

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

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85882 of 2020

(Arising out of Order-in-Original No. 43/SA(43) ADG (ADJ.)/DRI, MUMBAI/20-21 dated 09.07.2020 passed by the Additional Director General (Adj), DRI, Mumbai.)

Goodwill International

41, Asiad Market, 355, Shaikh Memon Street,
Mangaldas Market, Kalbadevi,
Mumbai-400 002.

.... Appellant

Versus

**Additional Director General (Adjudication),
D.R.I., Mumbai**

2nd Floor, Old Building, New Custom House,
Ballard Estate, Mumbai- 400 001.

.... Respondent

Appearance:

Shri Yusuf Iqbal, Shri Nevilla Majra a/w Shri Zubin Sheth, Advocates for the
Appellant

Shri Adeeb Pathan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85646/2024

Date of Hearing: 11.03.2024

Date of Decision: 28.06.2024

Per: S.K. MOHANTY

Brief facts of the case, leading to this appeal, are summarized
herein below:

1.1 With regard to import of perfumes and deodorants, the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit gathered intelligence that various importers, including the appellants herein were involved in evasion of Customs Duty by resorting to gross under-valuation in the said import. The intelligence further indicated that the importers were mis-declaring the Maximum Retail Price (MRP)/ Retail Sale Price (RSP) and also the transaction value to avoid appropriate duty assessment by

the Customs department and thereby, evading both Basic Customs Duty (BCD) as well as Additional Duty of Customs (CVD).

1.2 On the basis of such intelligence, the officers of DRI searched the office premises of the appellants and seized certain import documents and files etc., under panchanama dated 03.05.2018. On scrutiny of the seized documents/files, they observed that the appellants had imported 47 consignments of perfumes and deodorants of Rasasi brand of Dubai during the period October'2013 to November'2015; that out of those 47 imports, in respect of 44 imports, the appellants had filed the Bills of Entry (B/Es), declaring their products in rupee terms per dozen, instead of declaring the MRP per piece; and that with regard to the remaining 3 B/Es, the appellants had declared the MRP per piece of the product. During the course of investigation, the department had recorded the statements of Shri Abdul Hafiz Reshamwala, Partner of the appellants firm; Shri Rajendra Kumar Tripathy of M/s Chitalia Logistics Pvt. Ltd. and Shri Vidyadhar M. Thatte, country Head of M/s Rasasi Perfumers Pvt. Ltd. under Section 108 of the Customs Act, 1962.

1.3 Based on the seized records and the statements recorded from various persons, the DRI had concluded that Shri Hafiz Reshamwala, partner of the appellant's firm had indulged into the conspiracy with the overseas supplier M/s Al Rasasi International for undervaluing the perfumes and deodorants supplied to them. In support of such conclusion, the departments had referred to the Invoice Nos. 388/13/CM dated 08.12.2013 and 428/14/CM dated 16.12.2014 issued by M/s Al Rasasi International and the corresponding B/Es being Nos. 4269739 dated 06.01.2014 and 8027305 dated 19.01.2015 filed by the appellants before the customs authorities at the port of import for duty assessment. Upon comparison of the price shown in the above two invoices and B/Es vis-à-vis the price declared by the appellants in respect of remaining 45 B/Es and on the basis of the statement dated 15.10.2018 recorded from Shri Vidyadhar M. Thatte, Country head of M/s Rassasi Perfumers Pvt. Ltd., the DRI had averred that the actual MRP at which the goods were sold by them and the transaction value declared in the above referred B/Es appeared to be proper and that in the remaining 45 B/Es, the MRP declared were grossly understated.

1.4 On the above backdrop of the issue, the learned Additional Director General (Adjudication), DRI, Mumbai had issued the Show Cause Notice No. DRI/MZU/B/INT-166/2017/7987 (SCN) dated 24.10.2018 under Section 28 read with Section 124 of the Customs Act, 1962, proposing for rejection of the declared value in respect of 46 consignments of perfumes and deodorants under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14(1) *ibid* and Notification No. 49-C.E.(N.T.) dated 24.12.2008 as amended; re-determination of the assessable value and MRP under Rule 3(1) *ibid* read with Section 14 *ibid*; demand and recovery of differential duty amounting to Rs.12,41,95,860/- along with interest in terms of the provisions of Section 28(4) *ibid* and 28AA *ibid* respectively; confiscation of 46 nos. of consignments under Section 111(m) *ibid* and imposition of penalties under Section 114A or 112(a) and/or 112(b), 114AA *ibid*. With regard to the remaining one consignment, the said SCN had made the similar proposal for rejection of declared value, re-determination of the same under Rule 3 *ibid*, demand and recovery of the differential duty amounting to Rs.10,97,959/-, confiscation and imposition of penalties on the appellants.

