IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NOS: C/642, 821 to 829/2009

[Arising out of Order-in-Appeal No: 113 to 122 (DC/Gr.VIID)/2009 (JNCH) dated 25th March 2009 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Commissioner of Customs (Export)
Nhava Sheva …***Appellant***

versus

Apar Industries Ltd ***…Respondent***

Appearance:

Ms Vinitha Sekhar, Joint Commissioner (AR) for appellant

None for respondent

CORAM:

Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 13/12/2017
Date of decision: 27/02/2018

ORDER NO: ___________________________

Per: C J Mathew

In these ten appeals, the dispute pertains to import of 'primary aluminium ingots' by M/s Apar Industries Limited from M/s BHP Billiton Marketing AG, Switzerland under the Duty Exemption

Entitlement Certificate (DEEC) scheme of the Foreign Trade Policy and claiming benefit of exemption under notification no. 93/2004-Cus dated 10th September 2004. The price declared at the time of import was rejected on the ground that the values indicated in the London Metal Exchange Bulletin was much higher and was loaded by ₹8,52,98,173 with duty implication, though exempt, of ₹2,20,33,178. In appellate proceedings before Commissioner of Customs (Appeals), JNCH these enhancements ordered by the original authority were set aside *vide* order-in-appeal no. 113-122 (DC/Gr.VIID)/2009 (JNCH) dated 25th March 2009 leading to present appeals of Revenue.

2. None appeared for respondent. Reiterating the grounds of appeal, Learned Authorized Representative submitted that the rejection of the declared value was in accordance with rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 owing to report for 'aluminium ingots' in the London Metal Exchange Bulletin beign higher by about US$ 300-US$ 600 per metric ton and the significantly higher price reported in the National Import Data Base (NIDB) maintained by the Directorate of Valuation, Central Board of Excise & Customs of imports from the same supplier and from the same country of origin. It is also contended that the sequential application of the Rules had been clearly brought out in the order of the original authority which appeared to have been disregarded by the first appellate authority.

3. The grievance of Revenue appears to be that the elaborate findings recorded by the original authority on the submissions of the importer were discarded by the first appellate authority merely on the legal submissions made before him in the appeal of the importer. On a perusal of the records, it is seen that the original authority did comply with the mandate of rule 12 of Customs (Determination of Value of Imported Goods] Rules, 2007 on being faced with the declared value that was about 10% less than the published price in the London Metal Exchange Bulletin. On inquiry with the importer, the contractual obligation pertaining to the end use of the imported goods and the volume involved in the procurement from the supplier were brought out as justification for the transaction value. This was found to be not acceptable on two primary grounds: that the contracts were not registered with the appropriate wing in accordance with the schedule prescribed and that the under Customs Act, 1962 assessment is to be made for each consignment. The original authority, thereafter, rendered elaborate findings to hold that the justifications offered by importer lacked credibility. That rejection of the declared value should have been followed by a sequential application of the Rules for arriving at the assessable value. While there is a reference to certain bills of entry pertaining to contemporaneous imports, it would appear that these bills were not available in the adjudication proceedings.

4. It is in the above context that the impugned order must be seen.

While it may be wanting in elaborate discussion in the dispatch of the detailed justification offered by the original authority on the causes for the value of transaction to be considerably less than the prices in the London Metal Exchange Bulletin, it has taken note of the absence of any justification for the computation of the assessable value. The essential requirements for substituting the declared value for assessment has been pointed out in the impugned order with reference to the decision of the Hon'ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs, Mumbai [2000 (122) ELT 321 (SC)]*. He has also allowed the burden that rests on the proper officer as laid down in the decision of the Hon'ble Supreme Court in *Varsha Plastics Pvt Ltd v. Union of India [2009 (235) ELT 193 (SC)]*.

5. There is no evidence of the importer having been given an opportunity to rebut the contents of the bills of entry that were the purported foundation of the re-assessment by the original authority. In the absence of such opportunity, the rejection of declared value is an incomplete exercise that does not have the sanction of law. That want in the order of the original authority has not been supplied in the grounds of appeal.

6. It also needs noting that the importer operates under a scheme that imposes both quantitative and the value restriction on the import of goods procured for manufacture export goods. There are

obligations under the scheme and those obligations cannot be met unless the required quantity of inputs are made available. An enhancement of value would necessarily impact upon the quantity that may be imported. The advance license issued under the scheme is designated in CIF terms; the value adopted for assessment does not purport to be so. The original authority has undertaken the exercise of re-assessment to provide for recovery in the contingency of breach of the conditions of import. In the absence of ascertainment of such contingency, the re-assessment remains an academic exercise. Subsequent events do not indicate occurrence of the contingency. In the absence of such having been brought out in the grounds of appeal, Revenue has no cause for grievance. The importer has undertaken a number of supply agreements which involves utilization of imported goods for production and export. There does not appear to be the reason to disbelieve their contention that there exists no motive for undervaluation.

7. In view of the above, we find no reason to uphold the contention of Revenue that the impugned order is not legal and proper. Accordingly, the appeals of Revenue are dismissed.

(Pronounced in the Open Court on 27/02/2018)

(C J Mathew)
Member (Technical)

(Justice Dr. Satish Chandra)
President

**/as*