

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

Date of hearing:07.08.2018

Date of Decision:26.10.2018

Appeal No.C/50238 and 51246/2018 (DB)

[Arising out of common impugned Order-in-Appeal No.BHO-EXCUS-001-APP-191-192-17-18 dated 31.08.2017 passed by the ld. Commissioner (Appeals), GST, Customs & Central Excise, Bhopal (M.P.)]

Shri L.R. Maurya

...Appellant

M/s. Ideal Carpets Ltd.

(Rep by Shri Aneesh Mittal and Shri Pawanshree Agrawal, Advocates)

VERSUS

CC, Bhopal

...Respondent

(Rep. by Shri Rakesh Kumar, AR)

CORAM :

HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Final Order Nos..

Per Anil Choudhary:

The appellants are in appeal against the impugned Order-in-Appeal has held that there is a case of misdeclaration by the appellant, a manufacturer of carpets, which had been imported are used and old carpets. Two bills of entry dated 24.02.2011 and 11.05.2011 were filed and the declared value was rejected and enhanced under Rule 12 of Customs Valuation Rules, 2007 . Thereafter, demanding differential duty of Rs. 38, 29, 299, it is further held that there is misdeclaration in the country of origin with respect to one Bill of Entry No. 284

2630 dated 24.02.2011, holding the goods liable for confiscation under Section 111(d), 111(m) and 111(1) of the Customs Act, 1962. As the goods had been released provisionally, redemption fine of Rs. 29, 96, 358 was imposed and further penalty of Rs. 38,29,299/- was imposed under Section 114 A of the Act and further penalty of Rs.10,000/- was imposed under Section 114 AA of the Act. Further, the bond furnished with bank guarantee at the time of provisional release of the goods were ordered to be enforced and appropriated. Further, personal penalty was imposed on Shri L.R. Maurya, CMD of the importing company.

2. Being aggrieved, the appellant had preferred appeal before Commissioner (Appeals), who vide the impugned order dismissed the appeals upholding the findings in the Order-in-Original. Being aggrieved, the appellants are before this Tribunal.

3. The brief facts are that appellant is a manufacturer and exporter of handmade carpets/Rugs. They had a related concern in United States under the name and style of Imperial Rugs. The appellant had exported carpets sometime in the year 2007 to be the said Imperial Rugs – USA for the purpose of sale, business of renting. Subsequently, due to adverse business conditions, the appellant decided to close its operations in the USA and decided to re-import the stock lying with them at Imperial Rugs, USA. Accordingly, the appellant imported first consignment under bill of entry no.937952 dated 6.11.2010 at JNCH, Navasheva. The said goods were examined under first check appraisal procedure and the presented samples were tested at the Textile Committee, Mumbai. On test, the

goods were found to be in confirmation to the declared description made in the bill of entry. As per the dock examination report and also as declared in the invoices and the bills of entry, the goods were found to be old and used. As per para-2.17 of the existing Exim Policy, the import of old and used goods except capital goods were restricted unless accompanied by a specified licence/permission issued by the DGFT in this regard. Thus, second-hand or used were not freely importable. In the absence of specific import licence, the consignment of carpets/Rugs was found liable to confiscation under Section 111 (d) of the Customs Act. Vide order-in - original dated 15/12/2010 passed by the Additional Commissioner of Customs, Nhava Sheva, Mumbai. Accordingly, order of confiscation was passed with option to redeem on payment of fine Rs. 2 lakhs. Further, penalty of Rs.50,000/- was imposed on the appellant company under Section 112 of the Customs Act, 1962.

4. Subsequently, the appellant imported further consignment at ICD, Mandideep and filed bill of entry No.2842630 dated 24.02.2011 declaring country of origin as USA. The said consignment was detained and was examined by the officers of DRI, Mumbai under punchnama dated 10/11/2011 at ICD. It was noticed that most of the carpet rolls were having made in India tags, whereas the import documents, including the bill of entry mentioned the country of origin as USA. The carpets appeared to be old. The unit price of the carpets was declared as USD 2.00 per square yard, which appears to be on the lower side. Statement of the Director, Shri L. R. Maurya was recorded, wherein he stated that Imperial Rugs, USA is the related organization, which is looked after by his daughter in USA.

That he imported the consignment of carpets from Imperial Rugs, USA, which was owned and controlled by him. That none of the carpets are manufactured in USA. He also mentioned that the appellant company used to export carpets to USA and in other parts of the world. In his further statement recorded on 7.4. 2011, Mr. Maurya stated that they had earlier imported one consignment at JNCH and that one more consignment of carpet was pending customs clearance at ICD Mandideep, for which a bill of which was filed in 2015. That all the carpets imported were of Indian origin. He further stated that all the carpets imported were not exported by them. The carpets are imported back to India as they wanted to close down the business in USA. The lot of carpets imported included the carpets returned by the customers, who had taken them on credit from Imperial Rugs, USA. He also informed that from the earlier consignment imported at JNCH, samples were tested at the Textile Committee, Mumbai and clearance was allowed subject to payment of fine and penalty. On being asked as to why he mentioned the country of origin as USA., which amounts to misdeclaration, he stated that he wanted to hide the fact that the carpets are old and admitted his mistake and undertook to rectify the mistakes.

