

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

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86600 of 2021

(Arising out of Order-in-Original No.CAO 98/2020-21/CAC/CC (IMPORT-I)/MKK dated 15.03.2021, passed by Commissioner of Customs (Import-I), New Custom House, Mumbai)

.....Appellant

Mydream Properties Pvt. Ltd.

8thHamam Street Fort, Mumbai -400001.

VERSUS

**Commissioner of Customs,
Mumbai, Import -I**

New Custom House, Ballard Estate,
Mumbai – 400001.

.....Respondent

WITH

Customs Appeal No. 86635 of 2021

(Arising out of Order-in-Original No.CAO 98/2020-21/CAC/CC (IMPORT-I)/MKK dated 15.03.2021 passed by Commissioner of Customs (Import-I), New Custom House, Mumbai)

Vinay Karve

Director of Mydream Properties Pvt. Ltd.
Shapoorji Centre, 41/44 Minod Desai Marg,
Colaba, Mumbai – 400005.

VERSUS

.....Appellant

**Commissioner of Customs
Mumbai, Import-I**

New Custom House, Ballard Estate,
Mumbai – 400001.

.....Respondent

AND

Customs Appeal No. 86640 of 2021

(Arising out of Order-in-Original No. CAO 98/2020-21/CAC/CC (IMPORT-I)/MKK dated 15.03.2021 passed by Commissioner of Customs (Import-I), New Custom House, Mumbai)

V. Manivannan

Vice President (CPE), of Afcons Infrass,
Mumbai 400001.

VERSUS

.....Appellant

**Commissioner of Customs
Mumbai, Import-I**

New Custom House, Ballard Estate,
Mumbai – 400001.

.....Respondent

Appearance:

Shri Hormaz Daruwalla, Advocate for the Appellant

Shri R.K. Dwivedy, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85607-85609/2022

Date of Hearing: 15.03.2022

Date of Decision:01.07.2022

PER : S.K. MOHANTY

Brief facts of the case, leading to these appeals, are summarized herein below:

2. The appellant herein, M/s Mydream Properties Pvt. Ltd, had imported the goods, described as "Brand New Azimut 68 Motor Yacht with Accessories" from Italy and filed the Bill of Entry before the jurisdictional Customs authorities for duty assessment and for clearance of the said imported consignments. Initially, the Bill of Entry was assessed by RMS and thereafter, based on intelligence with regard to alleged mis-declaration of description and value of the imported goods, the Bill of Entry was recalled and examination conducted by the officers of Central Intelligence Unit (CIU) as per the instructions contained in letter dated 23.09.2009. The Bill of Entry in question was provisionally assessed for want of the relevant import documents. During the course of investigation, the appellant had submitted the detailed import documents including the certificate and catalogue of the imported yacht. The Customs department had recorded statement of various persons under Section 108 of the Customs Act, 1962 in respect of importation of the subject goods. Based on detailed investigation into the matter, the department had concluded that the importer (the appellant herein) had mis-declared the description of the imported goods in respect of its model as well as actual value, which resulted in evasion of legitimate customs duty payable on higher import price for the actually imported goods i.e. yacht of model 'Azimut 68 Evolution', instead of model

'Azimut68', as declared in the subject Bill of Entry. Further, it had also been concluded that the declared import price of Euro 1400000.00 does not seem to be actual value for levying of customs duty inasmuch as the said price had been arrived at by the importer-appellant after availing/claiming discount of approximately 43% on the initial price of Euro 2410300.00 quoted by the manufacturer-supplier M/s Azimut-Benetti SPA, Italy. On the basis of above analysis, it has been inferred that the declared import price of the subject goods at Euro 1400000.00 did not appear genuine and accordingly not acceptable and that the duty liability is required to be computed on the initial price of Euro 2410300.00 i.e. Rs. 17, 04, 08,210/- CIF quoted by the manufacturer-supplier, without extending any discount on the said price.

