# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# MUMBAI

REGIONAL BENCH - COURT NO. 01

## Customs Appeal No. 86646 Of 2013

(Arising out of Order-in-Appeal No. 94 (Gr-III)/2013IMP-87 dated 31.01.2013 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai-II)

**Surbhit Impex Pvt Ltd** .....**Appellant**
412/413 Mandiv Navjeevan, 4th Floor,
121/127 Kazi Sayed Street, Mumbai-400003.

*VERSUS*

**Commissioner of Customs-Import Nhava Sheva** .....**Respondent**
Jawaharlal Nehru Custom House, Post Uran District, Raigad Sheva-400 707.

**Appearance:**

Shri Vinay Ansulkar, Advocate for the Appellant
Shri Ram Kumar, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86758/2023**

Date of Hearing: 13.01.2023
Date of Decision: 13.01.2023

**PER : S. K. MOHANTY**

Brief facts of the case are that the appellant herein had filed the Bill of Entry No.3800457 dated 15.06.2011 for clearance of 'Knitted Fabrics' at a declared value of USD 2 per kg. The goods were examined on first check basis and samples were drawn and send to the Textile Committee for testing. On examination of the test report dated 20.07.2011 issued by the Textile Committee, the department found that the appellant had suppressed the actual description of fabric and its composition. Further, the department also found that the fabric was made of 97.1% viscose yarn and 2.9% polyurethane yarn. Since, the said parameters have the bearing on the value of the goods and that the appellant had declared the lesser value in respect of the goods imported by it, the department had invoked Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for rejection of such declared value and proceeded under Rule 9 *ibid* for re-determination of the value of goods at USD 5.21 per kg. The adjudication order dated 15.11.2011 passed by the department was appealed against by the appellant before the learned Commissioner of Customs (Appeals), Mumbai-II. The said appeal was disposed of vide the impugned order dated 31.01.2013 in rejecting the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has filed this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. We find that the original authority had mainly proceeded against the appellant for rejection of the declared value on the basis of the test report dated 20.07.2011 received from the Textile Committee, wherein it has been certified that the imported goods were made of viscose yarn (97%), which is of higher value than that of polyester. The original order had also referred to the inspection report, confirming that the goods were found to be of 4-way stretch fabric, which is costlier than the 2-way stretch fabric. Such views expressed by the original authority were also endorsed by the learned Commissioner (Appeals) in the impugned order passed by him.

4. It is an admitted fact on record that for enhancement of the declared value, the department had not issued any show cause notice and no

personal hearing was granted to the appellant before passing of the adjudication order. Thus, the ex-parte adjudication order passed is incomplete violation of the principles of natural justice. Both the authorities below have stated in their respective orders that various importers in their statements recorded under Section 108 of the Customs Act, 1962 have admitted under-valuation and remittance of money through hawala channel. In the case hand, it is an admitted position that no statements were recorded from the appellant with regard to sourcing of the goods from the overseas supplier. The authorities below though have stated that the composition of the goods in question was different, but the provisions of Section 111(m) *ibid* were not invoked for alleged mis-declaration of the goods. Further, paragraph 7 in the original order and paragraph 8 in the impugned order have accepted the fact that the NIDB data regarding identical or similar goods at the same commercial level during the relevant contemporaneous period was not available. Furthermore, reliance placed by the authorities below on 4-way knitted fabrics have not been supported with any evidence and contrary to the test report submitted by the Textile Committee inasmuch as they have refused to give any opinion on 2-way or 4-way stretch of the fabric. Thus, under the circumstances of the case, we are of the considered view that there was no reasonable cause to discard the transaction value and to determine the same by taking recourse to the Valuation Rules, 2007. It is not the case of Revenue that the price paid or payable by the appellant to the overseas supplier is not the proper transaction value. Further, the department has not brought on record any evidence to show that over and above the price paid for the imported goods, the appellant had paid any other amount through the approved banking channel. Therefore, we do not find any justifiable reason to reject the declared value in respect of the goods imported by the appellant.

5. In view of above discussions, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Therefore, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Operative portion of the order pronounced in open court)

**(S. K. Mohanty)**
**Member(Judicial)**

**(C J Mathew)**
**Member (Technical)**

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