

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. II

**Customs Stay Application Nos. 50815, 51214, 51216,
51218, 51220, 51222, 51224, 51226, 51228, 51230, 51232,
51234, 51236, 51238, 51240, 51242, 51244, 51246, 51248,
51250, 51252, 51254, 51256, 51258, 51260, 51262, 51264,
51266, 51268, 51270, 51272, 51274, 51276, 51278, 51280,
51282, 51284, 51286, 51288, 51290, 51292, 51294, 51296,
51298, 51300, 51302, 51304, 51306, 51308, 51310, 51312,
51314, 51316, 51318, 51320, 51322 & 51324 of 2019**
(on behalf of the appellant)

And

**Customs Appeal Nos. 51414, 52809 and 52810 to 52864 of
2019**

(Arising out of common Order-in-Appeal No. CC(A) CUS/D-II/ICD-PPG/BBG/3822-3878/2018-19 dated 20.3.2019 passed by the Commissioner (Review), Delhi-110096.

Commissioner of Customs, Patparganj

Appellant

Office of the Principal Commissioner of Customs
(ICD), Patparganj & Other ICDs),
Delhi-110096.

Versus

M/s Artex Textile Private Limited

Respondent

Khasra No. 282, Gali No. 04,
Shalimar Village Industrial Area,
New Delhi-110088.

Appearance

Shri Sunil Kumar, AR

- for the appellant

Shri Prem Ranjan Kumar, Advocate

- for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 10.02.2020

Date of Decision: 14.09.2020

Final Order No. 50769-50825/2020

Anil Choudhary:

These appeals filed by Revenue along with stay applications against the impugned order whereby the

Commissioner (Appeals) has set aside the enhancement made in the declared value in respect of 57 Bills of Entry which were filed by the respondent for import of various kind of polyester knitted fabric of different weight and colour during the period 8 June, 2018 to 9 February, 2019.

2. The brief facts are that the respondent importer of polyester knitted fabrics were filing Bill of Entry from time to time at ICD Sonapat on the basis of self assessment of duty on the declared transaction value. The Bills of Entry were assessed by Assistant/Deputy Commissioner of Customs, by enhancing the value over and above the declared value. However, no speaking order was passed giving reasons for rejection of the declared value and enhancement thereof.

3. Being aggrieved the appellant preferred 57 appeals before the Commissioner (Appeals), New Customs House, New Delhi-37 on the grounds inter alia that acceptance of enhanced value proposed by the Department, does not preclude them from challenging the order in appeal. The importer is not precluded from challenging the enhancement by way of an appeal, as there is no estoppel against the Rule, as held in the case of **Dunlop India**

Limited Vs. UOI- 1983 (13) ELT 1566 (SC). There is no proper rejection of declared value as required under Rule 14 of Customs Act read with Rule 3 of Customs Valuation Rules. Further, the adjudicating authority have erred in not proceeding sequentially from Rule 4 to 9 of the Rules for revaluation of the goods. Further Rule 3(1) and (2) of Customs Valuation Rules 2012 provides that assessment has to be done on the transaction value, save an except for reasons to be recorded for rejection of the same. The importer also placed reliance on Order-in-Appeal No. CC(A)/CUS/D-II/ICD/788-1083/2014 dated 31.12.2014 in their own case wherein they were challenging similar enhancement in respect of import of similar goods at ICD Patparganj and at ICD - TKD. By the said order in appeal the reassessment of the bills of entry was set aside and the declared value were accepted. The said order in appeal have also been accepted by the department and admissible refund has been granted.

4. The Commissioner (Appeals) was pleased to allow the appeals setting aside the reassessment of goods covered under the 57 bills of entry and restored assessment at the declared value observing as follows:

- (i) There is no estoppel in taxation matters and the importers have rightly filed the appeals relying ruling of Hon'ble Supreme Court in the case of **Dunlop India Limited Vs. UOI – 1983 (13) ELT 1566 (SC)**. Even assuming there is acceptance of the enhanced value does not preclude the importer from challenging the same by way of appeal.
- (ii) The assessment of imported goods have to be done as per transaction value in view of Rule 3 read with Rule 12 of Customs Valuation Rules and adjusted in accordance with the provisions of Rule 10. Unless the particular transaction falls within the exceptions in Rule 3(2) of CVR, the Customs authorities are bound to assess the duty on the transaction values.
- (iii) The adjudicating authority is under obligation to pass a speaking order disclosing the grounds for loading or enhancement in the declared value. The adjudicating authority shall discharge the burden to prove that the invoice value does not represent the true transaction value.

- (iv) It is also observed that the adjudicating authority in a routine manner over a large period of time, have been enhancing or loading the declared value uniformly which is not correct. There is no comparison with contemporaneous imports like quality, level of import, time of actual import, etc.
- (v) Loading based on DRI Alerts and Circular of DGOV – other Standing orders, is not in consonance with the provisions of the Customs Act and Rules.
- (vi) Reliance have been placed on the ruling of Hon'ble Supreme Court in the case of **Eicher Tractors Ltd. – 2000 (122) ELT 321 (SC)**, where it has been laid down that unless the price actually paid for the particular transaction falls with the exception in Rule 4 (2), the Customs authority is bound to assess the duty on the transaction value.
- (vii) NIDB data cannot be the sole basis for enhancement of value
- (viii) Reliance was also placed on the Final order No. 63455-63456/2018 dated 25.10.2018 of Chandigarh Bench of this Tribunal in **CC, ICD,**

New Delhi Vs. M/s VSM Impex Pvt. Ltd.

wherein similar facts and circumstances, Tribunal dismissed department's appeal upholding order of the Commissioner (Appeals), that the same does not suffer from any infirmity.

