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

APPEAL NO: C/422/2011

[Arising out of Order-in-Appeal No: 158(GR.VI)/2011(JNCH)/IMP-118 dated 11th April 2011 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
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

Yusuf Chasmewala … ***Appellant***

versus

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

Appearance:

Shri Anil Balani, Advocate for appellant

Shri Manoj Kumar, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 19/02/2019
Date of decision: 19/03/2019

ORDER NO: A/85517 / 2019

Per: C J Mathew

In this appeal of Shri Yusuf Chasmewala against order-in-appeal no. 158(GR.VI)/2011(JNCH)/IMP-118 dated 11th April 2011 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II, challenge is to the duty liability, as determined by the original authority, arising from enhancement of assessment value to ₹13,16,550/-, confiscation of the imported goods that was allowed to be redeemed on payment of fine of ₹ 3,50,000/- and the penalty imposed.

2. It is the contention of Learned Counsel for appellant that the enhancement of assessable value was not in compliance with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

3. Narrating the background, Learned Counsel informs that a container imported against bill of entry no. 629910/30.09.2008

by M/s Mize International was, upon investigation, alleged to have been arranged by the present appellant. According to him, the imported goods should have been subject to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 only after establishing that the declared value was unacceptable and, thereby, liable to proceed under the Rules. He points out that the show cause notice proceeds on the assumption that rule 7 of the said Rules was liable to be invoked directly and, that too, despite not being in consonance with the prescription of the time period contained therein. He contends that the market survey was undertaken more than six month after the import of the goods against the time-frame of three months prescribed therein. He relies upon the decision of the Tribunal in *Akash Stone Industries Ltd v. Commissioner of Customs (Import), Mumbai [final order no. A/87002/2018 dated 30th July 2018 in appeal no. C/179/2009]*. He also places reliance on the decision of the Tribunal in *Kanhaiyalal & Co v. Commissioner of Customs, Pune [2004 (163) ELT 33 (Tri.Mumbai)], Om International v. Commissioner of Central Excise, Kanpur [2014 (299) ELT 245 (Tri.-Del.)], Imperial Lites v. Commissioner of Central Excise, Kanpur [2013 (298) ELT 228 (Tri.Del.)]* and *Armstrong World Industries (I) Pvt Ltd v. Commissioner of Customs (I) Pvt Ltd [2015 (317) ELT 324 (Tri.-Mumbai)]*. Learned Authorised Representative submits that the decision of the first appellate authority cannot be faulted as is evident from the manner in which the findings have been recorded.

4. We find that the imported goods are said to be unbranded and, therefore, devoid of any scope for comparison with prices of identical or similar goods. We also found that the lower authorities have held, without being controverted by the importer, that the goods in question were ordered by, and belong to, the present appellant whereas the documents were filed by another entity. In these circumstances, the declared value is undoubtedly in breach of the parameters that govern acceptance of transaction value in section 14 of Customs Act, 1962 mandating recourse to Customs Valuation (Determination of Value of Imported Goods) Rules 2007. It is also clear that the absence of any comparable data is also beyond question. The appellant has also not brought forth any evidence of existence of such data.

5. The first appellate authority has upheld the order of the original authority which has placed reliance on rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 which is not restricted to a time-frame of three months. Consequently, the reliance placed on the market survey cannot be disputed. Recourse to the best judgment that appears to have led to this re-determination was not under challenge in the grounds of appeal or oral submissions as recorded. Accordingly, we hold that the appellants had not made out a case for discarding of the best judgment

value adopted in the order of the lower authority and accepted by the first appellate authority. A challenge in that direction at the second appeal stage is not tenable.

6. For the above reason we find no merit in the appeal which is dismissed.

(Pronounced in Court on 19/03/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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