CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD
REGIONAL BENCH - COURT NO. – I

Customs Appeal No. 30458 of 2018
(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-060-17-18 dated 15.02.2018 passed by Commissioner of Central Tax & Customs (Appeals), Visakhapatnam)

M/s Hanuman Timber Co .. **APPELLANT**
D.No.50-92-35/2 C,
Shantipuram,
Shankaramatham Road,
Visakhapatnam,
Andhra Pradesh – 530 016.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam - Customs
4th Floor,
Customs House,
Port Area,
Visakhapatnam,
Andhra Pradesh -530 035.

APPEARANCE:
Shri N.V. Ramana Rao, Advocate for the Appellant.
Shri M. Anukathir Surya, Authorized Representative for the Respondent.

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

FINAL ORDER No. A/30135/2026

Date of Hearing: 27.01.2026
Date of Decision: 27.01.2026

[ORDER PER: ANGAD PRASAD]

M/s Hanuman Timber Co, Shantipuram, Visakhapatnam (hereinafter referred to as appellant) is in appeal against the impugned order/ Order-in-Appeal No.VIZ-CUSTM-000-APP-060-17-18 dated 15.02.2018. Learned Commissioner (Appeals), whereby, upheld Order-in-Original No.105/2017 dated 11.08.2017.

2. The fact in brief is that the appellant imported Gurjan Core veneer and Gurjan short core and face veneer of different thicknesses vide two Bills of Entry No.4165966 and 4165992 both dated 25.07.2011 of Myanmar origin with a declared unit rate of USD 157.48037 PMT (FOB). On verification, it was

noticed that the unit rate of the goods under import appeared to be very low and not on par with the contemporaneous prices of the same quality of goods imported from the same country during relevant period and the same was informed to the importer. The value declared by the importer were less when compared with the contemporary imports through others ports were the unit rate of USD 333.729 PMT (FOB) was recorded as against the declared value by the appellant has been rejected by the Adjudicating Authority and enhanced value of USD 333.729 PMT (FOB) in place of 157.48037 PMT(FOB).

3. Thereafter, appellant had filed appeal before Learned Commissioner (Appeals), the Commissioner (Appeals), has rejected the appeal and upheld the order passed by Adjudicating Authority after that appellant filed appeal before CESTAT.

4. Learned Counsel for the appellant submits that Learned Commissioner (Appeals), has failed to appreciate under Section 17(5) of the Customs Act, which provides that if assessment is done contrary to the claim of the importer, the Customs Officer shall pass a speaking order within 15 days from the date of assessment of bill of entry. In the instant case there was no speaking order on the reassessment from the date of reassessment of the bill of entry as provided by above mention provisions.

5. Learned Counsel for the appellant also submits that Learned Commissioner (Appeals), simply reproduced the provisions of the act and upheld the order without appreciation of submissions. The Learned Adjudicating Authority has not disclosed the grounds for not accepting the price declared by the appellant and not given any opportunity to defend their stand and thus failed to follow the principles of Natural justice. Learned Counsel for the appellant relied on Hon’ble Supreme Court judgment

(Constitutional Bench) in Union Carbide Corporation Vs UOI (AIR 1992SC 248) wherein held that:

> "Omission to comply with requirement of rule of "audi alterem partem" as general rule vitiates a decision. Where there is violation of natural justice, no resultant or independent prejudice need be shown, as the denial of natural justice is, in itself, sufficient prejudice. The citizen is entitled to be under "rule of law" and not the "rule of discretion".

6. Learned Counsel for the appellant submits that Rule 12 of Customs Valuations (Determination of Value of Imported Goods) Rules 2007 provided mechanism and procedure for rejection of declared value in cases, where there is a reasonable doubt that the declared value does not represent the transaction value. The Learned Adjudicating Authority has not followed the procedure as required by act. The burden to prove that the declared price is not genuine lies on the Department. The basis on which the price of Rs. 333.729 PMT (FOB) represents the correct price has not been disclosed at any stage. Hence such order is not sustainable.

7. Learned AR reiterates the findings given by the Learned Commissioner as well as Adjudicating Authority. Learned AR submits that the declared price of the goods has been showing an inexorable declining trend and therefore, adopting the price which was the latest available could not cause any prejudice to the appellant.

8. Heard both the sides and perused the records.

9. The issue is whether rejecting the price declared by the appellant of imported goods and enhancement of assessable value by the respondent relying upon the prices of contemporary imports made through other ports is as per law.

10. The appellant imported Gurjan Core veneer and Gurjan short core and face veneer of different thicknesses vide two Bills of Entry No.4165966 and

4165992 both dated 25.07.2011 of Myanmar origin with a declared unit rate of USD 157.48037 PMT (FOB). Learned Assistant Commissioner / Adjudicating Authority notices that the declared unit rate of the goods appeared to be very low and not on par with the contemporaneous prices of the same quality of goods imported from the same country during relevant period and observed that the value adopted on the basis of contemporaneous prices of the similar goods imported during the relevant period as the time of assessment is to be taken for determining the value of the subject goods and assured unit rate of USD 333.729 per MT(FOB) in place of declared price.

