

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

CUSTOMS APPEAL NO.51347 OF 2019

[Arising out of Order-in-Original No.24/ 2018-19/V.S./COMM (IMPORT) dated 30.03.2019 passed by the Commissioner of Customs (Import), New Custom House, New Delhi].

M/s. C Cube Consulting Pvt. Ltd.

...Appellant

Through its Director –Abhishek Agarwalla
F-11/C, First Floor,
Okhala Industrial Area, Phase0I,
New Delhi-110020

VERSUS

Commissioner of Customs

...Respondent

New Custom House, Near IGI Airport,
New Delhi.

WITH

CUSTOMS APPEAL NO.50154 OF 2021

[Arising out of Order-in-Original No.09/COMM/ MS/C CUBE/ ICD-PPG/2019 dated 23.12.2019 passed by the Commissioner of Customs ICD, Patparganj, New Delhi].

M/s. Agya Import Limited

...Appellant

Through its Director – Abhishek Agarwalla
F-11/C, First Floor,
Okhala Industrial Area, Phase-I,
New Delhi-110020

VERSUS

Commissioner of Customs

...Respondent

ICD, Patparganj,
New Delhi.

WITH

CUSTOMS APPEAL NO.50937 OF 2021

[Arising out of Order-in-Original No.09/COMM/ MS/C CUBE/ ICD-PPG/2019 dated 23.12.2019 passed by the Commissioner of Customs ICD, Patparganj, New Delhi].

M/s. C Cube Consulting Pvt. Ltd.

...Appellant

Through its Director – Abhishek Agarwalla
F-11/C, First Floor,
Okhala Industrial Area, Phase-I,
New Delhi-110020

VERSUS

Commissioner of CustomsICD, Patparganj,
New Delhi.**...Respondent****WITH****CUSTOMS APPEAL NO.50938 OF 2021**

[Arising out of Order-in-Original No.09/COMM/ MS/C CUBE/ ICD-PPG/2019 dated 23.12.2019 passed by the Commissioner of Customs ICD, Patparganj, New Delhi].

Ummed Singh BishtAccountant of M/s. C Cube
Consulting Pvt. Ltd. &
M/s. Agya Imports Ltd.
F-11/C, First Floor,
Okhala Industrial Area, Phase-I,
New Delhi-110020**...Appellant***VERSUS***Commissioner of Customs**ICD, Patparganj,
New Delhi.**...Respondent****WITH****CUSTOMS APPEAL NO. 50939 OF 2021**

[Arising out of Order-in-Original No.09/COMM/ MS/C CUBE/ ICD-PPG/2019 dated 23.12.2019 passed by the Commissioner of Customs ICD, Patparganj, New Delhi].

Harpreet SinghEmployee M/s. C Cube
Consulting Pvt. Ltd. &
M/s. Agya Imports Ltd.
F-11/C, First Floor,
Okhala Industrial Area, Phase-I,
New Delhi-110020**...Appellant***VERSUS***Commissioner of Customs**ICD, Patparganj,
New Delhi.**...Respondent****AND****CUSTOMS APPEAL NO. 51724 OF 2021**

[Arising out of Order-in-Original No.09/COMM/ MS/C CUBE/ ICD-PPG/2019 dated 23.12.2019 passed by the Commissioner of Customs ICD, Patparganj, New Delhi].

Abhishek AgarwallaDirector of M/s. C Cube
Consulting Pvt. Ltd. &
M/s. Agya Imports Ltd.**...Appellant**

F-11/C, First Floor,
Okhala Industrial Area, Phase-I,
New Delhi-110020

VERSUS

Commissioner of Customs
ICD, Patparganj,
New Delhi.

...Respondent

APPEARANCE:

Ms.Divya Rastogi, Advocate (Proxy) for the appellant
Mr. Rakesh Kumar, Authorised Representative for the Respondent

Coram:
HON’BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON’BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 10/05/2024
DATE OF DECISION: 09/09/2024

FINAL ORDER NO.58563-58568/2024

DR. RACHNA GUPTA

Present order disposes of 6 appeals arising out of same set of investigation with respect to two importing companies controlled by common Director and the employees thereof. The requisite details of all these appeals are as below:

