CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH

Customs Appeal No. 667 of 2012

(Arising out of Order-in-Appeal No.54/2011-(VCH) dated 09.01.2012 passed by Commissioner of Customs (Appeals) Visakhapatnam)

M/s Essel Mining & Industries Ltd **...Appellant**
Industry House, 18th Floor,
10, Camac Street,
Kolkata-700017

Verses

Commissioner of Customs Central Tax **...Respondent**
Visakhapatnam-Cus
4th Floor, Custom House, Port Area,
Visakhapatnam-530035

APPEARANCE:
Mr Ch Sumanth, Adv. for the appellant
Mr P. Amaresh, A.R. for the Respondent

CORAM:
HON'BLE MR ANIL CHOUDHARY MEMBER(JUDICIAL)
HON'BLE MR A.K. JYOTISHI, MEMBER(TECHNICAL)

FINAL ORDER NO. 30358/2023

Date of Hearing: 24.08.2023
Date of Decision:24.08.2023

PER ANIL CHOUDHARY

Brief facts of the case:

1. M/s. Essel Mining and Industries Limited ('the Appellant') is a regular exporter of Iron Ore fines through Visakhapatnam Port. On the said exports of Iron Ore, customs duty was imposed on ad valorem basis from 13.06.2008.

2. The Appellant entered into an agreement with M/s. Concord Fortune Minerals Limited, British Virgin Islands for export of Iron Ore fines vide Contract No.EMIL/Export/08-09/05/CITIC dated 22.09.2008 for supply of 50,000 WMT (+/-10%) of iron ore having 'Fe' content of 63%-62% on dry weight basis for a price of USD 89 PDMT FOB during October 2008.

3. The table below would summarize the event along with the date:

DATE	DESCRIPTION
22.09.2008	The Appellant entered into an agreement with M/s. Concord Fortune Minerals Ltd., for export of 50,000 WMT of iron ore from Vizag port to one main port in China during October 2008.
25.09.2008	Shipping Bill No. 4406305 for export of 51000 MTs of Iron Ore at FOB Value of Rs.17,82,30,643/-.
26.09.2008	Letter of Appellant intimating the Customs Authority regarding the export price and the details of the vessel arriving at the Vizag Port along with a copy of the Sales Contract and Letter of Credit.
1.10.2008	Shipping Bill No. 4406474 for export of 3098 Mts of Iron Ore at FOB Value of Rs.1,15,54,268/-.
24.11.2008	The Appellant filed an Appeal before the Commissioner (Appeals) challenging the Shipping Bill No. 4406305 dated 25.09.2008 in terms of Board Circular No.18/2008-Cus dated 10.11.2008 where clarification was provided for computation of export duty by taking FOB price as cum duty price.
04.05.2009	Order-In-Appeal No.54/2009(VCH) directing to consider FOB price as cum duty price and to re-assess the shipping bills.
27.05.2009	Letter of the Appellant requesting refund of export duty of Rs.35,49,029/- pursuant to the OIA No.54/2009(VCH) dated 04.05.2009.
27.08.2010	Without sanctioning the refund, Show Cause Notice issued by the Assistant Commissioner of Customs, Visakhapatnam proposing to reject and enhance the declared value of goods exported under the aforesaid shipping bills under the provisions of Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and demand of differential duty.
11.01.2011	Written submissions filed by the Appellant in reply to SCN

18.05.2011	Order-In-Original No. 63/2011 rejecting the declared value of exported goods vide the aforementioned shipping bills and confirming demand differential duty of Rs.37,46,630/- by adopting unit price at USD 115 PDMT FOB.
22.07.2011	Aggrieved by the OIO, the appellant filed an Appeal before the Ld. Commissioner (Appeals), Visakhapatnam
09.01.2012	The impugned OIA No. 54/2011-VCH was passed rejecting the Appeal and upholding the demand confirmed in the OIO.

4. Aggrieved by the OIA confirming and upholding the rejection of the declared value of exported goods in respected of the said shipping bills and confirmation of demand differential duty of Rs.37,46,630/- by adopting unit price at USD 115 PDMT FOB on the basis of contemporaneous exports, the Appellant has filed the subject appeal.

