CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI.

COURT NO. II

Customs Appeal Nos. 53743, 53744, 53746, 53748, 53750, 53751, 53754, 53755, 53757, 53758, 53762 and 53763 of 2018
(Arising out of common order in appeal No. CC-A-CUS-D-II-ICD-PPG-PALWAL-2149-2160-2018 dated 30.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Customs Appeal Nos. 53747, 53749, 53752, 53756, 53759, 53760, 53761, 53764, 53765, 53766 and 53767 of 2018
(Arising out of common order in appeal No. CC-A-CUS-D-II-ICD-PPG-PIYALA-2164-2174-2018 dated 30.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Customs Appeal Nos. 53745 and 53753 of 2018
(Arising out of common order in appeal No. CC-A-CUS-D-II-ICD-PPG-BBG-2162-2163-2018 dated 30.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Customs Appeal Nos. 50187 to 50194 of 2019
(Arising out of common order in appeal No. CC-A-CUS-D-II-ICD-PPG-PALWAL-2351-2358-2018 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

Customs Appeal Nos. 50195 to 50208 of 2019
(Arising out of common order in appeal No. CC-A-CUS-D-II-ICD-PPG-PIYALA-2359-2372-2018 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi).

M/s. Century NF Casting **Appellant**
(A Division of Century Aluminium Mfg.
Co. Limited) Plot No. 1, Sector-25
Faridabad, Haryana-121004

VERSUS

Commissioner of Customs and Excise **Respondent**
ICD, Patparganj, New Delhi.

APPEARANCE:

Shri Parth, Advocate for the appellant.
Shri Vivek Pandey, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51677-51723/2019

DATE OF HEARING: 08.11.2019
DATE OF DECISION: 08.11.2019

ANIL CHOUDAHRY:

The issue in these appeals, filed by the importer-asseessee is whether the Revenue can enhance the declared value of the goods under import, without rejecting the transaction value/declared price, as provided in Section 14 of the Customs Act.

2. The brief facts are that the appellant is, inter alia, engaged in manufacturing aluminium alloys Ingots, falling under HSN Code No. 7601, since 1993. The appellant uses Aluminium scrap as raw material which is imported as well as procured locally. The appellant, on a regular basis, imports aluminium scrap through various ports like ICD Dadri, ICD Palwal, ICD Piyala and ICD ACTL Ballabhgarh.

3. The appellant purchases aluminium scrap of different grade/ specification from suppliers all over the world. The appellant enquires about the availability and price of aluminium scrap of a particular grade/ specification from suppliers all over the world. By way of reference reliance is placed upon a chat (email) between Mr. Nitin Tyagi of the appellant and a prospective supplier Mr. Jatin Ahuja, which culminated into a contract. After various rounds of negotiations, the appellant enters into a contract with the supplier offering aluminium scrap, as per the requirements of the appellant at the lowest price, amongst the suppliers approached by the appellant, considering the quality aspects.

4. The appellant filed various bills of entry declaring therein the self assessed value, which was the invoice value (transaction value), at which the aluminium scrap was imported. The Assessing officer re-assessed all the impugned bills of entry and enhanced the transaction value, declared by the appellant, without disclosing the basis for such enhancement, and worked out the duty liability accordingly.

The details are as follows:

Sl. No.	B/E No.	Date	Declared Assessable Value	Assessed Assessa	Declared Duty	Assessed Duty	Difference in Duty	% of Duty Differen

				ble Value			(G-F)	ce (H*100 /F)
A	B	C	D	E	F	G	H	I
1	3842175	02.11.2017	5182576	5462271	1090336	114910	58844	5.39%
2	3846802	02.11.2017	5284216	5569395	1111720	1171717	59997	5.39%
3	3700539	02.11.2017	1608486	1844458	338401	388046	49645	14.67%
4	3700517	02.11.2017	5233956	5796820	1101146	1219564	118418	10.75%
5	4044383	02.11.2017	4605600	5447313	968949	1146033	177084	18.27%
6	4033728	02.11.2017	4824457	5706169	1014993	1200492	185499	9.11%
7	4562171	02.11.2017	5103827	5569270	1073769	1171691	97922	9.11%
8	4562170	02.11.2017	5151295	5621067	1083755	1182588	98833	10.16%
9	4032408	02.11.2017	4620118	5464484	972003	114945	177642	18.27%

5. Being aggrieved, the appellant filed appeals before the Commissioner (Appeal), who was pleased to set aside the assessment order and remanded the matter to the Assessing Authority with direction to pass the reasoned order, and the Adjudicating Authority in terms of the appellate Order dated 26.03.2018, passed common order-in-original dated 7.05.2018 rejecting the declared value in the bills of entry and reassessing at the enhanced value, as done earlier. Reliance placed on the judgment of this Tribunal of Allahabed Bench vide Final Order No. C/A 70132-70137/2017 dated 17.01.2017 in the case of M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd., was not followed as the Department has moved in appeal before the Hon’ble Supreme Court. Further, observing that the decision of Tribunal has not attained finality. He further, placed reliance on the order-in-appeal dated 23.03.2018 in the case of Century Metal Recycling Pvt.Limited, wherein enhancement in the declared value, in case of similar import of Aluminium Scrap was upheld.