1.5 In support of the above proposals made in the SCN, the DRI investigation had provided the following grounds:

(i) That a conspiracy was hatched by Shri Abdul Hafiz Reshamwala, Partner of M/s. Goodwill International with their overseas supplier M/s. Al Rasasi International for undervaluing the perfumes and deodorants supplied to them.

(ii) On the basis of the understanding between Shri Abdul Hafiz Reshamwala Partner of M/s. Goodwill International with their overseas supplier, M/s. Al Rasasi International issued invoices showing a lesser value than the actual price for the perfumes and deodorants supplied by them to M/s. Goodwill International.

(iii) The Invoice issued by M/s. Al Rasasi International bearing No. 388/13/CM dated 08.12.2013 filed along with B.E. No.4269739 dated 06.01.2014 and invoice No.428/14/CM dated 16.12.2014 filed along with B.E. No. 8027305 dated 19.01.2015 showed the actual value of the perfumes and deodorants supplied by them to the appellants M/s. Goodwill International and the MRP for the said products said to have been declared by the supplier in the said two bills of entry was the proper MRP at which M/s. Rasasi Perfumers Pvt. Ltd. had sold in their retail store.

(iv) The MRP of the Rasasi products sold by M/s. Rasasi Perfumers Pvt. Ltd. in their retail stores was given by Shri Vidyadhar M. Thatte, Country Head of M/s. Rasasi Perfumers Pvt. Ltd. in his statement dated 15.10.2018. The MRP given by him matched with the MRP declared by

M/s. Goodwill International in the B.E. No.4269739 dated 6-1-04 and B.E. No. 8027305 dated 19-01-2015.

(v) Therefore, the assessable value as a percentage of the MRP taking the same percentage as given in bill of entry no. 8027305 dated 19-01-2015 was considered for arriving at the revised assessable value of the remaining bills of entry and the MRP declared by M/s. Goodwill International in the said two bill of entry and the MRP given by their Country Head was taken into account for arriving at the actual MRP of the remaining bills of entry also.

1.6 The matter arising out of SCN dated 24.10.2018 was adjudicated by the learned Additional Director General (Adjudication), DRI, Mumbai vide Order-in-Original No. 43/SA(43) ADG (ADJ.)/DRI, MUMBAI/20-21 dated 09.07.2020 (for short, referred to as "the impugned order"), wherein the proposals made in the SCN were confirmed.

1.7 Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2.1 Shri Zubin Sheth, learned Advocate appearing for the appellants submitted that 44 nos. of B/Es filed by them for import of perfumes and deodorants were duly assessed by the proper officer at the port of import, based on the documents filed by them. He further submitted that the payments were made by the appellant as per the prices reflected in the invoices issued by the overseas supplier M/s. Al Rasasi International, Dubai and that the same were routed through the approved banking channel. In this context, learned Advocate has referred to the statement dated 18.10.2018 recorded by the DRI from Shri Abdul Hafiz Reshamwala, Partner of the appellants firm, confirming that the invoice value was remitted through their bank account. He further submitted that in the statements recorded by the department from other persons under summons also nowhere specified that the appellants had paid any additional amount to the overseas entity, over and above the price indicated in the invoices. Thus, it is contended that the value declared in the B/Es, which are based on the invoices issued by the overseas supplier, should be considered as the 'transaction value' in terms of Section 14 *ibid* for payment of the Customs duty, which had been properly discharged by the appellants and also accepted by the proper officer at the time of assessment of the B/Es.