2.1. On the basis of above analysis, the Customs department initiated show cause proceedings against the appellant, seeking rejection of the declared assessable value and re-determination of the same under sub-Rule (1) of Rule 3 of the Customs Valuation Rules, 2007; confirmation of the differential duty demand along with interest under the *proviso* to Section 28(1) and 28AB respectively of the Customs Act, 1962; confiscation of the subject goods, with option to redeem the same and for imposition of penalties on the appellant's company, including the other appellants involved in these cases. The matter arising out of the Show Cause Notice dated 05.09.2014 read with subsequent corrigendum dated 09.12.2014 was adjudicated vide Order-in-Original No. 31/2015/CAC/CC-I/A/AB/GR.VB dated 22.05.2015, in confirming the proposals made in the notice. Being aggrieved with the said adjudication order, the appellants have filed the appeal before this Tribunal. The appeals were disposed of vide Final Order No. A/87398-87400/2019 dated 02.12.2019, by setting aside the adjudication order and allowing the appeals by way of remand to the original authority. While remanding the matter, the Tribunal had kept open all the issues for consideration by the original authority.

2.2. Pursuant to the order dated 02.12.2019 passed by this Tribunal, the original authority took-up *de novo* adjudication proceedings and passed the Order-in-Original No. 98/2020-21/CAC/CC (IMPORT-I)/MKK dated 15.03.2021 (for short, referred to as "the impugned order"), wherein, the learned adjudicating authority confirmed the allegations in the Show Cause Notice and has -

(i) Rejected the declared Assessable Value of Rs.9,99,69,800/- of the subject goods i.e. Yacht imported vide Bill of Entry No. 911190 dated 11.09.2009 under Rule 12 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) Re-determined the value of Yacht at Rs.17,74,67,817/- taking the transaction value of Euro 2485300.00 CIF on the basis of initial price quoted by supplier for Azimut 68/156 2 x MAN 1360 HP of Euro 2410300.00 FOB and Freight+ Insurance of Euro 75000.00 under Rule 9 of the Customs Valuation Rules, 2007.

(iii) Determined the value of 'V-SAT connection with dish antenna' which has not been declared in the subject Import Invoice and the Bill of Entry as Rs.14,78,125/- under the provisions of Rule 9 of the Customs Valuation Rules, 2007 at the CIF Value of Euro 20700.00 which was the quoted price of these goods by supplier manufacturer M/s. Azimut Benetti SPA, Italy and accepted by the importer in its purchase order.

(iv) Confirmed and demanded the total differential duty amounting to Rs.1, 91, 14,774/- (Rupees One Crore Ninety One Lakhs Fourteen Thousands Seven Hundred Seventy Four only) under proviso to then Section 28(1) of the Customs Act, 1962 (now section 28(4) of the Customs Act, 1962) along with due interest under erstwhile Section 11AB ibid (now section 28AA of the Customs Act, 1962).

(v) Ordered for appropriation of an amount of Rs.76,00,000/- already paid by the importer M/s My dream Properties Pvt. Ltd. against the differential duty & interest.

(vi) Ordered to assess the Bill of Entry No. 911190 dated 11.09.2009 finally under section 18(2) of the Customs Act, 1962.

(vii) Confiscated the Yacht of ascertained Assessable Value of Rs.17,74,67,817/- imported under the Bill of Entry No. 911190 dated 11.09.2009 under the provisions of Section 111(m) of the Customs Act, 1962 and the 'V-SAT connection with dish antenna' of ascertained assessable value of Rs.14,78,125/- imported on board the yacht vide the Bill of Entry No. 911190 dated 11.09.2009 under the provisions of Section 111 (I) of the Customs Act, 1962 (Total ascertained assessable value Rs.17,89,45,942/-). However, an option was given to the importer to redeem the goods on payment of redemption fine of

Rs.1,00,00,000/- (Rupees One Crore Only) under Section 125 of the Customs Act, 1962.