Sl.No.	Appeal No.	SCN No. & date	O-I-O No. & date		Declared Value	Differential duty
1	51347/2021	22/2016/19738 dated 22.09.2016	OIO No. 24/2018- 19/V.S./Commi- ssioner 30.3.19		Rs.2,16,55,855	Rs.3,14,53,970
		22/2016/23959 dated 25.11.2016				
		22/2016/1190 dated 18.01.2017				
		22/2016/1800 dated 06.02.2017				

2-6	50154/2021 50937/2021 50938/2021 50939/2021 51724/2021	8/2016/17693- 17701 dated 28.06.2016 8/2016/9222 dated 25.4.2018	OIO No.09/COMM/MS/C CUBE/ICD- PPG/2019 23.12.2019		Rs.36280350	48503330
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2. The officers of Special Intelligence and Investigation Branch (SIIB), New Delhi received an intelligence that various importers are indulged in under- invoicing and consequent under-valuation of the goods viz. "HOP Extracts" & "HOP Pallets" by not declaring the actual transaction value of the same, resulting in evasion of Customs Duty. The details of importers importing "HOP Extracts" through Air Cargo Complex, New Delhi were examined. It was found that M/s Agya Imports Limited and M/s C Cube Consulting Pvt. Ltd., both have the same address i.e. F-11/C, Okhla Industrial Area Phase 1, New Delhi 110020 and the common director, namely, Shri Abhishek Agarwalla. Both the importing companies had filed various Bills of Entry and cleared the impugned goods i.e. "HOP Extract"/ "HOP Pallets" from Air Cargo Complex, New Delhi.

3. It was found that M/s Agya Imports Ltd. had filed Bill of Entry No. 5252339 dated 13.05.2016 (Live B/E), covered under MAWB No. 05727777120 dated 25.02.2016 undervaluing the consignment. The goods covered under said Bill of Entry were examined by SIIB, ACC (Import) and on having been found undervaluation of those goods, the goods were seized under Section 110 of the Customs Act, 1962. The matter was investigated and Show Cause Notice C. No. VIII/SIIB/CUS/ACC (Import)/22/2016 dated 11.08.2016 was issued against the importer.

4. Further, during the investigations, in respect of past imports of the said importers at ACC (Import), New Delhi, it was found that M/s C Cube Consulting Pvt. Ltd. had imported the said items under the thirty three (33) bills of entry (as detailed in the aforesaid Show Cause Notices) from Air Cargo Complex, Import, New Delhi, during the period 2011 to 2016. During investigation, the impugned goods, covered under the said Bills of Entry, were found to be grossly mis-declared in terms of unit price and value. It was found that the importer was indulged in the modus operandi of using fake/forged invoices, showing grossly undervalued unit price, as against correct/real unit price found in the actual invoices received from Airlines/consolidator and from overseas inquiry (COIN) through ICD, Patparganj, New Delhi.

5. The detailed investigation revealed that the Appellants-importers were indulged in evasion of Customs Duty by way of mis-declaring the unit price (for under valuation) on the basis of fake / forged / parallel invoices, while filing the Bills of Entry for clearance of the impugned goods. Accordingly, 04 Show Cause Notices (as mentioned above) were issued to the Appellant importer M/s C Cube Consulting Pvt. Ltd. Two Show Cause Notices as mentioned above were issued to remaining appellants i.e. M/s. Agya Import Limited and to the employees of both the firms. All the said SCNs proposed the demand of differential custom duty as mentioned above along-with the proportionate interest and the appropriate penalties on each of the appellants, respectively. The proposal of all the above Show

Cause Notices have been confirmed vide two Order-in-Originals as mentioned above. Being aggrieved of the said orders, all the appellants as named in each appeal-title above are before this Tribunal.

6. We have heard Mr. Rakesh Kumar, Authorised Representative for the respondent and have perused the written submissions filed on behalf of appellant, in view of detailed order dated 10.05.2024.

7. It is mentioned in the written submissions of appellant that several questions of law are required to be considered by this Tribunal in the present appeals as there has been a grave violation of principles of natural justice on part of the original adjudicating authority, committed, while announcing the orders under challenge. The Commissioner has clubbed different Show Cause Notices without any intimation about such clubbing to the appellant. The clubbing is otherwise contrary to the letter dated 16.05.2018 as was issued by CBEC Board vide which the request of the appellant for appointment of common adjudicating authority was rejected. The appellant was not granted the opportunity of being heard by the original adjudicating authority. The orders under challenge have been passed ex-parte. The notices of hearing as mentioned in the order were never received by the appellant. In fact, the notices were issued so proximate to the date of hearing that there was no possibility of those to be received by the appellant before /on the date of hearing mentioned therein. Hence it remains the fact that the appellant was never heard by the adjudicating authority prior passing of the impugned orders.

