CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 181 OF 2009

[Arising out of Order-in-Original No: 305/08-09 CC(I) JNCH dated passed by the Commissioner of Customs (Imports), Nhava Sheva.]

Trinity Trading Corporation
422, Opera House, Rawal Building, Lamington Road
Mumbai - 400004 … ***Appellant***

versus

Commissioner of Customs (Imports)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Raigad-400707 ***…Respondent***

APPEARANCE:

Shri O P Khanduja, Advocate for the appellant

Shri S B Hatangadi, Assistant 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 / 86214/2023

DATE OF HEARING:	26/04/2023
DATE OF DECISION:	23/08/2023

PER: C J MATHEW

M/s Trinity Trading Corporation, aggrieved by the enhancement of value of goods imported *vide* bill of entry no.

827904/19.03.2003 assessed provisionally and earlier imports *vide* bill of entry no. 690832/24.09.2001 and no. 747904/21.05.2002 to ₹ 8,08,372 and ₹ 14,94,022 respectively with consequent differential duty liability of ₹ 2,69,778 and ₹ 4,58,475 respectively under section 28 of Customs Act, 1962, along with applicable interest under section 28AA of Customs Act, 1962, besides being saddled with fine of ₹2,00,000 and ₹5,00,000 respectively for redemption under section 125 of Customs Act, 1962 of goods confiscated under section 111(m) of Customs Act, 1962, is before us seeking the setting aside of order[1] of Commissioner of Customs (Imports), Nhava Sheva dated 10th December 2008.

2. The impugned order has rejected the declared value of GBP 72.90 apiece for 'hydraulic pumps' under the authority of rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and, by recourse to rule 5 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, undertook the exercise of re-valuation. At the investigation stage, explanations had been furnished for the acknowledged difference in their purchase price with that traced in correspondence of supplier. These are not of relevance in the context of recourse to enhancement of value at the price at which 'identical goods' imported by M/s Shashi Charu Hydraulics Ltd. It devolves on the customs authorities to evince in

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[1] [*order-in-original No: 305/08-09 CC(I) JNCH]*

adjudication order that this price is in conformity with the cited provision in Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.

3. Learned Counsel for appellant submits that the value at which goods were imported is the transaction value of the goods and that no evidence is on record to the contrary. According to him, the import price could not be compared with any other as post-supply negotiations had obtained favourable terms and that fax correspondence was no ground for not accepting the transaction value. It was further argued by him that the conformity of the relied upon imports with the prescription for 'identical goods' has not been considered in the adjudication proceedings. He contended that the country from which the goods in the relied upon bill of entry had originated was different.

4. We have heard Learned Authorised Representative at length.

5. We find that the adjudicating authority has adopted the value in the bill of entry for assessment of 'hydraulic pumps' imported by M/s Shashi Charu Hydraulics Ltd and these have been deemed as 'identical goods' for comparison. According to Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, the qualification for goods whose values may be adopted sequentially are

‘(c) "identical goods" means imported goods-

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

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(e) "similar goods" means imported goods-

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;'

6. The impugned order has not offered any justification for acceptance of the compared imports as either 'identical' or 'similar' goods. We also find that the prices used for comparison are not of contemporaneous relevance. Thus, even if rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 has been validly invoked, failure to follow through with eligible alternatives under Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 stultifies recourse to section 28 of Customs Act, 1962 and other detriments.

7. Consequently, we set aside the impugned order to allow the appeal.

(Order pronounced in the open court on 23/08/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*