CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

CUSTOMS APPEAL NO. 203 OF 2007

[Arising out of Order in Original No. 06/MDS/07 dated 31.01.2007 passed by the Commissioner of Customs (I & G), New Delhi]

M/S DOABA STUD & AGRICULTURE FARM. **.....APPELLANT**
403, Empire Apartments,
Empire Estate, Sultanpur,
Mehrauli-Gurgaon Road,
New Delhi-110 030

Vs.

COMMISSIONER OF CUSTOMS-NEW DELHI (IMPORT & GENERAL) **......RESPONDENT**
New Customs House, Near
IGI Airport, New Delhi-110037

With

CUSTOMS APPEAL NO. 204 OF 2007

[Arising out of Order in Original No. 06/MDS/07 dated 31.01.2007 passed by the Commissioner of Customs (I & G), New Delhi]

YADVENDRA SINGH, PARTNER **.....APPELLANT**
403, Empire Apartments,
Empire Estate, Sultanpur,
Mehrauli-Gurgaon Road,
New Delhi-110 030

Vs.

COMMISSIONER OF CUSTOMS-NEW DELHI (IMPORT & GENERAL) **......RESPONDENT**
New Customs House, Near
IGI Airport, New Delhi-110037

<u>Appearance:</u>
Present for the Appellant : Shri Piyush Kumar, Advocate
Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 50380-50381 /2025

Date of Hearing : 14/02/2025
Date of Decision : 07/03/2025

P.V. SUBBA RAO

1. The order dated 31.1.2007[1] passed by the Commissioner of Customs is assailed by M/s. Doaba Stud & Agriculture Farm[2], the importer and Shri Yadvendra Singh[3], its partner in these two appeals. In the impugned order, the Commissioner rejected the prices of 11 horses declared by Doaba under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988[4] and re-determined them as per Rule 8 of the 1988 Rules and also imposed penalty on Shri Singh.

2. However, he dropped the demand in respect of four horses as being time barred (being beyond the extended period of five years). He confirmed demand of differential duty in respect of the remaining seven horses under Section 28(1) of the Customs Act, 1962[5] invoking extended period of limitation. He also ordered recovery of interest under section 28AB of Customs Act and held the horses to be liable to confiscation under section 111 of the Customs Act and imposed a redemption fine under section 125 of

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1 Impugned order
2 Doab
3 Singh
4 1988 Rules
5 Customs Act

the Customs Act. He also imposed penalty on Doaba under section 114A of the Customs Act and on Shri Singh under section 112 of the Customs Act.

3. Doaba is a stud farm and it imported thoroughbred horses during the relevant period which were assessed as per the declared values and cleared. Later, receiving information, the Directorate General of Revenue Intelligence[6] started investigation and found that thoroughbred horses and their pedigrees are well documented. The horses imported by Doaba were from Ireland where they had been auctioned a short time before their import. The prices at which each of them was sold at the auction was available on the internet. The prices indicated in the invoices submitted by Doaba and declared in its Bills of Entry were just a fraction of the prices at which they had been sold at the auction just a few months before the import.

4. After recording statements and conducting a detailed investigation, DRI issued a Show Cause Notice dated 15th September 2004[7] proposing to reject the declared transaction values under Rule 10A and redetermine them under Rule 8 of the 1988 Rules, recover differential duty under Section 28 of the Customs Act invoking extended period of limitation with interest and to impose penalties on Doaba and Singh.

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6 DRI
7 SCN

5. Doaba and Singh resisted the proposals which were however, confirmed by the Commissioner in the impugned order. Aggrieved, these appeals have been filed before this Tribunal.

6. We have heard learned counsel for the appellants (Doaba and Singh) and learned authorised representative for the Revenue and perused the records.

7. Several submissions were advanced by the learned counsel for the appellants the most important of which is that the value was wrongly determined under Rule 8 of the 1988 Rules based on the domestic sale price of the horses in the country of export.

8. We proceed to examine this submission because if this question is answered in favour of the appellants, it may not be necessary to examine the other submissions because the essential part of the impugned order is re-determination the value of the horses. The demand of differential duty, interest and penalties are consequential to the rejection of the declared value under Rule 10A of the 1988 Rules and its re-determination under Rule 8 of the 1988 Rules.

9. As per Section 14 of the Customs Act, the value of the imported goods shall be the transaction value for delivery at the time and place of import where the seller and buyer are not related and the price is the sole consideration for sale. However, this section makes some exceptions and provides for rejection of

the transaction value and its redetermination in certain cases. This legal position is not in dispute.

10. The 1988 Rules were notified under section 14 and they provide for rejection of the transaction value and its re-determination through various methods. What needs to be pointed out is that if the transaction value is rejected under the 1988 Rules, the transaction value (which is a product of negotiation between the importer and its supplier) is not modified or altered but it is only rejected as the basis for assessing duty. Duty is then assessed on a different value determined through other methods prescribed in the 1988 Rules.

