IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Cus.Appeal No.15/10

(Arising out of Order-in-Appeal No.KOL/CUS/CKP/612/09 dt.12.10.2009 passed by Commissioner (Appeals) of Customs, Kolkata)

Commr. of Customs (Prev.), W.B., Kolkata

Applicant (s)/Appellant (s)

Vs.

M/s Zeba & Sabah Associates

Respondent (s)

Appearance:

Shri S. N. Mitra, Asstt.Commr. (AR) for the Revenue (s)
None for the Respondent (s)

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing : 14.05.2018
Date of Decision : 14.05.2018

ORDER NO.FO/A/76095/2018

Per Shri P. K. Choudhary :

The present appeal is filed by the Revenue against the Order-in-Appeal No.KOL/CUS/CKP/612/09 dt.12.10.2009 passed by Commissioner (Appeals) of Customs, Kolkata.

2. When the matter was called, none appeared on behalf of the respondent. With the consent of ld.A.R. for the Revenue, we take up the appeal for final disposal, as the present appeal is an old one, pertaining to the year, 2010.

3. Briefly stated the facts of the case are that the respondent filed one Bill of Entry No.002/Importer/TTS/Cus/09 dated 27.07.09 in

respect of one Motor Tug Boat with unit price of invoice value at US$ 36000. The Customs Authorities on not being satisfied with the declared value, asked the respondent to submit Valuation Certificate from the Government Valuer. The respondent-importer submitted a report of the Government Registered Valuer dated 17.08.2009 showing the value of Tug Boat at Rs.17,00,000/-. The show-cause notice was issued under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Adjudicating Authority passed the following orders :

> *"I have gone through the case records as made available, the documents submitted by the importer and submission made by the party during personal hearing. On scrutiny of the records, I find that the issue involved in the case is whether the Tug Boat under question can be determined under Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Particularly, on perusal of the information made from DOV, I find that the old and used Tug Boat which was cleared home consumption at the nearest time the details of which have been retrieved from the DOV Website have been cleared for home consumption at a much higher value than the value as declared by the said importer despite the fact that the goods in question are similar/identical in nature as well as in functional aspect. It is therefore contended that the value as declared by the said importer cannot be considered as representing the proper transaction value as defined under Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, for the purpose of fixation of particular Rule for determination of such value, it may be stated that the job rests on the prerogative of the proper Customs*

Officer and is beyond the jurisdiction of this adjudicating authority.

I, therefore, upheld the show cause notice to the extent that the determination of value of the vessel cannot be undertaken under Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and may be undertaken by proper Customs Officer by proceeding sequentially through Rule 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007."

4. On appeal, the ld.Commissioner of Customs (Appeals) set aside the adjudication order and directed that the value of the goods is to be done on the basis of the value determined by the Government approved Chartered Engineer and Tug Boat shall be assessed to the Customs duty accordingly. Against the impugned order, the Revenue has preferred this appeal before the Tribunal for determination of the following points :

(a) Whether the Commissioner of Customs (Appeals) was legally correct in setting aside the order of the lower adjudicating authority .

(b) Whether the Commissioner of Customs (Appeals) was legally correct in acting as proper officer of customs for the purpose of valuation of imported goods.

(c) Whether the Commissioner of Customs (Appeals) was legally correct for not remanding the case back to original adjudicating authority for passing a reasoned order and assess the value.

(d) For setting aside the Order in Appeal No.Kol/cus/CKP/612/2009 dated 12.10.09.

(e) To pass any other order as it deems fit.

5. With the above background, we have heard the ld.A.R. appearing for the Revenue, who has justified the impugned order. We have also perused the appeal records.

6. We observe that the main grievance of the Revenue is that the Commissioner (Appeals) of Customs is not the proper officer for fixing/assessing the value of the imported goods. We find that the issue for determination before us is in respect of import of one old and used tug boat from Bangladesh. The respondent provided technical data in respect of tug boat, the details of which are mentioned in the Registration Certificate. The declared value is US$ 36,000/-. Subsequently, the Respondent submitted a valuation report from the Government Registered Valuer, who in his Report No.SNJ/08-10/H1533 dated 17.08.2009 valued the tug boat of Rs.17,00,000/-. The Department did not accept it and sought the valuation data available with the Directorate of Valuer in respect of old and used tug boat imported on earlier occasions. The details are as follows :

S.No.	**Description of goods**	**Country of Origin**	**Unit Value in Rs.**
1.	"Old and used self propelled Tug" "Sea diamond X with Standard Equipment accessories & consumables on Board"	DK	165316800
2.	"Old and used self propelled Tug" "Sea diamond X with Standard Equipment accessories & consumables on Board"	JP	216978300

3.	Old and used self propelled Tug Crest Pearl IMP 9398864 GRT 486 with Singapore Registry consisting of the following : HULL, N	CN	176165715

It is the case of the importer that the Data given by the Directorate of Valuation were in respect of past import of old and used tug boat, which are imported more than two years back and those tug boat were very large and having far more amenities and hence, there was no comparison between them. Even the year and country of make of the tug boats were also different. We find that the Commissioner (Appeals) has passed the detailed and reasoned order. Para 9 of the impugned order is reproduced below :

> *"9. When the old and used goods (including tug boats) are imported and the transaction value in respect of this is not acceptable, then the valuation is required to be done on the basis of the recommendation made by the Govt. approved Chartered Engineer. This method of determination of valuation is well accepted and the law on this is settled by the decisions of the Tribunal and that of the Supreme Court. This being for the reason that in respect of old and used goods, the valuation can neither be done under Rule 4 nor under Rule 5 as there can be no comparison of old and used goods with either identical/or similar old and used goods. Even the lower authority has failed to bring out any such similarity between the goods (except the name - tug boats). Other methods of valuation provided in Rules 7 & 8 of the Customs Valuation Rules cannot be adopted for old and used goods. Hence the value of the old and used tug boats has to be done under the residual method. The Tribunal in*

a catena of decisions has provided that normally the transaction value should be accepted. But in case that is not acceptable, then the valuation has to be done by a Govt. approved chartered engineer. He determines the value using the cost of manufacture in the year of manufacture and thereafter, after providing depreciation determines the valuation. There is no reason why the lower authority should not have accepted the valuation done by the Govt. approved chartered engineer. The year of making of the tug boats is 1984. The material cost of the year of manufacture has to be considered. On going through the valuation by the chartered engineer, I find that he has taken the building steel cost @ 120 per kg. and thereafter worked out the current price by giving @ 50% depreciation (normally 70% depreciation is given after 7 years). He based his decision on similar vessels currently being built in India. He has provided depreciation in respect of the vessel as it is 25 years old, which in fact is less than 70% normally provided. I find that the lower authority has not come out with any tangible material to find falicy in the method and data of the chartered engineer. If it was so, nothing prevented the lower authority in asking for further details which he did not do so. Since the rejection of the report by the lower authority of the chartered engineer is for unwarranted reasons, the same is not sustainable in law and also on facts. It is liable to be set aside. In that view of the matter, the value determined by the govt. approved chartered engineer is liable to be accepted and which is higher than the invoice price."

Further, we hold that the Commissioner of Customs (Appeals) is also a proper officer of Customs for the purposes of valuation of imported goods. Accordingly, we do not find any interference with the impugned order, which is hereby sustained. The appeal filed by the Revenue is rejected.

(Operative part of the order was pronounced in the open Court.)

Sd/	Sd/
(BIJAY KUMAR)	**(P. K. CHOWDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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