of Entry were provided, which itself is a fallacy;

(iv) Out of 181 items, the learned Original Authority had not seen the NIDB data or Bills of Entry or Invoices for 103 items. For 67 items, Bills of Entry were made available but the relevant invoices were not made available. For 11 items invoices were made available but Bills of Entry were not made available. Thus, effectively no relied upon document was supplied to the appellant.

(v) Unless copies of the Bills of Entry of the so-called comparables were provided, it could not be said that the declarations made by the appellants under Section 46 of the Customs Act, 1962 in the Bills of Entry were wrong, to allege mis-declaration, etc.

(vi) The investigation was based suspicion that the import by other importers of similar goods was at higher prices the data of which should be available with the revenue and therefore, there was no justification for non-supply of relied upon documents on the flimsy ground of non-appearance of the appellants or their representative.

(vii) NIDB data is retrieved from the EDI system maintained by the Department and when the NIDB data is used, it is required that copies of relevant Bills of Entry, invoices, etc., are provided to the affected party failing which, such NIDB data could not be used as evidence at all.

(viii) The learned Original Authority has recorded that two sets of invoices showing different prices were recovered from one M/s.Rajita Herbals Pvt. Ltd., which was used as evidence to enhance the values declared by the appellants in respect of six Bills of Entry;

(ix) The recovery of two sets of invoices from other importers cannot be a ground to discard the appellant's transaction value and fasten the charge of mis-declaration, as long as no incriminating documents were recovered from the appellants;

(x) The Apex Court in the case of M/s.South India Telecom Pvt. Ltd., relied upon by the learned Original Authority, decided that the validity of the declared transaction values has to be decided keeping in view the provisions of Section 14(1) of the Customs Act, 1962 and Rule 4(1) of the Customs Valuation Rules and not arbitrarily. In that sense, the Apex Court opined that the "invoice price is not sacrosanct";

(xi) The Provisions under Section 14 as well as Rule 10A of Customs Valuation Rules, 1988/ Rule 12 of Customs Valuation Rules, 2007 prescribe that the transaction values are to be accepted as such unless the grounds for rejection mentioned under Section 14 r/w Customs Valuation Rules, 1988/2007 are fully satisfied;

(xii) Notwithstanding the admissibility or otherwise of the transaction values, as per the Customs Valuation Rules, 1988/2007, if the transaction values are to be re-determined, it is only by sequentially proceeding from Rule 5 onwards and not by jumping to Rule 8/9 of the Customs Valuation Rules, 1988/2007; such an arbitrary fixation of value is not sanctioned by law;

(xiii) Even if the value is re-determined under Rule 8 /Rule 9 of Customs Valuation Rules, 1988/2007, the lowest of the value recorded is to be adopted after making adjustments for quality, quantity and commercial level of transaction;

10. Therefore, the re-determination of the declared value is not done, in the first place, as provided under Section 14 of the Customs Act, 1962 and Customs Valuation Rules, 1988/2007.

11. The learned Advocate has relied upon the following decisions/orders of various judicial fora in his support: -

i) M/s.Red Elan Distributors Vs. Commissioner of Customs, New Delhi [2018 (359) ELT 258 (Tri.Del.)];

ii) M/s.Topsia Estates Pvt. Ltd., Vs. Commissioner of Customs (Imports-Seaport), Chennai [2015 (330) ELT 799 (Tri.-Chennai];

iii) a) M/s.Agarwal Foundries (P) Ltd., Vs. Commissioner of Customs [2020 (371) ELT 859 (Tri. Hyd.)];

b) Commissioner Vs. M/s.Agarwal Foundries (P) Ltd., [2020 (371) ELT A295 (SC)];

iv) Final Order No.40718/2023 dated 24.08.2023 passed by the CESTAT, M/s.Vikram Trading Company Vs. Commissioner of Customs, Chennai;

v) a) M/s. Global Industries Vs. Commissioner of Customs, Cochin [2011 (272) ELT 724 (Tri.-Bombay)];

b) *Commissioner of Customs, Cochin Vs. M/s.Global Industries [2023 (9) Centax 74 (SC)]/ [2023 (386) ELT 32 (SC)];*

vi) a) Commissioner of Customs, Nhavasheva-III Vs. M/s.Granite India [2023 (6) Centax 10 (Tri.Bombay)]; and

b) Commissioner of Customs, Nhavasheva –III Vs. M/s.Granite India [2023 (6) Centax 13 (SC)].

