CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 22126 of 2014

(Arising out of **Order-in-Appeal** No.37/2014-VCH. dated 19.03.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Oripol Industries Ltd., .. **APPELLANT**
P.O. Renumna, Balasore,
Odisha – 756 019.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Visakhapatnam– GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

AND
Customs Appeal No. 30992 of 2016

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-044-16-17 dated 27.07.2016 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

Oripol Industries Ltd., .. **APPELLANT**
P.O. Renumna, Balasore,
Odisha – 756 019.

VERSUS

Commissioner of Central Tax, .. **RESPONDENT**
Visakhapatnam– GST
GST Commissionerate,
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:
Shri Subrat Satpathy, Advocate for the Appellant.
Shri B Sangameshwar Rao, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30265-30266/2023

Date of Hearing:14.09.2023
Date of Decision:14.09.2023

[ORDER PER: R. MURALIDHAR]

The Appellant has exported Iron Ore during the period March 2010, 2011 to 2012. Transaction value adopted by the appellant and enhanced rate taken up by the Customs for levy of export duty is as per the following Table (Para 10 of the Order-in-Original):

Sl. No.	SB No. & Date	Name of the Exporter (M/s.)	Fe Content %	Unit Price in $	Date of Contract
1	8801838 & 8801840/190.3.10	Sri Sainath Industry	58	85 FOB	03.04.10
2	8801886 to 8801889/20.03.10	Bagadiya Brothers	58	94.5 FOB (119.5-25)	18.03.10
3	8802082/26.03.10 Subject S.B.	Oripol Industries	58	81.30	12.03.10

2. In order to come to the conclusion that the above enhancement is required, Adjudicating Authority has relied on the contemporaneous prices noticed during that period. This has been given at Para 10 (table) of the respective Order-in-Originals. There is no other dispute in these exports on account of Fe content or on account of any other matter. Based on the enhanced value, the export duty was increased by the Adjudicating Authority by the Order-in-Originals passed. Being aggrieved, the appellant has approached the Commissioner (Appeals). The Commissioner (Appeals) after going through all the documentary evidence and details submitted by the appellant has held as under:

> 5.5 Furthermore, when the respondent <u>doubted the declared unit price basin on which final commercial invoice was raised and the value realized as per the BRC which shall be the transaction value as per section 14 of Customs Act' 62, it was incumbent upon him to follow the conditions and procedure prescribed under Rule 8 (1) & (2) of the EVR, 2007. And the said conditions and procedure include issuing query memo to the appellant to furnish further information including documents or other evidence, at the request of the appellant specifying reasons in writing for doubting the declared transaction value and granting personal hearing to the appellant before taking the final decision to reject the declared price. I find from the impugned order that the Adjudicating Authority did not follow any such procedure before taking the decision to reject the declared unit price and kept the appellant in darkness while finalizing the assessment, rejecting the declared transaction value; thereby his decision of rejecting of declared unit price coming to the verge of being legally untenable under Rule 8 of the EVR, 2007.</u>
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> 5.6 Last but not the least, <u>loading of value basing upon contemporaneous export/contract would have been on strong footing had the Adjudicating Authority provided the relied upon evidences to the appellant following Principles of Natural Justice. All that was required to be done was to provide the Shipping Bill, Invoice copy and contract price which were relied upon to load the value. The quantity involved if comparable would have resulted into Department being in sound footing but these basic things which are sacred to "rule of law" were ignored. Not following</u>

Principles of Natural Justice, which is basic to any democratic jurisprudence, is bad in law and ideally I should have remanded the case back to Lower Authority to pass a reasoned order. However, since Act/Rule has not given me power to remand, I proceed to decide the case on merits.

5.9 In view of the above, the appeal filed is dismissed as devoid of merits. However, it is observed that providing relied upon documents to exporter (appellant) is a legal requirement and hence I direct the Assistant Commissioner/Deputy Commissioner (respondent) concerned to comply with the same forthwith.

3. From the above findings of the Commissioner (Appeals), it is observed that he admits that proper procedure was not followed by the Adjudicating Authority while enhancing the transaction value. It is also seen from the Table 10 of the Order-in-Original that the Adjudicating Authority has not mentioned quantity involved in each of such exports, country to which such exports are made and quantity of such exports. Unless, all these parameters are taken up together and compared, the Department cannot directly arrive at the contemporaneous value. Further, EVR 2007 specifies that the Adjudicating Authority should follow the Rules sequentially which means that Rule 4, 5, 6 and 7 should have been first applied and only when the value could not be arrived within these rules, he can resort to Rule 8 for arriving at the transaction value, which has not been done in this case. This point has been noted by the Commissioner (Appeals) in the Order.

4. Further, it is noted that the Adjudicating Authority has not called for the details of BRC from the appellant to check the actual realisation value of these exports. Since the appellant was not put to notice, grounds on which the enhancing was being proposed, it is erroneous on the part of the Commissioner (Appeals) to hold that the appellant should have brought in all the evidence before the Adjudicating Authority. The entire process of Adjudication and appeal proceedings before the Commissioner (Appeals) have been carried out in a very casual and careless manner. The Commissioner (Appeals) after holding that the Adjudicating Authority was in error in going with enhancement still has rejected the appeal. He has directed the Assistant Commissioner to produce the documentary evidence to the appellant now, which has no meaning after the entire process has been completed.

5. In view of the foregoing, we set aside the impugned Order-in-Appeals and allow the appeals with consequential reliefs, if any, as per law.

(Order dictated and pronounced in open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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