CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 143 OF 2010

[Arising out of Order-in-Appeal No: 289/2009/MCH/A/GVC/09 dated 12th November 2009 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Ciria India Ltd
P-5 Ocean Plaza, 5th Floor, Sector – 18, Noida 201 301 … ***Appellant***

versus

Commissioner of Customs (Import)
Mumbai –I
New Custom House, Ballard Estate, Mumbai 400001 ***…Respondent***

APPEARANCE:

Shri T Viswanathan, Advocate for the appellant

Shri K K Srivastava, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 86138 /2021

DATE OF HEARING:	25/03/2021
DATE OF DECISION:	25/03/2021

PER: C J MATHEW

In this appeal which is before us for the second time after disposal of remand, *vide* order no. A/181/C-II dated 21st July 2009 following appeal of Revenue against decision of first appellate authority to remit the matter back to the original authority, by Commissioner of Customs (Appeals), Mumbai-I, the dispute pertains to loading of value, to the extent of 29.3%, in imports of ‘refractory products’ effected by M/s Ciria India Ltd, a joint venture of M/s Carborundum Universal Ltd and the Thermal Ceramics division of M/s Morgan Crucible, UK, from companies of Morgan Crucible group in Italy, USA and China.

2. It is pointed out by Learned Counsel for appellant that the value enhancement, reduced in impugned order no. 289/2009/MCH /A/ GVC/09 dated 12th November 2009 of Commissioner of Customs (Appeals), Mumbai – I to 27.2%, has not taken into consideration their submission that the suppliers had been effecting exports to independent buyers in India thus entitling recourse to preceding provisions of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 instead of direct application of rule 8 as undertaken by the original authority. Moreover, he contends that the original authority had overlooked the extent to which the relationship with supplier had governed imports, and application thereof as related parties before 2007, as held by the Tribunal in *Modi Senator (I) Pvt Ltd v. Commissioner of Customs(Imports & General), New Delhi [2009 (247) ELT 313 (Tri-Del)]* and affirmed by the Hon’ble Supreme

Court. The appellant also contests the factual premise adopted by the first appellate authority for computing the enhancement.

3. Learned Authorized Representative reiterates the findings of the first appellate authority.

4. On perusal of the impugned order, we find it to be replete with unsubstantiated facts and bereft of findings on the issues raised by appellant which is not in consonance with the intent of the Tribunal in remanding the matter on the former occasion.

5. We, therefore, find it appropriate to set aside the impugned order for remand to the original authority to determine the dispute afresh. Considering the elapse of time, and assessments undertaken in the *interregnum*, the decision is also to be finalised within reasonable time.

6. Appeal is accordingly disposed off.

(Operative Part of the Order Pronounced in Open Court on 25th March 2021)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*