CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87447 OF 2013

[Arising out of Order-in-Appeal No: 203/MCH/AC/GR.VII C/2013 dated 13th March 2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone – I.]

Arya Ship Breaking Co Pvt Ltd
51/53A Mittal Court, Nariman Point
Mumbai - 400021 … ***Appellant***

versus

Commissioner of Customs (Export)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Vinay Ansurkar, Advocate for the appellant

Shri Sydney D'Silva, 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 /85303 /2023

DATE OF HEARING: 29/09/2022
DATE OF DECISION: 28/02/2023

PER: C J MATHEW

M/s Arya Ship Breaking Pvt Ltd, aggrieved by order of original authority rejecting value of US$ 530/MT declared in bill of entry no. 8614658/29.11.2012 for import of 8134.940 MTs of 'prime cold rolled coils (non-alloy)' and of US$ 517/MT in bill of entry no. 8614777/29.11.2012, 8616028/29.11.2012 and 8616033/29.11.2012 for import of 2496.540 MT, 1318.5490 MT and 2161.230 MT (totalling 5976.31 MT) of 'prime cold rolled sheets (non-alloy)' from Ukraine supplied by M/s Metinvest International SA, Switzerland, against sales contracts no. MI-AS0709CRC and MI-AS0709CRS both dated 7th September 2012 and irrevocable letter of credit no. 0023001330112 dated 11th September 2012, and enhancement to US$ 590/MT for of 'prime cold rolled coils (non-alloy) and US$ 570/MT for 'prime cold rolled sheets (non-alloy)', sought restoration of declared values before the first appellate authority. The continuation of the detriment by Commissioner of Customs (Appeals), Mumbai Customs Zone-I[1] is under challenge before us.

2. The original authority had held that the declared value was liable to be rejected by recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as query before resorting to enhancement had not been responded to with acceptable documentary evidence. The validity of the consequent re-determination of value lies in conformity of the computation with

> *'8. Computed value.- Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-*

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[1] [order-in-appeal no. 203/MCH/AC/GR.VII C/2013 dated 13th March 2013]

(a) *the cost or value of materials and fabrication or other processing employed in producing the imported goods;*

(b) *an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;*

(c) *the cost or value of all other expenses under sub-rule (2) of rule 10.'*

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which was invoked as authority.

3. The issue is simple enough: survival of the impugned order on the plea that original invoice, along with remittance particulars, remained untarnished and that value adopted by customs authorities was inconsistent with statutory provisions. That the impugned 'rolls and sheets' are ex-stock and price inclusive of 'cost and freight' only is common ground.

4. Contrarily, the findings against the appellant by the lower authorities appear as 'extras' jostling for space before the footlights. According to customs authorities, the declared value was not consistent with 'contemporaneous imports' of May 2012 priced at US$ 670 to US$ 672 per MT for 'sheets' (prime and others) and Metal Bulletin prices for 'coils' in the range of US$ 625 to US$ 630 (FOB) per MT for September 2012. On the finding that they had

failed to furnish the final payment certificate or bill of exchange to establish the genuineness of the value as declared, these were considered to suffice for invoking rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 thus

> *'8. ….. Since the value cannot be determined under Rule 3(1), the same needs to be re-determined as per 3(4) by proceeding sequentially through Rule 4 to 9 of the Customs Valuation Rules, 2007. The contemporaneous import prices of identical goods were not available; hence the value could not be determined under Rule 4 of Customs Valuation Rules, 2007. The value cannot be re-determined under Rule 5 of the said Rules as value of similar goods i.e. Prime Cold Rolled Non Alloy Steel Coils/sheets (Ex-Stock) were also not available. However contemporaneous import prices of Hot Rolled Non Alloy Steel Sheets (Ex-Stock) supplied by the same supplier i.e. M/s Metinvest International S.A., Switzerland and manufactured by the same manufacturer i.e. M/S Ilyich Iron and Steel Works were available. Further Rule 6 of the said Rules provides that if the value of imported goods cannot be determined under provisions of Rule 3, 4 and 5 the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, then under Rule 8. The value cannot be determined under Rule 7 of the said Rules as deductive value which is based on identical or similar goods sold in India. If the valuation is not possible by deductive method the same can be done by computing the value under Rule 8 of the customs valuation (Determination of Value of imported goods) Rules, 2007'*