(viii) Imposed penalty of Rs.1,91,14,774/- (Rupees One Crore Ninety One Lakhs Fourteen Thousands Seven Hundred and Seventy Four only) plus appropriate interest under erstwhile section 28AB of the Customs Act, 1962, (under section 28AA from 08.04.2011 onwards) on M/s My dream Properties Pvt. Ltd. under Section 114A of the Customs Act, 1962. It has further been ordered that if the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(ix) Imposed Penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on Shri. V. Manivannan Vice-President (CPE) of M/s. Afcons Infrastructure Ltd. under Section 112(a) of the Customs Act, 1962.

(x) Imposed Penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on Shri V. Manivannan Vice-President (CPE) of M/s. Afcons Infrastructure Ltd. under Section 114AA of the Customs Act, 1962.

(xi) Imposed Penalty of Rs.5,00,000/- (Rupees Five Lakhs only) on Shri. Vinay P. Karve- Director of M/s. Mydream Properties Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.

(xii) Imposed Penalty of Rs.5,00,000/- (Rupees Five Lakhs only) on Shri Vinay P. Karve Director of M/s. Mydream Properties Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

(xiii) Ordered for enforcement of the Provisional Duty (PD) Bond and Bank Guarantee of Rs.50 Lakhs executed by the importer for the provisional release of the subject vessel is adjusted towards differential customs duty, applicable interest, fine and penalty.

2.3. Learned Commissioner, inter alia, observed that the goods declared and goods imported by the appellants are two different products inasmuch as the value declared by the importer in the Bill of Entry was for the yacht 'Azimut 68' and not of the imported product i.e. 'Azimut 68 Evolution' ; thus, there is mis-declaration of the goods and therefore, value declared under Section 14 ibid by the importer cannot be considered as the transaction value and as such, the same is liable to be

rejected as per Rule 12 of the Customs Valuation Rules, 2007; arguments placed by the appellant that during the relevant period stating that there was sudden dip of price in ship building industry; therefore, the importer was able to negotiate a much lower price were not acceptable as the same was just a verbal one and no documentary evidence for the same was placed by the importer; there is 'connivance' between the overseas manufacturer and the appellant, which resulted in mis-declaration of goods, with the intent to evade payment of appropriate Customs duty. The impugned order has also recorded the findings that the value of 'V-SAT connection with dish antenna' of the value of Euro 20700 was not included in the value mentioned in the purchase order or in the commercial invoice and the same was also not declared in the Bill of Entry.

3. Being dissatisfied with the impugned order dated 15.03.2021, the appellants have preferred these appeals before the Tribunal. Shri Hormaz Daruwalla, learned Advocate appearing for the appellants submitted a written note of arguments which is summarized as below.

3.1. There was no mis-declaration as Purchase Order, Invoice and Bill of Entry, all contain a detailed description of the higher version of Azimut 68 Yacht, i.e. Evolution; the User's Manual, admittedly on board the Yacht, presented for inspection clearly stated that the Yacht is of the higher version, Evolution.

3.2. The findings of the commissioner are factually erroneous and legally non-tenable as follows:

- It's not correct to hold that the demand is not time-barred. Bill of entry was filed on 11.9.2009; it was already assessed by RMS; later the bill of Entry was recalled and re-assessed; recalling and re-assessing of the assessed Bill of Entry is illegal and not permissible in law.
- relying on alleged Examination Instructions is in violation of the principles of natural justice; Report dated 23.9.2009 was relied upon after twelve years; it was never earlier disclosed and/or relied upon by the Department; conclusion drawn by the Commissioner, based on this report, must and ought to be invalidated.