8. It is also mentioned in the written submission that an interim reply with reference to the impugned Show Cause Notices was sent by the appellant vide letter dated 28.06.2018 in Appeal No. 51347 of 2019 and vide letter dated 18.05.2018 in rest of the appeals. But there is no reference of the said reply in the order under challenge. The appellant had also requested for cross-examination of Mr. S. Kapur and Mr. Alok Singh as also of Mr. Jeffery Makhani and Mrs. Nicole Hosch vide the same letter dated 28.06.2018. However, the Department allowed the request for cross-examination except for the cross examination of Mr. Jeffery Makhani. It is impressed upon that the said order was passed on 25.03.2019 which was received by the appellant after the issuance of the orders challenged under present appeals. It is mentioned that cross-examination of Mr. Jeffery Makhani was relevant on account of the invoices provided by him based whereupon the demand of undervaluation has been substantiated. Mr. S. Kapur was the author of the letter written on behalf of the Lufthansa Cargo and documents supplied alongwith the communication. It is also alleged that the Department had failed to provide the certified copy of the relevant documents i.e. 20 invoices pertaining to imports made by the appellants which were procured by the Department through overseas inquiry conducted by the Directorate of Revenue Intelligence. The documents annexed with the Show Cause Notice were also not provided. The entire above conduct of the Department amounts to denial of mandatory right of personal hearing and is violation of section 122 A of the Customs Act, 1962.

9. While submitting on merits in the written submission, it is mentioned that the entire case is based upon the documents obtained through overseas inquiry. But no communication was given to the appellants importers about conducting such inquiry. The documents otherwise bear no authenticity being procured from foreign supplier as unsigned and unstamped documents. It is further submitted in the written submission that the goods were supplied on the basis of commercial contract entered between the foreign supplier and the importer and the value of the goods was fixed at 1.5 Euro. The Department has failed to appreciate that appellants were the largest importer of HOP-pellets and had been importing the same from the foreign supplier since the year 2008. The quantity of import was so huge and appellant being an old customer that the imports were made at the lowest negotiable price. It is also impressed upon that there is no undervaluation as is alleged. The valuation done by the Department is otherwise contrary to the ratio laid down by Hon'ble Supreme Court in the case of **Century Metal Recycling Private Ltd. vs. Union of India reported as (2019) 6 SCC 655**. The imports were made against manufacture invoice which is the best piece of evidence, but those were not relied upon. The order is contrary to the decision of **Hon'ble Supreme Court in the case of Collector vs. Sai Impex reported in 1996 (84) ELT 47 (SC)**. The order is also alleged to be contrary to the ratio laid down by Hon'ble Supreme Court in the case of **Basant Industries Nunhani vs. Collector of Customs reported as 1995 Supp. (3) SCC 320**. The fact that the payments to the foreign suppliers had always been sent by Banking channels has been ignored by the authority despite it was

so stated by the appellant while getting recorded under section 108 of Customs Act, 1962. It has been highlighted that no independent investigation with regard to the four Show Cause Notices of appeal No. 51347 was being conducted. Hence there is no basis for confirming the demand and imposition of penalty as has been done by the original adjudicating authority. Finally, it is in the written submission that the Show Cause Notices are barred by the time of limitation as the demand proposed by the Show Cause Notice pertains to the Bill of Entry which were filed more than one year prior the date of respective Show Cause Notice. None of the Show Cause notices alleged single word about any act of the appellants which may amount to an act of suppressing material facts or misrepresenting the same or an act of committing fraud etc. The order under challenge is liable to be set aside on this single ground itself. With these submissions and placing reliance on the decision of Hon'ble Supreme Court in the case of **Nizam Sugar Factory vs. CCE reported in 2006 (11) SCC 573**, the order under challenge is, accordingly, prayed to be set aside and the appeal is prayed to be allowed.