2.2 Learned Advocate has strenuously argued that reference made on the B/Es Nos. 4269739 dated 06.01.2014 and 8027305 dated 18.01.2015 in the impugned order to conclude that the value declared therein has to be considered as the proper value for the purpose of duty assessment is not in conformity with the statutory provisions. He submitted that the goods imported by the appellants through Nhava Sheva Port (44 nos. of consignments) were not in retail packaging, but were imported in packages, containing one dozen pieces each, meant for sale to various wholesalers. Further, it has also been stated that the quantities imported by the appellants were enormous and were absolutely incomparable with the minuscule quantities imported in the above referred B/Es. In this connection, learned Advocate submitted that total units imported by the appellants for their own wholesale business in India during the disputed period was in the range of 48,99,681 units, as compared to 27,889 units imported by the appellants for the retail business of Al Rasasi in India. In respect of the imports made under the above mentioned two B/Es, learned Advocate submitted that the consignments were imported by the appellants on behalf of M/s Al Rasasi, Dubai for their retail shop business in India and that the selling price in India was solely decided by them, without involving the appellants for finalization of the retail selling price. He further submitted that the pricing structure was solely decided by the overseas supplier on their own and was a speculative expected price, which they assumed that it would fetch from a new, untested retail market in India; but they failed to achieve the target of high speculative price by incurring huge business losses. In this context, learned Advocate has submitted the audited Profit & Loss accounts prepared by M/s Rasasi Perfumers Pvt. Limited for the relevant financial years.

2.3 On the basis of the above submissions, learned Advocate has pleaded that the transaction value declared by the appellants cannot be discarded on the basis of the B/Es relied upon by the department as contemporaneous import. Thus, it is contended by him that since the transaction value is determinable in terms of Section 14 *ibid*, there was no scope on the part of the DRI to reject such declared values and for proceeding subsequently through the Customs Valuation Rules, 2007 for determining the value under Rule 4 *ibid*. In support of the claim that the value declared in the 44 B/Es should be

considered as the transaction value, learned Advocate has relied upon the following judgements delivered by the judicial forum:

(i) Commissioner of Central Excise and Service Tax, Noida vs. M/s/ Sanjivani Non-Ferrous Trading Pvt. Ltd. [2019 (365) E.L.T. 3 (S.C.)]

(ii) M/s Classic Marble Company Pvt. Ltd. vs. Commissioner of Customs, Nhava Sheva-II [Final Order No. A/85726/2020 dated 11.06.2020, passed in Customs Appeal No.87484 of 2018.]

2.4 Learned Advocate further submitted that 45 consignments out of the subject 47 consignments had been admittedly imported by the appellants in wholesale packages, containing dozens of pieces of individual items. It is further stated by him that the appellants were not selling the said products in retail, but were selling the entire package in the condition, in which these were imported. Thus, he stated that the provisions of Drugs and Cosmetics Act, 1940 and the rules framed thereunder should be applicable to the goods imported by the appellants, and not the Legal Metrology (Packaged Commodities) Rules, 2011.

3. Shri Adeeb Pathan, learned Authorised Representative (AR) appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that the department's action in re-determination of the RSP is justified, where ever it is noticed that there is under valuation of the goods. Learned AR also submitted that affixation of MRP/RSP is a statutory requirement to be complied by the importer dealing in packaged commodities in terms of Legal Metrology (Packaged Commodities) Rules, 2011; since, the appellants had not complied with the requirements contained therein, confirmation of the adjudged demands in the impugned order is in conformity with the statutory provisions.

4. Heard Shri Zubin Sheth, learned Advocate for the appellants and Shri. Adeeb Pathan, learned AR for Revenue and examined the case records, including the written submissions filed by both sides.

5. The issues involved in the present appeal for consideration by the Tribunal are itemized herein below:

(i) Whether the prices declared in the 45 nos. of B/Es by the appellants should be considered as the 'transaction value', as

provided in Section 14 *ibid* read with sub-rule (1) of Rule 3 *ibid*, for the purpose of payment of customs duty?;

(ii) whether on the basis of the other two B/Es Nos. 4269739 dated 06.01.2014 and 8027305 dated 18.01.2015, relied upon by the Revenue, can the declared value be rejected and subsequently re-determined as the transaction value on the basis of the value of identical goods, as contained in Rule 4 *ibid*?;

(iii) as an importer of perfumes and deodorants, whether the appellants were required to comply with the provisions of Legal Metrology (Packaged Commodities) Rules, 2011 as claimed by Revenue; or, the Drugs and Cosmetics Act, 1940 and the rules made there under, as asserted by the appellants?.