- Its incorrect to state that the Appellant submitted the three documents viz, the Owner's Manual, the Builder's Certificate and the EC Type Examination Certificate issued by RINA for the first time to the Investigation Team; these documents were admittedly given by the CHA at the time of filing the Bill of Entry and other supporting documents for assessment; even if it is stated that the Owner's Manual was found on board the Yacht, suppression or mis-declaration cannot be alleged as these documents clearly described the higher version of the Azimut 68 Yacht.
- Connivance of manufacturer importer cannot be alleged as the purchase order, the invoice and the bill of entry were for higher variant of Azimut 68 Yacht.
- It was incorrect to observe that the argument on deep of in international prices was only the oral argument and there was no documentary evidence as necessary documents were also supplied.
- It was erroneous to find that the initial price list was the primary evidence; Learned Commissioner fails to understand the market dynamics of negotiation of the price initially quoted; there is no whisper of extra commercial consideration if any, by the Department; no justification given for rejection of declared value under section 12 *ibid* and therefore, no ground for re-determination of the value under Rule 9 of Custom Valuation Rules, 2007.
- It is in correct to assess the V-Sat separately; the director of the appellant as categorically stated that the same was purchase in India and therefore, it is not important goods.
- No penalty is imposable as no malafide conduct for evident on the part of the company and the individuals.

4. On the other hand, Shri R.K. Dwivedy, learned A.R. appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since the appellants are instrumental in mis-declaration of the goods and connived with the overseas entity for defrauding the Government revenue, confirmation of the adjudged demands in the impugned order is just and proper and as such, the same cannot be interfered with at this juncture for a contrary decision

inasmuch as the onus to prove compliance of the statutory provisions laying heavily on the appellants, have not been duly discharged.

5. Heard both sides and examined the case records, including the synopsis filed by the learned Advocate for the appellants.

6. On perusal of the documents available in the case file, it transpires that the appellant had negotiated with the overseas supplier M/s. Benetti SpA, Italy for purchase of motor yacht of model 'Azimut 68' of 1360HP (horsepower). In the 'Azimut 68' model, the figure '68' appearing therein refers to the length of the yacht, which is 68 ft. long. In the present case, the subject yacht imported by the appellant was also of the same class/category and is admittedly recognized in the trade parlance as 'Azimut 68' yacht only. From the available technical literature of the disputed goods, it also becomes apparent that there are two versions of yacht manufactured in this class viz., one with two engines of 1050HP each and another with two engines of 1360HP each and that the later version of the yacht is also referred to as 'Evolution' or 'E'. However, both these differently powered yacht are, in every respect classified as 'Azimut 68' and are accordingly, marked on the body of the yacht as such by the manufacturer. The purchase order dated 12.05.2009 issued by the appellant in this case to the overseas manufacturer had described the disputed goods as "Brand new Azimut 68 Motor Yacht with accessories as per the attached annexure-I", with the engine specification as '2xMAN 1360mHP'. We also find that the Bill of Entry dated 11.09.2009 filed by the appellant before the Customs department for clearance of the goods had also reflected the specification of yacht as '2xMAN 1360mHP'. Further, it is also an admitted fact on record that the overseas manufacturer-supplier too had delivered the disputed yacht to the appellant, exactly as per the description and specifications mentioned by the appellant in the purchase order and the Bill of Entry. We also find from the case records that though the appellant had specifically pleaded before the lower authority that they had erroneously missed in mentioning the phrase "E' or 'Evolution' in the name of the model of yacht imported by them, but such submission was brushed aside in the impugned order, without assigning any plausible reason. Thus, it is clear that all material facts have been declared to the department. Particularly, the capacity '2xMAN 1360mHP' applicable for evolution type, was specifically indicated in the bill of entry. Mere non-mentioning of the

words/Phrase 'E' or 'Evolution' would in no way constitute the suppression of a material fact more so, the details are available in the documents submitted along with the Bill of Entry. Thus, under the circumstances of the case and more particularly, the documentary evidences submitted by the appellant, we have no hesitation in holding that non-mentioning the code or word 'E' or 'Evolution' in the above documents is inconsequential and had no effect on the aspect of valuation of imported goods for the purpose of assessment of the correct duty liability. Thus, in our considered opinion, there is no question of any mis-declaration on the part of the appellants and that they have not connived with the overseas manufacturer in defrauding the legitimate dues of the government, as alleged by the learned adjudicating authority.

