

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 06.06.2017  
Date of decision: 30.06.2017

**Customs Appeal No. 54525 of 2015**

(Arising out of order in appeal No. CC(A) CUS/1038/2015 dated 23.09.2015 passed by the Commissioner of Customs (Appeals), New Delhi).

M/S VLCC Healthcare Limited Appellant

Vs.

CC (Prev.) New Delhi Respondent

Appearance:

Sh. S. Vasudevan, Advocate for the appellant  
Sh. R. K. Manjhi, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President  
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 54477 /2017

Per: **V. Padmanabhan:**

The appeal is filed against the order-in-appeal No. CC(A) CUS/1038/2015 dated 23.09.2015 passed by the Commissioner of Customs (Appeals), New Delhi. The appellant is engaged in the business of providing wellness, fitness, beauty and healthcare services. The appellant imported certain equipments for use in their centres and filed Bill of Entry No. 3417377 dated 30.09.2014 for import from M/s Viora Ltd., Israel. The Customs Department did not accept the declared value of the machine and reassessed the value at a higher rate and demanded differential duty. The imported goods were also ordered for confiscation under Section 111(m) of the Customs Act, 1962 and goods were allowed to be redeemed on payment of fine of Rs.3 lakhs. Penalties were also imposed under Section 28 and 28AA of the Customs Act,

1962. The order of the original authority was upheld by the Commissioner (Appeals). Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we have heard Sh. S. Vasudevan, Id. Counsel for the appellant and Sh. R. K. Mishra, Id. AR for the Revenue.

3. Id. Counsel for the appellant submitted that the goods were imported from M/s Viora Ltd., Israel on the basis of an MOU entered into by the appellant. Since several machines were imported, the supplier agreed to negotiated price of US\$ 10,000 per unit in respect of reaction machine. However, the Customs authorities have reassessed the value of these machines at US\$ 14,000 solely on the basis of the statement given by Sh. Mahesh Chander, Director (Operation) of M/s Viora Ltd., in India. Shri Mahesh Chander in his statement dated 18.10.2013 has only stated that M/s Viora Limited has sold the reaction machines in India at a maximum price of US\$ 14,000. This has been misinterpreted by Customs to reassess the value at US\$ 14,000 instead of the transaction value of US\$ 10,000. Id. Counsel further submitted that the import was from unrelated supplier and the agreed transaction value has been paid only through banking channels. In respect of pristine machines, he submitted that the declared import price of US\$ 400 included accessories and consumable i.e. Advance Anti-Wrinkle Solution and Ultrasonic-cleaner 2 Nos. However, Revenue has reassessed the value of this machine by adding the price of Ultrasound Cleaner on the basis of NIDB data.

3. Id. AR appearing for the Revenue supported the impugned order. He argued that the reassessed value was fully justified since the representative of supplier has admitted that such machines are supplied in India at US\$ 14,000. In respect of pristine machine, he argued that the Ultrasound Cleaner has been

shown as free of charge supply whose value needs to be added to the declared price of the basic machine.

4. In the relevant bill of entry 3 Nos. of reaction machine has been declared @ US\$ 10,000 per piece. The Customs department has reassessed the value at US\$ 14,000 per piece, on the basis of statement given by Sh. Mahesh Chander, Director (Operations) of M/s Viora Limited. On going through the statement given by him to Customs officers, we find that he has clearly stated that M/s Viora Limited was supplying such machine to the appellant @ US\$ 10,000 on the basis of the MOU between them. The fact that he has mentioned that such machines have been sold at a maximum price of US\$ 14,000 in India is irrelevant for the purpose of assessment. It is settled position of law that Customs authorities are bound to accept the transaction value at all times except in the case of exceptions provided specifically in Valuation Rules. The Hon'ble Supreme Court in the case of ***Eicher Tractors Ltd. vs. CC, Mumbai - 200 (122) ELT 321 (SC)*** has unambiguously held this view. On going through the records of the case, we find that the customs department has not cited any other evidence other than the statement of the Director for disregarding the transaction value. It is very much on record that the transaction value is negotiated price and there is MOU executed by the appellant with the supplier to support this view. In the light of the above, we are of the view that reassessment of value is unjustified and needs to be set aside. Customs duty is required to be charged on the basis of transaction value in this regard.

5. In respect of Pristine Machine, Customs has not accepted the value of US\$ 400 for the machine per se but has reassessed it on the basis of NIDB data. However, Ultrasonic Cleaners which has been supplied with the machine has

been valued separately and added and customs duty has been demanded duty on the differential value. The submission of the appellant is that Ultrasonic Cleaners are merely to an accessories to Pristine Machine and the negotiated rate of US\$ 400 is for the machine alongwith the accessories as well as some consumables.

5. It is well settled that transaction value cannot be reassessed only for the reasons that NIDB database show import of identical goods at higher value as has been held by the Apex Court in the case of Eicher Tractors Ltd. (supra). The transaction value is required to be accepted and can be disregarded only for specific reasons mentioned in Customs Valuation Rules. In the absence of any of those reasons, we find no reason to disregard the transaction value. Inasmuch as the consumables and the ultrasonic cleaners have been supplied as part of Pristine Machine and the price is inclusive of these items, we find no reason to disregard the transaction value.

6. In view of the above discussions, the impugned order is set-aside and appeal is allowed.

(Pronounced on 30.06.2017).

(Justice (Dr.) Satish Chandra)  
President

(V. Padmanabhan)  
Member (Technical)

Pant