

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.1

Customs Appeal No. 83 of 2011

(Arising out of Order-in-Original No.KOL/CUS/PORT/01/2011 dated:29.01.2010 passed by Commissioner of Customs (Port), Kolkata.)

M/s. Premier Trading Company

(1/604/2, 1st Floor, Hamilton Road, Kashmere Gate Delhi-110 006.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(Customs House, 15/1 Strand Road Kolkata- 700001.)

...Respondent

APPEARANCE :

Present for the Appellant: None

Present for the Respondent: Mr. A.K. Choudhary, Authorized Representative

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

FINAL ORDER No. 77465/2023

DATE OF HEARING :06.11.2023

DATE OF DECISION : 06.11.2023

PER: RAJEEV TANDON

M/s. Premier Trading Company has filed the instant appeal on 3rd of January 2011. Though none-appears for the appellant, we have taken this for consideration being an old matter and with the help of the learned Departmental Representative.

2. The appellant have filed this appeal assailing the order of the learned Commissioner of Customs Port, Custom House Kolkata, whereby he has rejected the declared unit value of the imported goods and has ordered its re-determination in terms of the Customs Valuation Rules, 2007. Consequently, the adjudicating authority directed confiscation of the

offending goods and ordered its redemption on payment of redemption fine besides a penalty of Rs.10,000/- was also imposed on the importer-appellant, under the provisions of Section 112(a) of the Customs Act.

3. We note that the appellant is an importer of auto parts and imported items such as auto accessories like Wiper Blade, Radiator, Cylinder Block, Turn Signal Switch, Oil Pump, Crankshaft, etc. from China. Upon examination, at the time of import, it was found that the importer had not complied with the provisions of Notification No. 40 (RE2000) 1997-2002, dated 24.11.2000, issued by the Ministry of Commerce and Industry as no MRP/RSP was found on certain packages and the goods entering the port meant to be cleared by the Customs authorities for home consumption. The department further alleges that the imported goods were undervalued in so far as the value of the Radiators, Cylinder Block, Crankshaft and Oil Pump were found to be on the lower side.

4. It is observed that while the department alleges under valuation of the said goods, in para 9 of the order, it records as under:

"9. 'The internet NIDB/DOV data of contemporaneous imports available with the department was searched but no data pertaining to identical and/or similar goods were available in the said database. However, the value of the like goods were found to vary as given in the following table....."

Thus, it is a fact on record that the department had no database of its own with regard to the valuation of contemporaneous imports of identical or similar goods. Therefore, a market enquiry was undertaken whereby it arrived at certain valuation, and the enhancement of the assessable value was carried out. The transaction value declared under Section 14 of the

Customs Act was rejected, and the value of import goods re-arrived in accordance with the Customs (Valuation Determination of Value of Imported Goods) Rules, 2007. The imported goods were assessed enhancing the declared value.

5. The appellant contends that of the various items imported by them- 29 types in all the officers had verified the declared value with reference to past importation and assessed Bill of Entry under second appraisement system, enhancing the value of 12 items, whereby appropriate duty at the revised/re-determined import values was paid. It is their case that hundred per cent of the imported goods were examined in the presence of the SIIB Officers and no excess quantity was observed. In the past as well, the importer had imported like items on two occasions where also the goods were examined by SIIB Officers and market enquiry was conducted. After the said market enquiry, the enhancement of the value was proposed arbitrarily however, as the consignment was incurring demurrage, the appellant chose to clear the consignments at enhanced values. No fine and penalty were however imposed on the appellant in the said cases. It is stated by the appellant that unlike on previous two occasions, the SIIB, was this time however not inclined to clear this consignment and wanted to undertake a further market enquiry. They contend that vide their letter dated 19.02.2010 followed by reminder dated 04.03.2010, they requested the concerned Deputy Commissioner for a speaking order. However, no speaking order was issued to them and subsequently on 24.05.2010, they filed appeal with the Commissioner (Appeals) under Section 128 of the Customs Act. In response they were informed that the said case was adjudicated by the Commissioner of Customs, and therefore no appeal could be admitted before Commissioner (Appeals). Subsequently, the impugned order dated 24 June 2010, came to be supplied to them.

