

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

PRINCIPAL BENCH - COURT NO. 1

Customs Appeal No. 52191 of 2019

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/Prev/261/2019-20 dated 24.05.2019
passed by the Commissioner of Customs (Appeals), New Delhi)

M/s. Sukhdev Exports Overseas

.... Appellant

515, Krishna Nagar, Tehsil Camp,
Panipat, Haryana

VERSUS

Commissioner of Customs (Preventive)

....Respondent

New Customs House, New Delhi

APPEARANCE:

Shri A.K.Prasad and Ms. Surbhi Sinha, Advocates for the Appellant
Shri Rakesh Kumar, Authorized Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing : December 06, 2022

Date of Decision: February 21, 2023

FINAL ORDER NO. 50154/2023

JUSTICE DILIP GUPTA

M/s. Sukhdev Exports Overseas¹ has sought the quashing of the order dated May 31, 2019 passed by the Commissioner of Customs (Appeals)². This order of the Commissioner (Appeals) upholds the order dated May 04, 2017 passed by the Additional Commissioner of Customs (Preventive)³

1. the appellant

2. the Commissioner (Appeals)

3. the Additional Commissioner

by which the declared assessable value of Alloy Wheels of motorcycles⁴ in the three Bills of Entry has been rejected and has been re-determined; the differential customs duty already paid has been appropriated; the imported goods have been confiscated under the provisions of section 111(m) of the Customs Act, 1962⁵ with an option to the appellant to redeem the same on payment of redemption fine in terms of section 125 of the Customs Act; and penalty has been imposed under section 114A of the Customs Act.

2. The records indicate that the appellant filed three Bills of Entry, each dated April 19, 2017, for clearance of Alloy Wheels for motorcycles through a customs house agent, namely, M/s. Him Logistics Pvt. Ltd. The consignment was put on hold for preventive check on account of a suspicion having arisen regarding mis-declaration of the retail sale price of the goods. In respect to the first Bill of Entry, the consignment was examined on April 25, 2017 in the presence of the G-Card holder of the customs house agent. The consignments covered by the second and third Bill of Entry were also examined on May 02, 2017 in the presence of the G-Card holder. On examination, it was found that the importer had not declared the brand name 'King way', in the import documents. The goods were, therefore, detained for further inquiry under section 110 of the Customs Act. The proprietor of the appellant gave his statements under section 108 of the Customs Act on April 27, 2017, April 28, 2017 and May 03, 2017. On April 27, 2017, he accepted that the declared value and retail sale price of the goods imported were not in consonance

4. the imported goods

5. the Customs Act

with the market price of such good sold in the Indian market. He also stated that in his view, the market value of the goods would be higher and he also undertook to pay the differential value, if the value of such type of goods was found to be higher during market survey. He also undertook to pay the fine and penalty, if imposed by the Department.

3. An open market survey was conducted in the presence of the proprietor and as per the opinion given by the shopkeepers, the retail sale price of similar/identical goods was ascertained.

4. In the statement made on April 28, 2017, the proprietor stated that he had been shown the market survey report which was done in his presence and he undertook to pay the differential duty with fine and penalty, if any, imposed by the Department. He also stated that he had been shown a chart containing the manner in which the calculation was done for re-determining the value and the amount of differential duty to be paid and he accepted it to be correct since the value was in conformity with the value that was ascertained during the market survey, which value he had earlier accepted. He also stated that he would pay the differential duty with interest, fine and penalty, as may be imposed by the competent authority.

5. A similar statement was made by the proprietor on May 03, 2017 in respect of the other two Bills of Entry, wherein also he accepted the re-determined value and agreed to pay the differential duty with interest and penalty, as may be imposed by the competent authority.

6. The proprietor also categorically stated that he would not want a show cause notice to be issued or personal hearing to be granted.

7. After considering the aforesaid statements made by the proprietor and after taking into consideration the value arrived at during the market enquiry conducted in the presence of the importer and the fact that importer had specifically stated that a show cause notice should not be issued or personal hearing be provided, the Additional Commissioner noted the following facts:

"10. I further find that the open market inquiry was conducted in the presence of the importer and he has voluntarily accepted the manner of the market inquiry conducted and the method adopted for the valuation of the goods vide statements dated 28.04.2017 & 03.05.2016.