7. The issue regarding rejection the declared value and re-determination of the same in the impugned order has admittedly been done on the basis of an 'inference', which is evident from paragraph 38 in the impugned order, wherein the learned adjudicating authority has observed that "*when the purchase order is of Azimut 68, then it has to be inferred that whatever price paid is not of higher version of Azimut 68 Evolution*" and that the same is for the lower version. These findings in the impugned order are factually incorrect inasmuch as the purchase order had described the specification of the engine of imported yacht as '2xMAN 1360mHP', which admittedly relates to the higher version, imported by the appellant on payment of the actual price, attributable to such category of goods.

8. The provisions for valuation of import of goods are contained in sub-section (1) of Section 14 of the Customs Act, 1962. The said statutory provisions mandate that the price actually paid or payable for the goods, when sold for export to India for delivery at the time and place of importation, should be considered as 'transaction value' for the purpose of levy of duties of Customs. The said statute also mandates that consideration of transaction value of the price actually paid or payable are subjected to the condition that, the buyer and the seller should not be related and that price should be the sole consideration for the sale of goods. Similarly, sub-rule (1) of Rule 3 of the Customs Valuation Rules, 2007 has adopted the provisions of Section 14 *ibid* to clarify that the value of imported goods shall be the transaction value

adjusted in accordance with the provisions of Rule 10 *ibid*. Further, Rule 12 *ibid* provides the mechanism and procedures for rejection of the declared value of imported goods in certain circumstances. For invoking the said rule, it has been mandated that the proper officer must have the reason to doubt the truth or accuracy of the value declared in relation to the goods under assessment. The explanation clause (1) appended to Rule 12 *ibid* suggests that *this rule by itself does not provide a method for 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; and that where the declared value is rejected, then the value shall be determined by proceeding subsequently in accordance with rules 4 to 9 ibid*.

9. In this case, the facts are not in dispute that the EURO 1400000.00 paid by the appellant to the overseas supplier of goods is full and final in respect of the importation of the subject goods and that over and above such amount; no additional payments were made by the appellant for such goods. Further, it is an admitted fact on record that the payment was made by the appellant through approved banking channel and to such effect, had submitted the accounts statement and other particulars before the department at the time of filing the Bill of Entry. Furthermore, it is also an admitted fact that the appellant is no way related in any manner with the overseas supplier of goods. Thus, under such circumstances, the valuation provisions contained in Section 14 *ibid* read with Rule 3(1) *ibid* have the application in this case for determination of the transaction value and the provisions of Rule 12 *ibid* read with Rule 9 *ibid* would have no application for rejection of the declared value and re-determination of the same by resorting to the provisions under the Valuation Rules, 2007. On scrutiny of the impugned order, we find that the learned adjudicating authority has rejected the declared value solely based upon the singular fact that the 'negotiations' with the overseas manufacturer with regard to the final price of goods were verbal. We are of the view that such facts can never be a reason for rejection of the declared value under Rule 12 *ibid* inasmuch as the appellant had given the name and details of the officer of the supplier, with whom the price negotiation took place. We find from the case file that the appellant had submitted and relied upon various documents and statement recorded under summon to demonstrate that there is no under valuation of goods

and the circumstances under which the negotiation took place, resulting in reduction of price of goods/ offer of discount etc.

10. The relevant extracts or records/documents, which are part of the RUDs, help us to draw the above conclusion, are as follows.

(i) Letters dated 8th April 2011 26th and April 2011 to the Appraiser of Customs (Sl. No. 15 of List of RUD) wherein, the appellants had enclosed various articles downloaded from Boating Industry websites, clearly showing stormy and bad conditions for the Industry at that relevant time, which justifies the market conditions vis-à-vis negotiated price of the impugned Yacht; Mr. Manivannan of the appellants met Mr. Girish Vadassery several times and has provided substantial information and documents on the import;

(ii) Statement dated 29 September 2009 of Mr. Manivannan (Sl. No. 24 of RUD) wherein, in reply to question No 5 (on being shown price list showing total price of the boat (yacht) as Euro 2,410,300.00; initial offer of M/s. Azimut vide proforma invoice Azimut/006/2008-09 for a value of Euro 1,724,600/ and Proforma Invoice no. Azimut/006/2008-09 dated 21.04.2009 for 1,400,000) and on being asked he replied that:

