CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86101 OF 2014

[Arising out of Order-in-Appeal No: 151 (CFS MULUND)/2014(JNCH)/IMP-143 dated 20th January 2014 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Radhey Shyam Ratanlal
6658 Gadodia Market, Khari Baoli, New Delhi … ***Appellant***

versus

Commissioner of Customs (General)
New Customs House, Ballard Estate, Mumbai – 400001 ***…Respondent***

APPEARANCE:

Shri Prabhat Kumar, Advocate for the appellant

Shri Ranjan 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: 85481/2025

DATE OF HEARING: 27/09/2024
DATE OF DECISION: 25/03/2025

PER: C J MATHEW

This appeal of M/s Radhey Shyam Ratanlal may be disposed off within the narrow compass of applicability of rule 8 of Customs

Valuation (Determination of Price of Imported Goods) Rules, 1988 to the circumstances of import for revision of declared value of imports of 'cloves' originating from Indonesia/Tanzania effected *vide* bill of entry no. 464/16.02.2004, 413/17.03.2004, 510/19.02.2004 and 550/20.02.2004 and especially in the light of the adjudication by original authority have been undertaken thrice only to be demanded once by the Tribunal on challenge to loading adopted for provisional assessment under section 18 of Customs Act, 1962 and once by the Commissioner of Customs (Appeals) who found it appropriate to remand the matter back to the original authority upon finalization.

2. The assessment of imports of the appellant were made provisional with the declaration of US $ 1300 to 1710 PMT enhanced to US $ 2185 PMT on two of the bills of entry and to US $ 2300 on the other two bills of entry. The loading was not interfered with by the first appellate authority for being premature challenge and, consequently, upon being carried to the Tribunal, was restored to the original authority for assessment to be finalized within three months thereof following which the importer was directed, *vide* letter dated 24th October 2006, to furnish documentary evidence of original sale as also evidence of the impugned goods being 'old crop', and, upon non-response, the declared value was rejected under rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 to be re-determined at US $ 2,900 PMT under rule 8 of Customs Valuation

(Determination of Price of Imported Goods) Rules, 1988 with differential duty of ₹ 28,94,227 recoverable thereon. The Commissioner of Customs (Appeals), Mumbai-II *vide* order[1] upheld the order leading to the present appeal.

3. We have heard Learned Counsel for appellant and Learned Authorized Representative. Learned Counsel for the appellant raised several objections to the manner in which the value was rejected and the revision adopted for recovery of differential duty. However, it is on record that the importer had failed to furnish any evidence of value being likely to be lower than the prices of contemporary transactions, through preceding invoices, or, through preceding test reports, of quality of the cloves, leaving no option, consequent upon the direction of the Tribunal, but to finalize the assessment on available documents and declaration. In the circumstances, recourse to rule 10A of Valuation (Determination of Price of Imported Goods) Rules, 1988 for discard of the declared value is not exceptionable as upheld in the impugned order. We, too, find no reason to concur with the Learned Counsel that the declared value should not have been rejected in the circumstances.

4. Turning to the manner in which the scheme of 'surrogate value' under rule 8 of Valuation (Determination of Price of Imported Goods) Rules, 1988 was to be adopted, it is seen that the order of the original

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[1] [order-in-appeal no. 151 (CFS MULUND)/2014(JNCH)/IMP-143 dated 20th January 2014]

authority relied upon prices in 'Public Ledger', as well declarations in 19 other bills of entry as hovering around the finally assessed value and as being in conformity with

> *'**8. Residual method.***
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> *(1) Subject to the provisions of rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the proceeding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962), and on the basis of data available in India.*
>
> *(2) No value shall be determined under the provisions of this rules on the basis of*
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> *(i) the selling price in India of the goods produced in India;*
>
> *(ii) a system which provides for the acceptance for customs purpose of the highest of the two alternative values;*
>
> *(iii) the price of the goods on the domestic market of the country of exportation;*
>
> *(iiia) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provision of rule 7-A.*
>
> *(iv) the price of the goods for the export to a country other than India;*
>
> *(v) minimum customs values; or*
>
> *(vi) arbitrary or fictitious values.'*

of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. There is no doubt that rule 8 of the said Rules afforded a flexibility, not available now under the extant Rules notified in terms of section 14 of Customs Act, 1962, but was, yet, subject to conformity with the general principle of value espoused in rule 3 therein and specific exclusions. The impugned order is not reticent in referring to 19 bills of entry which, admittedly, are not in conformity with scheme of ‘surrogate value’ set out in rule 5 of the said Rules. ‘Public Ledger’ is not a document that affords justification for adoption of value therein owing to the disbursement of prices stipulated in rule 8(2) (iv) of the said Rules as it is not on record that the prices therein are of ‘cloves’ of the country of origin. It is also surprising that the adjudicating authority has relied upon bills of entry which do not fit the criteria of ‘identical goods’ or ‘similar goods’ and yet chose to accord weightage under a different rule which is required to be consistent with principle of valuation. It is quite clear that the 19 bills of entry, relied upon by the lower authorities for discard within the frame work of the prevailing Rules is silent on reasons for drawal of the same as surrogate for transaction value in terms of rule 8 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988.

5. Recourse to rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 is required to be brought to a logical conclusion within the signification of rule 5 to rule 8 of the said Rules. Failure to do so, by non-availability of substitute value, rescinds the finding of non - acceptance of the declared value.

6. Consequently, the revision in value is without authority of law and on facts which do not find acceptance of substituted value within

the framework of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Accordingly, the impugned order is set aside to allow the appeal.

(Order pronounced in the open court on 25/03/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*