CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87843 OF 2013
WITH
CUSTOMS APPLICATION (MISC) NO: 85004 OF 2023
(on behalf of appellant)

[Arising out of Order-in-Appeal No: 265-266/MCH/DC/SVB/2013 dated 10th April 2013 passed by the Commissioner of Customs (Appeals), Mumbai Zone – I.]

A Raymond Fasteners India Pvt Ltd
Gat No. 259 +276/8B Village Nighoje
Tal: Khed, Pune - 410501 … ***Appellant***

versus

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

APPEARANCE:

Shri Anil Balani, Advocate for the appellant

Shri D S Maan, 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 / 86246/2023

DATE OF HEARING: 14/03/2023
DATE OF DECISION: 29/08/2023

PER: C J MATHEW

In this appeal, M/s A Raymond Fasteners India Pvt Ltd claims to be have been aggrieved by purported enhancing of duty liability, under Customs Act, 1962, that, in order[1] of Commissioner of Customs (Appeals), Mumbai Zone I, was sustained. The appellant had reported commercial transactions with suppliers who are related to them leading to reference by Commissioner of Customs (Import), Air Cargo Complex (ACC), Chhatrapathi Shivaji Maharaj International Airport (CSMIA), Mumbai to Special Valuation Branch (SVB) of New Custom House, Mumbai. For the earlier period, by order dated 16th January 2009, the supplies procured from M/s A Raymond Et Cie SCS, France and its subsidiaries/associates were found to be uninfluenced by the reported relationship and assessments – final and provisional – to be carried out on declared value for the next three years until next period of renewal.

2. At that stage, by letter dated 30th January 2012, it was reported by the appellant that, as of 1st October 2010, they had entered into separate ‘licencing agreement’ with M/s Rayconnect International SAS, France and M/s Raygroup SASU, France, a ‘service and distribution agreement’ with M/s Rayconnect International SAS, France and a ‘management fee agreement’ with M/s Raygroup SASU, France involving outflows whereupon, by order dated 22nd May 2012, Deputy Commissioner of Customs (GATT Valuation Cell), Mumbai,

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[1] [order-in-appeal no: 265-266/MCH/DC/SVB/2013 dated 10th April 2013]

ordered loading on import of specified goods from the specified suppliers. In addition, it was directed that

> *'11. In view of the above I pass the following order*
>
> *a. ………*
>
> *b. I order to load the declared invoice value to the extent of % loading mentioned in TABLE-B for Fastner and TABLE-D for Quick Connect of para 7, yearwise for goods imported by M/s. A. Raymond Fasteners India Pvt. Ltd., Pune from M/s. A. Raymond ET CIE SCS, France including all affiliates/associates group companies under Section 14 of the Customs Act, 1962 by the assessing group with an addition under Rule 10(1)(c)&(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 subject to usual check and scrutiny of the declared invoice value. However, if any contemporaneous imports at higher prices are noticed or there exists reasons other than influence of relationship to doubt the invoice value, the Assessing Group may evaluate the value of the imported goods under appropriate provisions of Customs Valuation Rules, 2007.*
>
> *xxxx*
>
> *i. All the assessments, which have been made final during the period mentioned in tables in para 7 shall be taken up in terms of para 9 and suitable demands shall be issued in terms of section 28(4) of the Customs Act, 1962.'*

Failure to persuade the first appellate authority on the merit of their stand has led to proceedings before us.

3. Learned Counsel for appellant and Learned Authorized Representative made extensive submissions on their respective cases. However, from a perusal of the appeal form, and the orders issued for acceptance of declared value earlier and for enhancement now, we find no reference to any impugned consignment or to quantification of the differential duty involved. There is also no elucidation on any review undertaken for the period after May 2015 concluding the validity of the loading save by further review. To a specific query on the impact of the assessment on specific imports, Learned Counsel was unable to enlighten us on any such. Neither is there any record that the order upheld by the first appellate authority has been implemented; Learned Authorized Representative was, likewise, unable to inform if the implementation of the direction to load value for assessment prospectively or for recovery of differential duty on finalized assessments had been held in abeyance for want of disposal of this appeal. Needless to state, that consignments had been adversely affected or collection of revenue impeded – two mutually exclusive, and only, situations – was unable to be argued leads us to believe that the loading was merely an academic exercise with no imports having taken place thereafter as it is inconceivable that the tax administration could have forborne collection of revenue in the absence of pre-deposit – directed or mandated – over this period without adverse observations from oversight agencies.

4. Learned Counsel for appellant advanced his argument that, notwithstanding any detriment, the directives of the GATT Valuation Cell (GVC) merited our disapproval in appellate proceedings for having enunciated a mandate on value to be deployed for assessment under section 17 of Customs Act, 1962, for fnalization of provisional assessment under section 18 of Customs Act, 1962 and for selective proceedings under section 28 of Customs Act, 1962. We cannot but fail to notice that the proceedings for recovery would be hopelessly time-barred by now. We do not abdicate our appellate responsibility but, in these circumstances, we need to examine if the first appellate authority was vested with the jurisdiction to decide on the appeal before it.

5. Learned Counsel reminded us that, in the past, the Tribunal had taken up similar matters for disposal. We have no doubt that this is so, but the facts pertinent to such disposals, including differential duty having been quantified therein, are not before us. Moreover, that an academic exercise, culminating in an unimplementable order, was under appellate scrutiny may not have been brought to the notice of the Tribunal in those disputes then. Furthermore, that such a ruling on loading of values would influence assessments under section 17 of Customs Act, 1962, finalization of provisional assessment under section 18 of Customs Act, 1962 or adjudication under section 28 of Customs Act, 1962 may not have been placed on record; effectively,

any decision on merits by us would be tantamount to ‘advance ruling’ which is not within our jurisdiction.