6. The statutory provisions, relevant for consideration of above issues, are extracted herein below:

The Customs Act, 1962

"Section 14. (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:....."*

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Rule 3. (1) *Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) *Value of imported goods under sub-rule (1) shall be accepted:*

Provided that -

- (a) *there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*
 - (i) *are imposed or required by law or by the public authorities in India; or*
 - (ii) *limit the geographical area in which the goods may be resold; or*
 - (iii) *do not substantially affect the value of the goods;*
- (b) *the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*
- (c) *no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and*

- (d) *the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*

(3)(a) *Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*

(b) *In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.*

- (i) *the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*
- (ii) *the deductive value for identical goods or similar goods;*
- (iii) *the computed value for identical goods or similar goods:*

Provided *that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;*

(c) *substitute values shall not be established under the provisions of clause (b) of this sub-rule.*

(4) *If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.*

Rule 4. (1)(a) *Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued :*

Provided *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(b) *In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.*

(c) *Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.*

(2) *Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.*

(3) *In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods."*

Rule 12. (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents."

Legal Metrology (Packaged Commodities) Rules, 2011

Rule 2. In these rules, unless the context otherwise requires—

(k) "retail package" means the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and includes the imported packages;

(r) "wholesale package" means a package containing—

- (i) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or...

Declarations applicable to be made on every wholesale package.

Rule 24. Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration as to—

- (a) The name and address of the manufacturer or importer or where the manufacturer or importer is not the packer, of the packer;
- (b) the identity of the commodity contained in the package; and
- (c) the total number of retail package contained in such wholesale package or the net quantity in terms of standard units of weight, measures or number of the commodity contained in wholesale package:

Provided that nothing in this rule shall apply in relation to a wholesale package if a declaration similar to the declarations specified in this rule, is required to be made on such wholesale packages by or under any other law for the time being in force.”

Drugs and Cosmetics Rules, 1945.

"129H. Labeling and Packing of Cosmetics.- No cosmetic shall be imported unless it is packed and labeled in conformity with the rules in Parts XV. Further the label of imported cosmetics shall bear registration certificate number of the product and the name and address of the registration certificate holder for marketing the said product in India.

PART XV

LABELLING, PACKING AND STANDARDS OF COSMETICS

148. Manner of labelling.-Subject to other provisions of the rules, a cosmetic shall carry-(1) on both the inner and outer labels:

- (a) the name of the cosmetics,
- (b) the name of the manufacturer and complete address of the premises of the manufacturer where the cosmetic has been manufactured...”

7.1 As per the mandate provided under Section 14 *ibid*, the ‘transaction value’ is required to be considered on the price i.e., actually paid or payable by the buyer in India to the seller located abroad and that such price should be the sole consideration, meaning thereby that, over and above such agreed upon price, nothing more is paid or payable on the imported goods; and that the buyer and the seller of the imported goods should not be related to each other. In the present case, there was no evidence of mis-declaration of transaction value inasmuch as the description and the price indicated in the 44 nos. of B/Es tally with the description and prices reflected in the invoices issued by the overseas supplier. It is not the case of the department that the appellants had shown wrong description of goods in the B/Es or imported any quantity, in excess of that shown in the relevant B/Es. None of the persons whose statements were recorded under summons by the department during the course of investigation, had attributed any contumacious conduct on the part of the appellants. Further, the appellants have paid the prices as mentioned in the invoices of the foreign supplier and there is no

evidence on record to show that any extraneous payment being made for the benefit of the supplier in respect of the goods imported by the appellants. Thus, in our prima facie view, there is no basis for discarding the invoice prices as the transaction value for discharge of due customs duty liability.

