

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 337 OF 2010

[Arising out of Order-in-Original No: COMMR/TKG/ADJN/13/2009-10 dated 13th January 2010 passed by the Commissioner of Customs, CSI Airport, Mumbai.]

S K Universal Pvt Ltd

House No. 6/2037, Papadwala Building, Office No. 403,
Bhojabhai Sheri, Mahindharpura, Surat - 395003

... Appellant

versus

Commissioner of Customs

CSI Airport

Awas Corporate Point, Makwana Lane,
Andheri-Kurla Road, Andheri (E), Mumbai - 400099

...Respondent

WITH

CUSTOMS APPEAL NO: 338 OF 2010

[Arising out of Order-in-Original No: COMMR/TKG/ADJN/13/2009-10 dated 13th January 2010 passed by the Commissioner of Customs, CSI Airport, Mumbai.]

Lalit Kothari

S K Universal Pvt Ltd
House No. 6/2037, Papadwala Building, Office No. 403
Bhojabhai Sheri, Mahindharpura, Surat - 395003

... Appellant

versus

Commissioner of Customs

CSI Airport

Awas Corporate Point, Makwana Lane,
Andheri-Kurla Road, Andheri (E), Mumbai - 400099

...Respondent

AND

CUSTOMS APPEAL NO: 339 OF 2010

[Arising out of Order-in-Original No: COMMR/TKG/ADJN/13/2009-10 dated 13th January 2010 passed by the Commissioner of Customs, CSI Airport, Mumbai.]

Sunil Kothari

S K Universal Pvt Ltd

House No. 6/2037, Papadwala Building, Office No. 403

Bhojabhai Sheri, Mahindharpura, Surat - 395003

... Appellant

versus

Commissioner of Customs

CSI Airport

Awaz Corporate Point, Makwana Lane,

Andheri-Kurla Road, Andheri (E), Mumbai - 400099

...Respondent

APPEARANCE:

Shri V N Ansurkar, Advocate for the appellants

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 / 86228-86230/2023

DATE OF HEARING:

27/04/2023

DATE OF DECISION:

24/08/2023

PER: C J MATHEW

The appellant, M/s SK Universal Pvt Ltd, is an importer of 'cut and polished diamonds' and the impugned proceedings arose from

procurement of 1461.23 carats in 26 lots, valued at US \$ 522,591 (₹2,62,60,198) as per invoice issued by M/s Belstar Jewellery (LLC), Dubai, for which assessable value of ₹ 2,65,22,800 had been declared in bill of entry no. 100434/23.12.2008 filed by them. The 'trade advisory panel', to whom the appraisal of value had been referred, indicated it to be US \$ 337,056.63 for 24 lots and advised that the remaining two lots be sent to another set of experts in view of size being different. A second panel examined all the lots and concluded that overinvoicing to the extent of 39% at US \$ 376,514.55 (₹ 189,19,856.14) and that the two specific lots had value of US\$ 66,870 indicating overvaluation of 153% with reference to declared value of US\$169, 436.

2. Commissioner of Customs, Chhatrapati Shivaji International Airport, Mumbai, in impugned order¹, re-determined the value at ₹2,11,06,256 under rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and confiscated the impugned goods under section 111(d) and 111(m) of Customs Act, 1962 while allowing redemption under section 125 of Customs Act, 1962 on payment of fine of ₹ 7,50,000. In addition to challenge of these detriments to the importer, imposition of penalty of ₹ 2,50,000 under section 112 of Customs Act, 1962 as also imposition of penalty of ₹ 1,00,000 each on Shri Sunil Kothari and Shri Lalit Kothari

¹ [no. COMMR/TKG/ADJN/13/2009-10 dated 13th January 2010]

respectively are disputed in the three appeals before us.

3. According to Learned Counsel for the appellant, it was not open to the adjudicating authority to resort to selective extraction from the reports of the 'trade advisory panel' to suit its convenience and that, on reference of the entire import to the second set of experts, even though the first had recommended only two lots to be so scrutinized, the first report should have been rejected *in toto*. It was submitted that the adoption of values for confiscation was not consistent with essential prescriptions in rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It was also contended that no evidence of any complicity or relationship with buyer, sufficing to reject the declared value, had been brought on record. It was further submitted that the appraisal in the second report does indicate values higher than that declared thus laying the charge of over-valuation open to question. Debit advice issued by M/s IndusInd Bank was also furnished as evidence of declared value being the transaction value.

