CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86777 OF 2014

[Arising out of Order-in-Appeal No: 473 (GR.VII-H)/2014 (JNCH)/EXP-22 dated 13th February 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Banaras Beads Ltd
A-1 Industrial Estate, Varanasi – 221 106 … ***Appellant***

versus

Commissioner of Customs (Export)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87222 OF 2014

[Arising out of Order-in-Appeal No: 517 (GR.VII-H)/2014(JNCH)EXP-35 dated 26th February 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Banaras Beads Ltd
A-1 Industrial Estate, Varanasi – 221 106 … ***Appellant***

versus

Commissioner of Customs (Export)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87223 OF 2014

[Arising out of Order-in-Appeal No: 516 (GR.VII-H)/2014(JNCH)EXP-35 dated 26th February 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Banaras Beads Ltd
A-1 Industrial Estate, Varanasi – 221 106 … ***Appellant***

versus

Commissioner of Customs (Export)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

APPEARANCE:

Ms Shamita Patel, Advocate for the appellant

Shri Ram Kumar, 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: 87456-87458/2024

DATE OF HEARING:	13/06/2024
DATE OF DECISION:	12/12/2024

PER: C J MATHEW

These appeals of Banaras Beads Ltd have their genesis in dispute over enhancement of value of 'glass beads (rockiles)' that were imported against bills of entry no. 3030137/19.08.2013, no. 3045047/20.08.2013 and no. 9281339/11.02.2013 while those covered by first of the bills was re-assessed at US$ 1.60/ kg, the consignments in the subsequent shipments were re-assessed at US$ 1.75/kg by recourse to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 after rejection of the declared value and consequent to being upheld in order[1] [2] [3] of by Commissioner of Customs (Appeals), Mumbai – II. In the impugned orders that are distinguished by the brevity, the first appellate authority has held that

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[1] [order-in-appeal no. 473 (GR.VII-H)/2014(JNCH)/EXP-22 dated 13th February 2014]
[2] [order-in-appeal no. 517 (GR.VII-H)/2014(JNCH)/EXP-35 dated 26th February 2014]
[3] [order-in-appeal no. 516 (GR.VII-H)/2014(JNCH)/EXP-35 dated 26th February 2014]

the enhancement on the basis of assessable value of ‘contemporaneous imports’ of ‘similar goods’ in the respective assessment were not to be faulted.

2. According to Learned Counsel for the appellant, the substitution of the declared value was not in consonance with the decision of the Hon'ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs, Mumbai [2000 (122) ELT 321 (SC)]* and the decision of the Tribunal in *Acmechem Ltd v. Commissioner of Customs (Import), Mumbai – II [2022 (6) TMI 435 – CESAT MUMBAI]* on applicability of stray imports as sufficing for rejection of declared value within the scope of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as to set recourse to ‘surrogate value’, under the authority of rule 3(4) therein, in motion. It was further contended that the Tribunal, in *Orion Systems v. Commissioner of Customs, Cochin [2005 (192) ELT 1117 (Tri.-Bang.)]*, had held that reliance on bills of entry that were not made available for challenge would not suffice for adopting value therein. Reliance was also placed on decision of the Tribunal in *Dujodwala Products Ltd v. Commissioner of Customs (Import), Mumbai [2009 (235) ELT 266 (Tri.-Mumbai)]* that failure to furnish documents relied upon invalidated re-assessment.

3. Learned Authorized Representative submitted that the orders

impugned before the first appellate authority had noted the relied upon bills of entry to be contemporaneous and, therefore, acceptable for the purpose of rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4. Doubtlessly, the lower authorities had placed reliance on what, to them, appeared to be contemporaneous imports and they may well have been; nonetheless, in proceedings before the original authority, as well as before the first appellate authority, the appellant herein had no access to the details of such imports to ascertain as being similar goods. In terms of rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, value of other imports is acceptable as surrogate 'transaction value' to the extent of conformity with

'(f) "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;'*

rule 2 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 requiring validation by reference to parameters therein. Without access to the relied upon bills of entry, the importer, and we too, are without wherewithal to subject determination by the original authority to be in conformity with the law. Consequently, and in the light of the decision of the Tribunal in *re Dujodwala Products Ltd,* we set aside the impugned orders and remand the matter back to the original authority with the direction that relied upon bills of entry be made available to the appellant herein before subjecting the imports to re-assessment and opportunity of hearing be afforded without fail.

5. Accordingly, the appeals are allowed by way of remand.

(Order pronounced in the open court on 12/12/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*