CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 691 of 2011

(Arising out of Order-in-Appeal No. 321 (Gr.VA) 2011 JNCH IMP-272 dated 24.06.2011 passed by the Commissioner of Customs (Appeals), Mumbai II, JNCH, Sheva)

M/s. SU Automotive (India) **…..Appellant**
1592, Hardhiyan Singh Road,
Naiwala, Karol Bagh, Street Road No. 31,
New Delhi

Vs.

Commissioner of Customs (Import), **…..Respondent**
Nhava Sheva
JNCH, Taluka Uran, Nhava Sheva

With

Customs Appeal No. 286 of 2012

(Arising out of Order-in-Appeal No. 21 (Gr.VB)/2012 JNCH-IMP-16 dated 25.01.2012 passed by the Commissioner of Customs (Appeals), Mumbai II)

Trilok Nath Mittal **…..Appellant**
Royal International, B-69/1,
Ground floor, Wazirpur Indl. Area, New Delhi

Vs.

Commissioner of Customs (Port Import), **…..Respondent**
Nhava Sheva
JNCH, Taluka Uran, Nhava Sheva

APPEARANCE:

Shri Prashant Patankar, Consultant for the appellant
Shri Ashwini Kumar, Addl.Comm. (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/85425-85426/2023

DATE OF HEARING : 09-02-2023
DATE OF DECISION : 09-02-2023

PER: C J MATHEW

These two appeals, against order[1] of Commissioner of Customs (Appeals), JNCH, Nhava Sheva impugned by M/s SU Automotive (India) and against order[2] of Commissioner of Customs (Appeals), Mumbai-II impugned by M/s Triloknath Mittal for having upheld the order of the original authority on enhancement of value from ₹ 12,34,221/- and ₹ 7,79,153/- declared for 'ball bearings' imported, among other goods, *vide* bill of entry no. 785746/01.12.2009 and bill of entry no. 781263/27.11.2009 respectively to ₹ 35,24,988/-. and ₹ 18,97,966/- in proceedings initiated by notice proposing re-determination of the assessable value to that prescribed for retail selling price in section 4A of Central Excise Act, 1944, are taken up for disposal together.

2. According to Learned Consultant for appellant, resort to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was inappropriate, of itself, in the absence of any reason

[1][order-in-appeal no. 321 (Gr.VA) 2011 JNCH IMP-272 dated 24th June 2011]
[2] [order-in-appeal no. 21 (Gr.VB)/2012 JNCH-IMP-16 dated 25th January 2012]

offered for rejection of the declaration in the bill of entry reflecting transaction value as evidenced by attached invoice. It was further contended that the prices of ‘ball bearings’ ascertained in the market survey was not, in the absence of details of the locally traded products, sufficient for comparison and adoption, by recourse to residual method, as substitute for transaction value. According to him, the professed inability of the adjudicating authority to adopt rule 4 and 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, despite availability of prices of identical and similar goods regularly imported, precluded resort to less preferable methods. Furthermore, according to him, the deductions allowed on the prices of local sales could well have been applied to invoke rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on the prices at which their own imports were being sold and evidenced by discharge of liability under ‘Value Added Tax’ (VAT). On a specific query from the bench, learned Consultant admitted that these had not been produced before the original authority owing to logistical impediment of access as these were in possession of their auditors at Delhi. He relied on the decision of the Hon'ble Supreme Court in *Commissioner of Customs v. South India Television (P) Ltd [2007 (214) ELT 3 (SC)]* and in *Commissioner of Customs, Mumbai v. J D Orgochem Ltd. [2008 (226) ELT 9 (SC)]*.

3. Learned Authorised Representative relied on the decision of the Tribunal in *Commissioner of Customs (Import), ICD, TKD, New Delhi v. M/s Sodagar Knitwear [2018 (362) ELT 819 (Tri-Del)]* against which appeal had been dismissed by the Hon'ble Supreme Court. He also placed reliance on the decision of the Tribunal in *M/s Krishang Alloy v. Commissioner of Customs, Nhava Sheva III*[3] to support acceptance of enhanced value as binding for future assessments.

4. Among the many contentions of Learned Consultant appearing for appellant, the main argument of retail selling price being available on record, but not provided then, persuades us that it would be appropriate to set aside the impugned order and remand the dispute back to the original authority with all issues left open for appellant to make submissions, now made before us, in those proceedings. Appeal is, accordingly, disposed off.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

//SR

[3] *[interim order no. 6-12/2022 in customs appeal no. 86465 of 2021 against order-in-appeal no. 254-260/Gr.IV/2021(JNCH)/Appeals dated 25th March 2021 of Commissioner of Customs(Appeals), Nhava Sheva, Mumbai II]*