7.2 Since, the transaction value is determinable on the basis of the documents exchanged between the parties i.e., the appellants and the overseas supplier, the value of the imported goods, for which the payments were made through the approved banking channel, should be considered as the transaction value in accordance with sub-rule (1) of Rule 3 *ibid*. There is no scope or occasion for the department to reject the declared value for the purpose of consideration of some other 'transaction value' inasmuch as the transaction value has already been determined and on the basis of such determination, the remaining 45 nos. of disputed B/Es were already assessed under sub-section (1) of Section 17 *ibid*, which had not been objected to by the department by taking recourse to sub-section (4) of Section 17 *ibid*, ordering for re-assessment of the same. We find that the learned adjudicating authority has revised the assessable value in respect of the disputed 44 B/Es on the basis of the MRP/RSP mentioned in the balance 3 nos. of B/Es (used by M/s Al Rasasi for their retail store), and not on the basis of transaction value as defined in Section 14 *ibid*.

7.3 We find that the learned adjudicating authority has not analyzed the provisions contained in Section 14 *ibid* read with Rule 3(1) *ibid* in their proper prospective with regard to determination of the transaction value on the goods imported by the appellants into the territorial waters of India. In context with determination of transaction value, the law is well settled by the Hon'ble Supreme Court, in the case of Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai – 2000 (122) E.L.T. 321 (S.C.) that if the transaction value cannot be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), then there is no question of determining the value under subsequent rules. Though, the said judgement was delivered in context with the *erstwhile* Customs Valuation Rules, 1988, but the ratio laid down therein squarely applies to the case in hand inasmuch as in the Customs Valuation Rules, 2007 (presently in vogue), Rule 4(1) and Rule 4(2)

in the *erstwhile* Rules, 1988 were re-numbered as Rule 3(1) and Rule 3(2) respectively. In the said judgement, the Hon'ble Court further held as under:

"22. *In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis-description of the goods imported as was the case in Padia Sales Corporation. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value..."*

The Hon'ble Supreme Court in the subsequent judgement delivered in the case of Commissioner of Customs v. J.D. Orgochem Ltd. – 2008 (226) E.L.T. 9 (S.C.), have also endorsed the views with regard to the manner of determination of the transaction value, as dealt with in the earlier judgement, in the case of Eicher Tractors Ltd. (supra). Further, the Hon'ble Court in the case of Commissioner of Customs, Calcutta v. South India Television Pvt. Ltd. – 2007 (214) E.L.T. 3 (S.C.) has also held that *"invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence..."*

The aforementioned judgments have been relied upon by the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Service Tax, Noida Vs. Ms. Sanjivani Non-Ferrous Trading Pvt. Ltd. – 2019 (365) E.L.T. 3 (S.C.), wherein it has *inter alia*, been held that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that mentioned in the B/Es. Thus, in the present case, there was no basis for rejection of the transaction value. The learned adjudicating authority has distinguished the above judgments, holding that the RSP declared by the appellants in those disputed B/Es was 10-20 times less than the actual RSP declared in the two nos. of B/Es

(supra). Such findings of the adjudicating authority, in our considered view, are not in conformity with the statutory provisions inasmuch as the RSP at which M/s. Rasasi Perfumers Pvt. Ltd., intended to sell the goods from their retail outlets cannot possibly be the actual RSP, at which the appellants intended to sell the goods (wholesale packages) from their premises.

8.1 In the case in hand, the department has only considered the prices indicated in the invoice nos. 388/13/CM dated 08.12.2013 and 428/14/CM dated 16.12.2014 issued by M/s Al Rasasi International, Dubai (corresponding B/Es nos. 4269739 dated 06.01.2014 and 8027305 dated 19.01.2015) and the statements of Shri Abdul Hafiz Reshamwala, partner of appellants' firm and Shri Vidyadhar M. Thatte, Country head of Rasasi Perfumers Pvt. Ltd., to conclude that the prices indicated in the said invoices are the correct transaction value in respect of the goods imported by the appellants in respect of the remaining 45 B/Es. However, the department had failed to appreciate that the prices indicated in those referred invoices were determined by the Rasasi Perfumers Pvt. Ltd. and the same were also meant for them. On the contrary, the 44 B/Es filed in respect of goods imported by the appellants were meant for their own behalf and the RSP was also determined by themselves and neither the overseas supplier nor its branch office located in India had played any role in finalization of the selling prices. Further, we find that the volume of transactions, made by the appellants (wholesale business) vis-à-vis as sold in the outlet(s) of the overseas supplier in India, are not in the same commercial level, which would be evident from the table appended below:

