CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Customs Appeal No. 87083 of 2016

(Arising out of Order-in-Appeal No. 227 & 228 (Gr.IV)/2016 9JNCH)/Appeals-II dated 23.05.2016 passed by the Commissioner of Customs (Appeals-II), Mumbai II)

Delta Iron & Steel Co. P. Ltd. **.....Appellant**
205, 2nd floor, Windfall Bldg.
Andheri Kurla Road, JB Nagar,
Andheri (E), Mumbai

VERSUS

Commissioner of Customs (Nhava Sheva-1), **.....Respondent**
JNCH, Nhava Sheva, Dist. Raigad

With

1) C/87084/2016- CC(Nhava Sheva-I), Mumbai vs. Ark Industries Ltd.; 2) C/87085/2016 -CC(Nhava Sheva-I), Mumbai vs. Ark Industries Ltd. 3) C/87086/2016 - CC(Nhava Sheva-I), Mumbai vs. Ark Industries Ltd.

APPEARANCE:

Shri Vishal Agarwal, Advocate with Ms. Hima Joshi, Advocate for the appellant
Shri Ashwini Kumar, Addl. 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/85428-85431/2023

DATE OF HEARING : 20-02-2023
DATE OF DECISION : 20-02-2023

PER: C J MATHEW

All these appeals of Commissioner of Customs, Nhava Sheva arise from the grievance of the competent Committee of Commissioners, duly constituted under section 129D of Customs Act, 1962, that the impugned order[1] of Commissioner of Customs (Appeals-II), Mumbai II, disposing off challenge of M/s Delta Iron & Steel Co Ltd and M/s Ark Industries Pvt Ltd against invoking of rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rule, 2007 for enhancing value of 'direct reduced iron fines (DRI fines)', imported against 37 bills of entry filed in 2015, to US $380 per metric ton, had failed to appreciate that law had been correctly applied by the original authority. In the grounds of appeal, it has been contended that setting aside of the enhancement by first appellate authority solely for non-compliance with the mandate of sequential application of rule 4 to rule 8 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and holding that rejection of the declared value under rule 12 of the said Rules to be improper application of law merited reconsideration.

2. According to Learned Authorised Representative, the impugned order had clearly elaborated upon justification for recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 after discarding the preceding rules for inapplicability. It was pointed out by him that the declaration in the bills of entry was deficient in specifying quality and grade owing to which it was not

[1] [order-in-appeal no. 227 & 228 (Gr.IV)/2016 9JNCH)/Appeals-II dated 23rd May 2016]

possible to ascertain ‘transaction value' of contemporaneous imports of ‘identical’ or ‘similar’ goods. According to him, the original authority had rightly, and strictly in accordance with empowerment of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, rejected the declared value.

3. Learned Counsel for respondent submits that the impugned order had relied upon legal provisions to set aside the order of original authority for non-conformity with judicial precedent laying down circumstances in which ‘transaction value’ may be rejected. He also cited the decisions of the Tribunal in *Rajesh Gandhi v. Commissioner of Customs (Import), Mumbai [2019 (366) ELT 529 (T-Mum)]* and in *Turakhia Feromet Pvt Ltd v. Commissioner of Customs (Import), Mumbai [2020 (372) ELT 279 (T-Mum)]* and of the Hon’ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Custom, Mumbai [2000 (122) ELT 321(SC)]* and in *Commissioner of Customs, Calcutta v. South India Television (P) Ltd [2007 (214) ELT 3 (SC)]* in support of his contentions.

4. The dispute lies within the narrow compass of valid exercise of powers by original authority in invoking rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rule, 2007 as well as validity of consequent resort to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rule, 2007 for enhancement of assessable value. It is common ground that declared

value was lower than the value adopted for assessment in contemporaneous imports but the legality of valuation on these assessments, following that which is described as ‘group practice’, had been the crux of the dispute in the appeal leading to the impugned order. It is, indeed, puzzling that, despite assertion of availability of ‘transaction value' of contemporaneous imports, and referred to by the original authority to justify rejection of declared value under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and no such information was placed on record in defence of recourse to the empowerment by the original authority, the competent Committee of Commissioners finds no irony in continuing to defend rejection of rules preceding the one which had been invoked by the original authority while contending that these contemporaneous imports sufficed for resort to the residual method of valuation.

5. It would appear that, having decided to enhance the value in accordance with ‘group practice’ - whatever that may mean – and endorsement thereof in assessment, proceedings before the appellate authority for failure to issue order contemplated in section 17(5) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 having had the outcome of remand to the original authority for issue of such order, *denovo* proceedings went on to justify the enhancement by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

6. It is clear from a perusal of section 14 of Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 that recourse to rule 12 therein is, even if sufficient, not a necessary condition for proceeding to other valuation methods. Nonetheless, whether the justification for rejection of declared value as ‘transaction value’ traceable to non-conformity of declared value with section 14 of Customs Act, 1962 or by recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the assessing authority is bound by the prescription of sequential application of the methods prescribed in the Rules.

7. It is on record that prevalence of contemporaneous imports and the values thereof, whether in conformity with the several methods in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 or not, was found sufficient by the original authority to discard the declared value as ‘transaction value’ but ignoring of those very values in proceeding to invoke rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 demonstrates inconsistent application of law or even lack of comprehension about the scheme of valuation.

8. The pleading of having valued the goods in ‘accordance with group assessment practice’, that is unknown to law of customs assessment, and the circumstances in which the order impugned before the first appellate authority came to be passed demonstrates the

post-decisional justification for the assessment that was finally fastened. The goods were, thus, subjected to enhancement of value by method outside the law and value, similarly re-determined, for earlier imports, was insinuated as comparative benchmark for discarding declared value and substitution with contrived value in the impugned consignments. The assessing authority failed to adhere to section 17(5) of Customs Act. 1962 and it was only by appellate intervention that speaking order came to be issued at that stage. Intended more to justify a decision already taken, that could pass muster by recourse to the ultimate refuge of 'residual method' as the 'all-forgiving' and 'all-encompassing' facility, the last resort thus became the first option and that is the essence of the impugned order.

9. The first appellate authority took note of this in the challenge to order impugned before him and for setting it aside. The grounds of appeal and submission of Learned Authorised Representative do not offer any grounds to interfere with the impugned order.

10. In view of the above, no flaw can be found in the order of the first appellate authority and, accordingly, the appeal of Revenue is dismissed.

(Operative part pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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