before going on to decide that

‘8. ……... In this respect the Metal Bulletin can provide an effective tool to have a broad idea of the prices of steel as it provides value for various grades of non alloy steel. On going through the Metal Bulletin prices for the week of 10 Sept. 2012 i.e. the week in which the Letter of Credit was opened, it was noticed that the FOB value from CIS countries of Cold Rolled Coil was between 625-630 USD PMT. Hence the base FOB price for Prime CR Coils was taken as an average of the range 625-630 USD PMT which comes out to be 628 USD PMT approx. Further, as an assessment practice discount of 10% can be given on this price as the goods were of Ex-stock. Therefore the FOB price of CR Coils can be determined logically at USD 565 PMT. Since the total quantity of consignment was huge i.e. 6,790.250 MTS a further USD 25 PMT (4.5% approx.) discount can be given on CR Coils Ex-stock and the value of CR Coils Ex-stock can be re-determined at (565-25) =540 USD PMT(FOB). In case of CR Sheets Ex- stock a further discount of 20 USD PMT can be given to re-determine the value of CR Sheets Ex-stock at 540-20 = 520 USD PMT (FOB). Since the declared value is C&F value, the C&F Value of CR Coils was re-determined at 540 + 50 = 590 USD PMT and C&F value of CR Sheets was determined at 520 + 50 = 570 USD PMT because as an assessment practice, generally USD 50 PMT is added as Freight charges over FOB value to arrive at C&F value. Similarly the value can be computed from the contemporaneous import prices of Hot Rolled Non Alloy Steel Sheets (Ex-Stock) supplied by the same supplier that is M/s Metinvest International S.A., Switzerland and manufactured by the same manufacturer that is M/s Ilyich Iron and Steel Works, Ukraine. The said HR Sheets (Ex-stock), which have been imported in the same vessel, have been assessed at USD 505 per Mts (CF). On going through the Metal Bulletin prices for the week of 10th September, 2012 i.e. the week in

which the letter of credit was opened, it was noticed that there is a difference of USD 60-80 per MTS in the prices of HR and CR coils. Hence, it can be concluded that if prices of HR sheets (ex-stock) were available of the same period, values of CR Coils/Sheets can be arrived at by adding the differential value between HR and CR coil. Accordingly, the value of CR Sheet and coil (ex-stock) can be logically and reasonably taken as USD 570 & 590 (CF) per Mts respectively for the purpose of assessment.'

5. In endorsing the re-determination, and by echoing of the findings of original authority except for dropping of some sentences and exclusion of some expressions, the first appellate authority has categorically concluded that rule 4 and 5 do not offer resolution, owing to non-availability of value of clearances of 'identical' or 'similar' goods, which is in stark contrast with the justification recorded for invoking of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

6. The range of US$ 2 in the pricing of the 'contemporaneous imports' for the converted values in the enumerated bills of entry does not appear to be compatible with the exchange rates prevailing in May 2012. Furthermore, the first appellate authority has approved of purported reliance placed by the original authority on Public Ledger which is surprising, to say the least, as that order did not and, in any case, the referred publication reports indicative prices of agricultural products. It is evident that non-application of mind to the dispute in

appeal is amply demonstrated.

7. Without going into contradictions in the finding of the original authority which, as pointed out by Learned Counsel, by relying on contemporaneous prices for invoking rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 while, at the same time, passed over rule 4 and 5 of the said Rules for resort to rule 8 therein, is itself a clear act of arbitrariness, we proceed to subject the computation to the test of the prescription in the rule that was invoked.

8. The impugned goods are 'cold rolled coils of non-alloy steel' and 'cold rolled sheets of non-alloy steel' from Ukraine backed with documentation for value of US$ 530 and US$ 517 per MT (CF). For coils, the price indicated in the Metal Bulletin of 10th September 2012 was adopted as the base on the finding that these, on FOB terms, is common across CIS countries; no evidence is at hand for concluding that these are not local market prices in Ukraine. The adjudicating authority has asserted that assessment practice allows abatement of 10% towards 'ex stock' and, again, without reference to any authority or empirical support for such, or for extent of, allowance. The allowance for quantity at 4.5% is equally cryptic, as also the further abatement for not being coil, assigned to sheets. The addition of US$ 50 per MT towards freight is not compatible with the corresponding

provision in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 especially as actual freight was easily ascertainable.

9. It also appears from the alternative computation in the order of original authority, based on declared value of 'hot rolled sheets of non-alloy steel' carried in the same vessel, and which had been accepted as transaction value, to which the proportion of difference indicated by prices in the Metal Bulletin was applied for arriving at the same computed value as *supra*, that the adjudicating Assistant Commissioner of Customs was unsure enough about the first calculation to seek reinforcing support to the finding.

10. The arbitrariness of the computation is sufficient to discredit the confirmation of enhancement by resort to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in the impugned order. That assessable values of contemporaneous imports are said to be available and, indeed, claimed to be basis of rejection by empowerment in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 renders resort to a later option to be travesty of the valuation mechanism prescribed by law. The original authority should have placed the importer on notice of those very contemporaneous imports that were invoked as prelude to enhancement of assessable value.

11. To remedy that defect, we set aside the impugned order and remand the dispute back to the original authority for a fresh decision bearing our observations *supra* in so doing.

(Order pronounced in the open court on 28/02/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*