- There was a serious slump in the market; they have explored possibility of buying a motor Yacht from European market for our business in India; Initially they have explored possibility of owned and used motor yacht from various agencies and collected few offers; meanwhile they learnt that the prices of new yachts manufactured in various yards were also falling and the builders are selling at an aggressive price; they have contacted parties like 1. Azimut, Italy 2. Benetti Italy 3. Princess, UK;
- They have received offers for new as well as pre-owned motor yachts where in the offers for pre-owned models were not having the quality equivalent to the price at which they were being offered; among the offers received for new yachts, they have found Mix Feretti was under financial troubles and up for sale and the price offered by M/s. Princess was high; Ms. Azimut

response was positive for new and willing to supply the yacht in shorter time;

- They received initial price list showing the total price of the boat yacht) at Euro 2,410,300.00 FOB (including accessories, transport to savona and launching and rigging charges); they have started negotiating with them and when M/s. Azimut found that we were seriously interested in the yacht they started negotiation with us and made an initial offer vide Proforma invoice no. Azimut/006/2008-09 dated 23/03/2009 for a value of Euro 1,724,600/-(CIF) (CIF price of Euro 1,400,000 plus Accessories of Euro 324,600); the components of transport to Savona Eur. 28,850.00; launching and rigging charges Euro 14,850.00 and insurance and freight to Mumbai Euro 75,000.00; all these elements totaling to Euro 110700.00 was offered as special discount.
- They learnt from the market that prices of the yachts are fallen by approximately 50% during the past 10 months; subsequently, they have again started negotiations with Mr. Yadvider Rana, Asia Pacific Sales Manager, for further discount; Shri Rana agreed as one off special price at Euro 1,400,000 (including all accessories) on CIF Mumbai Basis with the delivery in September 2009 vide Proforma invoice no. Azimut 006/ 2008-09 dated 21.04.2009;
- They found worldwide market of ship building and yacht building dropped sharply, several orders cancelled and the building has started declining which forced several builders to sell-off the products at rock-bottom price; as an evidence, they enclosed copy of the Shipping Intelligence Weekly published by M/S. Clarkson RESEARCH SERVICES Limited dated 04/09/2009; it can be observed that the prices have reduced by 40% worldwide as compared to the past nine months; in view of this situation, they could win the one-off special offer price vide proforma invoice no. Azimut 005/2008 02 dated 21.04.2009 because of heavy slump in the European market due to recession all over the world;
- Based on the above offer, they have released purchase order on MS Azimut for a 'Azimut 68' Motor Yacht through a letter of intent for Euro 1,400,000- CIF Mumbai under ref: no. 9925/Pur/

SPM/LY/01 dated 12/05/2009 and the same was accepted by MS Azimut under reference DIR30-2009; price was negotiated by us and no other agency was involved".

- On being told that it was mentioned in the import document that they procured the yacht at Euro 1400000.00/-(CIF) and however, the price list submitted by them showed total cost of the yacht including the accessories and freight is around Euro 2500000.00 and that they procured the yacht at approximately half of the price reflected in the price list and they paid customs duty on the price list of the manufacturer of the said yacht, he replied that they have negotiated the price and arrived at the final price of Euro 1400000.00; accordingly, issued the purchase order ref no 9925/ Pur/ SPMLY/LY/01 of dated 12/05/2009 and subsequently opened an L.C. for the Euro 1400000.00 and the payment of the same amount was made through Bank; they have not made any other payment to the supplier Ms. Azimut other than above mentioned amount of Euro 1400000.00; though the release of the purchase order was handled by him on behalf of Ms. My dreams Properties Pvt. Ltd, however, the financial transactions had been carried out by Shri Vinay P. Karve, Director of Ms. My dreams Properties Pvt. Ltd".
- On being asked as to whether they have paid any commission brokerage to any agent in India or abroad in the purchase of the said yacht, he replied that they have not paid any commission/brokerage to any agent in India or abroad in the purchase of the yacht in question"

11. From the facts of the case, the records and submissions of the appellant that it was categorically indicated in the import documents that the impugned yacht was of an engine capacity of 1360 HP which pertains to evolution category. Therefore, the fact of finding the same from the ship manual present in the ship has no bearing on the facts of the case. This aspect has been totally ignored by the learned adjudicating authority. Moreover, the adjudicating authority has rejected the declared price on the basis of the assumption that the initial quote was the finally agreed price ignoring totally the commercial practice of negotiation and discounting. We find from the statement of Shri Manivannan that it is abundantly clear that the international prices of the yacht were falling

during the lean period and as such, there is no reason to disbelieve the submission of the appellants, saying that they are mere hearsay and not evidenced by any documents. The shipping websites documents as submitted by Shri manivannan do indicate a slump in the market and consequential fall in prices. This aspect has been completely ignored by the learned Commissioner in the impugned order. Moreover, there is no whisper whatsoever, leave alone tangible evidence to indicate that the appellants have paid any amount over and above the negotiated price, for which proper commercial invoice were submitted by the appellants. This being so, for the legal position as explained above, we are not inclined to accept the reasons propounded by the learned Commissioner to reject the value under Rule 12 of Customs Valuation Rules, 2007 and to re-determine the declared value under Rule 9 *ibid*.

12. The issue of rejection of transaction value and re-determination of the same was the subject matter of litigation in many cases. The common ratio of various judgments has been that the transaction value cannot be rejected on the basis of assumption and unless there is enough evidence to prove that any consideration over and above the invoice price has been paid by the importer, the declared value has to be accepted for the purpose of Section 14 of the Customs Act, 1962.

12.1 In the case of Commissioner of Central Excise and Service Tax, Noida V. Sanjivani Non-Ferrous Trading Pvt. Ltd. - (2019) 2 SCC 378, the Hon'ble Supreme Court, held as follows:-

"The law, thus, is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the

transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value”.

12.2 Hon'ble Apex Court in case of Commissioner of Customs, Calcutta vs. South India Television P. Ltd., reported in MANU/SC/2966/2007 : 2007 (214) ELT 3 (SC) wherein, by paragraphs 6, 7 and 8 it has been laid down as under:-

"6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under- invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has

to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries; collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion".

12.3 The Principal Bench of this Tribunal at Delhi, in the case of H.S. Chadha & V. Commissioner of Customs (Preventive) [2021 (378) ELT 193 (Tri.Delhi)] held as follows:-

"We find that it is trite law that since the goods were assessed by proper officer based on transaction value, onus lies on the Revenue to prove undervaluation, which it has failed miserably to do so since it did not show any contemporaneous import data of identical or similar items or NIDB data to indicate undervaluation and therefore the invoice value is required be accepted and the transaction value itself and hence could not have been discarded, as held by various judgements of the Hon'ble Supreme Court like CCE Vs Sanjivani Non-Ferrous Trading Pvt. Ltd. MANU/SC/1456/2018 : (2019) 2 SCC 378 and CC Vs South India Television Pvt. Ltd. MANU/SC/2966/2007 : (2007) 6 SCC 373. We find that there is no allegation or finding that the buyer and seller being related or of any extra payment to the

supplier beyond the normal authorized banking channels and thus undervaluation is not established as held by this tribunal in Kelvin Infotech Pvt. Ltd. (supra).

12.4 In the case of M/s Century Metal Recycling Pvt. Ltd. V. Union of India and Ors. [2019(367) ELT 1(S.C.)], Hon'ble Supreme Court held that -

"a doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere prediction on grounds and material in the form of 'certain reasons' and not mere ipse dixit. Subjecting imports to enquiry on mere suspicion because one is distrustful and unsure, without reasonable and certain reasons, would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of goods."

12.5 In the case of NPT Papers Pvt. Ltd & Others V. C. C., Mundra & Others , (MANU/CS/0120/2021), the Tribunal by following the judgments in Bayer India Ltd. V. Commissioner Of Customs, Mumbai [2006 (198) ELT 240], upheld by Hon'ble Supreme Court [2015 (324) ELT 17 SC] and Tele Brands (India) Pvt. Ltd. V. Commissioner Of Customs (Import) Mumbai, reported in [2016 (336) ELT 97 (Tri. Mum.)], held that there should be evidence on record to show that the importers have paid directly or indirectly any amount over and above the invoice value. Once it is proved that there is no evidence of extra remittance, transaction value cannot be discarded.

13. In view of the above discussion, we are of the considered opinion that in so far as the valuation of the yacht is concerned, Revenue has not made out any case of mis-declaration and consequential undervaluation of the same. Therefore, we find no merit in the re-determination of the value of the yacht and confirmation of differential duty thereon. To this extent, we find that the impugned order is not maintainable. As the charge of mis-declaration and undervaluation of the yacht falls flat, confiscation and penalties imposed also do not survive. Accordingly, the same are set aside.

14. With regard to importation of goods i.e. "V-SAT connection with dish antenna", the learned adjudicating authority in the impugned order has held that the value of Euro 20700 was not included in the commercial invoice and also the same was not declared by the appellant in the Bill of Entry filed for assessment purpose. Further, he has also

held that the person concerned who had dealt with the subject import has submitted contradictory statements with regard to actual importation of the goods vis-à-vis procurement of the same from the domestic market. As such, the impugned order has held that the value of the said goods is also required to be re-determined under the provisions of Rule 9 *ibid* at the CIF value of Euro 20700.00, which was the quoted price of the said goods by the supplier-manufacturer and confirmed by the appellant-importer, while accepting the Proforma invoice dated 21.04.2009 and in the purchase order dated 12.05.2009. We find that Shri V. Manivannan, Vice President (CPE) of M/s. Afcons Infrastructure Ltd. in his statement recorded under Section 108 *ibid* had stated that the said goods was purchased in India and he will submit the relevant documents before the department. However, the appellant-importer failed to submit any documents showing the purchase of V-SAT connection in India, the fact of which has been highlighted by the learned adjudicating authority at paragraph 43 in the impugned order. The said paragraph has also recorded the statement dated 29.03.2011 of Shri Vinay P. Karve, Director of the appellant-company, wherein it has been stated that the documents pertaining to purchase of V-SAT antenna are not traceable and appear to have been misplaced in their office. It is observed from the findings recorded in the impugned order that the appellant had not submitted any documentary evidences with regard to the purchase of the said goods and accordingly, we are of the view that determination of the value of such goods under Rule 9 *ibid* is justified and thus, cannot be interfered with at this juncture. Therefore, we held that differential duty along with interest in the impugned order on the said goods is proper and justified and are liable for confiscation under Section 111 (I) *ibid*. We also noticed that though the impugned order has imposed redemption fine on both the category of improperly imported goods, but imposed the fine combined, without bifurcating the same product-wise. Since, the assessable value determined in the impugned order was to the tune of Rs.14,78,128/-, we are of the view that imposition of redemption fine on such value should be confined to 10% of such value. Accordingly, it is ordered that the appellant is liable to pay redemption fine of Rs.1,47,812/- in respect of 'V-SAT connection with dish antenna' imported by them. However, the appellant is not exposed to the penal consequences provided under Section 114A *ibid*, especially for the reason

that non-levy or short-levy of duty was not due to the reason of willful mis-statement or suppression of facts etc.

15. The personal penalty imposed on the other appellants in respect of the goods 'V-SAT connection with dish antenna' cannot also be sustained inasmuch as the impugned order has not specifically dealt with the issue regarding involvement of those persons (the other appellants herein) in importation of such goods.

16. In view of the foregoing discussions and analysis, the appeal is partly allowed and the impugned order is upheld to the extent of demand of duty on the V-sat antenna and redemption fine in above terms; all other demands confirmed and penalties imposed are however, set aside, along with consequential relief, if any, as per law.

(Order pronounced in the open court on 01.07.2022)

(S. K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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