CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85634 OF 2014
WITH
CUSTOMS APPLICATION (MISC) NO: 85324 OF 2022
(on behalf of appellant)

[Arising out of Order-in-Original No: 131/2013/CAC/CC(I)/AB/Gr.VB dated 21st November 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Resham Singh & Co Pvt Ltd
5 P D'Mello Road, Mumbai - 400009 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 85635 OF 2014

[Arising out of Order-in-Original No: 130/2013/CAC/CC(I)/AB/Gr.VB dated 21st November 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Sarabjit Singh
Resham Singh & Co Pvt Ltd
5 P D'Mello Road, Mumbai - 400009 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 85636 OF 2014
WITH
CUSTOMS APPLICATION (MISC) NO: 85325 OF 2022
(on behalf of appellant)

[Arising out of Order-in-Original No: 130/2013/CAC/CC(I)/AB/Gr.VB dated 21st November 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Resham Singh & Co Pvt Ltd
5 P D'Mello Road, Mumbai - 400009 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 85637 OF 2014

[Arising out of Order-in-Original No: 131/2013/CAC/CC(I)/AB/Gr.VB dated 21st November 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Sarabjit Singh
Resham Singh & Co Pvt Ltd
5 P D'Mello Road, Mumbai - 400009 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 85785 OF 2014

[Arising out of Order-in-Original No: 131/2013/CAC/CC(I)/AB/Gr.VB dated 21st November 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Commissioner of Customs (Import)
New Customs House, Ballard Estate, Mumbai-400001 … ***Appellant***

versus

Resham Singh & Co Pvt Ltd
5 P D'Mello Road, Mumbai - 400009 ***…Respondent***

AND

CUSTOMS APPEAL NO: 85786 OF 2014

[Arising out of Order-in-Original No: 130/2013/CAC/CC(I)/AB/Gr.VB dated 21st November 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Commissioner of Customs (Import)
New Customs House, Ballard Estate, Mumbai-400001 … ***Appellant***

versus

Resham Singh & Co Pvt Ltd
5 P D’Mello Road, Mumbai - 400009 ***…Respondent***

APPEARANCE:

Shri C M Sharma, Advocate for the assessee-appellants

Shri Sydney D’Silva, Additional Commissioner (AR) for the Revenue

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A /86111-86116/2023

DATE OF HEARING:	15/02/2023
DATE OF DECISION:	13/07/2023

PER: C J MATHEW

In these common proceedings, we dispose off six appeals, of which two have been filed Revenue. Two appeals have been filed by the importer, M/s Resham Singh & Co Pvt Ltd, and two by Shri Sarabjit Singh, Director in the appellant-company.

2. The facts, briefly, are that a tug towing a barge departed from Singapore to arrive at Kakinada on 17th April 2011 where it was converted for coastal trade and proceeded to different destinations,

including Colombo, before arriving at Mumbai on 1st July 2011 whereupon these were diverted to Belapur on 2nd July 2011, where the consequence of show cause notice issued, *i.e.*, re-ascertainment of assessable value of tug 'Resco-5' to ₹ 3,81,99,831/-, by addition, under rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, of freight and insurance of ₹ 63,41,871/- and insurance of ₹ 1,48,607/-, and, by rejection of value of ₹ 2,79,37,500/- declared, that of the barge 'Resco-6' was re-determined, under rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as ₹ 4,82,03,995/- which was further adjusted for freight and insurance. In addition, both were confiscated under section 111(f) and section 111(m) of Customs Act, 1962 but permitted to be redeemed on payment of redemption fine, of ₹ 35,00,000/- for the tug and ₹ 45,00,000/- for the barge, under section 125 of Customs Act, 1962 subject to discharge of duty liability of ₹ 51,06,498/- and ₹ 26,99,874/- respectively along with interest thereon. Penalty of ₹ 20,00,000/- was imposed on the importer and ₹ 15,00,000/- on the Director insofar as the import of the barge was concerned and of ₹ 15,00,000/- and ₹ 10,00,000/- respectively insofar as the import of the tug was concerned. The differential duty of ₹ 7,38,109/- and ₹ 19,78,854/- on the tug and barge respectively were ordered to be recovered under section 28 of Customs Act, 1962. Furthermore, penalty of like amount was imposed on the appellant-company under section 114AA of Customs Act, 1962.

3. Revenue is in appeal against dropping of proposal for confiscation under section 111(l) and of proposal to impose penalty under section 114AA of Customs Act, 1962.

4. According to Learned Consultant appearing for the appellants, the tug was a new vessel procured by the appellant from Malaysia and registered there solely for the purpose of removal from the shipyard and that the barge had been bought by them from the former owners. It is further submitted by him that they had proceeded with intention to register the vessels in India for which they had obtained approval of the Indian Registrar of Shipping (IRS) for change in name as evidenced by appropriate certificate of registry. It is also submitted that the vessel had arrived for offloading of cargo and, thereafter, proceeded to Mumbai for further processing of registration formalities. It is contended by him that the revising of assessable value was entirely incorrect inasmuch as the declared value represented purchase price and, thereby, the transaction value. According to him, the tug arrived on its own propulsion that did not involve payment of any freight at all and the barge, towed by the said tug, did not incur any additional charges on freight. He submitted that the insurance component had been clearly indicated and there was no requirement to revise it for assessment.