5. That another bill of entry no.3470916 was filed on 11.05.2011 for the other pending consignment. The appellant had requested for examination on first check basis and the same was examined in the month of June, 2011. As per the records, some of the carpets were found to have 'Made in India' tags and there was some discrepancy in the declared quantity. The declared quantity of the carpet was 578

rolls, whereas a total of 596 rolls were found during the examination. There was a discrepancy of 18 carpet rolls. Although in the bill of entry dated 11th May, 2011, the country of origin was mentioned as India. However, in the import documents available with the CHA indicated the country of origin as – ‘Made in USA’. The goods were ordered to be released provisionally vide order dated 25th/26th August, 2011. The Provisional Assessment Order dated 12/10/2011 was passed by the Dy. Commissioner of Customs, ICD, Mandideep. Being aggrieved with the conditions of provisional release, the appellant filed writ petition before Hon’ble High Court of Madhya Pradesh, which vide its order dated 10.05.2012 was pleased to quash the provisional assessment order dated 12.10.2011, holding it to be a harsh and ordered issuance of a fresh order of provisional assessment taking into consideration the facts of the case and in compliance therewith a fresh provisional assessment order dated 20.06.2012 was passed by the Dy. Commissioner of Customs, ICD, Mandideep directing the appellant, the importer to pay provisionally assessed duty of Rs. 9, 65, 585/- along with a bond and bank guarantee of Rs. 38, 25,658/-for the two bills of entry dated 24.02.2011 and 11.05.2012 together. Being aggrieved, the appellant again approached the Hon’ble High Court of Madhya Pradesh, by way of a writ petition challenging the order dated 20.06.2012 of the Dy. Commissioner of Customs, ICD, Mandideep and the High Court by its order dated 28/01/2013 directed the appellant to deposit 20% of the provisional assessment duty in cash or by way of demand drafts and for the remaining amount of duty, the appellants was directed to furnish a bond alongwith bank guarantee to the Department. Further, direction was made to furnish bond to

the Department for Rs.38,25,658/-. Thus, the goods were provisionally released as under: –

Sr. No.	BE No. & Date	Provisionally assessed value (Rs.)	Provisionally Duty Collected (Rs.)	Amount of Bond supported by Bank Guarantee (Rs.)	Amount of Bond without Bank Guarantee (Rs.)
1.	2842630/24.02.11	60,96,672	1,09,134	7,72,468	38,25,658
2.	3470916/11.05.11	46,24,201	83,983		

6. The appellant by their letter dated 15.04.2011 also produced evidence that 101 bales of carpet were exported by them in the year 2007 and accordingly, prayed for granting benefit of notification no.94/96 – cus, as applicable, wherein the said notification provides, “ exemption of import duty on reimport of goods exported under duty drawback regulations or under bond. The said notification also provides that the reimport should have been within a period of three years from their export. The goods should be the same, which were exported. The said notification was found to be not applicable under the facts and circumstances of the case, after a period of three years and it was not possible to identify the imported goods with the goods exported originally.

7. It further appeared to Revenue that the appellants did not inform the customs that the transaction is between the related parties and that the carpets were of Indian origin. Further, the carpets were found to be of Indian origin and also appeared to be undervalued on the basis of the export invoices submitted along

with shipping bill no. 462/DBK/2007 dated 12.04.2007 for the export of handmade carpets, which were found valued in the range of USD 2.00 to USD 10.00 per square feet FOB i.e. US\$ 18 to 90 per sq. yard (after converting the square feet into sq.yard), whereas the declared value for the carpets under import was only US\$ 2.00 FOB per square yard. Accordingly, Revenue worked out, based on the shipping bill of the year 2007, average value of USD 4.89601 per square feet. It is further observed in the impugned order that sufficient information for determination of value under Rule 4 or 5 of the Customs Valuation Rules is not available and further, adequate data for adopting the value under Rule 7 or Rule 8 of the Customs Valuation Rules, 2007 is also not available. Accordingly, Rule 9 was adopted for valuing the carpets under import. The said Rule 9 of CVR, 2007 stipulates that the value shall be determined using reasonable means consistent with the principles and general provisions of these rules. Accordingly, observing that the appellant have not cooperated in working out the deductive value, Revenue worked out the value at USD 4.89601 per square feet and further observing that as the carpets are imported after about three years, allowed depreciation @ 10% on straight line basis and thus arrived at the value of USD 3.42721 per square feet. Accordingly, the consignment under export was re-determined on such an adopted value by the Revenue and thus re-valued at Rs. 40,22,416/- as against the declared value of Rs.12,14,756/- and thus worked out a difference of Rs.28,07,660/-. Accordingly, the appellant was required to show cause as to why the declared value be not rejected for the carpets imported vide the two bills of entry dated 24.02.2011 and 11.05.2011 under Rule 12 of CVR,

