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

APPEAL NO: C/173/2011

[Arising out of Order-in-Appeal No: 335(GR.II)/2010(JNCH)/IMP-313 dated 4th November 2010 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

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Donear Décor Pvt Ltd … ***Appellant***

versus

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

Appearance:

None for appellant

Shri R 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: 14/02/2019
Date of decision: 19/03/2019

ORDER NO: A/85518 / 2019

Per: C J Mathew

Appellant challenges the upholding of the order of the original authority by Commissioner of Customs (Appeals), Mumbai – II, JNCH, Nhava Sheva in impugned order-in-appeal no. 335 (GR.II)/2010(JNCH)/IMP-313 dated 4th November 2010. Appellant had imported 'wood veneers' against bill of entry no. 883145/05.05.2009 declaring value of ₹ 2,21,942.91 and cleared on payment of customs duty of ₹ 43,426.90. Subsequently, the value declared, on suspicion of being unduly low in comparison with similar goods cleared by other importers, was disputed in proceedings that were initiated and culminated by applying Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for enhancement to ₹ 14,61,719.91/- after revision of the unit price to US $ 3293 per cubic meter from the declared unit price of US $ 500 per cubic meter. In addition, the goods were ordered to be confiscated, though allowed to be redeemed on payment of fine of ₹ 5,00,000/-, and penalty of ₹ 2,00,000/- was imposed under section 112 of

Customs Act, 1962. Aggrieved by the sustaining of this order, the appellant is before us.

2. None appeared for the appellant and it is also noticed that there was no representation on various dates on which the appeal was listed for disposal.

3. Learned Authorised Representative informs us that the goods, being of assorted sizes, average value of specific quality was adopted from the declaration made by other importers. He also points out that the importer had agreed to accept enhancement of US $ 2500 per cubic meter which, according to him, suffices to evidence the undervaluation in the bill of entry.

4. The rejection of the declared value, though challenged by the appellant for lack of evidence of any additional consideration, cannot be faulted in the light of imports effected by others around the same time. Though the impugned order refers to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the enhancement of the assessable value to US $ 3253 cannot be faulted merely for that reason as rule 9 permits, consistent with the provisions of the said Rules, resort to ‘best judgment’. Error in citing a provision does not alter the substantive findings or the validity of the outcome thereof. In any case, such a plea may have been acceptable had the appellant not waived their right to show cause notice as that

would have served as the framework within which the adjudication was to have been undertaken. We also find that the appellant has not been able to produce any evidence that the imports, effected at the value declared by him, reflected the transaction value. We also note that the appellant, by letter dated 12th June 2009, had expressed willingness to consider loading of value to US $ 2500 per cubic meter. Though such a negotiated determination of assessable value is not envisaged in law, there is acknowledgment of inadmissibility of declared value and the dispute that remains is merely one of quantification. Quantification in the impugned order has relied upon average value which is not inconsistent with best judgment.

5. In view of the unduly low declaration justifying rejection of declared value and from lack of any evidence of circumstances that would appear reasonable, the intention to evade duty by such mis-declaration cannot be discounted. Confiscation of goods under section 111 of Customs Act, 1962, and imposition of penalty under section 112, cannot, therefore, be faulted. Consequently, we find no reason to interfere with the impugned order.

6. The appeal is dismissed.

(Pronounced in Court on 19/03/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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