12. Per contra, Shri M.Ambe, Ld. Deputy Commissioner has supported the findings in the impugned order. He also drew our attention to paragraphs 8, 9, & 10 of the impugned order, wherein, specific findings on the undervaluation have been recorded by the Adjudicating Authority.

13. We have considered the rival contentions and we have also carefully perused the

documents placed on record. We find that the only issue to be decided by us is, "whether the revenue was justified in rejecting the declared value and re-determining the same?"

14. With regard to the limitation, the original authority has primarily alleged that there was a huge difference between the declared value and the contemporaneous imports found during investigation, it was held to be a justifiable and sufficient reason to attribute willful misstatement of facts insofar as the price of the goods imported by the appellant are concerned. The requirements of the statute to invoke the larger period of limitation are fraud, suppression, willful mis-statement of facts, but we are afraid when it comes to the price, the revenue has to prove beyond hilt that the prices so declared by the appellant cannot be accepted for any reasons in terms of Rule 3 of the Customs Valuation Rules. That is to say, the revenue must have concrete evidences of contemporaneous imports, which are comparable in all respects

like the quantity, size, description, country of origin, etc.

15. Therefore, some importer having maintained parallel invoices or some importer having declared at such and such a price which was more or which was less, *ipso facto* does not establish ‘mis-statement’ without verifying the quantity or description of import, etc. Moreover, as settled by various judicial precedents, such mis-statement should be willful, that is to say, it should be a preplanned one with a motive to evade/avoid tax; and that mis-statement should be proved in the importer’s case independently, by referring to exactly gained tax evasion, etc. not just going by the so-called comparables which are actually not worth comparing in anyway, as in the case on hand.

16. Other than the above, the other reasons given are the non-appearance and recovery of parallel invoices to allege mis-statement, which cannot lead us anywhere near the phrase ‘willful mis-statement’, the marginal difference in thickness of glass as alleged by

the original authority, in addition to the above grounds cannot convert the *bonafides* into *malafides*. It is also a matter of record that the authority himself has admitted that even during search/investigation in the case of the appellant, no incriminating documents was found and thus, the allegation has just remained unproved. In this regard, the reliance placed on the decision of the Apex court in the case of Commissioner of Customs, Mumbai Vs. M.M.K.Jewellers – reported in 2008 (25) ELT 3(SC) – is apt, wherein it has been held as under:

> *" 46. In view of the clear legal position crystalized by a series of judgments that in case where the assesses are not guilty of suppression of facts, collusion or willful misstatement of facts, therefore, the extended period of limitation cannot be invoked under proviso to Section 28(1) of the Customs Act, 1962 in the instant appeal and the other connected appeals. Consequently, this appeal and connected appeals filed by the appellant have to be dismissed being time barred…"*

17. In addition to the above, we find from the series of correspondences addressed by the appellant to the office of the original authority that there have been many requests for supply of relied upon documents for effective rebuttal, in tune with the principles of natural justice.

However, as urged by the ld. Advocate, we agree that there the relied upon documents have not at all been given to the appellant for effective rebuttal. It appears that most of the documents furnished to the appellant were incomplete. In this regard, we find that the Hon'ble Bombay High Court has in the case of Johnson and Johnson Ltd. Vs. Dy. Chief Controller of Imports & Exports – reported in 2003 (154) ELT 370 (Bom) held that the non-supply of adverse materials to the affected person constitutes violation of Rules of natural justice, in the following words:

> "*12. In order to conform natural justice, the decision maker must not act on the material coming on record subsequent to the stage of hearing or after oral hearing, which the other side has not seen and had no chance to comment on it. It is an elementary rule of principles of natural justice that party must be given a fair opportunity to collect and controvert any relevant material brought forward to his prejudice. It is needless to mention that the breach of principles of natural justice constitutes breach of Article 14 of the Constitution of India as held by the Apex Court in the case of Union of India & Ors. v. Ex-Constable Amrik Singh (A.I.R. 1991 S.C. 564). Thus, considering the clear breach of principles of natural justice, the impugned order cannot stand to the scrutiny of law and the same needs to be quashed and set aside on this short count.*
> *Since the impugned order is being set aside on the ground of breach of principles of Natural Justice, we do not think it necessary to dwell on other various challenges set up in the petition and canvassed in the oral submissions by the learned Counsel for the Petitioners."*