5. He submitted that the assessment of the vessel had been regularly carried out at Kakinada before its voyage to other ports in India prior to arrival at Belapur. It is his contention that there was no requirement to file manifest insofar as 'conveyance' is concerned and the arrival in Mumbai for the purpose of import into India was, till then, in the capacity of the vessels as conveyance. He submitted that duty liability did not arise, in accordance with section 129 of Finance Act, 2012, on vessels imported into India between 1st March 2011 and 16th March 2012 for which he relied upon the circular no. 16/2012 dated 13th June 2012 of Central Board of Excise and Customs (CBEC). Further reliance was placed on the decision of the Hon'ble High Court of Orissa in *Great Eastern Shipping Compnay Ltd v. Union of India [2022 (379) ELT 318 (Ori.)]* and of the Tribunal in *Hede Ferrominas Pvt Ltd v. Commissioner of Customs (Import), Mumbai [2016 (334) ELT 540 (Tri.-Mumbai).* He contended that the filing of import general manifest was the responsibility of the person-in-charge of the conveyance and not of the importer and that charge for violation of section 30, section 32 and section 34 of Customs Act, 1962 had not been levelled against them.

6. Learned Authorised Representative submitted that the appeals of Revenue should be allowed inasmuch as the value declared in the bill of entry was consequent upon action taken against the vessel when it berthed at Belapur. He contended that the entire purpose of

arriving under Indian flag at Kakinada was with intent to evade duties of customs while operating in and around territorial waters. Accordingly, he urged that the failure to file import general manifest should also be viewed seriously.

7. We find that the age of both the tug and the barge are irrelevant in the proceedings which rests upon non-fulfillment of requirement pertaining to declaration of cargo brought into India in import general manifest and incorrectness of the value declared in the bill of entry for assessment. The confiscation and penalties merely follow from the findings of the adjudicating authority on these violations.

8. In examining the applicability of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, it is noted by us that the ownership of the vessels had already been transferred to them, under 'contract to sell' as well as 'bill of sale', well before the first arrival of the vessel in India at Kakinada. Consequently, wherever the import had occurred or deemed to have occurred, applicability of section 14(1) of Customs Act, 1962 does not obtain.

9. Two parties, buyer and seller, are essential, and that too at the time and place of importation, to a transaction envisaged in section 14(1) of Customs Act, 1962 and, thereby, to rule 3 (1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 failing which recourse must be had to rule 3(4) of Customs Valuation

(Determination of Value of Imported Goods) Rules, 2007.

10. It would appear from the records that the value declared for the tug was exclusive of freight and insurance which was sought to be added by the 'proper officer'; triggered by the perceived absence of these two elements, recourse is had, as prescribed in rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, rule 10 therein. There are three mutually exclusive parts to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; the first sets out the gold standard of transaction value and default acceptance of declared value thereby; the second, in circumstances in which the declared value does not conform to the transaction value, for recourse to be had to rules 4 to 9 therein; the third permits, as per rule 3(1) therein, addition of cost of services to imported goods, even if strictly not in accordance with constitutional assignment of customs duties to be levied on goods, because of the inextricable connection with the goods.

11. Before proceeding to invoke the authority of rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, it is necessary to place the importer on notice of intent to reject the declared value under the authority of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It is seen that, insofar as the barge is concerned, the lack of certificate from chartered engineer in support of the declared transaction value

and the vessel being 'old and used' was held as sufficing to pull the trigger for rejection of declared value. It would appear that the adjudicating authority did not take into account the exclusion from applicability of rule 3(1) itself owing to the absence of commercial transaction between buyer and seller at the place of importation.

12. In such circumstances, the assessment has necessarily to take recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on the basis of framework prescribed therein. While certificate of chartered engineer may serve in assisting the assessing officer, it lacks the statutory credibility inhering in application of mind, in accordance with the Rules, by the proper officer. No reason has been assigned by the adjudicating authority for adoption of the value and nor is there any narration of ascertainment of the correctness of the value declared in the certificate obtained after arrival of the vessels.

13. Furthermore, adjustment under rule 10, under the authority of rule 3(1), of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and in the event of adoption of rule 4 or rule 5 therein for arriving at transaction value, with no reference in rule 7, rule 8 and rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for such adjustment, precludes lack of authority of law for the addition of freight to the barge. Therefore, we find that the recourse to rule 3(4) of Customs Valuation (Determination of Value of Imported

Goods) Rules, 2007 has not been in conformity with the framework of the mechanism for resort to section 14(2) of Customs Ac, 1962. Insofar as the tug is concerned, the declared value had been accepted and it is only the addition of freight and insurance that was in question. We have premised *supra* that recourse to rejection of declared value is an assessment exercise arising from the specific circumstances in which rule 12 provides the means. Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 stands on a different footing as freight and insurance is, by default, presumed to be included in the declared value. In the instant case of the tug, it is an undisputed fact that there was no transaction involved at the time and place of entering into India. The vessels belong to the appellant and, in the course of normal import, assessable value is required to be inclusive of insurance and freight solely owing to these expenses having been incurred on the vessel before transfer of possession occurs. In the case of the import in question, with no expense having been borne on account of any other person till the time and place of importation, these elements are beyond the pale of ascertained value.

14. Revenue is in appeal against incomplete adjudication, as it were, in the impugned order for ignoring failure to declare the goods at the time of import and for not imposing penalty under section 114AA of Customs Act, 1962, As the issue of valuation of the tug and barge had been adjudged improperly by not being in conformity with

section 14 of Customs Act, 1962, it has to be re-determined in terms of the legal provisions. The appeal of Revenue, by not challenging the acceptance of the purchase price of the tug for which reason it is to be kept out of de novo proceedings and as all other issues remain open, is thus, rendered infructuous.

15. Accordingly, we set aside the impugned order and remand the matter back to original authority for fresh decision on the above terms.

(Order pronounced in the open court on 13/07/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*