11. As per Rule 3 of the 1988 Rules, the value of the imported goods shall be, subject to Rules 9 and 10A, the transaction value. It further provides that if the value cannot be determined as above, it shall be determined sequentially through Rules 5 to 8. Rule 3 reads as follows:

> **"3. Determination of the method of valuation**. - For the purpose of these rules, -
>
> (i)subject to rules 9 and 10A, the value of imported goods shall be the transaction value;
>
> (ii)if the value cannot be determined under the provisions of Clause (i) above the value shall be determined by proceeding sequentially through rules 5 to 8 ofthese rules."

12. Rule 9 provides for addition of certain costs and services to the transaction value. If this Rule is applied along with Rule 3, the costs and services have to be added to the

transaction value and that shall be the assessable value. In other words, the transaction value gets modified if Rule 9 is applied. Rule 9 is not relevant for this appeal.

13. Rule 10A provides for rejection of the transaction value under certain circumstances if the proper officer has reasonable doubt about the truth and accuracy of the transaction value. It reads as follows:

> **"10A. 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 value of such imported goods cannot be determined** under the provisions of sub-rule (1) of rule 4.
>
> (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)."

14. In this case, applying Rule 10A, the SCN, proposed to reject the transaction value for the reason that the very horses which were imported from Ireland had been sold in auction in Ireland just a few months before at much higher prices and the declared price was just a fraction of the auction price.

15. If the transaction value is rejected under Rule 10A, it must be re-determined as laid down in Rule 3 (ii) by **following**

sequentially Rules 4 to 8. In other words, Rule 4 must be applied first and if it is not possible to determine the value as per Rule 4 and Rule 5 must be applied and so on up to Rule 8.

16. Rule 4 provides for acceptance of transaction value after adjustment for costs and services as per Rule 9.

17. Rule 5 provides for the value to be determined as per the value of identical goods. Rule 6 provides for the value to be determined as per the value of similar goods. Rule 7 provides for determination of value as per the value of identical or similar goods sold at or about the same time in India with certain deductions. Rule 7A provides for constructive method of determining the value based on the cost of production.

18. Rule 8 is the residual method if the value cannot be determined as per any of the previous rules. Finding that the value could not be determined under Rules 4 to 7A, it has been re-determined under Rule 8 of the 1988 Rules in the impugned order (as was proposed in the SCN). It has been specifically recorded in paragraph 7.4 of the SCN that the value of the horses in the case cannot be determined under Rules 4,5,6,7 and 7A and therefore, it must be determined under Rule 8. This Rule reads as follows:

> **"8. Residual method.**
> (1) Subject to the provisions of rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the proceeding rules, the value shall be determined using reasonable means consistent with the principles and

general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962, and on the basis of data available in India.

(2) No value shall be determined under the provisions of this rule on the basis of

(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purpose of the highest of the two alternative values;
(iii) the price of the goods in the domestic market of the country of exportation;
(iiia) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provision of rule 7A.
(iv) the price of the goods for the export to a country other than India;
(v) minimum customs values; or
(vi) arbitrary or fictitious values."

19. Learned counsel submits that the value was wrongly determined under Rule 8 on the basis of the auction price of the horses in Ireland which had taken place shortly before the import. These prices were taken from the internet and adopted with some adjustments. In other words, these were the domestic prices in Ireland, the country of export. Re-determination of the value under Rule 8 of the 1988 Rules cannot be done on the basis of the price of the goods in the domestic market of the country of export in view of explicit stipulation to this effect in sub-rule 2(iii) of Rule 8 of the 1988 Rules.

20. Learned authorised representative for the Revenue, on the other hand, submits that we must first consider if the rejection of the declared value under Rule 10A is correct. Since the goods in

question were thoroughbred horses, there was a complete record of them. Undisputedly, the very horses which were auctioned in Ireland for certain prices were, shortly thereafter, in a few months imported by Doaba declaring a fraction of the auction price as the transaction value. Therefore, there was an extremely strong reason to reject the declared price.

21. On the question of application of Rule 8 of the 1988 Rules, learned authorised representative submits that the auction price of the horses in Ireland cannot be considered as the domestic price in Ireland because anyone in the world could have participated in the auction and bought the horses. Therefore, he submits that these prices are not covered by the exclusion under sub-rule (2) (iii) of Rule 8 and therefore, they can form the basis for re-determining the prices of the imported horses.

22. As an alternative submission, learned authorised representative for the Revenue submits that if the auction prices are considered as domestic prices of Ireland and hence excluded by Rule 8(2) (iii), the matter may be remanded to the Commissioner to determine the price by applying the correct 1988 Rule. He further submitted that not mentioning or wrong mentioning of a Rule in the SCN, by itself, should not vitiate the proceedings. He placed reliance on the judgment of Supreme Court in **Collection of Central Excise, Calcutta** vs.