18. Insofar as the transaction value is concerned, Section 14 of the Customs Act, 1962 read with rule 10 A of the Customs Valuation Rules, 1988 provides that the transaction value is to be accepted as such unless the grounds for rejection mentioned there-under are fully satisfied. Here in the case on hand, the reasons attributed by the revenue for rejection of transaction value are apparently very vague. Moreover, mandate of section 14 read with rule 10 *ibid* is that the transaction value could be rejected for reasons of the buyer and the seller are related; the difference between the declared value and that of identical goods is significantly higher; or it is the case of providing abnormal discount or involving special discounts; or there is clear mis-declaration as to description; etc., but however, from a perusal of the impugned order, there is no finding with regard to the satisfaction or otherwise of the requirements of section 14 read with rule 10 A/12 *ibid*. In fact, it has also been observed by the original authority that the investigation itself was based on NIDB records and the outcome of investigation in respect of similar imports wherein it has been observed that during investigation of

import of glass sheets by some of the importance, DRI had found two sets of invoices, one showing actual value while the fabricated invoice showing lesser value in respect of some imports, but no mention about the appellant's imports; with regard to 6 out of the total 94 bills of entry, except one instance wherein the investigation appear to have found that Rajita herbal Private Ltd. New Delhi had imported identical goods from same supplier showing higher value. But apparently nothing is brought on record as to how the goods were identical and what was the value admitted by the supplier. It thus boils down to the fact that whether the transaction value has been rejected as per the law. Other than NIDB data, no other evidence has been let-in by the revenue; it is thus required to be established that such data which is like a stock- document in the armory could be held to be sacrosanct and is well accepted by higher judicial fora.

19. Further, determination of transaction value is required to be done sequentially; the lower authority himself has admitted in so far as re-determination of the value in respect of at least 88

bills of entry are concerned, that Rules 4, 5, 6/6A, 7/7A cannot be applied for reasons of either differences in the quantum of imports or the period of import or the description of the goods, to resort to the Residual Rule 8 of the customs valuation rules. It only proves that the comparison is not between comparables. The case of the revenue is that there were contemporaneous imports, which had resulted in mis-declaration /undervaluation of the transaction value; the contemporaneous imports itself indicate that the revenue was in fact having all the details of the comparable cases of imports which had resulted in the issuance of show cause notice. Now the original authority in order to justify resorting to rule 8, candidly admits that rules 4 to 7 could not be applied for various differences, including description itself, which only tempts us to accept the appellant's plea that the very allegation for not accepting the transaction value based on comparable imports itself lacks merit because nothing was comparable; and the case of the revenue is built on hollow grounds. This argument of the ld. Advocate becomes relevant when we refer to page No. 121 of the appeal memo which was referred to during the course of arguments. It refers to the copy of a relied upon documents [NIDB data] supplied by the department to the appellant and the description of the goods referred therein are 'Apples' which has nothing to do with the import of 'Glass sheets' and hence, it is not only that the proceedings which was conducted so mechanically, but also without proper application of mind.

20. In this regard, we find it appropriate to refer to and rely upon the decision of Apex court in the case of South India Television (*supra*) wherein, it has been ruled as under:

> "*6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under* ***Section 2(41),*** *"value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent- importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section*

14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. ***However, before rejecting the invoice price the Department has to give cogent reasons for such rejection.*** *This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time.* ***Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports.*** *For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of*

> *like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted.* ***The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation.*** *This is where the conceptual difference between value and price comes into discussion…"*

[emphasis added by us in bold]

21. The following emerge from the above landmark decision of the Apex court:

- the invoice price is not sacrosanct,
- before rejecting the invoice price the Department has to give cogent reasons for such rejection.
- This is because the invoice price forms the basis of the transaction value,
- Unless the evidence is gathered in that regard. The question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value.
- Invoice is the evidence of value,
- Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods.
- Under- valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer.

22. We do not find from the impugned order that the same has proceeded on the above guiding principles laid by the Apex court and

hence, we have to hold that the revenue has failed to prove undervaluation alleged against the appellant and the resultant re-determination by the revenue of the declared value lacks support.

23. In the light of the above discussion, we are of the view that the appellant should succeed both on limitation as well as merits. Resultantly, we set aside the demand and the impugned order and allow the appeal with consequential benefits, if any, as per law.

24. For the very same reasons, even the penalty imposed on the 2nd and 3rd appellants cannot sustain and hence, the same is set aside and the appeals of 2nd and 3rd appellants are allowed.

(Order pronounced in the open court on 29.05.2024)

(M.AJIT KUMAR)
Member (Technical)

(P.DINESHA)
Member (Judicial)

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