# CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL NEW DELHI.

**Customs Stay Application No.50417 of 2019**
**in Appeal No.51076 of 2019.**

[Arising out of Order-in-Appeal No.CC(A)Cus/D-II/ICD-TKD/IMPORT/3522-3526/2018-2019 dated 06.02.2019 passed by the Commissioner of Customs (Appeals), New Delhi.]

**Commissioner of Customs (Import),** **Appellant**
Inland Container Depot,
Tughlakabad, New Delhi.

Versus

**M/s.A.R. Fabrics** **Respondent**
X-1246, First Floor, Gali No.2,
Rajgarh Colony, Delhi-110 031.

**APPEARANCE:**

Shri Rakesh Kumar, Authorised Representative for the appellant/Department.
Shri Prem Ranjan, Advocate for the respondent.

**CORAM:**

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

**FINAL ORDER NO.51856/2019**

**DATE OF HEARING/DECISION:19.07.2019**

**ANIL CHOUDHARY:**

The respondent filed 19 bills of entries (under Self-Assessment) for clearance of Polyester Knitted Fabrics and other similar goods falling under CTH 60064200 and 54076190 of CTH. Out of 19 bills of entries, 13 bills of entries (all filed during or about April, 2014) were finally assessed at higher value than the declared value. Out of 13 bills of entries, the respondent had made endorsement of acceptance in hand for enhanced values of the 7 bills of entries, being bills of entries having written endorsement of acceptance of enhanced values. Further, the Assessing Authority did not allow the benefit of Notification No.30/2004-CE dated 9.7.2014, which provides exemption from payment of CVD, subject to condition.

2. Being aggrieved, the respondent-importer preferred appeal before the Commissioner (Appeals).

3. The Commissioner (Appeals) observed that in the present case, the issues for discussion and determination were as follows:-

(i) Whether the assessing authority was right in rejecting the declared values and re-assessment of the impugned bills of entries at enhanced values and;

(ii) Whether the assessing authority was right, while rejecting the benefit of Notification No.30/2004-Central Excise dated 09.07.2004 to the appellant, which provides exemption from payment of CVD.

4. The Commissioner (Appeals) had examined the fact that the importer had accepted the value enhanced in respect of 9 bills of entry; that as submitted by the importer, the acceptance of enhanced values was to save demurrages, and that this does not preclude them from challenging the enhancement by way of appeal. The Commissioner (Appeals) found considerable force in this contention of the appellant, observing that it is settled legal proposition that there is no estoppel in taxation matters while relying on the judgement of the Hon'ble Supreme Court in the case of **Dunlop India Limited Vs. UOI** reported in **1983 (13) ELT 1566 (SC)**, wherein it was laid down that even assuming that there is an acceptance it does not preclude the assessee from challenging by way of appeal, as there cannot be an estoppel against law. Similar view was held in [2015 (329) ELT 307 (T)] and 2016 (343) ELT 963 (T)].

5. The Commissioner (Appeals) allowed the appeal of the respondent by setting aside the re-assessment of the goods covered under the impugned bills of entries and restored the assessment at the declared values.

6. Being aggrieved, the Revenue has filed the present appeal before this Tribunal on the ground, among others, that the respondent had given their consent with respect to enhancement of the assessable value, in respect of the several bills of entries and the Commissioner (Appeals) has erred in holding that still the respondent-importer can challenge the enhancement in appeal. It is provided in Section 17(5) of the Customs Act, 1962 that "importer may accept the assessment made by the Customs Officer by communicating his consent in writing, otherwise the Customs Officer will be obliged to pass a speaking order".

7. Further, reliance is placed on the ruling of the Apex Court in the case of **CCE, Madras Vs. Systems & Components Pvt. Ltd. – 2004 (165) ELT 136 (SC),** wherein it has been held that – "it is the basic and settled law that what is admitted need not be proved". Reliance is also placed on the Final Order No.55379 of 2017 dated 20.07.2017 of this Tribunal in **M/s. Jai Shiv Trading Company Vs. CCE**, **New Delhi,** whereby the Tribunal upheld the redetermination of value, as the same was accepted by the assessee. As the assessee accepted the re-determination of the value, he cannot subsequently challenge the same. Reliance is also placed on the ruling of the Coordinate Bench of this Tribunal in **M/s. Advanced Scan Support Technologies Vs. CC, Jodhpur - 2015 (326) ELT 185 (Tribunal-Delhi)**, wherein it was held that," by consenting to enhancement of value and thereby voluntarily forgoing the need for a show cause notice, the importer made it unnecessary for Revenue to establish the valuation any further, as the consented value in effect becomes transaction value requiring no further investigation or justification to establish the consented value (enhanced suffers from fatal infirmity).

8. Reliance is also placed on the ruling of this Tribunal in **Vikas Spinners Vs. CC, Lucknow - 2001 (128) ELT 143 (Tribunal-Delhi),** wherein it has been held that --

> " Having once accepted the loaded value of the goods and duties paid accordingly thereon without any protest or objection, importer is legally estopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods."

9. Ld. Authorised Representative further urges that the ld. Commissioner (Appeals) has erred in allowing the appeal of the respondent-importer by setting aside the re-assessment of the impugned goods and restoring the assessment at declared value in respect of the aforementioned 7 bills of entries.

10. Opposing the appeal, ld. Advocate, Shri Prem Ranjan for the respondent-importer submits that the issue is no longer *res integra* under similar facts as per the decision of the Tribunal in the case of **M/s. Rainbow Fashion being Final Order No.50658-50659 of 2019 dated 06.05.2019,** whereby the issue was decided in favour of the importer.

11. Having considered the rival contentions, we find that judgements relied upon by the Revenue in this appeal, were not placed before the court below. Secondly, the court below has not appreciated the scope of Section 17(5) read with Section 17 (4) of the Customs Act. Importer cannot be allowed to play a cat & mouse game with the Revenue. Accordingly, we allow this appeal by way of remand to the Commissioner (Appeals) for re-

appreciation of the facts in accordance with law and also considering the observations of this Tribunal. The Commissioner (Appeals) is expected to pass a denovo order in accordance with law, preferably within a period of 3 months from the date of receipt of the copy of this order. The respondent – assessee is also directed to appear before the Commissioner (Appeals) with a copy of this order and seek hearing. The stay application also stands disposed of.

[Operative portion already pronounced in open court]

**(ANIL CHOUDHARY)**
MEMBER (JUDICIAL)

(**C.L. MAHAR**)
MEMBER (TECHNICAL)

Ckp.