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

Appeal No. C/1129/09

(Arising out Order-in-Appeal No. Goa/CUS/PAP/51/2009 dated 31.07.2009 passed by the Commissioner of Central Excise & Service tax, Goa)

For approval and signature:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

Commissioner of Customs & Central Excise, Goa — Appellant

Vs.

Andrew Telecommunication Pvt. Ltd. — Respondent

Appearance:

Shri S.R. Nair, Examiner (AR) for the appellant
Shri R.P. Jindal, Advocate for the respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing : 06.02.2018
Date of decision : 05.06.2018

O R D E R No: **A/86610 / 2018**

Per: C J Mathew

Appeal of Revenue against order-in-appeal no. GOA/CUS/PAP/51/2009 dated 31st July 2009 of Commissioner of Customs (Appeals) Goa pertains to the dropping of the enhancement of assessable value of 'copper strips' imported by M/s Andrew Telecommunications India Pvt Ltd against eight bills of entry nos. 106699/20.07.06, 106700/20.07.06, 106701/20.07.06, 106795/14.08.06, 106828/14.08.06, 106829/14.08.06, 106979/06.09.06 and 106980/06.09.06. The declared value in five of the consignments imported from M/s Andrew Corp, USA, ranged from US$5171 to US$5428 per metric ton while the other three sourced from M/s KM Europa Metal AG varied from 4322 euros to 4605 euros per metric ton. The proper officer found these to be low in comparison with price of the base metal and, having discarded the declared value, invoked rule 7A of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 after a finding of inability to apply the preceding rules and directed enhancement. The first appellate authority found no merit in the enhancement leading to the present appeal.

2. The assessing officer, and the appeal of Revenue, contend that the justification offered by the importer that contracted price was for long-term supply is unacceptable

as no contract was registered, that prudence in commercial transactions would not find supply price of manufactured price to be less than the cost of copper metal, that adoption of London Metal Exchange price of copper had been agreed to by the importer and that recourse to computed value for assessment was in consequence of sequential application of the Rules notified under section 14 of Customs Act, 1962.

3. Learned Authorized Representative places reliance on the decision of the Tribunal in *Commissioner of Central Customs, Mumbai v. Indian Leads Ltd [2000 (117) ELT 447 (Tribunal)]* and of the Hon'ble High Court of Gujarat in *Ramachandra Art Silk Yarn v. Union of India [2002 (139) ELT 540 (Guj)]* which have upheld adoption of prices found in authoritative publications with appropriate adjustments to arrive at assessable value.

4. The contention of Learned Authorized Representative cannot be faulted. Yet, we may sound a note of caution here. The decision of the Hon'ble Supreme Court in *Eicher Tractors Ltd.* [*2000 (122) ELT 321 (SC)*] makes it abundantly clear that rejection of declared value must be justified and sequential application of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 cannot be given the go by.

5. The assessing authority places reliance on the price of the base metal published in bulletin of the London Metal Exchange and the consent of the importer to adopt that as the base for re-determination. However, it cannot be lost sight of that the clearance was ordered to be held up on the basis of raw material prices in the said bulletin when the goods under import were manufactured products. The rationale for the comparatively low prices was claimed to lie in the supply contracts to which importers had drawn the attention of the assessing officer who, however, chose to disregard these. We find that the resort to prices of base metal to reject the declared price of manufactured goods, particularly, in the light of an explanation offered and not disputed is not in accordance with section 14 of Customs Act, 1962. Consent at gun-point is no consent and consent of any sort cannot condone deviation from the law.

6. The respondent claimed before the first appellate authority that they had themselves imported goods on or around the same time at similar rates which had been accepted by the assessing officer. The by-passing of the preceding rules to take recourse to rule 7A of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 is also not legally tenable. The failure to sequentially apply the Rules after consideration of the evidence of contemporaneous goods furnished by the importer renders the enhancement to be against the law.

7. Therefore, taking into account the facts and circumstances *supra*, we find no flaw in the reasoning adopted by the first appellate authority to set aside the enhancements. Accordingly, we dismiss the appeal of Revenue.

(Pronounced in Court on 05.06.2018)

(Ramesh Nair)
Member (Judicial)

(C J Mathew)
Member (Technical)

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