

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

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 52072 OF 2019

(Arising out of Order-in-Appeal No. CC(A)CUS/D-II/Export/ICD/TKD/223/2019-20 dated 27.05.2019 passed by the Commissioner of Customs (Appeals), New Delhi)

M/s. Hindustan Traders

252, Opp. Khalsa School,
Nakodar Road, Jalandar- 144003

...Appellant

VERSUS

**Commissioner of Customs (Export),
Inland Container Depot, Tughlakabad,
New Delhi- 110020**

...Respondent

APPEARANCE:

Shri L.B. Yadav, Consultant for the Appellant
Shri Manish Kumar Chavda, 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/Decision: 30.08.2023

FINAL ORDER NO. 51285/2023

P.V. SUBBA RAO

This appeal is filed to assail the order-in-appeal¹ passed by the Commissioner (Appeals) dated May 27, 2019 whereby he upheld the order passed by the Adjudicating Authority and rejected the appeal filed by the appellant.

2. The appellant is an importer of Brass ball valves with iron handle of different sizes and other items and it filed six Bills of Entry between July 29, 2010 and August 31, 2010. Receiving information that the goods were undervalued, the proper Officer ordered provisional assessment under section 18(1) of the Customs Act,

1. Impugned Order

1962² and the goods were cleared. After the goods were cleared, the assessments were finalized by assessment order dated January 13, 2016. It needs to be pointed out that the information with regard to the undervaluation was received by the Appraising group from the Preventive Commissionerate, who observed that the goods were valued lower than the scrap value of brass value itself. While finalizing the assessment, the Assessing Officer rejected declared assessable value under Rule 12 of the Customs Valuation Rules, 2007³ and redetermined the value under Rule 9 of the Valuation Rules.

3. To finalise the value, he placed reliance on the direction of the Commissioner of Customs (Preventive) issued by letter dated January 11, 2016 suggesting that the Bills of Entry could be finalized on the basis of the import price of the goods, on the basis of tariff value of brass scrap+30%.

4. Accordingly, the Assistant Commissioner passed the assessment order finalizing the assessment. This decision was upheld by the Commissionerate (Appeals) by the impugned order.

5. We have heard Shri B.L. Yadav, learned consultant for the appellant and Shri Manish Kumar Chavda, learned authorized representative and perused the records.

6. Duties of customs are levied on goods imported into and exported from India at the rates specified in the Schedules to the Customs Tariff Act, 1975. On some goods, the levy is based on quantity (specific duty) and other goods, it is based on value (ad

valorem). If the duty is to be levied based on value, valuation for the purpose has to be done as per Section 14 which reads as follows:

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 that such transaction value in the case of imported goods shall **include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges** to the extent and in the manner specified in the rules made in this behalf:

Provided further that the **rules** made in this behalf **may provide for,-**

(i) the circumstances in which the **buyer and the seller shall be deemed to be related;**

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or **price is not the sole consideration for the sale or in any other case;**

(iii) **the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:**

(2) Notwithstanding anything contained in 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.

7. The non-obstante clause in sub-section 2 of section 14 gives the Board the power to fix tariff values for any class of goods and if fixed, the tariff value will be the value to determine the duty. This sub-section is not relevant to this case. In all other cases, the value to be reckoned for calculating the Customs duty shall be the transaction value subject to five conditions:

- a) Buyer and seller are not related.
- b) Price is for delivery at the time and place of importation.
- c) Price is the sole consideration for sale.
- d) Some amounts indicated in the first proviso to sub-section 1 of section 14 must be included.
- e) Valuation will be as per any other conditions as may be specified in the Rules.

8. Thus, the default position is that the valuation has to be done on the basis of the transaction value and not based on any fixed value. The second proviso to this sub-section provides for Rules to be made in this behalf to provide for:

- a) the circumstances in which **the buyer and the seller shall be deemed to be related;**

- b) the manner of determination of value in respect of goods **when there is no sale,**
- c) the manner of determination of value in respect of goods if **the buyer and the seller are related,**
- d) the manner of determination of value in respect of goods where **price is not the sole consideration for the sale;**
- e) the manner of determination of value in respect of goods in **any other case;** and
- f) the manner of **acceptance or rejection of value** declared by the importer or exporter, as the case may be, **where the proper officer has reason to doubt the truth or accuracy of such value,** and determination of value for the purposes of this section.

10. The Valuation Rules were framed as per the second proviso to sub-section 1 of section 14. It has 13 Rules in all of which Rules 1 and 2 are Preliminary rules. Rule 3 states that subject to Rule 12, the value shall be the transaction value adjusted according to Rule 10. Rule 10 provides for certain costs to be included in the transaction value. Rule 12 provides for the proper officer to reject the transaction value if he has reason to doubt its truth and accuracy. **Thus, unless the proper officer rejects the transaction value under Rule 12, the valuation has to be based on transaction value as per Rule 3 with some additions, if necessary, as per Rule 10.**

11. Rule 3 further provides that if the valuation cannot be done under that Rule, i.e., as per the transaction value with additions as per Rule 10, then **it must be done sequentially under Rules 4 to 9.** In other words, if the transaction value is rejected under Rule 12

and valuation cannot be done as per the transaction value under Rule 3 and it must be done sequentially under Rules 4 to 9.

