

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85009 OF 2023

[Arising out of Order-in-Appeal No. 1059 (Gr. IIC)/2022(JNCH)/Appeals dated 07th December 2022 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Lakyou Beauty India

902, 9th Floor, Gami Vivaan, Plot No. 17
Sector –7, Koparkhairane, Navi Mumbai– 400 709

...Appellant

versus

Commissioner of Customs

Nhava Sheva-I JNPT, Customs House, Nhava Sheva,
Mumbai Zone-II, Raigad, Maharashtra- 400 707

...Respondent

APPEARANCE:

Shri Chirag Shetty, Advocate and Ms Diva Devarsha, Advocate for the appellant

Shri Manoj Kumar, Deputy 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 / 86074/2023

DATE OF HEARING: 23/02/2023

DATE OF DECISION: 05/07/2023

PER: C J MATHEW

This appeal arises from the rejection of challenge, mounted by
M/s Lakyou Beauty India before the first appellate authority, to order

revising the assessable value of various types of cosmetics, imported *vide* bill of entry no. 9310079/28.06.2022, under rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The impugned goods were also required to carry the 'retail selling price (RSP)' in accordance with requirements of Legal Metrology Act, 2009 and relevant rules and, upon rejection of the declared value, multiplier of 0.3515 was applied to the price at which the goods were intended to be sold in the country to arrive at the revised value.

2. Both Learned Counsel for appellant and Learned Authorised Representative made their submissions at length; the issue in dispute is, however, limited to the correctness of rejection under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and consequential adoption of 'deductive value' method in accordance with the said Rules.

3. Learned Counsel for the appellant informed that they had made available manufacturer's invoice issued in favour of their consignor which should have sufficed for the purpose of accepting value declared in the bill of entry. It was further argued that the Tribunal, in *Sarto Electro Equipments Pvt Ltd v. Commissioner of Customs (Import) Air Cargo Complex, Mumbai*¹ disposing off appeal against order² of Commissioner of Customs (Import), ACC, Mumbai and in

¹[final order no. A/88413-88414/2017-WZB/CB dated 14.07.2017 in appeal no. C/598-599/2010]

²[order-in-original no. COMMR/MJ/07/2010 ACC dated 30th April 2010]

Sai Exports v. Commissioner of Customs, Tuticorin [2019 (370) ELT 398 (Tri.-Chennai)], had held that rejection of the declared value by reference to retail price in Indian market is erroneous. Relying upon the decision of the Hon'ble Supreme Court in *Commissioner of Customs, Calcutta v. South India Television (P) Ltd [2007 (214) ELT 3 (SC)]* and in *Commissioner of Customs, New Delhi v. Prabhu Dayal Prem Chand [2010 (13) SCC 535]*, it was contended that, in the absence of evidence of contemporaneous imports at higher price, recourse could not be had to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. That the onus of establishing undervaluation resting upon customs authorities, as held in decisions of the Tribunal in *Commissioner of Customs, Chennai v. Adhani Exports [1999 (111) ELT 143 (Tribunal)]*, and affirmed by the Hon'ble Supreme Court in *Commissioner of Customs, Chennai v. Adani Exports Ltd [2004 (167) ELT 131 (SC)]*, as well as in *Neha Intercontinental (P) Ltd v. Commissioner of Customs, Goa [2006 (202) ELT 530 (Tri.-Mumbai)]*, had not been duly discharged and, thereby, precluded revision was a further submission made on behalf of appellant.

4. Learned Authorised Representative submitted that 'first check' carried out in the presence of the investigators and representative of importer, and establishing the gap between intended selling price in the domestic market and declared price, sufficed for recourse to rule

12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It was contended by him that the 'deductive value', arrived at in terms of rule 7 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, had allowed reasonable abatement, towards discount and profit margins at different stages in the supply chain, leaving no room for appellant to be aggrieved.

5. The original authority, whose determination of differential duty of ₹ 1,43,56,583/- was upheld in the impugned order³ of Commissioner (Appeals), Mumbai – II, had initiated proceedings upon report of investigators about the huge gap between the declared value and 'retail price' marked on the goods and, despite furnishing of invoice of manufacturer as called for, proposing to reject declared value by recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The investigators had reported non-availability of 'transaction value' of identical or similar goods as justification for proceeding to rule 6 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, based on verification of local sale invoices of 'lipgloss' and 'lipstick' on which, by backward abatement of retailer discount at 15.33%, of profit margin at 20% each for retailer; wholesale distributor and importer and by exclusion of duties of customs and of 'integrated goods and service tax (IGST)', it was concluded that the 'deductive

³[order-in-appeal no. 1059 (Gr. IIC)/2022(JNCH)/Appeals dated 07th December 2022]

value' should be 0.3515 times that of the marked retail price.

6. The ascertainment of abatement from local sale price 'lipgloss'/ 'lipstick' was applied, across the board, to other goods in the consignment entered for import by the appellant. This, in itself, is not acceptable as no justification had been offered for different types of goods to be treated alike. Furthermore, three conditions are pre-requisite in the 'deductive value' method option, viz., that the sale is to persons who are not related to the person in India, that derivation of the unit price should have been from identical or similar imported goods sold in the highest aggregate quantity and that sale be in the condition as imported and about the time at which the bills are presented for import. The goods, presented for assessment on 29th July 2022, were covered by declaration in bill of entry filed on 28th June 2022.

7. On directions of the assessing officer, the appellant had submitted local invoices of sale to their wholesalers as also the invoice issued to their overseas supplier by the manufacturer in that country. The rejection of declared value without subjecting the invoice of the manufacturer to scrutiny is clear breach of circumstances in which rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 could be invoked legally. Compounding this deviation from the law, failure on the part of the adjudicating authority to acknowledge the local sale invoices as evidence of

existence of 'transaction value' of identical/similar goods is further indication of command performance instead of application of mind warranted by the exercise of valuation in accordance with statutory prescription. In such circumstances, rejection of the declared value under the authority of rule 3(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 requires that 'transaction value' of identical goods/similar goods takes precedence over substitution by 'deductive value' from local prices even if the ascertainment had been of each type of goods and in conformity with the conditions therein. From the above, it would appear that the original authority has improperly proceeded beyond the preceding methods in the sequential enumeration. The first appellate authority, in endorsing the re-determination, had failed to take note of breach of this prescription in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, the resort to deductive value for assessment is incorrect.

8. For the above reasons, the impugned order is set aside and appeal allowed.

(Order pronounced in the open court on 05/07/2023)

(AJAY SHARMA)
Member (Judicial)

**/as*

(C J MATHEW)
Member (Technical)