10(a) As per the Annexure-A (Value re-determination and Duty Calculation Chart), re-determined assessable value of the offending goods covered under Bill of Entry No. 9370825 dated 19.04.2017 filed by M/s Sukhdev Export Overseas is Rs. 16,59,884/- and duty payable on re-determined assessable value at appropriate rate is Rs. 5,91,847/-.

10(b) As per the Annexure-B (Value re-determination and Duty Calculation Chart), re-determined assessable value of the offending goods covered under Bill of Entry No. 9370886 dated 19.04.2017 filed by M/s Sukhdev Export Overseas is Rs. 15,91,656/- and duty payable on re-determined assessable value at appropriate rate is Rs.6,35,282/-.

10(c) As per the Annexure-C (Value re-determination and Duty Calculation Chart), re-determined assessable value of the offending goods covered under Bill of Entry No. 9370898 dated 19.04.2017 filed by M/s Sukhdev Export Overseas is Rs. 15,94,932/- and duty payable on re-determined assessable value at appropriate rate is Rs.6,37,029/-.

I find that the importer vide statement dated 28.04.2017 agreed with the contents of the market survey report and have also agreed to pay the differential duty alongwith fine and penalty, if any, as may be imposed upon them under the provisions of Customs Act, 1962.

11. In view of facts mentioned hereinabove, I find that M/s Sukhdev Export Overseas, by not declaring the correct RSP value of the goods have willfully contravened the provisions of Section 17(1) and 46(4) of the Customs Act, 1962. The act of the

importer rendered the goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 read with Section 4(A) 4 of Central Excise Act, 1944. The importer had made a wrong declaration/ information violating the provisions of Rule 11 & 14 of the Foreign Trade (Regulation) Rules 1993 to the department, which makes themselves liable for penalty under Section 114A of the Customs Act, 1962.

12. In view of voluntarily acceptance of the importer for payment of the Customs duty calculated on the basis of its proper classification, and enhanced value of the concerned goods as per the Chart (Value re-determination and Duty calculation Chart) prepared on the basis of market inquiry, for the present detained consignments, the differential duty was worked out as under."

(emphasis supplied)

8. Feeling aggrieved with the re-determined assessable value of the imported goods, the importer filed an appeal before the Commissioner (Appeals), which appeal was dismissed by the order dated May 31, 2019 and the order passed by the Additional Commissioner was upheld. The relevant finding recorded by the Commissioner (Appeals) are as follows:

" As aluminium was the main constituent of the Alloy Wheels imported by the Appellant, the calculation of assessable value based on minimum base price of Aluminium i.e. London Metal Exchange was taken up, which was agreed by the Appellant and was calculated considering the weight of the import consignment and RSP found during the market survey in presence of the Appellant. **The assessable value was arrived at by the Department as per the provisions of Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which was agreed by the Appellant in his statement dated 28.04.2017 and 03.05.2017.**

The Appellant had admitted in his statements dated 27.04.2017, 28.04.2017 & 03.05.2017 that that Aluminium is the major constituent of the Alloy Wheels imported by them and it was clearly revealed that the Appellant had accepted in writing the re-assessed value of the said imported goods by himself participating in the market survey. It has been revealed in the statements of the Appellant that the department had conducted independent market survey in his (Appellant's) presence to re-determine the market value of the imported goods, which was voluntarily accepted by the importer in his statement, recorded under the Customs Act and had agreed upon to pay the differential duty.

XXXX XXXX XXXX

I find that the said imported goods i.e., Aluminium Alloy wheels were not securely affixed with MRP/RSP on the individual retail packs. RSP/MRP mentioning on the individual packing is required for retail sale under the allied Act. In the instant case the appellant failed to declare truthfully the MRP/RSP of the goods in the Bill of Entry as all the cartons containing different size/weight and branded & unbranded Alloy wheels were declared with same MRP and thus mis-declared the same and rendered the impugned goods liable to confiscation under Section 111 (m) of the Customs Act, 1962. As the violation of the provisions of Customs Act, 1962 has been proved against the appellant, the intent to evade Customs duty has been clearly established.