10. While rebutting these submissions Ld. D.R. submitted that there is no violation of principles of natural justice, as alleged, has been committed by the adjudicating authorities below while passing the impugned orders. It is mentioned that despite ample opportunities were given to the appellants, they have failed to file any reply to the Show Cause Notice even after lapse of considerable time. The interim reply as has been mentioned by the Id. Counsel for the

appellant alongwith another letter dated 10.01.2019 had requested for legible copies of RUDs for filing complete reply and cross-examination of the witnesses. It is impressed upon that the legible copies of RUDs were duly provided vide the letter No.80/2016 dated 25.02.2019 but no reply thereafter was ever filed by the appellant vis-à-vis the allegations against them in all the impugned Show Cause Notices. The request to cross-examine the witnesses was not rejected except for Mr. Jeffry Makhani because he being an employee and operation supervisor of Airfrance and he had merely admitted the fact of handing over the relevant documents as invoices master Airway Bill, console manifest, packing list etc. to the appellants in the sealed condition as were received from the origin. There was no rejection vis-à-vis remaining 3 witnesses to be cross-examined. However, the appellants did not come forward to cross-examine any of those witnesses. The factum of failure on part of the appellant to attend the personal hearing despite being afforded ample opportunities is well recorded in both the orders under challenge. It is impressed upon that no principle of natural justice has been violated while adjudicating the impugned Show Cause Notices.

11. While rebutting the submissions made with respect to the merits of the case, Id. Departmental Representative has mentioned that the importing companies M/s. C Cube Consulting Pvt. Ltd and Agya Import Ltd were importing "**HOP pallets**" and "**HOP extract**" from different foreign supplier and Shri Agarwalla was Director to both the companies and was looking after all work relating to imports made by the companies. M/s. C Cube Consulting Pvt. Ltd had

imported those items under several Bills of Entry as detailed in the respective Show Cause Notice for each of the appeal herein, from Air Cargo Complex, New Delhi during the period 2011-2016. The live Bills of Entry of both the impugned orders were intercepted. However, based on the investigation, all the imports made by the appellants during the period 2011-2016 were being questioned. Ld. DR further impressed upon that the adjudicating authority has passed the decision based on the comparison of the invoices submitted by the importer with those invoices as were procured by the Department during the investigation from Airlines/ Consolidator and overseas inquiry. This comparison revealed that except the total value and the unit price all the other parameters like description, invoice state, invoice No., quantity No, No. of packages HAWB etc. were identical in all the cases except for the value. Based whereupon, it has been rightly held in the orders under challenge that the invoices submitted by the importer at the time of import were grossly undervalued vis-à-vis value found in the original invoices procured during the investigation. The rejection of declared invoice value in terms of rule 12 of Customs Valuations (Determination of Value of Imported Goods) Rules 2007, therefore, has no infirmity. The value has been re-determined on the basis of actual invoices having correct and real value of the imported goods under section 14 of the Customs Act, 1962.

12. Ld. D.R. further impressed upon that the importers deliberately and in a very systematic and planned manner have arranged to submit the forged documents to evade applicable duties by way of

undervaluation. They had original documents in their possession but opted to submit the undervalued forged documents. Thus, there is no infirmity in the order when the appellants are alleged to have contravened the provisions of section 46, section 17 and section 14 of the Customs Act, 1962 nor there is any infirmity in the order rejecting the declared value redetermining the same and confirming the demand of differential customs duty. Since, it was the case of apparent forgery committed and that of fabrication of invoices there is no infirmity in imposition of penalty upon the appellants even under section 114 AA of the Customs Act. Section 28 (4) of the Act has also been rightly invoked as the facts against the appellant are related to misdeclaration of value evasion of duty by way of committing fraud and the suppression of facts which would not have come to the notice of the Department had there been no intelligence received. With these submissions, the orders under challenge in six of the appeals are prayed to be upheld. Appeal is prayed to be dismissed.

13. Having heard both the parties, the rival contentions and after looking into the records of all the 6 appeals, we find that following questions are required to be adjudicated for the purpose:-

1. Whether the appellant has been denied the right of personal hearing.
2. Whether the appellants have undervalued the HOP pallets/HOP extracts imported by him while submitting the respective Bills of Entry.

