

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

Customs Appeal No.86773 of 2015

(Arising out of Order-in-Original No.31/2015/CAC/CC-I/A/AB/GR.VB dated 22.05.2015 passed by the Commissioner of Customs(Import) Mumbai-1.

M/s Mydreams Properties Pvt.Ltd.

Shapoorji Pallonji Centre
41/44 Minoo Desai Marg, Colaba,
Mumbai-400005.

.... Appellant

Versus

**Commissioner of Customs (Imports)
Mumbai**

New Customs House, Ballard Estate
Mumbai-400001.

.... Respondent

And

Customs Appeal No.86774 of 2015

(Arising out of Order-in-Original No.31/2015/CAC/CC-I/A/AB/GR.VB dated 22.05.2015 passed by the Commissioner of Customs(Import) Mumbai-1.

Shri Vinay P. Karve

Shapoorji Pallonji Centre
41/44 Minoo Desai Marg, Colaba,
Mumbai-400005.

.... Appellant

Versus

**Commissioner of Customs (Imports)
Mumbai**

New Customs House, Ballard Estate
Mumbai-400001

.... Respondent

With

Customs Appeal No.86775 of 2015

(Arising out of Order-in-Original No.31/2015/CAC/CC-I/A/AB/GR.VB dated 22.05.2015 passed by the Commissioner of Customs(Import) Mumbai-1.

Shri V. Manivannan

Shapoorji Pallonji Centre
41/44 Minoo Desai Marg, Colaba,
Mumbai-400005.

.... Appellant

Versus

**Commissioner of Customs (Imports)
Mumbai**

New Customs House, Ballard Estate
Mumbai-400001

.... Respondent

Appearance:

Shri. H.C. Daruwala, Advocate, for the Appellant
Shri Mohammad Shamshad Alam, Authorized Representative for the Respondent

CORAM:

HON'BLE S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/87398-87400/2019

Date of Hearing: 02.12.2019

Date of Decision: 02.12.2019

Per: P. Anjani Kumar

Mydream Properties Pvt.Ltd have imported a motor yacht of model "Azimut 68 Evolution" which is also known as "Azimut 68 E"; Revenue contended that the value was not declared correctly and accordingly have issued a show cause notice dated 5.09.2014 seeking to re-determine the assessable value at Rs. 17,74,67,817/- (Euro 24,85,300/- CIF) in place of the declared value of Rs. 9,99,69,800/-; seeking to re-determine the value of Vsat connection with dish antenna at Rs. 14,78,125/- ; demanding differential duty and proposing to heavy penalty on the company, Shri V. Manivannan, Vice President and Shri Vinay P. Karve, Director. The show cause notice was adjudicated Commissioner of Customs, Import (I) vide order 31/2015 dated 22.05.2015 wherein the allegations leveled in the show cause notice were confirmed; learned Commissioner imposed a penalty of Rs.10,00,000/- and Rs.15,00,000/- respectively under Section 112 (a) and Section 114A of Customs Act, 1962 on Shri Manivannan, Vice president of M/s. Afcon Infrastructure Ltd. and on Shri Vinay P. Karve, Director of M/s.

Mydream Properties Pvt. Ltd. Hence, these three appeals are filed by the respective appellants.

2. Learned counsel for the appellants submits that they have negotiated with Benetti SpA of Italy (the supplier) for purchasing the motor yacht of model "Azimut 68 Evolution"; the initial price quoted was Euros 24,10,300/-. However lastly it was agreed upon at Euros 14,00,000/- In the purchase order the letter "E" came to be missed and it was mentioned as Azimut 68 only; the same mistake got carried forward in other documents and Bill of Entry. However appellants have submitted along with Bill of Entry documents like owner's manual, builder's certificate and EC type examination certificate issued by Royal Institute of Naval Architects; these documents clearly indicate that "Azimut 68 Evolution" due to mis-match in the description the yacht was personally assessed and sought to be finalized by the show cause notice. Learned Counsel for the appellant submits that their bonafide are established as the have submitted documents indicating the actual description of the yacht; therefore no mis-declaration can be alleged; the value declared by them was correct and was the amount paid to the foreign supplier. Therefore, re-valuation of the goods was not correct. The learned counsel submits that while rejecting the declared value under Rule 12 of the Valuation Rules, Commissioner has re-determined the same under Rule 3(1) of Customs Valuation Rules instead of proceeding from Rules 4 to 9 of Valuation Rules in terms of Sub-Rule 1 (1) of Rule 12 and Rule 3 (4) of Customs Valuation Rules, 2007. Learned counsel also submits that they have given elaborate submissions on the Valuation Rules but the learned Commissioner has not discussed any of their submissions and has not justified the invocation of Rule 3(1). He also submits that for the above reasons, penalties imposed are also not sustainable.

