

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

REGIONAL BENCH - COURT NO. - III

Custom Appeal No. 42413 of 2018

(Arising out of Order-in-Original No.60388/2017 dated 19.12.2017 passed by the Commissioner of Custom, Chennai – II)

M/s. Auto Creators

Appellant

Rep. by its Proprietor
Shri Satpal Singh
H. No. 684, E Block
Bhai Randhir Singh Nagar
Ludhiana – 141 001.
Punjab.

Vs.

Commissioner of Customs

Respondent

Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600 001.

And

Custom Appeal No. 40553 of 2019

(Arising out of Order-in-Original No.55551/2017 dated 22.5.2017 passed by the Commissioner of Custom, Chennai – II)

M/s. Auto Stores

Appellant

Rep. by its Proprietor
Shri Guruvinder Singh Kochhar
355, V.P. Road, 6, Lakshmi Niwas
Mumbai – 400 004.

Vs.

Commissioner of Customs

Respondent

Chennai II Commissionerate
Custom House
No. 60, Rajaji Salai
Chennai – 600 001.

APPEARANCE:

Shri B. Venugopal, Advocate for the Appellant
Shri M. Jagan Babu, AC (AR) and
Shri Arul C Durairaj, Superintendent (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Anil G. Shakkarwar, Member (Technical)

Final Order Nos. **40346-40347 / 2020**

Date of Hearing: 12.02.2020

Date of Decision: 12.02.2020

Per Shri Anil G Shakkarwar

The above stated two appeals are taken up together for decision, since the issue in both of them is same.

2. Brief facts of the case are that the appellants have imported certain spares of automobiles and filed Bills of Entry. In the appeal filed by M/s. Auto Stores the number of Bills of Entry were 6 and in case of the other appellant the number of Bills of Entry filed were 7. The said Bills of Entry were filed during the period from 2011 – 2012. Accordingly, both the appellants filed a total of 13 Bills of Entry. It appeared to Revenue that special valuation of the consignments was required for arriving at the assessable value. Therefore, investigations were taken up in the year 2011 – 12. After a gap of around five years, the appellants were issued with Show Cause Notices in 2016. It was stated in the said Show Cause Notices that the goods were imported from Dubai, UAE and goods were shipped from Germany and on scrutiny of documents indicated that no brand name etc. were mentioned while filing the Bills of Entry and they were suitable for high-end vehicles. It was stated that the high-end vehicles were such as Audi, BMW, Benz etc. Further, in para 3.3 of the Show Cause Notice, it was stated that the value of the parts are definitely to be costlier compared to other car models / brands and to

be precise are beyond comparison with that of unidentifiable or unbranded goods. In some cases, the manufacturers were from various parts of the world and the imports were from Dubai. The basic allegation in the Show Cause Notice was that the appellant had not declared the brand of the goods and thereby undervalued the goods and therefore there was proposal to enhance the assessable value of the goods. For the sake of enhancing the value of the goods, Revenue relied upon one table prepared by them stated to be information based on Port Load Document and on the basis of such table undervaluation was alleged and differential duty was demanded. In the case of M/s. Auto Creators, the differential duty demand was Rs.1.38 crores and in the case of M/s. Auto Stores, the differential duty demanded was Rs.80.23 lakhs. On contest, the Show Cause Notices were adjudicated and Orders-in-Original were passed which are impugned in both the appeals. The adjudicating authority has held that the importer did not declare the brand, manufacturers' detail, country of origin and actual transaction value of the imported goods in the documents submitted for clearance of the goods and that it was found that the goods were branded and it was also found that the goods were undervalued when compared with the price data available in public domain and therefore he has held that the goods were undervalued by the appellant and he has enhanced the value and confirmed the customs duties proposed in both the Show Cause Notices. Further, he has confiscated the goods and gave option to redeem the same on payment of redemption fine. He has further

imposed penalty on the appellants. Aggrieved by such orders, the appellants are before this Tribunal.