Issue No.1:

14. As already noted above, several Show Cause Notices have been served upon the appellants in each of these six appeals. But there is no reply filed by appellant except for the letter dated 28.06.2018 which is in reference to Show Cause Notice No.22/2016 dated 22.09.2016 and the letter dated 10.07.2019 which is with respect to Show Cause Notice No.22/2016 dated 06.02.2017. As observed from the orders under challenge the OIO dated 23.12.2019 specifically recites that no reply has been received from any of the appellants except that a reply from Mr. Uma Kant Dash, the employee of M/s. Yemuna Impex was furnished vide letter dated 18.05.2018. Mr. Uma Kant Dash did not appear before the Adjudicating Authorities. In Appeal No.51347, there were almost 8 opportunities given to the appellants over a period of almost 10 months. But except for 2 letters dated 28.06.2018 and 10.01.2019 received from the Advocate of the appellant, no reply vis-à-vis allegations in the Show Cause Notices was ever filed by the appellants. It is not the case of the appellants that the Show Cause Notices were not in their knowledge. The perusal of this letter revealed that appellant had asked for supply of the copy of the order vide which the four Show Cause Notices in Appeal No.51347 were ordered to be clubbed. It is further mentioned that the Show Cause Notices issued to C Cube Consulting Private Ltd. has referred to the Show Cause Notice dated 11.08.2016 as was served upon M/s. Agya Import Ltd. on the ground that M/s. Agya Import Ltd. and C Cube Consulting Private Ltd. have the common Director and the common address. The said Show Cause Notice was alleged illegal. In addition, the Show Cause Notices were alleged to be barred by time.

15. Vide reply dated 10.07.2019, the appellants had requested for the cross-examination of several witnesses including Mr. Jeffry Makhani and for providing relevant invoices (20 in number) as were procured through overseas inquiry conducted by the Directorate of Revenue Intelligence. It is clear that despite the opportunity, the appellant has opted to not to any statement on defense against the allegations in the Show Cause Notice except asked for the copies of document and cross-examination of witnesses. It is brought to notice on behalf of the Department that all the requisite documents were duly provided to the appellants vide Department's letter dated 25.02.2019. There is nothing on record to show that appellant had taken any step with effect from receiving the said documents till passing of the impugned Order-in-Original dated 30th September, 2019 in Appeal No.51347. Appellants did not take any steps nor made any efforts to file any reply subsequent to receiving those documents till the another Order-in-Original passed on 23.12.2019. While making submissions before the Bench though appellant has denied receiving those documents but we observe that there is no denial about receiving the letters dated 25.02.2019 vide which the department supplied the document to the appellant. These observations are sufficient for us to hold that appellant had sufficient time to make the representation challenging the allegation of the impugned Show Cause Notices but they deliberately kept avoiding the same on one pretext or the other. Thus it can not be said that appellant was not opportunity of being heard.

16. Coming to the aspect of request of cross-examination of witnesses. The cross-examination of Mr. Jeffry Makhani only was rejected, that too, on the ground that vide his statement recorded under section 108 of Customs Act 1962 dated 10.08.2016 and 06.02.2017, he merely had stated about handing over the relevant documents to the Department, which were received in the sealed condition from the suppliers country. The master airway bills as was submitted by the Jeffry Makhani were got verified from their origin office located in Nuneek via office e-mail dated 11.08.2016. In view of these facts, we do not find any infirmity in the order declining the request to cross-examine such witness. Few other Witnesses were denied cross examination for the reasons either of unavailability/ untraceability etc. as were duly communicated to the appellants. Apparently and admittedly there is no rejection to cross-examine the other witnesses but there is no effort on the part of the appellant to get any of them cross-examined.

17. Though the order dated 25.02.2019 rejecting the request of cross-examining Mr. Jeffry Makhani came to his notice only after the Order-in-Original dated 30th March 2019 i.e. on 08.04.2019 but it is apparent on record that the proceedings of the impugned Show Cause notices were to the notice and knowledge of the appellants since beginning the appellants premises got searched way back on 29.02.2016. The incriminating records, laptops and a desktop computer CPU were recovered from the search of premises of both the importers vide Panchnama dated 29.02.2016 itself. The appellant had enough time to place on record documents revealing their

bonafide but till the date of the impugned orders under challenge, no single document falsifying the allegations in the impugned Show Cause Notices were produced by the appellants. The case law relied upon by the appellant is held not applicable to the given circumstances. We do not find any force in the argument that the appellants could not have been allowed cross-examination of foreign suppliers etc. who had been the source of documents based on which the entire case has been made out. We draw our support from the decision of Hon'ble Supreme Court in the case of **Kanungo & Co vs. Collector of Customs, Calcutta reported in 1983(13) ELT 1486 (S.C.)**

18. With these observations, we hold that there is no violation of principles of natural justice as has been alleged by the appellant. Issue No.1 therefore stands decided against the appellant.

Issue No.2.

