CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 776 OF 2011
WITH
CROSS-OBJECTION NO: 13 OF 2012

[Arising out of Order-in-Appeal No: 362(Gr.VA)/2011 JNCH/IMP-305 dated 29th July 2011 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 … ***Appellant***

versus

VBP Corporation
S No 8 & 9, Sindhi Nari Shala, Ashoka Colony
Vallabh Nagar, Kota - 324007 …***Respondent***

APPEARANCE:

Shri Bhushan Kamble, Assistant Commissioner (AR) for the appellant

None for the respondent

CORAM:

HON'BLE MR ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 85985 /2022

DATE OF HEARING:	15/02/2022
DATE OF DECISION:	15/02/2022

PER: C J MATHEW

This appeal of Revenue lies against setting aside of enhancement of assessable value from ` 20,95,551 to ` 83,27,813 by the ‘proper officer’ of customs in assessing bill of entry no. 982451/13.11.2010 of M/s VBP Corporation *vide* order-in-appeal no. 362(Gr.VA)/2011 JNCH/IMP-305 dated 29th July 2011 in the challenge before Commissioner of Customs (Appeals), Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai – II.

2. The consequential recovery of differential duty on 50,000 pieces of ‘tapered roller bearings’, valued at US $ 44,500, imported by the respondent was held to be in contravention of the law by the first appellate authority as the requirement of section 17(5) of Customs Act, 1962 that ‘speaking order’ be issued within 15 days of the disputed assessment had not been complied with for which reliance was placed on the decision of the Tribunal, in *Commissioner of Customs, ICD, New Delhi v. K D Exports [2008 (227) ELT 494 (Tri.Del.)],* holding that lack of ‘speaking order’ justifying the enhancement render the additional levy illegal. It was also held by the first appellate authority that re-determination of value solely on the basis of circular dated 20th August 2010 of Director General of Valuation, Central Board of Excise & Customs pertaining to ‘spherical roller bearing’ was inappropriate.

3. The cavil of Revenue, articulated in the grounds of appeal and

reiterated by the Learned Authorised Representative, is that the re-determination of value was with the consent of the importer and, therefore, 'speaking order' was not only not mandated but also excluded the importer from right to seek remedy. It was his primary contention that the enhancement had been assented to in response to a 'query' during assessment. Discarding of the relevance of the circular dated 20th August, 2010 of the Director General of Valuation was assailed for factual inaccuracy in assuming that circular did not include 'tapered roller bearing' in its coverage.

4. None appeared for the respondent but, considering the circumstances in which the impugned order came to be issued, we can, with the assistance of Learned Authorised Representative, proceed to dispose off this matter.

5. The scheme of valuation under Customs Act, 1962 permits 'declared value' to be discarded under the empowerment in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 though necessarily to be preceded by issue of notice of such intent along with proposal for substitution thereof by such value as is valid under the said Rules. The impugned order is not wrong in concluding that the pre-requisites had not been complied with. The sole ground on which challenge to this finding rests is the concurrence of the importer in response to 'query' raised by assessing officer. We

find nothing on record to indicate acceptance of proposal by, or even that such proposal was communicated to, the importer. Indeed, the challenge to the assessment of the bill of entry suffices to establish the disinclination on the part of the importer to the consent that is now claimed on behalf of Revenue.

6. ‘Declared value’ may be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 only for inconsistency with the several qualifications enumerated in section 14 of Customs Act, 1962 as characteristics of ‘transaction value’ to enable the ‘proper officer’ access to the several methods prescribed in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 sequentially for determination of acceptable substitution. Director General of Valuation, Central Board of Excise and Customs may well have the authority to issue circulars intended to offer guidance value and rational advice on valuation of ‘risky imports’ but these cannot supplant the prescription in the Rules necessary for completion of assessment when ‘declared value’ is not acceptable for specified reasons. Even with imperfect appreciation of the scope of the circular, the first appellate authority was correct in holding that the said circular was of no relevance to assessment which are to be compliant with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

7. In the light of our findings above, we find no merit in the appeal of Revenue which is dismissed. Cross-objection is also disposed off.

(Operative Part of the Order pronounced in the open court on 15th February 2022)

(ANIL CHOUDHARY)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*