6. Being aggrieved, the appellant preferred appeal before the Commissioners (Appeals), who vide common impugned order-in-appeal dismissed the appeals, upholding the order of assessment. Being aggrieved, the appellant are before this Tribunal.

7. The Learned Counsel for the appellant urges that the Commissioner (Appeals) have erred in relying upon the order of the Adjudicating Authority, which was in respect of earlier imports. The Adjudicating Authority in the earlier order had held – the value of the goods cannot be lower than the constituent materials. That there was reason to doubt the truth or accuracy of the value declared by the appellant. He further urges that such logic adopted by the Court, that value of goods cannot be lower than constituent materials, holds goods for the manufactured article, the cost of which in normal circumstances would not be lower than the cost of material (inputs) of which it is made.

8. The counsel urges, aforementioned logic cannot apply in the facts of the appellant's case, as appellant has imported scrap and not prime metal. The value of scrap is always lower than the value of prime metal. Scrap is after all, obtained from unserviceable, defective or worn out prime metal or on processing of prime metal.

9. Ld. Counsel further urges that the declared transaction value in the bill of entry is the basis for levy of duty, as provided in Section 14 of the Customs Act, which provides that for the purpose of the Customs Tariff Act or any other law for the time being enforced, the value of imported goods and export goods shall be the transaction value of such goods, that is to say the price actually paid or payable for the goods, when sold for export to India for delivery at the time and place of importation, or, as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale of subject goods or such other consideration, as may be specified in the Rules made in this behalf.

10. Further, sub section (2) of Section 14 provides that, notwithstanding anything contained in the provision of sub Section (1), if the Board is

satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

11. Ld. Counsel states that similar issue of rejection of transaction value and enhancement without any basis, was considered by a coordinate Bench of this Tribunal in Sanjivani Non-Ferrous Trading Pvt. Ltd. Vs. Commissioner of Central Excise and Service Tax, Noida 2017 (7) G.S.T.L. 82 (Tri.-All.), wherein this Tribunal held that it is only after recording of a finding that the price/transaction value is not the sole consideration, the transaction value can be rejected. The judgement of the Tribunal was carried in appeal by Revenue and the Hon'ble Supreme Court in C.C.E. & S.T., Noida vs. Sanjivani Non-Ferrous Trading Pvt. Ltd. 2019 (365) E.L.T. 3 (S.C.), held that the normal rule is that the assessable value has to be arrived at on the basis of price actually paid, as provided in Section 14 of the Customs Act, 1962, and that the declared price can only be rejected with cogent reasons. The Hon'ble Supreme Court relied on its earlier order in **Commissioner of Customs vs. Prabhu Dayal Prem Chand-2010 13 SCC 535=2010 (253) ELT 353**. The finding of the Hon'ble Supreme Court is 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.

11. *In South India Television (P) Ltd., the Court explained as to how the value is derived from the price and under what circumstances the deemed value mentioned in Section 14(1) can be departed with. Following discussion in the said judgment needs to be quoted hereunder :*

> *"10. 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 misdeclaration regarding the price. There is no allegation of misdeclaration in the context of the description of the goods. In the present case, the allegation is of underinvoicing. The charge of underinvoicing 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.*
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> *xxx xxx xxx*
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> *12. 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. Undervaluation has to be proved. If the charge of undervaluation*

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 undervaluation, it must make detailed 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 proving undervaluation, 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 undervaluation. 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 underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. 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."

12. *The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act and the case law referred to by it (In paragraph 5, the Tribunal referred to its own judgments which follow the aforesaid principle laid down by this Court).*

13. *It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise*

> *done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.*

12. According, the Ld. Counsel prays for allowing the appeals and setting aside the impugned order in appeal.

13. Ld. Authorised Representative for Revenue relies on the impugned order. Further urges, that the appellant had accepted the enhanced value as assessed by the adjudicating authority and paid the differential duty and also gave the declaration that they waive their right for issue of show cause notice, and after the paying the differential duty was granted out of charge, by the Customs Officer. Further, the bills of entry under dispute were assessed in terms of Circular F No.- BAL/ Tech/36/2016 (AI Scrap) dated 01.12.2016, issued by DGOV, CBED, New Customs House, Mumbai. Further, the value of the goods as declared by the appellant importer, appeared to be on lower side, as compared to contemporaneous imports of identical goods in India, as well as the LME prices of the metal, after allowing maximum discount as prescribed in the said circular.

14. Learned Authorized Representative relies on the ruling of Coordinate Bench of this Tribunal in the case of **CMR Nikkei India Private Limited and others,** being **Final Order No. 51393-51398/2019 dated 18.10.2019.**

15. Having considered the rival contentions, we find that no cogent reasons have been given by the Court below for rejection of transaction value. The declared transactions value can only be rejected with cogent reasons by undertaking the exercise as to on what basis the paid price was not the sole consideration, or the transactions value. Since, no such exercise is done by the Court below to reject the price declared or the transaction value in the bills of entry, the orders of Court below are erroneous and fit to be set aside.

16. The Adjudicating Authority was bound to accept the transaction value declared by the appellant - importer, and erred in rejecting the declared price without recording any finding for rejecting the same, as required under Section 14 of the Customs Act. Accordingly, these appeals are allowed. The impugned orders are set aside. The appellants are entitled to consequential benefits, in accordance with the law.

(Operative part of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

(C.L. Mahar)
Member (Technical)

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