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

**APPEAL NO: C/1097/2009**

[Arising out of Order-in-Appeal No: 459(GR.I)/2009(JNCH)/IMP-104 dated 31st August 2009 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Bharathi Rubber Lining & Allied Services Pvt Ltd. … ***Appellant***

*versus*

Commissioner of Customs (Import)
Nhava Sheva ***…Respondent***

*Appearance:*

Shri Anil Balani, Advocate for appellant

Ms Trupti Chavan, Assistant Commissioner (AR) for respondent

**CORAM:**

**Hon'ble Shri Ramesh Nair, Member (Judicial)**
**Hon'ble Shri Raju, Member (Technical)**

**Date of hearing: 22/02/2018**
**Date of decision: 16/05/2018**

**ORDER NO: A/86383/2018**

*Per: Raju*

This appeal has been filed by M/s Bharathi Rubber Lining & Allied Services Pvt Ltd against rejection of the declared assessable value, demand of customs duty, interest, penalty and imposition of redemption fine.

2. Learned Counsel for appellant pointed out that they had imported zinc ash as US $ 305 PMT. The matter was investigated and a show cause notice was issued to them. In the notice it was alleged that the supplier of goods M/s Hemsu International, had issued invoice No. 397 dated 17/03/2003, 399 dated 01/04/2003 in respect of these goods which were cleared by the appellant *vide* Bill of Entry No. 838319 dated 23/04/2003, 840593 dated 30/04/2003 and 856181 dated 20/06/2003. The aforesaid invoices were received by DRI along with information regarding undervaluation. Statement of Ashok Kumar Talesara, Director of appellant was recorded wherein he admitted that they had an understanding with the supplier M/s Hemsu International that they would help them in saving customs duty and collect part of the price off the record before shipment of goods from USA and the price declared on the invoice would be paid against documents through regular channels. The goods were cleared at the declared price of US $ 305 PMT. In the statement the Director admitted that they had paid the difference between US $ 560PMT, and the declared price of US $ 305 PMT to the Indian representative of the foreign supplier in Indian rupees in cash at Mumbai. He also admitted he had paid ₹ 7 lakhs in cash to the said representative of the foreign supplier as advance towards price of the imported goods. When confronted with the invoices received along with information,

Director agreed that the said invoice was issued for the differential amount of actual price and the same had never been supplied to the Director. He also paid the differential customs duty demanded. The assessable value was revised on the basis of said invoices and demand of the Customs duty, interest and imposition of penalty was ordered. The goods were held liable to confiscation and redemption fine was also imposed. The goods, however, were not available for confiscation. The Commissioner (Appeals) upheld the order of the Additional Commissioner. The Commissioner (Appeals) held that the value of the goods can be re-determined in view of Rule 10A of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as the price actually paid for the imported goods was evident from the invoices/documents recovered during the course of investigation by DRI. He also relied on the statement of Shri Ashok Kumar Talesara, Director of the appellant firm but had admitted that the value of the goods and the *modus oprerandi* were negotiated with the supplier. Aggrieved by the said order the appellants are before the Tribunal.

3. He argued that the confessional statement of the Director dated 12/04/208 and 15/04/2008 was not true and voluntary and was obtained under threat and by showing unauthenticated documents. He further argued that loading has been done on the basis of invoices obtained from undisclosed sources. He argued that the same is not

admissible evidence under Section 139 of the Customs Act, 1962. He further argued that no goods were available for confiscation and thus no confiscation could have been ordered and no redemption fine could have been imposed. He further argued that they have given a chart of contemporary imports of zinc ash during the relevant period in their reply to the original authority in para 8 thereof but the same was not examined by the original authority. He pointed out that the said chart showed that the average import price at the material time was US $ 250 PMT and the same was accepted by the department and not challenged or questioned.

4. Learned Authorised Representative relies on the impugned order.

5. We have gone through the rival submissions. We find that Director of the appellant firm had in his statement agreed that the invoices received by DRI along with its information showed real price of the goods. He also agreed that the amount of differential value was given in cash to the Indian representative of the foreign supplier in cash. The statement has not been retracted at any time. The claim of appellant that the said statement was obtained due to coercion was unsubstantiated and cannot be accepted.

6. The case of Revenue is not merely based on rejection of transaction value in terms of Rule 10A of the Customs Valuation

(Determination of Value of Imported Goods) Rules, 2007. The appellant had claimed that Revenue has not gone sequentially under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and no findings have been given in respect of applicability of Rules 5, 6, 7 and 8 of Valuation Rules. In this case, however, it is not that the Customs has the evidence of real transaction value and thus there is no need to go to the rules. Since real transaction value i.e. the amount transferred through legal channels and amount paid to the local representative of the foreign supplier is available the same becomes transaction value and the duty can be demanded taking the same as assessable value.

7. It is seen that the goods have been held to be liable to confiscation and redemption fine has also been imposed under Section 125 of the Customs Act, 1962. We find that the goods are not available for confiscation no confiscation can be ordered and no redemption fine can be imposed. Redemption fine is therefore set aside.

8. The appeal is partly allowed to the extent that redemption fine is set aside.

*(Pronounced in Court on 16/05/2018)*

**(Ramesh Nair)**
***Member (Judicial)***

**(Raju)**
***Member (Technical)***

**/as24040305*