CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No.	Appellant(s)	Respondent(s)	Impugned Order
C/14/2009	Obulapuram Mining Company Pvt Ltd	CCCE & ST, Guntur	OIA: 07/2008 (G) Cus, Dt.28.11.2008 passed by CCCE & ST, Guntur
C/15/2009			OIA: 08/2008 (G) Cus, Dt.28.11.2008 passed by CCCE & ST, Guntur
C/16/2009			OIA: 09/2008 (G) Cus, Dt.28.11.2008 passed by CCCE & ST, Guntur

Appearance:
Shri B.G. Chidananda Urs, Advocate for the Appellant.

Smt. B.V. Siva Naga Kumari, Commissioner/AR for the respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 21.08.2018
Date of Decision: 28.09.2018

FINAL ORDER No. A/31240-31242/2018

[Order per: P.V. Subba Rao.]

1. These three appeals deal with the same issue and hence are being disposed of together.

2. Heard both sides and perused the records. The appellant herein is an exporter of iron ore fines and lumps and had exported vide Shipping Bills Nos. 33//2008 dated 27.06.2008, 35/2008 dated 01.07.2008 and 31/2008 dated 08.07.2008. These products were chargeable to export duty on ad valorem basis during the relevant period. The declared value in the shipping bills was USD ($) 76, 78 and 86.5 per Metric Ton respectively in the above three shipping bills. The Asst. Commissioner of Customs assessing these

shipping bills found that these values were much lower than the prevalent market rates and hence, after giving an opportunity to the appellant to explain their case, rejected the declared export value as per Rule 8 of the Customs Valuation (determination of value of export goods) Rules, 2007. This rule reads as follows:

> *"8. 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 export goods, he may ask the exporter 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 exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.*
>
> *2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*
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> *Explanation. - (1) For the removal of doubts, it is hereby declared that-*
>
> *(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.*
>
> *(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.*
>
> *(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -*
>
> *(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.*
>
> *(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.*
>
> *(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production."*

3. Once the declared value has been rejected, the value of the export goods has to be determined in terms of Rules 4 through 6 sequentially. Rule 4 requires the value of export goods to be based on the transaction value of

the goods of like kind and quality exported at or about the same time to other buyers in the same country of importation or in its absence another country of importation with adjustments. The adjustments which can be made shall be as may appear reasonable to the proper officer taking into account;

(i) difference in dates of exportation,

(ii) difference in commercial levels and quantity levels,

(iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,

(iv) difference in domestic freight and insurance charges etc.

4. If the value cannot be determined as per Rule 4, Rule 5 prescribes the computed value method. If the value cannot be determined as per Rule 4 and rule 5 then Rule 6 provides the residual method of determining the export value. The lower authority determined the value of the exported goods as per Rule 6 enhancing the value of export goods to USD 148/MT (SB.33/2008) and USD 150/MT (SB.35/2008 & SB.37/2008). He passed an assessment order enhancing the value and demanding the duty properly. Aggrieved, by these orders, the appellant appealed the first appellate authority who rejected their appeals and upheld the assessment orders. Aggrieved by the Orders-in-Appeal, the appellant preferred these appeals on the following grounds:

(a) Since the export value of their goods was based on the transaction value the same should have been accepted by the Asst. Commissioner and it could not have been rejected. There is no finding in the impugned order but a summary rejection of the grounds stated that the case laws cited by them do not apply.

(b) The Asst. Commissioner has recorded the computation of value under Rule 5 of Customs Valuation Rules was not feasible and there is no scope in the law to not adopt method because it was not feasible.

(c) It has been accepted that iron ore lumps and iron ore fines are different and price of lumps has been taken as USD 2 less than that of fines without any supporting reasoning.

(d) The Asst. Commissioner has rejected following Rule 4 on the ground that there are no exports by the same exporter during the month and that there are no exports of iron ore lumps. The provisions of Rule 4 do not prescribe an addition that the export should be done by same exporter and hence the price of goods exported by any other exporter at or around same time or of same quality for same destination can form the basis for re-determining the value.

5. During hearing, the learned counsel for the appellant reiterated the above arguments and asserted that the Asst. Commissioner has erred in first of all rejecting the transaction value which was based on a contract without sufficient reasoning and after having rejected the value, ignoring Rules 4 and 5 and jumping to Rule 6 to determine the value of the export goods.

6. Learned Commissioner (AR) reiterated the arguments made in the Order-in-Original and Order-in-Appeal and asserted that the lower authority has clearly recorded the reasons for rejection of the transaction value in his assessment order. It has been recorded that the prices declared in the shipping bills were only about 60% of the prices at which the same exporter

was exporting similar goods to the same destination country to other buyers. The assessing officer also took further steps to ascertain from internet data the price of similar goods imported by China from India which was ranging from USD 208 to 212/MT. Thereafter, he gave a complete opportunity to the appellant to present their case and having considered all the arguments put forth by them, came to the conclusion that the assessable value declared by the appellant needs to be rejected and the value has to be determined in terms of Rule 6. The first appellate authority has correctly examined the order and upheld the same. Therefore, the appeals are liable to be rejected.

7. We have considered the arguments on the both sides. As far as the question of rejection of transaction values is concerned, we find that Rule 8 of the Customs Valuation (determination of value of export goods) Rules, 2007 clearly lays down mechanism for rejection of the declared value. Rule 8 (2) (iii) states that the proper officer shall have the powers to raise doubt on the declared value based on certain reasons which may include the significant variation in value on which goods of like kind and quality are exported at or around same time in comparable quantities and comparable commercial transaction. It also provides for rejecting the value on the basis of the value being significantly higher compared to the market value of goods at the time of export. In this case, value declared in the shipping bills is clearly far below the other values which the Asst. Commissioner found and the shipping bills to other buyers by the same exporter as also the prices at which similar goods were exported to China from India. Therefore, we find that Asst. Commissioner is correct in doubting the accuracy of the value declared in the shipping bills and after hearing the appellant rejecting the same. However, after having rejected the value under Rule 8 he should have gone through Rules 4 to 6 in a sequence. The Asst. Commissioner has not

determined the value in terms of Rule 4 on the ground that the same exporter has not exported the goods during the same month to other buyers. He also rejected Rule 5 on the ground that it is not feasible to determine the value as per this Rule and adopted Rule 6. We find that learned counsel was correct in pointing out that Rule 4 nowhere requires that exports should be by the same exporter for the values to be compared. It only says that the value comparison has to be with goods exported at or around same time but does not specify that it has to be within the same month. Therefore, the lower authority should have examined the feasibility of finding the price of the goods of like kind and quality exported at or around the same time to other buyers in terms of Rule 4 whether or not the exporter is the same as the appellant. In conclusion, we find while the rejection of the transaction value under Rule 8 by the lower authority is correct, determining the value under Rule 6, ignoring Rule 4 is not correct because this Rule does not require exports to be made by the same exporter or within the same month for the Rule to apply. We find this a fit case to be remanded to the original authority to re-determine the value in terms of Rule 4 of Customs Valuation (determination of value of export goods) Rules, 2007.

8. The appeals are allowed by way of remand.

(Pronounced in the Open Court on 28.09.2018)

(P.VENKATA SUBBA RAO) **MEMBER (TECHNICAL)**	**(M.V. RAVINDRAN)** **MEMBER (JUDICIAL)**

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