3. Learned AR for the Department reiterates the findings of Order in Original.

4. Heard both sides and perused the records of the case. We find that the issue involved in the case is about alleged mis declaration and under valuation. In respect of mis declaration the appellant contends that their bonafides are established by the submission of owners' manual, type certificate etc. submitted by them along with other documents, filing the Bill of Entry. On the contrary learned Commissioner records that it was during the examination it was noticed that the specifications pertains to "Azimut 68 Evolution" rather than "Azimut 68" and that the documents were procured by the investigation. However no evidence has been produced by either parties to support and substantiate their claim. In case the appellants have submitted such documents along with Bills of Entry even before separately being called for, bonafides of the appellants are established and to that extent that the wrong declaration in the Bill of Entry could be seen as a typographical error, if any. However, in the absence of proof submitted by either parties we are not able to proceed further in the matter. Therefore, we find it fit to remand the matter back to the Original Authorities for appreciating the evidence and to determine if there was any mis declaration and if so it was with an intend to avoid payment of duty or it was a clerical / typographical error.

5. Learned counsel further submits that it was incorrect to determine the value of the goods under Rule 3 (1). To have a better appreciation it will of use to go through the provisions of the rules.

RULE 12. Rejection of declared Value.- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule 3.

2. At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation: (1) for the removal of doubts, it is hereby declared that:-

- (i) This rule by itself does not provide a method of determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents.

RULE 3. Determination of the method of valuation.- (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule(1) shall be accepted:

Provided that-

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
 - (i) are imposed or required by law or by the public authorities in India; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods.
 - (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
 - (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.
- (3) (a) Where the buyer and seller are related the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
- (b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.
- (i) the transaction value of the identical goods, or similar goods, in sale to unrelated buyers in India;
 - (ii) the deductive value for identical goods or similar goods;
 - (iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated differential in commercial

levels, quantity levels, adjustments in accordance with the provision of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

- (c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.
- (4) If the value cannot be determined under the provisions of sub-rule(1), the value shall be determined by proceeding sequentially through rule 4 to 9.

RULE 10 Cost and services: (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods.-

- (a) the following to the extent they are incurred by the buyer but are not included in the price paid or payable for the imported goods, namely:-
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
 - (iii) the cost of packing whether for labour or materials;
- (b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, art work, design work and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;
- (c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;
- (e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation:- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable to the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

¹(2) For the purpose of sub-section (1) 14 of the customs Act, 1962(52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include-

- (a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;
- (b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable such cost shall not exceed twenty percent on free of board value of the goods:

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, handling charges associates with such transshipment shall be excluded

Explanation:- The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on chartered vessels, lighterage or barge chares.)

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

6. We find the Learned Commissioner of Customs has not rejected the value declared by the appellant under Rule 12 of Customs Valuation Rules, 2002, instead, it appears that he has considered the price quoted in the proforma invoice to be the actual price paid or payable; we find that value declared in terms of Section 14 can be rejected only under Rule 12 of Customs Valuation Rules, 2007 under which as per Rule 12 (1) " when the proper officer has reason to doubt about the truth or accuracy of the value declared in relation to any imported goods, he may ask he importer of such goods to furnish further evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be admitted that the transaction value of such imported

goods cannot be determined under the provisions of Sub Rule 1 of Rule 3". In the instant case the Commissioner finds that " it is a well established principle that once a discrepancy has been noticed in respect of description particulars, the onus of proving correct values shifts from revenue to the importer. Learned Commissioner proceeds on the value appearing in the proforma invoice and applied the same to the impugned case in terms of Rule 3 (1) . However it is pertinent to note that under Rule 12 in case the officer has a doubt about the truth or accuracy of the declared value etc., the value cannot be determined under the provisions of sub-rule 1 of Rule 3 of CVR 2007.

7. The adjudicating authority is required to give his findings after properly evaluating the evidence on record and the provisions of law. He can not arbitrarily jump to the provisions of CVR, 2007, without rejecting the transaction value declared in terms of Section 14 of Customs Act, 1962. Having given the findings that the value declared under Section 14 is not correct due to the misdeclaration, we find that learned Commissioner has no scope to determine the value under Rule 3 (1) in terms of the provisions of Rule 12 of CVR, 2007. For this reason we find it will be in the interest of justice that the matter should go back to the Original Authority for the proper appreciation of the available records, evidence on hand and legal aspects before determining or re-determining the value declared.

8. In view of the above, the impugned order is set aside and the appeal is allowed by way of remand back to the adjudicating authority. All issues are kept open.

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)