2007 and should not be re-determined at Rs.84, 91, 897/- and Rs. 64, 89, 893/- respectively under Rule 9 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962. Further, differential duty was demanded at Rs. 38,29,299/- after granting credit for the amount already paid and further penalty was also proposed under Section 112 (a) and Section 114 A of the Customs Act, 1962. The goods under import are also proposed to be confiscated under Section 111(d), 111(m) and 111(1) of the Customs Act, 1962. Further, personal penalty was also proposed to be imposed on the appellant, Shri L.R. Maurya, CMD of Ideal Carpets Ltd.

8. The said show cause notice was adjudicated by the learned Adjudicating Authority, wherein she has confirmed the allegations leveled in the show cause notice and confirmed the differential duty demand of Rs.38,29,299/- with equivalent penalty. She had also imposed a redemption fine of Rs.29,96,358/- under the provisions of Section 125 of the Customs Act, 1962. She further imposed penalty of Rs.10,000/- under Section 114 A of the Customs Act, 1962. The aforesaid order had been challenged by the appellant before the learned Commissioner (Appeals), wherein the learned Commissioner (Appeals) has rejected the appeal of the appellants. Against the said impugned order dated 31.08.2017, the appellants are before this Tribunal.

9. The learned Counsel for the appellants submitted that the impugned order is liable to be set aside by making the following submissions:-

9.1 The entire case of the Department insofar as Bill of Entry dated 24.02.2011 is concerned, rests on the solitary fact that Country of Origin declared by the Appellant as USA is mis-declaration. In this regard, it is submitted that the Country of Origin has been entered as USA under the belief that "Country of Origin" means the place from where the goods are being imported from i.e. from where the goods originate/start their journey. The said belief continued as the first Bill of Entry was cleared, by mentioning USA as Country of Origin. Yet that error could have been permitted to be corrected by the Department under Section 149 of the Customs Act which permits the importer to rectify the error by amending the documents as nothing turns on such an error. There was nothing which could suggest that by mentioning the wrong country of origin any advantage could be derived by the appellant. A bleak support has sought to be drawn up by the department from the statement recorded on 07.04.2011 (the veracity of which is doubtful as indicated above), where it was stated that wrong country of origin was mentioned to hide the fact that goods were old or used. This aspect is completely unbelievable. The entire case of the appellant is that declaration was that the goods were old and used, and therefore the value of goods imported are less, than why will the appellant try to hide the said fact which is evident, by declaring country of origin as USA. The allegation of department is presumptive and without any merit.

9.2 That insofar as Bill of Entry dated 11.05.2011 is concerned, there is actually no misdeclaration and unnecessary case has been set up with regard to two sets of documents and difference of 18 rolls of carpets. As regard the first part it has been lucidly explained initially that there is no two sets of documents. As regards second part, it is submitted that there is no difference in the total measurement which has been declared in sq.yds. in the Bill of Entry. The duty assessed under the impugned order is based on the area in sq.yard declared by the appellant in the Bill of Entry. Therefore, there is no case of mis-declaration for this Bill of Entry.

9.3 It is further submitted that mis-declaration of country of origin is purely technical in nature. Generally, country of origin is filled in the bill of entry based on the invoice and packing list prepared by the exporter and therefore, no fault could be attributed on the appellant. The appellant seek to rely on **Kumar Associates Vs. Collector of Customs – 1993 (65) ELT 500 (Tribunal-Delhi) and Transview Enterprises India Pvt. Ltd. Vs. CCE (Sea Import), Chennai – 2016 (338) ELT 133 (Tribunal-Mad.).**

9.4 That the Department has rejected the transaction value declared by the appellant in its Bill of Entries dated 24.02.2011 and 11.5.2011 on the ground that appellant has mis-declared the country of origin and the quantity of goods. It has also been stated that exporter is related person. In this regard, firstly, it is relevant to state that, as stated above, there is no mis-declaration on both counts and therefore Rule 12 (2)(iii)(d) of the Customs Valuation

Rule has no application. Secondly, the fact that the parties are related by itself is not enough to reject the transaction value. There is absolutely no evidence that the relationship has influenced the price. On the contrary, the Customs at JNCH, Raigad has accepted the value of the identical goods vide 'First' Bill of Entry. Thus the transaction value could not have been rejected in view of Rule 3(3)(a) of the Customs Valuation Rules.