4. Reliance was placed on the decisions of the Tribunal in *JB and Brother Pvt Ltd v. Commissioner of Customs, Mumbai* [2021 (378) ELT 803 (Tri-Mumbai)] and in *Sahil Diamonds Pvt Ltd v. Commissioner of Customs, Ahmedabad* [2010 (250) ELT 310 (Tri-Ahmd)]. Learned Counsel also contended that cross-examination of individuals had been incorrectly refused by the adjudicating authority.

5. Learned Authorized Representative argued that the exercise in valuation had been undertaken in accordance with established norms and instructions. It was also submitted that

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(ii) *The valuation of diamonds is a tricky subject and it carries with it the requirement of inherent expertise. The best suited persons for such job are, therefore, experienced members from the same trade. Tarn of the opinion that no fruitful purpose could have been served even after cross-examination of the Trade Panel Experts because it is not the case that there was a single member alone who had valued the goods. Each member had given the value with mutual consultation and being the veteran members of the same trade, had suggested the value prevalent on the day of import after considering all the factors involved in the valuation of cut and polished diamonds. Moreover, it is a well accepted position that there can be a difference of 10-15% in the valuation of homogenous class of cut and polished diamonds suggested by the trade members or experts. A copy of the letter Ref No.GJC/OPC/2002-03/667 dated April 19, 2002 issued in this regard by the Secretary of Gem and Jewellery Export Promotion Council was in fact also submitted by the learned advocates, who had appeared on behalf of the noticees, during the course of personal hearing on 17.11.2009. In this case, the total value of the 1-24 lots (lot no. 25 and 26 were not valued by the first panel) of the consignment suggested by the first panel is US\$3,37,056.63 while the second panel suggested the value for these 24 lots as US\$3,09,644.55. The factual variation in value in these two reports is thus only to the*

tune of 8.3%. This being the true position, there was no need to allow cross-examination of the trade panel valuers on this count also and the attack on the reports made by the noticees on the ground that how there can be difference in values suggested by the trade panel members is not sustainable and have no merits especially when the value difference in two reports is well within this range.'

in the impugned order makes it abundantly clear that no prejudice had been caused to appellants by the discarding of plea for cross-examination.

6. The issue involved in this appeal is alleged overvaluation of 'cut and polished diamonds' for the adjudicating authority has relied upon two 'trade advisory panel' reports to discard the declaration and to conclude that the goods had been overvalued warranting resort to confiscation under section 111 of Customs Act, 1962 and consequent penalties under section 112 of Customs Act, 1962. The difference between the declared value and the ascertained value, even with such flaws as alleged by Learned Counsel, is just about 20%. We also notice that the first panel had tendered its estimation of 24 lots and suggested limited reference to another panel of experts; request for cross-examination was rejected on the ground that the difference between the estimation of the first and the second panels was a mere 8.3%. In the light of these variations, we are also not inclined accept the exactitude of valuation assigned by the two panels. These may, at

best, be ground for rejection of declared value under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

7. Even if the goods involved are ‘cut and polished diamonds’, which appears to have been earmarked by customs authorities for special treatment insofar as examination and valuation are concerned, the rigour of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not admit to any dilution therefrom. To do so, by adjudicatory assertion or appellate affirmation, would be to throw the doors open to whimsical assessment untrammelled by reasoned justification. Here the adjudicating authority has supplanted the task devolving on assessing authority to an outside agency without even the formality of adopting such valuation as its own. There could be no greater alienation of responsible and responsive administration in tax collection as legislated by Parliament.

8. There is no finding that the declared value is inconsistent with the essence of section 14 of Customs Act, 1962 nor of any ground, within the prescription of rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 enabling recourse to subsequent alternatives. Nor is there any narration in the impugned order that can lead us to conclude that the process set for invoking rule 12 of Customs Valuation (Determination of Value of

Imported Goods) Rules, 2007 had been taken to its logical conclusion. The value adopted in the impugned order has not been shown to lack the impediments enumerated in rule 9(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is essential as the reasons that prompted the ‘trade advisory panel’ to arrive at the disputed values is not on record. In sum, there has been blatant disregard not only of the scheme of valuation, now in force and consistent with international convention, as set out in Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 but also in the particulars of process and method embodied therein.

9. In the light of our findings *supra*, we hold that the re-determination of value is not in accordance with the law. As the penal consequences arise from confiscation based on illusory foundation, the detriment to the individual appellants lack authority of law. Accordingly, we set aside the impugned order and allow the appeals.

(Order pronounced in the open court on 24/08/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)