Goods Imported for appellant's wholesale business

S. No.	Invoice number	Invoice date	Deo Qty	Perfume Qty	Total Unit
1	325/13 cbm	10-06-2013	60288	35940	96228
2	701/13 cbm	13/10/2013	99420	3300	102720
3	359/13 cbm	11-07-2013	61058	33420	94478
4	369/13 cbm	14/11/2013	111708	1560	113268
5	383/13 cbm	12-03-2013	60348	34223	94571
6	386/13 cbm	12-05-2013	119314	396	119710
7	397/13/cbm	16/12/2013	58127	37576	95703
8	414/13/cbm	29/12/2013	121224		121224
9	036/14/cbm	30/01/2014	113975	1260	115235
10	057/14/cbm	19/02/2014	120765		120765
11	091/14/cbm	03-12-2014	60060	34812	94872
12	163/14/cbm	27/04/2014	53052		53052
13	201/14/cbm	21-05-2014	8436	58380	66816

S. No.	Invoice number	Invoice date	Deo Qty	Perfume Qty	Total Unit
14	210/14/cbm	29-05-2014	88500	18375	106875
15	221/14/cbm	06-08-2014	91188	46980	138168
16	243/14/cbm	29-06-2014	123372		123372
17	263/14/cbm	16/07/2014	112512	9288	121800
18	275/14/cbm	08-05-2014	110772	8244	119016
19	295/14/cmb	24/08/2014	55836	38772	94608
20	307/14/cbm	09-07-2014	111552	9204	120756
21	320/14/cbm	16/09/2014	76260	32220	108480
22	343/14/cbm	28/09/2014	120756	-	120756
23	355/14/cbm	13/10/2014	63360	31260	94620
24	386/14/cbm	11-10-2014	50592	39444	90036
25	412/14/cbm	27/11/2014	121248	-	121248
26	431/14/cbm	17/12/2014	53436	47964	101400
27	007/15/cbm	15/01/2015	121800	-	121800
28	018/15/cbm	28/01/2015	43932	40332	84264
29	031/15/cbm	24/02/2015	121812	-	121812
30	035/15/cbm	03-01-2015	107724	2868	110592
31	043/15/cbm	16/03/2015	121800	-	121800
32	061/15/cbm	14/04/2015	128568	-	128568
33	071/15/cbm	26/04/2015	79872	26280	106152
34	081/15/cbm	05-12-2015	128508	-	128508
35	088/15/cbm	05-12-2015	125516	-	125516
36	112/15/cbm	16/06/2015	69660	30432	100092
37	136/15/cbm	07/08/2015	66156	29772	95928
38	155/15/cbm	26/07/2015	85296	15960	101256
39	198/15/cbm	09-10-2015	121836	-	121836
40	203/15/cbm	09-10-2015	121656	-	121656
41	211/15/cbm	28/09/2015	103788	8808	112596
42	900/15/cbm	18/10/2015	122856	-	122856
43	225/15/cbm	20-10-2015	54132	39144	93276
44	247/15/cbm	11-08-2015	112236	2760	114996
45	321/13/cbm	10-03-2013	116400	-	116400
					4899681

Goods Imported For Al Rasasi for their Retail Business

<u>Sr No</u>	<u>Invoice number</u>	<u>Invoice date</u>	<u>Deo Qty</u>	<u>Perfum Qty</u>	<u>Total Unit</u>
1	428/14 cmb	16/12/2014	1650	3661	5311
2	388/13/cbm	12-08-2013	8578	14000	22578
					27889

8.2 Rule 12 *ibid* provides the mechanism and procedure for rejection of the declared value. The said rule does not empower the proper officer to reject the transaction value, without establishing that such value was not genuine. In the case in hand, the information/documents called for from the appellants by the investigation wing sufficiently prove that the price indicated in the invoices issued by the overseas supplier and paid by the appellants was genuine, in the sense that, no adverse findings were recorded that the appellants had paid more price towards purchase of the disputed goods. Further, in the statements recorded from various persons under summon, nowhere it came out that the appellants had paid additional amount over and above the invoiced price. Thus, in

our considered opinion, there cannot be any reason to doubt the declared value in the B/Es as the transaction value, for the purpose of duty assessment.