XXXX XXXX XXXX

I find that, in the instant case, when the goods were brought from a place outside India, the declarations made in the Bill of Entry were not found to be in accordance with the imported goods, an obligation which the importer failed to discharge. Thus, I find that the importation act was in violation of the provisions of the Customs Act, 1962 the goods were imported improperly and were rightly confiscated. The fines are right proportion. The order passed by the Adjudicating Authority needs no interference."

(emphasis supplied)

9. Shri A.K. Prasad, learned counsel for the appellant assisted by Ms. Surbhi Sinha, made the following submissions:

- i) The order dated May 05, 2017 was passed by the Additional Commissioner in contravention of the principles of natural justice as copies of the statements relied upon as well as the market enquiry report and differential duty calculations were not supplied to the appellant. The order passed by the Additional Commissioner also does not state the brand of the goods in respect of which the market enquiry was conducted from the three vendors;
- ii) In the absence contemporaneous imports at higher transactions value, and in the absence of re-determination of the retail sale price on the basis of that declared on the

imported items, the Department could not have demanded any extra duty from the appellant;

- iii) The tone and tenor of the statement of the proprietor clearly indicates that they were given under the duress and in any case, they could not have been relied upon without compliance of the provisions of section 138B of the Customs Act;
- iv) Even if the proprietor had accepted to enhanced value, it did not absolve the Department from valuing the goods in accordance with law; and
- v) Since the goods were correctly described and the value was correctly indicated, there existed no grounds for invoking section 111(m) of the Customs Act.

10. Shri Rakesh Kumar, learned authorized representative appearing for the Department, however, supported the impugned order and submitted that the appeal should be dismissed in view of the decisions of the Tribunal in **Commissioner of Customs vs. Hanuman Prasad & Sons⁶**, **Vikas Spinners vs. Commissioner of Customs, Lucknow⁷**, and **Commissioner of Customs, ICD Patparganj & Others ICDS (ICD Palwal, Haryana) vs. M/s. Manvi Exim Pvt. Ltd⁸**. Learned authorized representative also submitted that the market enquiry had been conducted in the presence of the proprietor and he had also accepted the value of the goods re-determined on the basis of the market enquiry as

6. MANU/CE/0151/2020

7. 2001 (128) E.L.T. 143 (Tri.-Del)

8. 2022 (7) TMI 466 -CESTAT New Delhi

also the calculation chart and therefore, it is not open to the appellant to challenge the value so re-determined.

11. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

12. In the present case, the statements of the proprietor of the appellant were recorded on April 27, 2017, April 28, 2017 and May 03, 2017. What transpires from the aforesaid statements in a nutshell is that:

- (i) The proprietor accepted that the declared value and retail sale price of the imported goods in the three Bill of Entry were not in consonance with the market price which was much higher;
- (ii) The proprietor admitted that the market survey was done in his presence and he also accepted that the value mentioned in the chart together with the calculation was in accordance with the value ascertained during the market survey and agreed to pay the differential duty with interest, fine and penalty as may be imposed by the competent authority;
- (iii) The proprietor did not want any show cause notice to be issued or personal hearing to be provided;
- (iv) In regard to the first Bill of Entry, he accepted that the re-determined value of the goods would be Rs.16,73,204/- on which duty would be to Rs.05,84,093/- and agreed to pay the differential duty of Rs.02,14,748/-;

- (v) In regard to the second Bill of Entry, he accepted that the re-determined value would be Rs.15,91,656/-, on which the duty would come to Rs.06,35,282/- and agreed to pay the differential duty of Rs.03,28,949/-; and
- (vi) In regard to third Bill of Entry, he accepted that the re-determined value would be as Rs.15,94,932/-, on which the duty would come to Rs.06,37,029/-, and he agreed to pay the differential duty of Rs.03,36,148/-.

