IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST ZONAL BENCH AT KOLKATA

APPEAL NO: C/107 & 108/2012

[Arising out of Order-in-Appeal No: 34/Pat/Cus/Appeal/2012 dated 27th February 2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Patna.]

Commissioner of Customs
Patna é ***Appellant***

versus

Hanuman Marbles
Ashok Kumar Sinha ***…Respondents***

Appearance:

Shri DK Achariya, Special Counsel for appellant

Shri Ravi Raghavan, Advocate for respondents

CORAM:

Hon'ble Shri P K Choudhary, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 14/03/2018
Date of decision: 14/03/2018

ORDER NO: , FO/A/76782-76783/2018

Per: C J Mathew

This appeal of Revenue disputes the upholding of the order of the lower authority by Commissioner of Customs, Central Excise & Service Tax (Appeals), Patna in order-in-appeal no. 34/Pat/Cus/

Appeal/2012 dated 22nd February 2012. The impugned order confirmed the findings of the original authority on show cause notices issued for recovery of differential duty in the import of ópolished marble slabsô from Nepal. In exercise of authority under the Foreign Trade (Development and Regulation) Act, 1992, the Director General of Foreign Trade had issued notification no. 18 (RE-2008)/2004-09 dated 30 June 2008 in which certain goods classified under EXIM code 6802 were permitted to be imported freely subject to the value being not less than US $ 50 (CIF) and, by subsequent notification no. 50/(RE-2008)/2004-2009 dated 23rd October 2008, provided an exception for the imports of such goods from Nepal that are processed from marble mined in that country.

2. As a general practice, such ómarble slabsô were being cleared on payment of appropriate duty without ascertaining the compliance with the threshold in the notification of Director General of Foreign Trade. Based on a review by the jurisdictional Commissioner of certain assessments, the original authority was directed to initiate proceedings for compliance with the said notification. The first of these proceedings against another importer was set aside in appeal and the competent reviewing authority had accepted the appellate order. Thereafter, the pending notices, including that of the present respondent, M/s Hanuman Marbles, were dropped by the original authority relying on this acceptance. Aggrieved by this, and upon

directions of the competent reviewing authority, appeal was filed before the first appellate authority which reiterated the earlier appellate order leading to the present appeal.

3. In the impugned order, the first appellate authority, after reproducing the appellate order which had been followed by the lower authority, held that

> *'Now, in the Revenue appeal, the Commissioner Customs (Prev) has pointed out that the Additional Commissioner who is the adjudicating authority here has solely relied on the Order-in Appeal of the Commissioner (Appeals), Patna, which he says appears to be erroneous. He had cited certain reasons which I find not relevant to the issue. However, the bond (sic) of contention in the instant case is whether Indo-Nepal Treaty of Trade can be taken or accepted as the Bible for bilateral trade between India and Nepal or Whether the General Foreign Trade Policy of the country will have overriding effect on the Indo-Nepal Treaty of Trade. The matter has been discussed at length in the aforesaid paras and need not be repeated again. The Order-in-Appeal of the Commissioner (Appeals), Patna referred to above has been accepted by the Committee of Chief commissioners and the issue has attained finality.*
>
> *Therefore, the Commissioner customs (Prev) has no authority to raise the issue again as this would amount to judicial indiscipline. I find that the order of the Additional Commissioner is proper and legal and sustainable in the eyes of law....'*

4. We have perused the records and considered the submissions

made by Learned Authorised Representative and Learned Counsel. From the findings in the impugned order extracted above, we find that there is no cause for grievance. Once an order of an appellate authority has been accepted on behalf of Revenue by a duly constituted authority whose competence is not in question and in a procedure sanctioned by law, it is not open for that same individual or a successor in office to alter the accepted stand of Revenue. We arrive at this conclusion as the statute, while providing for recourse to appellate remedies against orders of the original and appellate authorities, does not provide for a further review of a review carried out by the competent authority. In tax matters, a certain finality is essential to avoid the potential for chaos. According to us, the first appellate authority has stated the correct legal position. There can be no ground of appeal which can sustain against such a finding.

5. The appeal, now before us, and as contended before the first appellate authority, appears to stem from a dissatisfaction with the deviation from the direction of the Commissioner of Customs that the assessment of ópolished marble slabô imported from Nepal should, in the event of not being in conformity with the threshold prescribed in the notifications of Director General of Foreign Trade *supra*, be assessed at the threshold value. This was not found acceptable by the original authority and the appeal before the first appellate authority, as well before us, sought relief from this finding. We therefore restrict

ourselves only to this aspect.

6. Assessment of duty is a function of rate of duty and the value. In section 2 of Customs Act, 1962, óvalueô is defined as

> *‘(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14.’*

7. It is, therefore, unambiguously clear that value has to be determined in terms of section 14 of Customs Act, 1962 and the rules framed therein. There is, therefore, no scope for assigning the task of determining the value to another authority established under a different law. The initial direction of the Commissioner, as well as the grievance articulated in the appeal, are not based on a proper appreciation of the legal provision.

8. We do not to question the power of the Director General of Foreign Trade to notify the minimum import price; the applicability of such import price empowered by another statute, is limited to the objectives of that statute and will not extend to assessment under Customs Act, 1962. The compliances, or requirement to comply, with that description for purpose other than assessment of duty has not been examined by either of the two lower authorities; neither has the lack been agitated in the grounds of appeal which has almost entirely dealt with the óoverrideô of the Foreign Trade Policy *vis-a-vis* Indo-

Nepal Treaty. In these circumstances, and in the light of our findings above, we do not perceive any reason to delve beyond the grounds of appeal.

9. We find no merit in the appeal of Revenue and dismiss the same.

(Pronounced in Court)

Sd/	***Sd/***
(P K Choudhary)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

**/as1*