5. Ld., Counsel for the Appellant made following arguments:

5.1 Transactional value declared under Section 14 of the Customs Act, cannot be disregarded without any evidence doubting the genuineness of the transaction. In this regard, reference is made to Section 14 of the Customs Act, wherein it is provided that the value of the exported goods shall be the ‘transactional value’, i.e., the price actually paid or payable for the goods and that where the buyer and seller of the goods are not related, and price is the sole consideration for the sale.

5.2 However, relying on the proviso to Section 14(1) of the Act, the declared value for exported goods was rejected on the ground that there is reason to doubt the truth or accuracy of such value.

5.3 It is submitted that there is no doubt to the extent that the Appellant realized an amount of USD 43,38,857.97 from the buyer, as per the BRC and on the said transactional value the Appellant has discharged payment of duty amounting to Rs.2,49,18,709/-. Therefore, it is humbly submitted that when the BRC was accepted by the department, the transactional value, i.e., the amount received by the Appellant for the exports ought to have been accepted as the declared value in terms of Section 14 of the Customs Act, read with Rule 3(1) of the Valuation Rules. In this regard reliance is placed on the following decisions:

(a) BTM Exports Ltd. v. CC & ST, Visakhapatnam-Cus, 2017 (11) TMI 1530 - CESTAT HYDERABAD

(b) Commissioner of Customs, Visakhapatnam Vs. Rashmi Metaliks Ltd. [2016 (11) TMI 300 - CESTAT HYDERABAD

5.4 It is submitted that when the Appellant declared the value in terms of Sale Agreement entered mutually between the exporter and the foreign buyer and no additional payment was made to the Appellant, value declared in Shipping Bills could not be rejected. In this regard, reliance is placed on the following decisions:

(a) Sanjivani Non-Ferrous Trading Pvt Ltd. vs. CCE, Noida [2017 (7) G.S.T.L. 82 (Tri. - All.)] affirmed by theSupreme Court in ***CCE & ST, Noida vs. Sanjivani Non-Ferrous Trading Pvt Ltd., 2019 (365) E.L.T. 3 (S.C.)***

5.5 That until and unless there is cogent evidence that there is financial flow back by the foreign buyer, the transaction value cannot be rejected. In view of the submissions above, it is pertinent to note that, there is no dispute with respect to the amount of consideration realized by the Appellant towards the exports, i.e., the transactional value, or that extra financial consideration was received apart from the declared value or that the invoice value was not the declared transactional value. Further there was no allegation that the Appellant and the overseas buyer were related parties, to influence the price or that the classification and description of the goods exported, in this regard reliance is placed on the following decisions:

(a) Impex Steel & Bearing Co. vs. Commissioner of Customs, Delhi-IV, 2014 (302) E.L.T. 464 (Tri. - Del.)

(b) Rehau polymers Pvt Ltd Vs. Commissioner of Customs, Mumbai – 2014 (301) ELT 116 (Tri-Mumbai)

(c) Ebro Armaturen India Pvt Ltd Vs. CCE, Bangalore-I – 2021 (375) ELT 259 (Tri-Bang)

5.6 In this regard, there is no reasonable cause for rejection of the value declared by the Appellant merely on the ground that other exporters had exported the goods at a higher value, especially when the contemporaneous exports are not similar in quantity and the similarity of quality cannot be determined, since the documents pertaining to the quality of the contemporaneous exports were never provided to the Appellant.

5.7 Further the impugned order is incorrect in adopting price of USD115, on the basis of DRI, Kolkata letter, without ascertaining quantity and quality of the iron ore exported from Kolkata port.

5.8 Therefore, the declared transaction value by the Appellant in the Shipping Bill ought to be accepted and the redetermination of value of exported goods confirmed in the Impugned Order is liable to be set aside.

6. Ld. Departmental representative submitted that the transaction value declared by the Appellant is liable to be rejected, because the contemporaneous exports made by different exporters at or about same time which is on a higher side i.e. USD115 as against the USD 89, as declared by the Appellant in the shipping bills. Accordingly, the revenue has correctly redetermined the value declared by the Appellant for the purpose of payment of export duty, in terms of Rule 4 to 6 of the Customs Valuation (Determination of value of export goods) Rules, 2007.

7. Heard both sides, and considered the facts on record.

8. The crux of the matter is, whether the transaction value declared by the Appellant can be disregarded only on the basis that contemporaneous exports made by different exporters at or about same time, which is on a higher side.

9. We find that no case has been made out by the revenue of the receipt of any additional consideration/flow back of funds.