11. In this regard Section 14 of the Customs Act provides as under:

> "14. Valuation of goods. – (1) For the purpose of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export 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 to India for delivery at the time and place of importation, or as the case may be, 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 subject to such other conditions as may be specified in the rules made in this behalf:
>
> Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:
>
> Provided further that the rules made in this behalf may provide for,—
>
> (i)the circumstances in which the buyer and the seller shall be deemed to be related;
>
> (ii)the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
>
> (iii)the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:
>
> (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may

specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria: (5) C/20682/2015 Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50."

12. In this regard, Rule 3 of Customs Valuation (Determination of Value of imported goods) Rules 2007 is important to mention which is provides as follow:

"Rule 3. Determination of the method of valuation._ (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

(a) there are no restriction as to the disposition or use of the goods by the buyer other than restrictions which-

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3)(a) Where the buyer and seller are related, the transaction value shall be accepted provided that the ex-administration of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii)the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quality levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9."

13. The Rule 12 of above valuation rules, where it is provided that when the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the importer to furnish further information including documents or other evidence, if proper officer still has reasonable doubt about the truth or accuracy of the value so declared. The proper officer shall intimate to the importer in writing the grounds for doubting and provide reasonable opportunity been heard, before taking the final decision. The relevant part of the Rule 12 as follows:

Rule 12. 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 imported goods, he may ask the importer 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 importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provision of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

14. Hon'ble Supreme Court in the case of Century Metal Recycling (P) Ltd., Vs UOI [2019 (6) SCC 655], inter alia, held that 'rejection of the transaction value declared by importer without giving cogent and good reasons in terms of Section 14(1) of the Customs Act, 1962 and Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, not permissible. Enquiry prior to such rejection and giving of valid reasons for doing so by proper officer, is necessary. Requirement of giving reasons, both at the preliminary as well as the second stage of enquiry i.e., when doubting the truth or accuracy of the value declared, mandatory in nature'.

15. Transaction value/invoice price corroborated by sale/purchase contract and BRC cannot be rejected without substantive evidence that the export price was not true or genuine. Hon'ble Supreme Court in the case of CCE & ST, Noida Vs Sanjivani Non Ferrous Trading Pvt Ltd., [2019 (365) ELT 3 (SC)] has held as under:

> "10) The law, thus, is clear. As per Sections 14(1) and 14(1-A), 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 of price 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 2(2007) 6 SCC 373 3(2010) 10 SCC 576 4(2012) 1 SCC 186 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."

16. In the case of CC, Goa Vs VGM Exports [2013 (291) ELT 572 (Tri-Mumbai)], it has been held as under:

> "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."

17. In the case of Mahajan Fabrics Pvt Ltd., Vs CCE, New Delhi [2017 (357) ELT 1240 (Tri-Del)], it has been held as under:

> "10. …… it is seen that the customer in the foreign country has accepted the declared value of the export goods and have also paid the declared amount to the appellant. There is nothing on record to indicate any other extraneous consideration. It is settled law that transaction value between the importer and exporter is required to be accepted normally. The conditions under which such transaction value can be rejected is also mentioned in the Customs Valuation Rules 2007. These rules also indicate the procedure for redetermination of the value in the case transaction value is to be rejected. In the present case we are of the view that there are no valid reasons for rejection of the transaction value…"

18. We find that the Assessing Authority enhanced the value declared by the importer with the approval of the importer, however, the importer paid the said differential duty under protest. Further, he also observed that the importer had not filed any appeal before any appropriate Authority against the re-assessment of Bill of Entry with the enhanced unit rate on par with contemporaneous prices nor the protest letter has been vacated. Therefore, he proceeded to decide the issue of protest by way of speaking order after giving an opportunity to the importer for personal hearing and noted that the

imported good's declared unit rate was quite low and not on par with contemporaneous price of similar quality imported goods from the same country during relevant period. He thereafter proceeded to reject transaction value as declared and re-determined the value in terms of Customs Valuation Rules, 2007 based on contemporaneous prices of identical goods in NIDB data. He has based his re-determination by observing that there was a vast variation between the declared value and the value of similar goods in the NIDB Data and therefore has taken the NIDB Data price for re-determining the assessable value and thereafter vacated the protest.

19. What is obvious in this process is that there was no detailed explanation given as to why their value should be re-determined in the manner in which the Assessing Officer has arrived at. It is obvious that the basis which was taken for re-determination has not been made available to the appellant before the hearing so as to contest as to whether it can be treated as identical or similar goods, as contemplated under the Valuation Rules or otherwise. Therefore, while there was valid reason to doubt or reject the transaction value, but the method of adopting contemporaneous value is not apparent and transparent and it was not disclosed to the importer so as to enable them to rebut the inapplicability of such value vis-à-vis impugned goods. This method of rejecting the value is not consistent with the provisions under the Valuation Rules, as also, not proper as held by the Co-ordinate Benches, cited, supra. Therefore, we feel that the proper officer has failed to accord proper opportunity of hearing before the re-assessment and has also failed to clearly demonstrate that the value adopted by him was consistent with the provisions under the Customs Valuation Rules and that the goods were identical or similar in all respect with the impugned goods. We also note that there was a categorical averment made by the representative of the importer who claimed

that the duty was paid under protest but they had not agreed for enhancement of unit value.

20. In view of the above, the impugned order of the Commissioner (Appeals), is not proper, legal and correct in the facts of the case and therefore, liable to be set aside.

21. Appeal allowed.

(Operative part of this order was pronounced
in court on conclusion of the hearing)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Shirisha