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

APPEALS NO: C/152 to 154/2011

[Arising out of Order-in-Appeal No: 435 to 437 (Adj Export)/2010 (JNCH)/Exp-36 to 38 dated 28th December 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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Matrix Global Export
Raj Kumar Yadav
Sanjay Yadav … ***Appellants***

versus

Commissioner of Customs (Export)
Nhava Sheva, Mumbai – II ***…Respondent***

Appearance:

Shri Prashant Patankar, Consultant for appellant

Shri DD Singh, Assistant Commissioner (AR) for respondent

CORAM:

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

Date of hearing: 20/02/2019
Date of decision: 20/03/2019

ORDER NO: A/ 85548-85550/2019

Per: C J Mathew

The issue in these appeals against order-in-appeal no. 435 to 437 (Adj Export)/2010 (JNCH)/Exp-36 to 38 dated 28th December 2010 of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II pertain to the import of 'polyester knitted fabrics' *vide* bill of entry no. 765337/29.01.2009 in which the consignment was found to have net weight of 5710 kgs against documents indicating weight of 4350 kgs. On this differential quantity of 1360 kgs, the declared value of ₹6,96,354/- was enhanced to ₹9,16,085/- with consequential differential duty of ₹ 32,916/-. The goods were also held liable to confiscation under section 111(d) and 111(l) of Customs Act, 1962 besides which penalty of ₹ 3,00,000/- each was imposed under section 112 and section 114AA of Customs Act, 1962. In the impugned order, redemption fine was set aside and penalties were reduced to ₹2,00,000/- each and limited to section 112 of Customs Act, 1962.

2. Learned Consultant for the appellants submitted that customs authorities had erroneously arrived to the conclusion of mis-declaration owing to ascertained difference in weight. It is his contention that the goods, *i.e.* 'knitted fabrics' are billed in metres and this measure is not in dispute. He also points out that the bill of lading indicating 4350 kgs is not an authentic evidence of quantity, issued, as it was, by the person-in-charge of conveyance, who, for containerised cargo, is not concerned with the weight but with the space occupied on the vessel. He also asserted that the packing list has been wrongly presumed to contain declaration of weight as the unit of measurement, because of the columns shown as kgs, as the yardage has been inaccurately represented therein.

3. Learned Authorised Representative submits that it was the responsibility of the importer to declare the weight of the cargo as the unit of measurement in the schedule pertaining to the relevant chapter of the First Schedule to the Customs Tariff Act, 1975 are in kgs. The imposition of penalty was also defended as the invoice was issued on the basis of the bill of lading.

4. We find from the records that the goods are consigned with the value computed and with metre as unit of measurement. Revenue is unable to justify the orders of the lower authorities establishing that weight would determine the value. The reference to weight in the

tables in the various chapters of the First Schedule to the Customs Tariff Act, 1975 has no bearing on the assessment. No ascertainment of the billed length of the fabric has been carried out.

5. In the circumstances above, the findings of the lower authorities are flawed. The reasons for re-determining the value is not consistent with the provisions of section 14 of Customs Act, 1962. For this reason, we find that the enhancement of value, and the determination of the penalties, are not in accordance with the law.

6. Accordingly, the impugned order is set aside and the appeals are allowed.

(Pronounced in Court on 20/03/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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