6. We note that the impugned matter for assessment of the imported goods rightly and ordinarily fell within the adjudication competency of the Deputy/Assistant Commissioner. Though there is no prohibition in law for the Commissioner to undertake adjudication in the impugned case, however, as a matter of practice that is ordinarily, not resorted to. We find that no reasons as required to be adduced for the rejection of the declared value, in terms of sub-rule (2) of Rule 12 of the CVR- 2007, have been spelt out in the present adjudication undertaken by the Commissioner. Also none of the ingredients indicated in Explanation (1) of Rule 12 *ibid* are also indicated in the adjudication order. We also note that this Tribunal in the case of **M/s. Lord Shiva Overseas¹**, had observed that no re-enhancement of value was possible once value of goods was enhanced and duty paid thereon. Reassessment was not possible once earlier assessment had become final, without undertaking any appeal or review. Thus, the re-enhancement of value for assessment purposes, undertaken when the goods were already assessed and exercise for enhancement of declared value was already undertaken at the time of assessment, is patently illegal and unjustified.

7. It is also common knowledge as also held in a slew of cases, like **M/s. Pearl Enterprises²**, that the lowest value in a bandwidth of the database is required to be taken in terms of Rule 5/Rule 6 (Rule 4 and Rule 5) of CVR, 2007. However, in the present case it is not so.

1. 2005 (181) ELT 213 Tribunal, Mumbai

2. 2006 (203) ELT 71 Tribunal

8. Further, there is an inherent contradiction in the department's proposal with reference to assessment of the goods imported, thus while at para 11 B of the order, it is admitted that the assessed value models of MPFI and MC appeared to be acceptable, yet at the same time learned adjudicating authority has resorted to enhancement of the declared values of the said items as well.

9. It may be pertinent to point out, that the Apex Court in the case of **M/s. Rabindra Chandra Paul**³ had held, that resort to Rule 7A- that is Computed Value assessment (Rule 8) of CVR 2007, is applicable only to those cases where buyer and seller are related. There is no such finding in the present adjudication order. Therefore, recourse to such methodology for valuation for a variety of items imported like radiators, cylinder block, crankshaft etc. is not authorised in law. We also note that the ratio of the Tribunal's decision in the case of **M/s. Keveeyam Company**⁴ and **M/s. Orion Systems**⁵, as upheld by the **Hon'ble Apex Court** in⁶, as well as **M/s. Gujarat Small Industries Corporation Limited**⁷, in the context of adoption of contemporaneous values, in the absence of any evidence of payments beyond the transaction values, sequential adoption of the CV Rules, before adopting the value of similar goods with suitable adjustments towards quantity and quality of the goods or in relation to inavailability on

3. 2007(209) ELT 326 Supreme Court

4. 2006(194) ELT 447 Tribunal, Bangalore,

5. 2005(190) ELT 1117 Tribunal Bangalore

6. 2006(196) ELT A-32

7. 2005(186) ELT 579 Tribunal

record, the adoption of comparable value for identical goods are all applicable to the instant matter. We also note that the learned Commissioner has adopted the value of Indian goods as sold in the Indian market. This certainly cannot form the basis for comparison of valuation of the imported goods and therefore such re-determination would be void in law. Following the law as pronounced by the Apex Court in the case of **M/s. Eicher Tractors Ltd. Vs. Commissioner of Customs⁸**, we have no hesitation in stating that the transaction value has been rejected, arbitrarily, as the department was not able to adduce any sustainable evidence in the matter. The golden rule being that ordinarily the transaction value has to be accepted, the rejection of transaction value has to be based only on extraordinary or special reasons and considerations. (**M/s. Motor Industries Company Ltd.)⁹**.

8. 2001 (122) ELT 321 SC

9. 2009 (244) ELT 4 Supreme Court

10. For aforesaid reasons, we set aside the Order in Original and allow the appeal, with consequential relief if any.

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

**Sd/-
(Ashok Jindal)
Member (Judicial)**

**Sd/-
(Rajeev Tandon)
Member (Technical)**

K.M.