8.3 Even assuming that there was reasonable doubt that the declared value does not represent the transaction value, for which the declared value is required to be rejected, then in such case, Rule 4 *ibid* cannot be applied for determination of the transaction value, especially in the facts and circumstances of the present case. Rule 4 *ibid* deals with the situation of consideration of transaction value of identical goods. It has been provided that in applying the said rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity should be used. On perusal of the above table, it transpires that the volume of imports made on behalf of M/s Rasasi Perfumers Pvt. Ltd. was only 0.57%, as compared to the imports made by the appellants for their wholesale business during the disputed period. Further, the facts are not under dispute that the appellants had imported the goods for their wholesale business in India; whereas, the overseas supplier had supplied the goods for exclusive sale in retail through its outlet(s) located in India, that too, in a minuscule quantity. The dealings of a wholesaler vis-à-vis a retailer cannot be considered at the same commercial level. Thus, determination of value under Rule 4 *ibid* cannot be resorted to by the department under the above factual matrix.

8.4 We find that Shri Abdul Hafiz Reshamwala, Partner of the appellants' firm in his statement recorded under summon, had *inter alia*, stated that M/s Rasasi could not sell the products at the MRP fixed by them and as a result, they made huge losses and shut down their retail business in India. We find support from such submissions through the audited Profit and Loss account of M/s Rasasi Perfumers Pvt. Ltd., prepared for the relevant period, showing the cumulative loss of Rs.2,45,90,606/- incurred by them. Thus, we are of the view that M/s Rasasi could not be able to sell the products in Indian market through their outlet(s), owing to the reason that the retail sale price was grossly inflated by them.

8.5 Apart from the invoice price referred to in the above two B/Es, the department had also relied upon the statements of other

persons, in support of the assertion that the value declared in the disputed B/Es cannot be considered as the transaction value. We have gone through the statements recorded by the department from Shri Abdul Hafiz Reshamwala, Partner of the appellants' firm and Shri Vidyadhar M. Thatte, country head of M/s Rasasi Perfumers Pvt. Ltd. The statement of the partner of the appellant's firm was exculpatory and he had mainly clarified that the transaction value and MRP declared in the B/Es dated 06.01.2014 and 19.01.2015 were decided by M/s Al Rasasi International and that they were meant for sale in the outlet(s) owned by M/s Rasasi Pvt. Ltd. The said clarification cannot be made as the basis for alleging any undervaluation or mis-declaration on the part of the appellants in the B/Es filed by them, with regard to the imports made by them exclusively for their wholesale business in India. Similarly, the statement of Shri Thatte also does not establish any *mala fides* on the part of the appellants. He was the country head of M/s Rasasi Perfumers Pvt. Ltd. and had no concern with the price at which the appellants intended to sell their products in India. We find that while cross examining the said witness, the learned Advocate for the appellants had put certain questions, to which the manner he replied, clearly indicates that the appellants were no way concerned with the activities, concerning under-valuation or mis-declaration with regard to the disputed imports made by them. The relevant questions asked on behalf of the appellants and replied by Shri Thatte during the course of cross examination on 26.09.2019 (referred to in paragraph 3.1 in the impugned order) are extracted herein below:

Q.No.4	Are you aware about the pricing mechanism followed by Rasasi at Dubai?
Ans no.4	No, I had no connection with the pricing mechanism in Dubai.
Q.No.5	Are you aware of the manner in which Rasasi sells its products worldwide?
Ans no.5	No. I have no exposure.
Q.No.6	Whether Rasasi Dubai issues invoices as per instruction of purchaser?
Ans no.6	No.
Q.No.17	Does Rasasi Dubai have different qualities/varieties of perfumes by the same name?
Ans no.17	Yes.
Q.No.18	What do you have to say about the DRI allegations that Rasasi Dubai sent incorrect invoices at lower value for the perfumes sold to Goodwill?
Ans no.18	No.

8.6 In view of the fact that the statements recorded from the persons do not attribute any *mala fides* on the part of the appellants, we are of the view that placing reliance on such statements by the department cannot be a defensible ground for rejection of the transaction value and for re-determination of the same by taking recourse to Rule 4 *ibid* read with Rule 12 *ibid*.