12. We now proceed to examine Rules 4 to 9. **Rule 4** provides for the valuation to be done on the basis of **identical goods**. **Rule 5** provides for the valuation to be done on the basis of the value of **similar goods**. Rule 6 states if Rules 4 and 5 cannot determine the value then they must be done as per Rule 7 and thereafter Rule 8 but this sequence can be reversed at the option of the importer. In other words, if the importer so chooses, Rule 8 can be applied directly instead of Rule 7. **Rule 7** provides for a **deductive method of valuation** on the basis of prices of similar or identical goods sold in India and after making some deductions from such prices. **Rule 8 provides for a computed value**, i.e., based on the cost of raw material, cost of manufacture, reasonable profit, etc. In view of Rule 6, the importer may choose the computed value without examining the feasibility of determining value through deductive methods. **Rule 9 is a residual method** which provides for determining the value where it cannot be determined under Rules 3 to 8. Rule 10, as already discussed, provides for some costs to be added to the transaction value if the valuation is done as per Rule 3. Rule 11 requires the importer to make a declaration. Rule 12 lays down the provision for rejection of transaction value. Rule 13 provides for interpretative notes for the Rules.

13. The next question which arises is when can the proper officer reject the transaction value. Rule 12 reads as follows:

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 mis-declaration 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.

14. Thus, if the officer has **reason to doubt** the truth and accuracy of the transaction value, he can call for information including documents and evidence. If the information and evidence is presented and after examining it or if no information or evidence as called for is presented, if the proper officer has **reasonable belief** then it shall be deemed that the value cannot be determined as per Rule 3 (i.e., based on transaction value with additions, if necessary). While the officer can, in the first place call for information and evidence if he has reason to doubt, at the second stage, he should have not just some reason to doubt but a **reasonable doubt**. If he has such reasonable doubt, then the transaction value can be rejected. The grounds on which the proper officer may raise doubts about the truth and accuracy of the transaction value have been illustrated in explanation 1 (iii) to Rule 12. The list is inclusive and not exhaustive.

15. No reasoning for rejecting the declared assessable value under Rule 12 has been given in the Assessment Order by the original authority. No specific reasons for upholding the rejection have also been indicated in the impugned order. All that is mentioned is that the value of the imported goods was less than the tariff value of the

brass scrap and hence the Bills were provisionally assessed and that the Commissioner (Preventive) had approved the import price of the goods on the basis of the tariff value of the brass scrap + 30% and the appellant had, in six previous Bills of Entry, paid duty accordingly. Learned consultant for the appellant submits that the reason the value of the imported good was lower than that of brass scrap is that the imported goods are made of both brass and iron and the value of iron is much lower than the value of brass.

16. After rejecting the transaction value, it was re-determined under Valuation Rule 9 at the tariff value of brass scrap+ 30% on the directions of the Preventive Commissioner. Assessment of duty on the imported goods has to be done as per the law which, insofar as Valuation is concerned, is Section 14 and the Valuation Rules. Section 14 requires the valuation to be as per transaction value subject to some conditions. The transaction value can be rejected under Rule 12 by a two-step process. If the proper officer has reason to doubt the truth or accuracy of the transaction value, he can call for further information and if the importer does not provide the information or after examining the information, the proper officer still has a reasonable doubt about the truth and accuracy of the transaction value, it shall be deemed that the valuation cannot be done as per the transaction value and he can reject the transaction value. Thus, the basis for the reasonable doubt which the proper officer entertained to reject the transaction value must be spelt out and which has not been done in this case. For this reason alone, the impugned order must be set aside.

17. Secondly, after rejecting the transaction value under Rule 12, the proper officer has to re-determine the value sequentially under

Rules 4 through 9. There is not even a whisper, let alone any evidence, in the Assessment Order or the impugned order that there were no values of identical goods (Rule 4), no values of similar goods (Rule 5), the value could not be determined through Deductive method (Rule 7) or through computational method (Rule 8). Therefore, directly determining the value under Rule 9 cannot be sustained. The impugned order has to be set aside for this reason as well.

18. Thirdly, assessment is a quasi-judicial function and the assessing officer has to apply his mind and take an independent decision as per the law, based on the facts of the case and following judicial discipline. In this case, the assessment was clearly not done independently but as per the directions of the Preventive Commissioner. For this reason also, the re-assessment of the imported goods needs to be set aside.

19. For all the above reasons, we find that the rejection of transaction value under Rule 12 and reassessment of the Bill of entry under rule 9 is not sustainable. Accordingly, we allow the appeal and set aside the impugned order with consequential relief to the appellant.

(JUSTICE DILIP GUPTA)
PRESIDENT

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