CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 50170 OF 2020

(Arising out of Order-in-Original No. 32/2019/MKS/Pr. Commr./ICD- Import/TKD dated 14.10.2019 passed by the Principal Commissioner of Customs ICD, TKD, New Delhi)

Shri Amit Agarwal ..... **Appellant**
Director of M/s Yug International Pvt. Ltd.
C-4, Anand Vihar
Delhi – 110 092

Versus

Principal Commissioner of Customs (Import), ... **Respondent**
Inland Container Depot,
TKD, New Delhi

APPEARANCE:

NONE for the appellant
Shri Shiv Shankar, authorised representative of the department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing/Decision: December 08, 2025

FINAL ORDER NO. 51857/2025

JUSTICE DILIP GUPTA:

Amit Agarwal[1] has filed this appeal to assail the order dated October 14, 2019 passed by the Principal Commissioner of Customs, ICD-TKD, New Delhi[2] to the extent it imposes penalty upon the appellant, as a Director of M/s Yug International Pvt. Ltd., Delhi, under sections 112(a) and 114AA of the Customs Act, 1962[3]. The

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1. **the appellant**
2. **the Principal Commissioner**
3. **the Customs Act**

extended period of limitation as contemplated under section 28(4) of the Customs Act has also been invoked for this purpose.

2. Case has been called out, but no one has appeared on behalf of the appellant. When the matter was taken up on March 10, 2025, the Bench made it clear that the matter may be decided on merits even if the appellant does not appear. The appeal is, accordingly, being decided on merits after hearing Shri Shiv Shankar, learned authorized representative appearing for the department.

3. The issue that arises for consideration in this appeal is whether the importers of melamine had resorted to evasion of anti-dumping duty by over valuation of the goods imported. The anti-dumping duty was leviable on the import of melamine from China in terms of a Notification dated February 19, 2010. This Notification provides that anti-dumping duty shall be imposed at a rate which is equivalent to the difference of US$ 1681.49 per MT and the landed value of the goods. 'Landed value' has been defined to mean the assessable value as determined under the Customs Act and includes all duties of customs, except duties levied under sections 3, 8B, 9 and 9A of the Customs Tariff Act, 1975. According to the department, the appellant had artificially increased the transaction value of melamine to over US$ 1681.49 per MT so as to evade anti-dumping duty.

4. Accordingly, a show cause notice was issued. The Principal Commissioner has, by the impugned order, rejected the assessable value declared by the appellant and redetermined the

assessable value as a result of which anti-dumping duty has been levied on the appellant with interest and penalty.

5. This issue was considered by a Division Bench of this Tribunal in **Shubham Chemicals & Solvents Ltd.** vs **Principal Commissioner of Customs (Import), New Delhi**[4] and it was held:

> **"22. The Principal Commissioner, however, held that the values of melamine imported and cleared by the firms declared by them in 13 Bills of Entry at the time of import into India were not the correct transaction values and, therefore, rejected them under rule 12 of the 2007 Rules read with section 14 of the Customs Act, 1962 and thereafter redetermined the transaction value under rule 5 of the 2007 Rules read with section 14 of the Customs Act on the basis contemporaneous imports.**
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> **30. It is also seen from the order that much emphasis has been placed by the Principal Commissioner on the statements made by the three co-noticees**. The Commissioner has not accepted the request made by the Appellant for cross examination of the three otices for the reason that they had voluntarily made the statements which were not retracted. This approach of the Principal Commissioner regarding the issue as to whether cross-examination was to be permitted or not cannot be said to be a correct approach, for an opportunity should have been given to the appellant to ascertain by cross-examination whether the statements were voluntary or not. It is also necessary to note that the sale transactions were made through banking channels on the basis of agreements between the parties.
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> **32.** The principles of natural justice cannot be put in a straight jacket and they vary from case to case depending on the facts of each case. In the present case, **it was imperative for the authorities to have not only confronted the Appellant with the said statements but also permit cross examination of these three persons who had given statements regarding the valuation of the imported goods, for it is these statements that**

4 **Customs Appeal No. 52254 of 2019 decided on 14.12.2020**

> **formed the basis for holding that the value of the imported goods had been inflated. These statements could not have been taken into consideration for determination of the transaction value since the Appellant was not confronted with these statements and permission to cross-examine them was rejected. The decisions relied upon by** the learned Authorized Representative of the Department are on their own facts and would not advance the submissions of the Representative.
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> **34.** What needs to be noticed is that all the imports were made on the basis of High Sea Sales agreements which were executed and payments were made through proper banking channels. "High Sea Sales" is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. It is after the "High Sea Sales" of the goods that the Bill of Entry is filed by the person who buys the goods from the original importer during the said sale. **The Principal Commissioner has not doubted the agreements or the payments made and it is only the basis of the statements made by the three co-noticees, that the transaction value has been rejected**. The Appellant has also stated that the goods could not have been directly imported. **The transaction value, in view of the provision of section 14(1) of the Customs Act and aforesaid discussion could not have been rejected**."
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> **[emphasis supplied]**

6. The Division Bench also examined whether the extended period of limitation under section 28(4) of the Customs Act could have been invoked. After referring to various decisions, the Division Bench held that the extended period of limitation could not have been invoked. Accordingly, the impugned order was set aside.

7. In the present case also, the case of the department is based on the premise that the imported melamine was purchased by the appellant from a Chinese supplier @ US$ 1180 per MT and that the appellant had knowingly and intentionally inflated the value of the goods over US$ 1681.49 per MT to evade anti-dumping duty. The impugned order has imposed penalty upon the appellant under

section 112(a) and section 114AA holding that the appellant had abetted the importer in mis-declaration of the value of the goods during the evasion of anti-dumping duty. This is based only on certain statements made under section 108 of the Customs Act, but the request of the appellant to cross-examine them has been rejected.

8. For the reasons stated by the Division Bench in **Shubham Chemicals**, the transaction value could not have been rejected. The impugned order, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Dictated & pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(C.J. MATHEW)
MEMBER (TECHNICAL)

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