IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:24.08.2017

Customs Appeals Nos.50503-50504/2017 and C/50519-50520/2017

[Arising out of Order-in-Appeal No.BHO-EXCUS-002-APP-323-16-17 dated 04.01.2017 in Appeal No.C/50503/2017, Order-in-Appeal No.BHO-EXCUS-002-APP-302-16-17 dated 21.12.2016 in Appeal No.C/50504/2017, Order-in-Appeal No.BHO-EXCUS-002-APP-324-16-17 dated 4.1.2017 in Appeal No.C/50519/2017 and Order-in-Appeal No.BHO-EXCUS-002-APP-325-16-17 dated 4.1.2017 in Appeal No.C/50520/2017 passed by the Commissioner (Appeals) of Central Excise, Customs and Service Tax, Raipur]

M/s.Sarda Energy and Minerals Ltd. Appellants

Vs.

CCE, Raipur Respondent

**Appearance**:

Rep. by Shri J.M. Sharma, Consultant for the appellant.
Rep. by Shri P. Juneja, DR & Shri R.K. Manjhi, DR for the respondent.

**Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Orders Nos.56317-56320/2017

**Per B. Ravichandran:**

These four appeals are on identical set of facts and hence are taken up together. The appellants are engaged in the manufacture of ferrow alloys in their plant at Raipur. They have been regularly importing iron and steel scrap to be used as input in their manufacture. The dispute in the present appeals relates to valuation of such imports made by the appellants. The appeals deal with bills of entry, which were subject matter of four impugned orders. At the time of import, the appellant filed bills of entry declaring an assessable value ranging from US$199 to 258 PMT. The imports were made from September, 2015 to May, 2016. The assessing officer raised a query to justify the valuation declared by the appellant and also intimated the importers that bills of entry will be re-assessed based on contemporaneous price available with the assessing officer. The assessments were accordingly carried out by enhancing the value in respect of each one of the consignments. The duties were paid and the goods were cleared. Later, the assessing officer issued a speaking order justifying re-determination of assessable value. The appellants filed appeals, which were rejected by the impugned orders by the Commissioner (Appeals).

2. Ld. Counsel for the appellants contested the findings of the lower authorities and submitted as below:-

(a) The appellants are actual user of imported items and the imports were based on detailed purchase order and contract, which were submitted to the assessing officers. The contract envisaged detailed specifications for the product to be shipped, including impurities and terms of payment;

(b) Transaction value based commercial consideration cannot be rejected on extraneous ground by the assessing officers.

(c) The appellants were not given full details along with supporting evidence of the contemporaneous imports, which were adopted for re-assessment of assessable value. Certain unsigned print-outs given with no additional evidence of invoice and terms of contract in such contemporaneous imports cannot form basis for re-assessment. Comparison should be with comparable import consignments with similar levels of quantum, period, payment terms, country etc.

(d) Rule 3 (1) of Valuation Rules, 2007 is subject to Rule 12. The said rule gives powers for the assessing officers to raise doubts regarding correctness of the assessable value. Upon such doubt being raised, the appellants have provided all the relied documents. No discussion on documents have been recorded by the lower authorities. Instead they have straight away stated a comparable value purported to be with reference to contemporaneous import;

(e) No comparable value can automatically substitute transaction value and there is no evidence that any other consideration other than one mentioned in the invoice has formed part of the transaction;

(f) NIBD data is a reference value for the assessing officers and cannot be automatically adopted for enhancing value. The assessable value is governed by legal provisions of Section 14 and Valuation Rules. Reliance was placed on certain decided cases.

3. Ld. AR submitted that the assessing officer is correct in raising a query based on his doubt regarding the declared value being less than contemporaneous value of imports. Thereafter, the assessing officer proceeded to re-assess the impugned goods based on the said contemporaneous price in terms of Rule 4 of the Valuation Rules, 2007. There is no legal infirmity in the action of the lower authorities and as such, the appeals deserve to be dismissed.

4. We have heard both the sides and perused the appeal records.

5. We note that the present imports by the appellants are in terms of a specific written purchase orders supported by the detailed contracts. The appellants are actual users of the items for the further manufacture. They required particular type of iron and steel scrap as mentioned in the contract.

The payment terms are also mentioned in the contract. There is no evidence that transaction value was being influenced by any other considerations. The only basis for enhancement of value by the assessing officer is that certain imports of similar items were assessed with higher value around the same period. We have perused the chart submitted by the appellants, which gives the detailed consignment-wise price on the contemporaneous imports made by the assessing officers. We note that the contemporaneous imports have been made in connection with dissimilar nature of consignments with reference to quantity and also in some cases, period of import. Even otherwise, we note that the price variation is in the range of 11 to 15%. The exact nature of goods and the details of contracts of the contemporaneous consignments were not available, only basic description and quantity of the imported items were available, which were compared.

6. In this connection, we have perused the provisions of Rule 12, which enables the rejection of declared assessable value. The said rules provide for proper officer seeking clarification from the importer to provide further information to satisfy the correctness of the declared assessable value. In the present case, the appellants did submit the invoice, purchase order and supporting contract documents with reference to the impugned consignments. Nothing more is required with the importer to further substantiate the value. In such situation, it is for the assessing officer to discount the documents with valid reasons in order to reject the declared value and thereafter to proceed with the re-assessment, after due enhancement. Explanation (1)(i)(iii)(a) in Rule 12 appears to be applicable

to the present case. In other words, the assessing officer having noticed higher value of contemporaneous import raised the doubt regarding the correctness of declared value. The legal provisions mentioned in the Explanation clearly stipulates that the contemporaneous value should be significantly higher for identical or similar goods at or about the same time, in a comparable commercial transaction. We find in the present case due examination about this crucial aspect has not been done by the assessing officer and comparison based on the contemporaneous import is not proper. Further, the contractual arrangements and invoices should not be rejected in the absence of any evidence to question their authenticity. As submitted by the appellants, NIBD data is a guidelines and an indicator for the assessing officer and it cannot be a substitute for assessable value. The assessable value for imported items has to be invariably arrived at applying Section 14 read with Customs Valuation Rules, 2007.

7. We also note that the reliance placed by the appellant on the decision of the Tribunal in the case of **Topsia Estates Pvt. Ltd. Vs. CC, Chennai – 2015 (330) ELT 799 (Tribunal-Chennai)** is appropriate to the facts of the present case. The observation of the Tribunal is as below:-

> "11. We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be very low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. It is noticed that the value of impugned goods varies widely on the basis of quality, size, quantity, etc., and it is contended by the appellant before the lower appellate authority that the declared value of the same goods were accepted by the

> Department at Kolkata Port. We also find force in the submission of the learned Advocate that in this particular situation, Rule 9 of the Valuation Rules would not be invoked.”

8. In view of the discussions and analysis, we find that the impugned orders cannot be legally sustained. Accordingly, the same are set aside. The appeals are allowed with consequential relief.

[order dictated and pronounced in the open court]

(S.K. Mohanty )
Member (Judicial)

( B. Ravichandran )
Member (Technical)

Ckp.