9.1 We find that the learned adjudicating authority has confirmed the differential demand of Basic Customs Duty (BCD) by adopting to the deemed value based on MRP, for arriving at the transaction value. The valuation of goods for the purpose of computation of BCD amount has to be in accordance with Section 14(1) *ibid* and has thus, to be based on transaction value and not on the basis of MRP declared on the said goods. Therefore, no recommendation has been provided in the Customs statute for adopting the MRP as the basis for arriving at the transaction value of the imported goods. Even considering the fact that the transaction value can be arrived at on the basis of RSP, the wholesale dealers (appellants herein) are outside the scope and ambit of the Legal Metrology (Packaged Commodity) Rules, 2011. Rule 2(k) in the said rules has defined the phrase 'retail package' to mean the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein. Similarly, the phrase 'wholesale package' has been defined in Rule 2(r) *ibid* to mean a package containing a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale directly to a single consumer. The provision regarding the declaration to be made on every package has been contained in Rule 6 *ibid*, and the said rule is meant for the retail package(s) and not to the wholesale package(s), for which separate provisions have been made in Rule 24 *ibid*. In the *proviso* clause appended to Rule 24 *ibid*, it has been specifically mandated that nothing contained in this rule shall apply in relation to a wholesale package, if a declaration similar to the declaration specified in this rule, is required to be made on such wholesale packages by or under any other law, for the time being in force.

9.2 Revenue in this case, has not disputed the fact that the appellants had imported and sold the deodorants & perfumes to the retailers in the packages containing dozens of bottles, and in turn, the retailers had sold the said goods in individual pack(s) to the ultimate consumers for their use; on the contrary, the exporter M/s Rasasi International, Dubai had supplied the goods for exclusive sale in individual pieces to the consumers in its retail outlet(s) located in India. As per the requirement under the Rules, 2011, the retail outlet of the overseas supplier was required to comply with the provisions laid down therein. In so far as the appellants are concerned, the definition of wholesale package contained in Rule 2(r) *ibid* is applicable inasmuch as the imported goods in packaged form are sold to the intermediary and not directly to the consumers. In other words, the goods purchased in bulk by the intermediary from the appellants are subsequently sold to the consumer in smaller quantities. The appellants herein are exempted from complying with the provisions of Rule 24 *ibid* for furnishing declaration on the wholesale package in view of the *proviso* contained in the said rule. The *proviso* clause contained in Rule 24 *ibid* is applicable in the case, where the declarations have to be furnished in the wholesale package as per any other law applicable at the relevant point of time.

9.3 In respect of imported cosmetics, the Drugs and Cosmetics Act, 1940 and the rules framed there under are required to be complied with by the importer/dealer of such goods. Rule 129H of the Drugs and Cosmetic Rules, 1945 provides that no cosmetic shall be imported, unless it is packed and labelled in conformity with the rules provided in Part XV therein. The said provision also mandates that the label of imported cosmetics shall bear the registration certificate number of the product and the name and address of registration certificate holder, for marketing the said product in India. In Rule 148 *ibid*, it has been provided the manner in which the cosmetics are to be labelled. The department in the present case, has not specifically alleged that appellants had not complied with the requirements provided under the Act of 1940 and the Rules, 1945. Further, the authorities entrusted with the power for enforcement of the said statutory provisions have also not initiated any proceedings, alleging that the provisions of such statutes have been contravened by the appellants. Therefore, it can be concluded that as an importer and wholesaler of perfumes, the appellants had duly complied with

the provisions of Drugs and Cosmetics statute. In view of the fact that the appellants as the importer/wholesaler of perfumes and deodorants are governed under the provisions of Drugs and Cosmetics statute, they are outside the purview of the Legal Metrology Act, 2009 and the rules framed there under.

10. In view of the foregoing discussions and analysis, we are of the considered opinion that in the present set of facts, rejection of transaction value, re-determination of the same, confiscation of the impugned goods, confirmation of the differential duty demand along with interest and imposition of penalties on the appellants shall not stand the judicial scrutiny. Therefore, the impugned order dated 09.07.2020, confirming the adjudged demands on the appellants are set aside in entirety. Accordingly, the appeal is allowed in favour of the appellants, with consequential benefits, if any, as per law.

11. The appeal is disposed off in above terms.

(Order pronounced in open court on 28.06.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)