10. In the absence of any case made out by the revenue of additional consideration or otherwise, rejecting transaction value merely on the basis of higher value declared by other exporters, is not correct.

11. This issue has been considered by the CESTAT in the case of ***Sanjivani Non-Ferrous Trading Pvt Ltd. vs. CCE, Noida [2017 (7) G.S.T.L. 82 (Tri. - All.)]*** wherein it was held as under:

> *"7. Having considered the rival contentions and on perusal of record, we find that the Original Authority was directed by the Hon'ble High Court to pass speaking order on the enhancement of assessable value. We find that the Original Authority in its Order-in-Original dated 25-3-2015 has passed comments on the grounds of writ petition and did not properly examine the evidence available with the department required to be examined for enhancement of assessable value. Further, we find that as held in the case laws stated above and as provided by Section 14 of Customs Act, 1962, the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not sole consideration or if the buyers and sellers are related persons then after establishing that the price is not sole consideration the transaction value can be rejected and taking the other evidences into consideration the assessable value can be arrived at. Such exercise has not been done in these cases on hand. Therefore, we reject the enhancement of assessable value in respect of the Bills of Entry which are involved in all the appeals being decided and we restore the assessable value as declared by the appellant in said Bills of Entry."*

12. The aforementioned decision was affirmed by the Hon'ble Supreme Court in the case of ***CCE & ST, Noida vs. Sanjivani Non-Ferrous Trading Pvt Ltd., 2019 (365) E.L.T. 3 (S.C.)*** wherein it was held that:

> *The law, thus, is clear. As per Sections 14(1) and "10. 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis ofprice which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.*

> *13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry on shipping bills. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.***”***

13. Further CESTAT, Hyd in the case of ***BTM Exports Ltd. v. CC & ST, Visakhapatnam-Cus, 2017 (11) TMI 1530 - CESTAT HYDERABAD*** held as under***:***

> ***“****5.* It can be noticed from the impugned orders that both the Lower Authorities have incorrectly appreciated the law which is governing the valuation of the consignments of iron ore cleared for export is as per provisions of Section 14 and 18(2) of Customs Act, 1962. The Tribunal in the case of ***Commissioner of Customs (Export), Goa Vs. V.G.M. Exports [2013 (291) ELT 572]*** on the issue held as under:
>
> *6. We have carefully considered the submissions made by both sides. As the issue involved lies in narrow compass, after dispending with the pre-deposit of duty adjudged, we take up the appeal itself for final disposal.*
>
> *6.1 Section 14 of the Customs Act, 1962 stipulates that for the purpose of the Customs Tariff Act, "the value of the exported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale."*
>
> *6.2 It is not the case of the department that the buyer and seller are related. It is also not a case of the department that the respondent has realized any amount more than what is indicated in the final invoice price, which has been received by them through the Bank. In other words, the price actually paid for the goods exported was the price realized by them as per the final invoice and as per the Bank certificate and that is the transaction value on which duty liability has to be discharged.”*

14. Similar issue fell for the consideration of this Bench in the case of ***Commissioner of Customs, Visakhapatnam Vs. Rashmi Metaliks Ltd., [2016 (342) ELT 458]*** wherein the Bench held as under:

> ***“4.*** *We find that the grounds raised by the department have been taken cognizance of by the Commissioner (Appeals) and the order passed by him is well reasoned. When the department accepts the BRC, as well as the final invoice of the exporter and has no doubt or dispute that amount other than what was reflected in final invoice was not received by the latter, the BRC has to be given credibility and reliance. This being so we do not find any infirmity in the*

impugned order. The appeal of department therefore requires to be dismissed, which we hereby do."

15. We find that in the present case, there is no dispute that the Appellant realized @ USD 89 per MT amounting to USD 4338857.97 from the buyer as per the BRC received basis, the invoice raised and has discharged export duty of Rs.2,49,18,709/- thereon, upon the said value. There is no dispute/allegation by the revenue that the Appellant has received any amount over and above the said declared value and hence following the above precedent decisions rejecting the transaction value only on the basis of higher value declared in case of contemporaneous exports , is not justified.

16. In view of the above, we set aside the impugned order and allow the appeal along with consequential reliefs.

(Operative portion of the order pronounced
in open court on conclusion of the hearing)

(ANIL CHOUDHARY)
MEMBER(JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

Neela reddy