9.5 Without prejudice, the appellant humbly submits that the method adopted by the department to value the goods is incorrect and illegal. Department has taken the mean price of the carpets exported by the appellant in the year 2007 and after providing for 10% depreciation for 3 years i.e. 30% has arrived at the value. It is humbly submitted that said valuation has been done by applying Rule 9 of the Customs Valuation Rules. In this regard, it is submitted that a faulty approach has been adopted by the Department. Rule 4 and 5 of the Customs Valuation Rules has not been applied as it has been stated that value of identical or similar goods about the same time has not been produced. Since the department has rejected the transaction value, it was equally important that the department should have looked for the similar or identical goods imported around the same time. In any case in the case of the appellant, First Bill of Entry value was available, which was of the similar or identical goods around the same period, which could have been relied upon by the Department.

9.6 Further, the Department has applied the depreciation method on the export mean value calculated on the export prices of the appellant in the year 2007, by treating that as a reasonable method. It seems that department has treated carpets as electronic goods. Depreciation cannot be the reasonable basis for valuing old and used carpets as old and used carpets become obsolete because of old design and use and has virtually no commercial value. Nobody will buy a used carpet or the old one with obsolete design and will have no worth. The department has not undertaken any exercise to get the same valued by the carpet manufacturing units as it was found that the goods were “Made in India”. No proper examination of the goods has been made. Thus the impugned orders valuing the goods at higher than the transaction or declared value is liable to be set aside.

9.7 That redemption fine is imposed, if the goods are liable for confiscation. In the present case, it is submitted that since no notice for confiscation has been issued by the respondent under Section 124 and the goods were liable to be released under Section 110(2) of the Act, the goods could not have been confiscated and therefore no redemption fine could have been imposed on the appellant.

9.8 Without prejudice, it is submitted that the goods were not liable for confiscation. Under Section 111(d), the goods are liable for confiscation if the goods being imported contrary to prohibition imposed under the Act. There is not an iota of evidence or allegation that the carpets which were being

imported were contrary to any prohibition under the act. Similarly, Section 111(d) is also not applicable to the facts of the present case as there were no goods which were not included in the bill of entry made under this Act. In the present case, as stated above there is no mis-declaration nor the value declared was incorrect. Thus the goods were not liable for confiscation and thus no question of payment of redemption fine arises. In any case the redemption fine imposed is on the higher side as it is twice the value of goods declared, which is the true value of carpets imported.

9.9. That according to the humble submission of the appellant no penalty under Section 114 A could be imposed on the appellant company and Shri L R Maurya. Firstly, penalty cannot be imposed on the company and CMD together. Secondly no ground exists for imposition of penalty. It is urged that error in declaration of country of origin is a technical error and no penalty can be imposed. Certainly it was not with an intent to evade the payment of duty. Misdeclaration of the country of origin being the only reason for rejecting the transaction value, the penalty cannot be imposed. Similarly, no penalty is imposable under Section 114 AA of the Act.

9.10 Thus, the impugned order is liable to be set aside with consequential relief.

10. The learned AR appearing on behalf of the Revenue reiterated the impugned order and submitted that appellant has mis-declared and undervalued the goods in

order to clear their consignment to save customs duty. He, therefore, prayed for rejection of appeals.

11. Considered the rival contentions and perused the records. We find that the appellant has declared 'Country of Origin' as 'USA' with respect to Bill of Entry dated 24.02.2011. We find that the appellant wanted to correct the said error under the provision of Section 149 of Customs Act, however, that request was not acceded to by the Department. We find that said error is purely clerical in nature, as the appellant had declared the goods as old and/or used. Only on the said basis, it cannot be said that the appellant has misdeclared the goods in order to clear their goods. With respect to second Bill of Entry dated 11.05.2011, we find that there is no misdeclaration by the appellant as alleged by the department.

12. That so far the enhancement of value is concerned, we find that Rule 12(2)(iii)(d) is not applicable in as much as there is no mis-declaration of goods. We further find that the Department has not produced any evidence to show that the relationship between the parties has influenced the price. Therefore, we find that the reasons for rejecting the transaction value is not in consonance with law and therefore liable to be set aside. We also find the goods are not liable for confiscation as well.

13. Since the charges of misdeclaration & undervaluation are not sustainable in law, the differential duty demand is liable to be set aside along with penalties imposed and redemption fine imposed.

14. Accordingly, the appeals are allowed and impugned order is set aside.
Appellants are entitled to consequential relief in accordance with law.

[Order pronounced on 26.10.2018]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(BIJAY KUMAR)
MEMBER (TECHNICAL)

Ckp