13. Section 14 of the Customs Act deals with 'Valuation of Goods' and is reproduced below:

"Section 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the 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 subject to such other conditions as may be specified in the rules made in this behalf:

Provided xxxxxx xxxxxx xxxxxx"

14. It would be seen that section 14 of the Customs Act provides that the transaction value of goods shall be the price actually paid or payable for the goods when sold for export to India where the buyer and the seller of the goods are not related and the price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. The Valuation Rules have been framed in exercise of the powers conferred by section 14 of the Customs Act. Rule 12 deals with rejection of the declared value and is reproduced below:

"Rule 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule(1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

15. Rule 12 provides that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of rule 3(1). Explanation (iii) to rule 12 provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons, which may include any of the six reasons contained therein, one of which is that there is a significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

16. The proper officer doubted the value of the goods declared by the appellant. In the statements made under section 108 of the Customs Act, the proprietor of the appellant accepted the re-determined value of the goods and also stated that he did not desire any notice to be issued or personal hearing to be provided.

17. It is on the basis of the statements made by the proprietor of the appellant that the Additional Commissioner, after rejecting the assessable value declared by the appellant, re-determined the value.

18. After payment of duty on the assessments made by the Additional Commissioner, the appellant filed an appeal before the Commissioner (Appeals), which appeal was dismissed.

19. It is seen from a perusal of section 17(4) of the Customs Act that the proper officer can re-assess the duty leviable, if it is found on verification, examination or testing of the goods or otherwise that the self-assessment was not done correctly. Sub-section (5) of section 17 provides that where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer, the proper officer shall pass a speaking order on the re-assessment, except in a case where the importer confirms his acceptance of the said re-assessment in writing.

20. It is no doubt true that the value of the imported goods shall be the transaction value of such goods when the buyer and the seller of goods are not related and the price is the sole consideration, but this is subject to such conditions as may be specified in the rules to be made in this behalf. The Valuation Rules have been framed. A perusal of rule 12(1) indicates that when the proper officer has reason to doubt the truth or accuracy of the value of the imported goods, he may ask the importer to furnish further information. Rule 12(2) stipulates that it is only if an importer makes a request that the proper officer shall, before taking a final decision, intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared and provide a reasonable opportunity of being heard. To remove all doubts, Explanation 1(iii)(a) provides that the proper officer can have doubts regarding the truth or accuracy of the declared

value if the goods of a comparable nature were assessed at a significantly higher value at about the same time.

21. Explanation (1)(i) to rule 12 of the Valuation Rules, however, provides that the rule only provides a mechanism and procedure for rejection of declared value and does not provide a method for determination of value and if the declared value is rejected, the value has to be determined by proceeding sequentially in accordance with rules 4 to 9.

22. In **Century Metal Recycling**, the Supreme Court summarized the provisions of rule 12 of the Valuation Rules and the observations are as follows:

"15. The requirements of Rule 12, therefore, can be summarised as under :

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence.

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on certain reasons which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods.

Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

16. Proper officer can therefore reject the declared transactional value based on certain reasons to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression grounds for doubting the truth or accuracy of the value declared has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the reason to doubt exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared."

23. The very fact that the importer had agreed for enhancement of the declared value in the statements made under by section 108 of the Customs Act, itself implies that the importer had not accepted the value declared in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importer had accepted the enhanced value, it was really not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under sub-rule (1) of rule 3 for the reason that the declared value has been rejected under sub rule (2), that the value of the imported goods is required to be determined by proceeding sequentially through rules 4 to 9. As noticed above, the importer had accepted the enhanced value and there was, therefore, no necessity for the assessing officer to

determine the value in the manner provided for in rules 4 to 9 of the Valuation Rules sequentially.

24. However, in the present case, not only did the proprietor make a statement on April 27, 2017 that a market survey should be conducted, since the value and the retail price of the goods imported were not in consonance with the market price of such goods sold in the Indian market, but a market survey was actually conducted in the presence of the proprietor and as per the opinion given by the shopkeepers, the retail sale price was ascertained, which price was accepted to be correct by the proprietor in the statement made on April 27, 2017. When he was shown details of how the value was calculated, the proprietor admitted that it was based on the value ascertained during the market survey and agreed to pay the differential duty with interest.

