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

Customs Miscellaneous Application No. 40341 of 2017
and
Customs Appeal No.275 of 2011

(Arising out of Order-in-Appeal No. 41/2011 dated 19.5.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Chennai)

Commissioner of Customs **Appellant**
Custom House, New Harbour Estate
Tuticorin – 628 004.

Vs.

M/s. Atlantic Corporation **Respondent**
No. 121, Grohitam Building
1st Floor, Plot No. 14/B, Sector 19/19
Vashi, Navi Mumbai – 400 703.

AND

Customs Miscellaneous Application No. 40342 of 2017
and
Customs Appeal No.276 of 2011

(Arising out of Order-in-Appeal No. 42/2011 dated 19.5.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Chennai)

Commissioner of Customs **Appellant**
Custom House, New Harbour Estate
Tuticorin – 628 004.

Vs.

M/s. S. Mira Commodities Pvt. Ltd. **Respondent**
No. 121, Grohitam Building
1st Floor, Plot No. 14/B, Sector 19/19
Vashi, Navi Mumbai – 400 703.

DATE OF DECISION: 12/03/2025

FINAL ORDER NOS. 40331-40332/2025

In view of the majority order,

The points of difference have been answered by the third Member vide his order dated 09/01/2025, as follows:-

2. At para 62 of the order, the Third Member Dr. D.M. Mishra has agreed with the findings of the Member (Technical) forming a majority decision, that the proper officer as per provisions of Rule 12(1)(iii) of

CVR, 2007 is vested with the authority to proceed with rejection of the declared value only on the basis of huge difference between the declared transaction value and contemporaneous assessed value recorded in NIDB and the department is not required to establish by adducing evidence in the nature of extra payment, fake transaction etc. as held by Member (Judicial) in the order.

3. The third Member at para 65, has agreed with the conclusion of the Member (Judicial) forming a majority decision that in the circumstances of the case, the transaction value declared by the respondents cannot be rejected but albeit on a different reasoning that is not because the department failed to establish that the declared transaction value is not genuine, fake etc. but the mandatory procedure laid down under sub-rule (iii) of Rule 12 has not been followed by the Ld. Adjudicating Authority before rejecting the same.

4. The order dated 09/01/2025 has been placed before us for appropriate action/ order.

5. We find that as per the majority judgment in this case, the proper officer, as per provisions of Rule 12(1)(iii) of CVR, 2007, was right in the rejection of the declared value. Further the majority opinion held that the transaction value declared by the respondents cannot be rejected. This was because the mandatory procedure laid down under sub-rule (2) of Rule 12 of CVR, 2007 has not been followed by the adjudicating authority before rejecting the same. We find that the non-following of the mandatory procedure of CVR, 2007 was a breach of the principals of natural justice. The Hon'ble Apex Court in Commissioner **of Sales Tax, U.P. Vs R.P. Dixit Saghidar** (2001 (9) SCC 324), and in **Commissioner Of Sales Tax & Ors. Vs. M/s.**

Subhash & Company [AIR 2003 SUPREME COURT 1628], held that when principles of natural justice are stated to have been violated it is open to the appellate authority, in appropriate cases, to set aside the order and require the adjudicating authority to decide the cases afresh after following the requisite procedure.

6. We accordingly direct that the matter be remanded to the Ld. adjudicating authority for a decision afresh in de novo proceedings after fulfilling the requirement of procedure laid down under sub-rule (2) of Rule 12 of CVR, 2007. The lower authority shall follow the principles of natural justice and afford a reasonable and time bound opportunity to the respondents to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The respondents should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order. Since the issue involves the finalization of provisional assessment and is also found to be of an interpretational nature, no confiscation of goods / fine or imposition of any penalty on the respondent is called for. The impugned order stands modified on the said terms, and the appeals are disposed of accordingly. The respondents are eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 12.03.2025)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Sd/-
(**P. DINESHA**)
Member (Judicial)

Rex