19. The allegations against the appellant in the impugned Show Cause Notices are that the appellants as importers who have grossly undervalued the import consignment by way of fabricating the invoices to avoid payment of appropriate duty of Customs. Importers are alleged to have deliberately undervalued the goods to substantially reduce the transaction value with an apparent intent to evade payment of appropriate duty of customs on the goods under import. These allegations have been confirmed based on the following details:-

- 1 The documents recovered during search
- 2 The statements recorded during investigation.

3 The overseas inquiry reports (almost 4 in Number)

20. From the data recovered from the various premises belonging to the different appellants the documents with respect to each Bills of Entry and the respective invoices were retrieved / recovered. It got revealed that the invoices received from the overseas suppliers and the invoices as were submitted by the importers have a different value for the imported goods lesser values were shown in the invoices as were submitted with the Bills of Entry. Both the adjudicating authorities have observed that the comparison of the documents clearly establish that all shipment details with reference to nature, classification, origin etc. in the documents as retrieved from soft data recovered from appellants' premises and those received with overseas enquiry report are same as mentioned in the invoices submitted with the Bills of Entry except that the value of the imported goods and the quantity thereof were different. Even the date of reaching of consignment was observed as same in all the said documents even with respect to the live consignment. The overseas inquiry report also had the certified copies of the invoices for shipments made to both the impugned importers. The copies of proforma invoices (sales contract) also had the same rate and value of imported goods as was shown in the invoice obtained through overseas inquiry. The value in the invoices retrieved during the investigation is also same. It is only the value declared in the invoices filed by both the importers with the respective Bills of Entry which is different and is highly undervalued as compared to rest of

the above mentioned documents. The overseas report summaries as follows :-

a) Genuine copy of invoices recovered during the investigation and copy of same number of invoices received from Overseas Inquiry show the true and correct transaction value inasmuch as they match with one another.

b) When compared with the same number of invoices submitted by the said importers i.e. M/s C Cube Consulting Pvt. Ltd. and M/s Agya Imports Ltd. at the time of import with those number of invoices received from Overseas Inquiry it reveals that the said importers used forged and fabricated invoices so as to declare highly lower value of the import consignments in order to evade Customs duty thereon.

c) M/s C Cube Consulting Pvt. Ltd. and M/s Agya Imports Ltd. adopted illegal and unauthorized channels for remittances to the overseas suppliers for excess amount not shown in the forged invoices and suppressed from Indian Customs.

d) Documents and evidences received through overseas inquiry revealed that the said importers M/s C Cube Consulting Pvt. Ltd. and M/s Agya Imports Ltd. submitted copy of untrue and fabricated ledgers to the department in course of investigation.

21. Thus, it stands established that the appellants had original documents in their possession but opted to submit forged documents with the Customs authorities after altering the value of goods with an intention to evade customs duty.

22. This forgery has been proved beyond doubt from the two sets of Invoices placed on record in the impugned Order dated 30.03.2019 (Para 2.11 Table E) which shows Unit value declared at Column No 8 and revised determined Unit value based on actual Import Invoices provided by the airlines, Consulates and customs, SIIB ICD PPG in respect of imports made by M/s C Cube consulting Pvt. Ltd are different.

23. Though Mr. Abhishek Agarwalla has denied any knowledge about the original invoices, but the comparison of invoices submitted by the appellants when compared to original invoices submitted by airlines (in overseas inquiry) revealed that apart from the value of the goods all other entries are same. We hold that it cannot be a mere coincidence that the invoice submitted by the airlines is not known to the appellant nor it can be the coincidence that all other details of the invoices compared are same except the valuation of the goods imported. There otherwise can be no denial to the fact that there has to be the original invoices sent from the foreign suppliers. Nothing has been produced by the appellant that the invoices received during the overseas inquiry do not pertain to the original invoices of their imports or that the original invoices w.r.t. Bills of Entries in question

are different from the original invoices received or retrieved by the department.

24. We also observe that Statement of Sh. Suvojit Banerjee, Financial controller and Authorized signatory of M/s ELF Shipping India Pvt. Ltd recorded on 25.01.2017 and he has also reiterated the same propositions. In fact the CHAs have stated in their various statements that the documents were submitted after receiving from the Importer/ Sh Abhishek Agarwalla. Thus, it proves beyond doubt that Sh Abhishek Agarwalla is the mastermind involved in the said forgery. The invoices supplied by airlines proved gross undervaluation using forged invoices.