25. In this connection, it would be useful to refer to a decision of this Tribunal in **Advanced Scan Support Technologies vs Commissioner of Customs, Jodhpur**⁹, wherein the Tribunal, after making reference to the decisions of the Tribunal in **Vikas Spinners vs Commissioner of Customs, Lucknow**¹⁰ and **Guardian Plasticote Ltd. v. CC (Port), Kolkotta**¹¹, held that as the appellant therein had expressly given consent to the value proposed by the Revenue and stated that it did not want any show cause notice or personal hearing, it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring

9. 2015 (326) ELT 185 (Tri.-Del)

10. 2001 (128) ELT 143 (Tri.-Del)

11. 2008 (223) ELT 605 (Tri.-Kol)

no further investigation or justification. Paragraph 5 of the decision is reproduced below:

"5. We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by Revenue and expressly stated that it did not want any Show Cause Notice or personal hearing. Even the duty was paid without protest. By consenting to enhancement of value and thereby voluntarily foregoing the need for a Show Cause Notice, the appellant made it unnecessary for Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put Revenue in an impossible situation as the goods are no longer available for inspection and Revenue rightly did not proceed to further collect and compile all the evidences/basis into a Show Cause Notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no Show Cause Notice, could/would have invited allegation of harassment and delay in clearance of goods. When Show Cause Notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail as with the goods not being available and valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so re-assessment of value in the absence of goods will not be possible. The case of Eicher Tractors v. Union of India (supra) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value."

[emphasis supplied]

26. In **Vikas Spinners**, the Tribunal dealing with a similar situation, observed as under:

"7. In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants. Admittedly, the price of the imported goods declared by them was US \$ 0.40 per Kg. but the same was not accepted and loaded to US \$ 0.50 per Kg. **This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special**

Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 7-5-1999. After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008/- on 19-5-1990. **Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are 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. The ratio of the law laid down by the Apex Court in *Sundar N. Images*, (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/Special Attorney and paid the duty thereon accordingly."

[emphasis supplied]

27. In **BNK Intrade (P) Ltd. vs Commissioner of Customs, Chennai¹²**, the Tribunal observed as follows:

"2..... It is also to be noted that the importer had also agreed for enhancement of the price based on contemporaneous prices available with the Department. We, therefore, find no merit in the contention raised in the appeal challenging the valuation and seeking the refund of the differential duty paid by the appellants on enhancement."

28. The following position emerges from the aforesaid decisions of the Tribunal:

- (i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation;

- (ii)** When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and
- (iii)** The burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntarily accepted.

29. Thus, when the proprietor had admitted the re-determined value and also paid the differential duty with interest and penalty imposed by the competent authority, it is not open to the appellant to now contend, after goods have been cleared, that the market value could not have been re-determined.

30. The contention of the learned counsel for the appellant that the principles of natural justice have been contravened as copies of the statements relied upon as well as the market enquiry report have not been supplied to the appellant cannot be accepted. The market enquiry was conducted in the presence of the appellant and in the statements made by the appellant under section 108 of the Customs Act, the appellant admitted that the market enquiry had been conducted in his presence and the market value was ascertained, which value he accepted to be correct. The adjudicating authority has not placed reliance upon statements made by some other persons, but has placed reliance upon the statements made by the appellant himself. Even in this appeal, the appellant has not stated that the statements were not correctly recorded since all that has been suggested is that the tone and tenor of statements give an impression that they were recorded under duress. The value has been re-determined on the basis of the opinion given by the shopkeepers during the market

survey, which value was accepted by the appellant. It is, therefore, not a case where only the statement of the proprietor has been relied upon. The provisions of section 111(m) of the Customs Act have been correctly invoked as the value of the goods imported by the appellant do not correspond with the value given by the appellant in the Bills of Entry.

31. In such circumstance, the order dated May 31, 2019 passed by the Commissioner (Appeals) does not suffer from any illegality. The appeal is, accordingly, dismissed.

(Order pronounced in the open court on **21.02.2023**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)