5. Being aggrieved, Revenue is in appeal inter alia, on the grounds that the respondent - importer had agreed to re-determination of value/enhancement as per the reply to the query in EDI system after seeing the data of contemporaneous import. The respondent have agreed to enhancement of the declared value from US D 1.10 to US D 1.94 and have stated so in writing with reference to the Bill of Entry as follows:-

"Since, we have voluntarily accepted the rejection of declared value of the goods and increased value. We do not want any speaking order on the re-assessment of the same. We also do not want any show cause notice of personal hearing in the matter. Thus, we voluntarily forfeit our right so as to having show cause notice and opportunity of personal hearing as provided under Section 124 of the Customs Act, 1962. It

is requested to urgently release our consignment at the aforementioned rate”.

Thus the importer did not exercise their right to provisional assessment even if the clearance was being taken to save the demurrage charges. As regards uniform enhancement of transaction value, the learned Commissioner (Appeals) have erred, as in case of three Bills of Entry the enhancement is different. Moreover, the enhancement of value was duly accepted by the importer waiving his right to show cause notice and opportunity of hearing. Although the import data of contemporaneous import have not been discussed in the assessment orders, but admittedly the same was shown to the importer who have accepted the same and referred to in their letter of acceptance. Further, learned Commissioner (Appeals) have erred to take cognizance of the written admission by the respondent importer before the assessing officer. Reliance is placed on the ruling of the Apex Court in the case of **Veera Ibrahim Vs. State of Maharashtra - 1983 (13) ELT 1590 (SC)**, wherein it was held that statement recorded before the Custom officer is not hit by Article 20(3) of the

Constitution. The respondent after seeing the contemporaneous import data of Bill of Entry No. 8828516 dated 13 November, 2018, 9861114 dated 30 January, 2019 etc., agreed that the declared value/transaction value is low and vide their declaration letter accepted the enhancement of value. As per Section 17(5), the proper officer need not issue speaking order in cases where the importer confirms his acceptance of re-assessment in writing. Thus it is a case of amendment of the declared value in the Bill of Entry by the appellant, and hence they cannot make a grievance later on for the assessment made by the department on such amended Bill of Entry. Reliance is placed on the ruling of Hon'ble Supreme Court in the **CCE Vs. Systems and Components Private Limited - 2004 (665) ELT 136**, wherein it has been held - what is admitted need not be proved. The respondent importer did not exercise their right to demand provisional assessment, if they were not agreeable to the enhancement made in the transaction value. So far as incurring of demurrage is concerned, importer has facility under Section 49 of the Act to pray for warehousing of the goods. The learned AR relies on the following decisions:

(i) Jai Shiv Trading Co. – 2018 (359) ETL 2018 (Tri.-Del.);

(ii) CC Vs. Sodagar Knitwear – 2018 (362) ELT 819 (Tri.-Del.);

(iii) Advanced Scan Support Technologies Vs. CC - 2015 (326) ELT 185 (Tri.-Del.);

(iv) Surjeet Singh Chhabra Vs. Union of India – 1997 (89) ELT 646 (SC).

6. Opposing the appeal learned Counsel for respondent Shri Prem Ranjan Kumar urges that the importer was under pressure to take the delivery of the goods to mitigate losses, including demurrage charges, etc. In case of prayer for provisional assessment, the adjudicating authority are reluctant to grant the same and it leads to delay in getting out of charge, resulting in demurrage charges. It is further urged that the loaded values as per NIDB data, are not the declared value, but the same are loaded value. Thus, the loaded value is not the proper value or the contemporaneous value for the purpose of assessment. Further, it is evident from the facts on record that the assessing officer was left with no choice, but to make enhancement under the direction(s) of their superiors through circulars, direction etc. Thus, there is no illegality or impropriety in the impugned order and prays for dismissing the appeal by Revenue.

7. Having considered the rival contentions, we find that assessing officer have been making enhancement in a routine manner and the respondent who are regular importers are left with no choice but to sign on the dotted line for taking delivery of their goods to carry on their business, and also save the demurrage charges if the consignment is delayed in the port for want of clearance. Relying on the precedent Final Order No. 63455-63456/2018 dated 25.10.2018 of this Tribunal and also in view of the Order-in-Appeal No. CC(A)/CUS/D-II/ICD/788-1083/2014 dated 31.12.2014 had been accepted in respondent own case, we uphold the impugned common order(s) in appeal. Accordingly, these appeals by Revenue are dismissed being without merit. The stay applications also stand disposed of accordingly.

(Pronounced in Court on 14.09.2020)

(Anil Choudhary)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

RM