25. Some of the actual Invoices were supplied by the airlines. Some were procured by the DRI and the same was submitted by the SIIB ICD Patparganj. Some actual invoices were also submitted by the consols/ Importers agent to the Investigating authority and the same when compared with the declared Invoices, huge undervaluation to max more than 100% was found. The Noticee were hand in gloves and penalty imposed on Sh Abhishek Agarwalla and Other Noticee for their various acts of forgery which has made the goods liable for confiscation is appropriate and the impugned Order does not warrant any infirmity.

26. It is a fact on record that the documents have been obtained from any place outside India in the course of

investigation of any offence alleged to have been committed by the appellants and the Court is bound to presume unless, the contrary is proved that the documents are valid piece of evidence as per Sec 139 of the Customs Act. The provision is reproduced below:-

"Section 139 in The Customs Act, 1962

**139. [Presumption as to documents in certain cases.[
Substituted by Act 36 of 1973, Section 10, for Section 139
(w.e.f. 1.9.1973).]**

- Where any document-

- (i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
- (ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act, and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall-
 - (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
 - (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
 - (c) in a case falling under clause
 - (i) also presume, unless the contrary is proved, the truth of the contents of such document.]

[Explanation.-For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (1-C) of section 110.] [Inserted by Act 80 of 1985, Section 11 (w.e.f. 27.12.1985).]"

27. In light of this provision we hold that the declarations annexed with other documents including invoices are such documents to which presumption of correctness is attached. The appellants have failed to rebut the said presumption. The fact that payments were being transferred through banking channels cannot rebut this presumption as the amount which was transferred is the value shown in invoices submitted, by the appellants themselves, along with the Bill of Entry and that the said value has been rejected. No other export declarations have falsified the documents obtained by the Department are placed on record by the appellant. Nor any other cogent document is produced which may show that the price as was declared to the Chinese Customs was different from the price which is mentioned in the export declaration obtained by the Department from China through Consulate General of India. We, therefore, hold that the export declarations as received through overseas inquiries are well admissible into evidence. Those documents have sufficiently proved the alleged forgery / fraud committed by the appellant. There remains no doubt as far as the authenticity of the documents obtained by DRI through Government channel and from concerned Department of exporting countries are concerned. We draw our support from the decision of this Tribunal in the case of **Orson Electronics Pvt. Ltd. vs. Collector of Customs, Bombay reported in 1996 (82) ELT 499 Tri-Del.** We also draw our support from the decision of this Tribunal in the case of **Décor Rubber Industries vs. Commr. of Customs reported in 2023 (12) Centex 238 (Tri.-Del.)** wherein it has been held that the export

declarations are the documents in terms of section 139 (ii) of Customs Act, 1962. Prima facie they appeared to be genuine and admissible. If the importer fails to rebut the presumption of correctness attached to these documents, the documents are well admissible in the evidence.

28. In the light of entire above discussion, the documents obtained by the Departments during investigation and also with overseas inquiry report when were compared with the invoices filed by the appellants along with the bill of entry have sufficiently proved that the appellants have undervalued their product while importing the same. We do not find any infirmity when the Department has rejected the said declared value and re-assessed the same. Thus we hold that the order based such admissible documents, rejecting the import value declared in bills of entry is sustainable.

29. It is not the case of appellant that re-determination has not correctly been done otherwise also we observe that these findings in para 2.13 of OIO dated 30th March, 2013 and in para No.27.3 and 30 of order dated 23.12.2019 vis-à-vis the redetermination of value. We find no infirmity as the value has been rejected while invoking Rule 12 of the determination of value rules. Section 17 has been invoked for re-assessing the value and the method of valuation as prescribed under rule 3 of valuation rules is observed to have been followed sequentially while arriving at the redetermined respective values. We also do not find anything on record to counter the said methodology.

30. Above all Department not to prove actual value with mathematical precision - Reliance on documents proper when transaction veiled in secrecy as per Section 14 of the Customs Act, 1962. Also present is held to be a case of fraud by forging transaction values to have illegal gain of Customs duty "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there-from although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void *ab initio*. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. **(See Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].**

31. In the light of entire above discussion, we do not find any infirmity in the order. Not even vis-à-vis imposition of penalty as the present case is observed to be a clear cut case of fraud forgery and manipulation. We hereby upheld the order. Consequent thereto, all the appeals are hereby dismissed.

[Pronounced in the open Court on 09/09/2024]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita