CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 87897 of 2013

(Arising out of Order-in-Appeal No. 316,317 & 318/MCH/DC/Gr.I/2013 dated 21.5.2013 passed by Commissioner of Customs (Appeals), Mumbai-I)

M/s. Surbhit Impex Pvt. Ltd. **Appellant**
412/413, Mandvi Navjeevan, 121/127 Kazi Sayed Street, Mumbai-400 003.

Vs.

Commissioner of Customs (I), Mumbai **Respondent**
2nd Floor, New Custom House, Ballard Estate, Mumbai-400 001.

WITH

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2nd Floor, New Custom House, Ballard Estate, Mumbai-400 001.

Appearance:

Shri Vinay Anshurkar, Advocate, for the Appellant
Shri Ramesh Kumar, Assist. Commr., Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

Date of Hearing: 18/07/2022
Date of Decision: 18/07/2022

FINAL ORDER NO. A/85652-85653/2022

PER: SANJIV SRIVASTAVA

These appeals are directed against order in appeal No 316,317,318/MCH/DC/Gr.1/2013 dated 21.05.2013. By the impugned order, the Commissioner Custom (Appeals), Mumbai-I has upheld the loading of the value on the bill of entries filed by the appellant without issuance of re-assessment order in terms of Section 17 (5) of the Customs Act, 1962

2.1 Appellant filed three bills of entry for the clearance of imported goods as detailed in table below:

Sr No	Bill Of Entry &Date	Nature Of Goods	Value declared per Kg	Value assessed per Kg
1	2	3	4	5
1	7961165/17.09.2012	Knitted fabrics	US$ 2.50	US$ 4.6
2.	8629828/30.11.2012	Polyester Knitted fabrics	US$ 2.7	US$ 4.7
3.	8470497/12.11.2012	PVC coated fabrics, Width 58"	US$ 0.32	US$ 0.65

2.2 These Bill of Entries were assessed by the proper officer after loading the declared value (as indicated in column 4) to the value as 22.3 No speaking order as provided by Section 17 (5) of the Customs Act, 1962 was issued to the appellants.

2.4 Appellant cleared the goods on payment of duty on the value as determined by the Customs authority without any protest.

2.5 Subsequently they filed the appeals to Commissioner (Appeals) challenging the loading of value which was dismissed by the impugned order hence this appeal.

3.1 We have heard Shri Vinay Ansurkar, Advocate for the Appellant and Shri Ramesh Kumar, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submitted that,-

- No reasons for enhancing the value has been made available to him by assessing authority, while assessing the Bill of Entry.
- Commissioner (Appeal) has for deciding the appeal filed by the appellant, relied upon certain submissions made by the revenue to her which were made available to them three months after passing the order.

- Since these submissions made by the Custom Officers before Commissioner (Appeal) were never given to him before decision in appeal, he had no occasion to reply to the same.
- In view of this the order has been passed grossly in violation of the principle of natural justice.
- The appeals may be allowed

3.3 Learned authorized representative re-iterates the findings recorded by the Commissioner (Appeal) in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments on appeal.

4.2 Admittedly in this case the value of the goods as declared by the Appellants at the time of filing the Bill of Entry has been enhanced by the assessing officer. However no order under Section 17 (5) of Customs Act, 1962 (reproduced below) has been passed by the assessing officer:

"(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

4.3 In terms of the Section 17 (5) of the Custom Act, 1962 as it existed at the material time, it was mandatory for the proper officer to issue a speaking order on the reassessment except in the cases where the importer/ exporter confirms his acceptance of the re assessment in writing. It is the submission of the appellant that they had never accepted the said re-assessment order in writing. Contrary to this Commissioner (Appeal) has in the impugned order observed as follows:
"6. In the subject cases, the appellant neither did ask for a

provisional assessment nor for an assessment order at the time of assessment/clearance of goods. The assessing authority has loaded the value basing on the contemporary NIDB data which the appellant / the authorized representative / CHA of the appellant has accepted. In such a scenario, when the importer has accepted the enhancement, such assessed value will prevail. According to Section 17(5) of the Customs Act itself, once the value enhanced is accepted, there is no need for any further action. It is evident that appeals have been filed as an afterthought. In fact by accepting the enhanced value, they have managed to escape penal provisions."

4.4 Plain reading of the Section 17 (5) show that acceptance of re-assessment made has to be in writing, which means that re-assessment order needs to be accepted positively by the importer and it cannot be derived in an implied manner that re-assessment order has been accepted. In absence of the written acceptance by the importer/ exporter, this section mandatorily provides that proper officer has to issue the speaking order for the re-assessment done within fifteen days of such re-assessment. Hence we do not find any merits in the said findings recorded by the Commissioner (Appeal)

4.3 Commissioner (Appeal) has in the impugned order para 4 onwards recorded as follows:

4. Shri Ashwini K. Prabhakar, Advocate, appeared the hearing on behalf of the appellants on 15.01.2013 8 12.02.2013. ***The Department had submitted Britten submissions vide letters in F. No. S/26 -MISC-082 & 83/2013 (III) dated 29.01.2013 & 30.01.2013 enclosing the print outs of the contemporaneous import prices of the impugned goods from the NIDB database.*** *Appellant's representative. reiterated the grounds of appeal. He further contended that the loading of value was arbitrary & reassessment without passing a speaking order in terms of the provisions of section 17(5) of Customs Act 1962, is against natural justice. Department reiterated that value has been loaded as per Customs valuation rules. The Department's written submission states that the loading of value was on the following reasons:*

A) The values of the impugned goods are declared at US$ 2.5 & US$ 2.7, respectively. But the assessing officer, on the strength of NIDB data base doubted the genuineness of the transaction values. Hence, the declared value was rejected in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

B) Thus, in terms of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as the value could not be determined under the provisions of a sub-rule (1) of Rule 3, it was arrived at by following the prescribed procedure, i.e. proceeding sequentially through rules 4 to 9.

C) The value of fabric depends upon various factors like contents of fabric , quality of type of yarn (texturised / non-texturised), GSM, colour, country of origin, width, piling, flocking, bleached, unbleached, printed or dyed , composition nature of coating- if any etc , which vary from consignment to consignment. Since these details, except country of origin, are not available in-NIDB, the value of identical imported goods cannot be compared. Hence, the transaction value of the imported goods could not be determined under the provisions of Rule 4 of the Custom's Valuation (Determination of Value of Imported Goods) Rules, 2017

D) The NIDB data of the contemporary import of identical/ similar goods (viscose knitted fabric) was retrieved and examined which revealed that the value of such viscose knitted fabrics varied in the price range from Rs. 261/- per kg to Rs. 274/- per kg. The respondents have submitted that similar goods were being assessed at similar value on the basis of the contemporaneous data. To further their stand the respondents, also, have cited the case of import of viscose knitted fabrics from China by M/s SSD Vijay Trading Pvt. Ltd. cleared vide B/E No-7818759 dated 31.08.2012 which had the declared value of US$ 4.75 / kg. Thus, the subject goods were assessed at US$ 4.60 / kg & US$ 4.70 / kg, respectively, by the assessing authority.

E) It stands clear that the importer/ their authorized representative / CHA has accepted the loading and valuation of the goods so determined in tune with the NIDB data at the material time. This is corroborated by the facts that they cleared *the goods by paying duty on the enhanced value and never protested the same at the time of clearance.*

F) Since the importers did not object or contest to the proposed loading and assessment on the basis of data from NIDB at the time of assessment, no speaking orders were passed by the assessing authority.

5. It is noticed that after rejecting value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Department has proceeded sequentially through Rules 4 to Rule 9. The assessable value of the goods has been arrived at by following the provisions of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 based on the contemporaneous imports, similar of which were found to be in the price range from Rs. 261/- per kg to Rs. 274/- per kg. & accordingly, the subject goods were assessed at US$ 4.60/kg & US$ 4.70/ kg respectively. Again, the value proposed was accepted by the appellant/ authorized representative of the appellant. The duty on enhanced value was paid without protest. This shows acceptance of the reassessed value."

4.4 Appellants after receiving the impugned order, wrote a letter to the Commissioner (Appeal) dated 27.06.2013 received in the Office of Commissioner (Appeal) on 27.06.2013 and placed in the Appeal Paper Book at page 47 stating as follows:

"Sub: Order in Appeal No 316, 317 & 318/MCH/DC/Gr-I/2013 dt 20.5.2013 and request for furnishing copies of Documents filed by the department-reg

Ref: S/49-535,536 & 537/Cus/Mum-I/2012/NCH

1. *Kindly refer to the above Order in Appeal No 316, 317 & 318/MCH/DC/Gr-I/2013 dt 20.5.2013 wherein appeal filed by us was dismissed on the ground that the department/ respondent vide letter No. S/26 -MISC-082 & 83/2013 (III) dated 29.01.2013 & 30.01.2013 have filed print outs of contemporaneous import prices from the NIDB data base. In the order it is also observed that the respondent have cited the case of import of viscose knitted fabrics from*

China by M/s SSD Vijay Trading Pvt Ltd vide B/E No 7819759 dt 31.08.2012.

2. *It is put on record that neither the evidence of contemporaneous import nor copy of B/E No 7819759 dt 31.08.2012 was made available to us at the time of assessment of B/E and further these documents/ records were also not made available at the appellate stage.*
3. *In view of the above it is prayed that we may please be furnished the copy of letter No. S/26 -MISC-082 & 83/2013 (III) dated 29.01.2013 & 30.01.2013 and copy of B/E No 7819759 dt 31.08.2012 along with invoices and other relevant documents.*
4. *As we are require to file an appeal within 90 days, it is prayed that the above documents may please be made available to us at the earliest."*

4.5 This letter was responded by Assistant Commissioner of Customs (I), GR.III New Custom House, Mumbai, vide letter F No S/26-Misc-84/2013 Gr-III dated 12.07.2013, stating as follows:

"Sub: Order in Appeal No 316, 317 & 318/MCH/DC/Gr-I/2013 dt 20.5.2013 and request for furnishing copies of Documents filed by the department-reg

Please refer to your letter dated 27.06.20913 and reminder letter dated 05.07.2013 on the above mentioned subject.

In this connection, please find enclosed copies of B/E No 7819759 dt 31.08.2012 along with invoice print.

The letter requested by you are not in public domain."

4.6 From the facts as stated above the documents relied upon by the Commissioner (Appeal) were never made available to appellant for replying to the same either by Commissioner (Appeal) or the assessing officer. Thus the impugned order has been passed contrary to the settled principles of natural justice and has no legs to stand on.

4.7 In our view the matter needs to be remitted back to the Commissioner (Appeal) for reconsideration of the entire issue after making available to the appellants all the documents and communications that revenue wishes to rely upon and hearing the appellants on the same.

5.1 In view of above, the appeals are allowed and the matter remanded back to the Commissioner (Appeals) for reconsideration of entire issue afresh.

5.2 Since the issue is considerably old, Commissioner (Appeals) should finalize the matter in remand proceedings within three months of receipt of this order after giving opportunity to the appellants to present their case.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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