6. We also notice that the loading directive has been prompted by volunteering of information that the appellant is related to the suppliers with whom the said agreements, involving monetary outflows, had been entered into. It is seen that these pertain to ‘services’ for which a specific provision has been made in rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 that have nothing to do with relationship between buyer and seller but as a specific aberration, and therefore executable only under special dispensation of law in circumstances embodied therein. On the other hand, the GATT Valuation Cell (GVC), having restricted itself to the ‘relationship’ aspect, appeared to have concluded that declared value was to be discardable owing to such relationship. We are not inclined to accept that any other than ‘proper officer’ under section 17, section 18 or section 28 of Customs Act, 1962 can venture there. The Hon’ble Supreme Court, in *Canon India Pvt Ltd v. Commissioner of Customs [AIR 2021 SC 1699]*, is emphatic on the sanctity of jurisdictional circumscribing of statutory authority; any directive to a ‘proper officer’ to decide an assessment or adjudication is certainly anathema. It cannot, therefore, be presumed, as appellant does, that a grievance existed over a recommendation, or even directive, for loading that, in the eyes of law, lacks sanctity.

7. It is also settled law that a valid order of assessment or adjudication must, if detrimental to assessee, be decided within the confines of a show cause notice. The present proceedings are bereft of such preliminaries and, thus, is not an order; it may, at best, be a recommendation to ‘proper officer’ that does not substitute for exercise of that original authority under the statute.

8. The internal procedures for providing expert consultation to the statutorily empowered assessing officers, even if of long standing existence, do not vest the institution established for such purpose with statutory acknowledgement; in keeping with the tentativeness of the findings of this internal advisory mechanism, assessments, guided by the findings, are retained as provisional, under section 18 of Customs Act, 1962, till finalization on a future date. Potential as a trigger for resort to provisional assessment is impugned here but as on the date of order approving the guideline, no import had been subject to it. Nor is there any record of any detriment to importers thereafter and, if it had been an irreversible detriment, an appeal would have been resorted to as surely as night follows day. Customs Act, 1962 is concerned with levy of duty, as well as the enforcement of prohibitions, under law, on import/export goods. Other consequences such as differential duty, refund, drawback, fines and penalties may arise but only in consequence. The contingency of detriment that may arise on a future date is not a grievance that should be entertained unless and until it

does translate as one actually occupying on import or export of goods. We do not interfere with proceedings under section 18 of Customs Act, 1962 except if terms of such assessment is a cause of grievance. Even so, no incidence of provisional assessment is now impugned before us. We are also not vested with authority to approve or disapprove an advance ruling which has yet to place on burden on goods under section 46 of Customs Act, 1962.

9. Further, for the Tribunal to render a decision on goods that are, as yet provisionally assessed, would be a premature intervention. The time of finalization that should inevitably take place is also, as yet, uncertain. It is also apparent that procedure does not deter the finalization of an assessment for want of decision by the Tribunal or, should such need arise, by the Hon’ble Supreme Court. In other words, the internal process of the customs administration that enables the proper officer, under section 17 or section 18 of the Customs Act, 1962, to be assisted in the discharge of the statutory obligation and, which, legally, may not even bind the proper officer does not merit our attention. To the extent that we accord approval or disapproval at this stage, we would be appropriating the exercise of powers under section 18 of Customs Act 1962 for finalization of the assessment to ourselves and, thereby, would also erase one level of remedial jurisdiction that would, otherwise, be available to either side. This, in our view, is not the intent of section 128 of Customs Act, 1962. The

first appellate authority should also have similarly desisted from intervening before any provisional assessment finalised. The impact of the impugned order has been to transfigure a final assessment of the future to provisional assessment at the insistence of the Commissioner of Customs (Appeals). Any grievance arising from finalization does have appellate remedies commencing with the first appellate authority but not upon such reverse transfiguration.

10. The GATT Valuation Cell (GVC) has its origins in the obscurity of a valuation scheme that is only of archival relevance. The partial incorporation of the *schema* of Agreement on Customs Valuation (ACV), negotiated as the Tokyo Round Valuation Code in 1980 had largely been incorporated in Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and, with its specifics on defining relationship and recourse to alternatives in the Rules, had already obviated the role of Special Valuation Branch (SVB) as a specialized unit authorized to venture beyond the generality that assessments groups were habituated to. The complete alignment effected by Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 has virtually rendered it archaic. Yet its continuation within the administrative structure has now confounded the discharge of statutory delegation of assessment and adjudicatory function and effectively rendering the appellate authorities as ‘advance ruling’ bodies which is inconsistent with jurisdiction

conferred by the statute.

11. The first appellate authority, in exercise of powers under section 128 of Customs Act, 1962, should have restricted itself to orders that cause grievance. From our findings *supra*, there is no order in existence, even if one is presented as claiming to be, and, thereby, no cause of action until the recommendation did, unjustifiably, influence assessment or adjudication. The appeals were premature and should have been dealt with accordingly. As a question of jurisdiction has been answered thus, there is an implied lack of jurisdiction for the Tribunal too to consider the merit of either side. It would, therefore, be appropriate for the first appellate authority to consider remedies appropriate to the grievance, if any and to the extent permitted by statutory conferment.

12. Accordingly, the impugned order is set aside and appeal restored to first appellate authority to dispose off in accordance with the law.

(Order pronounced in the open court on 29/08/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*