Pradyumna Steel Ltd.[8] which was followed by the Supreme Court in **J K Steel Ltd.** vs. **Union of India**[9]**.**

23. We have considered the submissions by both sides on the question of determination of value under Rule 8 of the 1988 Rules which specifically prohibits determination of value based on the price of the goods in the domestic market of the country of export.

24. It may not be out of place to mention here that the 1988 Rules were subsequently replaced by Customs (Determination of Value of Imported Goods Rules), 1997[10], Rule 9 of which is the residual method of determination of the value. This Rule also stipulates that the valuation cannot be on the basis of the value of the goods in the domestic market of the country of export. It reads as follows:

> **"9. Residual method.-**
> (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;
>
> Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.
>
> **(2) No value shall be determined under the provisions of" this rule on the basis of -**

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8 1996 (82)ELT 441(SC)
9 1978 (2) ELT J 355 (SC)
10 1997 Rules

(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
(iii) the price of the goods on the domestic market of the country of exportation;
(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
(v) the price of the goods for the export to a country other than India;
(vi) minimum customs values; or
(vii) arbitrary or fictitious values."

25. Both the 1988 Rules and the 1997 Rules are based on India's international Commitments as a signatory to the General Agreement on Tariffs And Trade 1994 (GATT) under which various rules of international trade were agreed to. Article VII of GATT dealt with the valuation of the goods. In order to elaborate on implementation of Article VII of the GATT, **Rules on Customs Valuation** were signed Article 7 of which is the residual method of determination of value. This Rule also specifically prohibits determination of value based on the domestic price of the goods in the country of export or the country of import. Article 7 reads as follows:

"Article 7
1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of GATT 1994 and on the basis of data available in the country of importation.
2. **No customs value shall be determined under the provisions of this Article on the basis of**:
(a) the selling price in the country of importation of goods produced in such country;
(b) a system which provides for the acceptance for customs purposes of the higher of two alternative values;
(c) the price of goods on the domestic market of the country of exportation;

> (d) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;
> (e) the price of the goods for export to a country other than the country of importation;
> (f) minimum customs values; or
> (g) arbitrary or fictitious values.
>
> 3. If the importer so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value."

26. Thus, in determination of value of the imported goods through the residual method, the explicit prohibition on basing it on the domestic price in the country of export is as per an international agreement. It is part of Rule 8 of the 1988 Rules and also its successor Rule 9 of the 1997 Rules. In the impugned order, after rejecting the transaction value under Rule 10A of the 1988 Rules, it was re-determined under Rule 8 of 1988 Rules as per the auction prices of those horses in Ireland with some adjustments.

27. The submission of the learned counsel for the appellant is that the value cannot be determined under Rule 8 based on the domestic price of the goods in the exporting country by virtue of Rule 8(2)(iii). The submission of the learned authorised representative for the Revenue is that since anyone from anywhere in the world could have participated in the auction, the auction prices in Ireland cannot be called domestic prices in Ireland.

28. The submission of the learned counsel for the appellants merits acceptance. Even if anyone from anywhere in the world

could have participated in the auction in Ireland, it does not make the auction prices international prices. It would only mean that anyone from within Ireland or from outside could have purchased the horses in the domestic market of Ireland. The mere fact that the horses were sold through auction and not through a fixed price would make no difference whatsoever to the fact that the market was the domestic Irish market.

29. Another submission of the learned authorised representative for the Revenue is that if Rule 8 of 1988 is said to be wrongly applied, the matter may be remanded to the Commissioner to apply the correct Rules and re-determine the value because, evidently, the declared price is just a fraction of the actual price as was evident from the auctions.

30. However, we find that if the declared value is rejected under Rule 10A of the 1988 Rules, it has to be re-determined sequentially under Rules 4,5,6,7,7A and 8 of 1988 Rules. The SCN has specifically recorded in paragraph 7.4 that Rules 4,5,6,7,and 7A cannot be applied to this case and for that reason proceeded to determine the value under Rule 8 of the 1988 Rules. Therefore, remanding the matter to the Commissioner would serve no purpose whatsoever because the only Rule which could have been applied in the facts of the case as per the SCN itself is Rule 8 but in view of the prohibition in sub-rule (2) (iii) of this Rule, the value cannot be determined based on the auction

prices. The entire allegation of undervaluation is only based on the auction prices.

31. The proposals for demand of duty, confiscation, fine and penalties are solely based on the re-determination of the values of the horses based on the auction prices. In view of the above, we find that the impugned order cannot be sustained and needs to be set aside.

32. Both appeals are allowed and the impugned order is set aside with consequential relief to the appellants.

[Order pronounced on **07/03/2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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