3. Heard the learned counsel Shri B. Venugopal. He has submitted that the Load Port Documents which Revenue has relied were provided to the appellants but the authenticity of such documents was questioned by them as the documents were neither endorsed nor signed by any of the shippers or load port authorities of the country of export. He has submitted that the said documents had no evidentiary value. He further submitted that on the basis of such document, which do not have any evidentiary value the data was tabulated. On the basis of such data undervaluation was alleged. He further submitted that the goods were not branded and the name of the manufacturer was mentioned on the cartons and the findings of the Commissioner that the goods were found to be branded is not based on the fact. He has submitted that in the whole discussion, the Commissioner has not stated as to which brands the goods were belonging to but made a bald statement that the goods were found to be branded. Further, the Id. counsel for the appellant has taken us through the ruling by the Larger Bench of the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. Vs. Union of India reported as 2019 (367) ELT 3 (SC). He has submitted that it was held by the Hon'ble Supreme Court that for rejection of declared value under Rule 12 of Customs Valuation Rules, 2007, elaborate procedure has been specified and such procedure was not followed for rejection of transaction value. He further submitted that the Revenue did not have any evidence that the appellants have made payment to the

overseas exporters in addition to what was stated in the invoices and in the absence of any additional consideration flowing from the importer to the exporter overseas, under the provisions of Customs Act, 1962, transaction value has to be accepted. He has also relied on the ruling of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Noida Vs. Sanjivani Non-Ferrous Trading Pvt. Ltd. reported as 2019 (365) ELT 3 (SC). He has relied on para 10 of the said ruling which is reproduced as follows:-

"10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value."

4. He further submitted that there was a delay of five years in issue of Show Cause Notices and the goods have been lying in the customs custody till now and the importers are put to great financial difficulty. He has requested for setting aside the impugned orders and assessing the goods at the value at which the Bills of Entry were filed.

He also further relied on Handling of Cargo in Customs Area Regulation, 2009 and claimed that as provided under clause (I) of Regulation 6(1), since the goods were under detention by the orders of the proper officer for the purpose of investigation by SIIB, appellant should not be charged with any rent or demurrage under the said goods. He has further requested to order for early release of the goods.

5. Heard the Id. ARs for Revenue who supported the impugned orders.

6. Having considered the submissions from both sides and on perusal of records, we note that though the adjudicating authority has stated that the goods were found to be branded, the information as to which brand the goods were belonging to is totally missing in the adjudication order. We also note that the objection raised by the appellant in respect of documents which were load port documents is valid and Revenue could not establish that the load port documents were admissible evidence for relying for initiating any proceedings. We find that the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Sanjivani Non-Ferrous Trading Pvt. Ltd. (supra) has extracted from Hon'ble Supreme Court's decision in the case of South India Television P. Ltd. reported as 2007 (214) ELT 3 (SC), wherein it was held if the department wants to allege undervaluation it must make detail inquiries, collect material and also adequate evidence. When undervaluation is alleged, the department has to prove it by evidence or information about comparable imports. For providing undervaluation, if the department relies on declaration

made in the exporting country, it has to show how such declaration was procured. We hold that the department could not establish as to how the information about load port document was procured by the Revenue and therefore the information stated in the Show Cause Notices obtained from exporting country is not reliable as evidence. We also find that other than that there is no evidence relied on in the Show Cause Notice for alleging undervaluation. We therefore hold that undervaluation in the present case is not established. We further rely on the ruling by Hon'ble Supreme Court in the case of Commissioner Vs Sanjivani Non-Ferrous Trading Pvt. Ltd. (supra) that in the absence of any contrary evidence, the value actually paid has to be accepted as Transaction Value. The value actually paid is Invoice value. We therefore set aside the impugned orders and allow both the appeals with direction to Revenue to assess the Bills of Entry on the basis of value declared in the Bills of Entry and complete the assessment within a period of two weeks from the date a copy of this order is served by the appellant on Revenue. We also hold that as provided under Handling of Cargo in Customs Area Regulation, 2009, the appellants are entitled for exemption from any rent or demurrage. In the above terms, both the appeals are allowed.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
Member (Judicial)

(ANIL G. SHAKKARWAR)
Member (Technical)

