CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 1016 OF 2012

[Arising out of Order-in-Appeal No: 312/MCH/ADC/EP/2012 dated 13th May 2012 passed by the Commissioner of Customs (Appeals), Mumbai Zone – I.]

Shree Ramdev Metal Mart
E-2/9, Bharat Nagar, Grant Road, Mumbai 400 004 … ***Appellant***

versus

Commissioner of Customs (Export Promotion)
New Custom House, Ballard Estate, Mumbai 400 001. ***…Respondent***

APPEARANCE:

Shri Stebin Mathew, Advocate for the appellant

Shri Deepak Sharma, 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: 85826/2025

DATE OF HEARING: 03/10/2024
DATE OF DECISION: 01/04/2025

PER: C J MATHEW

The issue in this appeal of M/s Shree Ramdev Metal Mart, arising from order[1], of Commissioner of Customs (Appeals), Mumbai Zone – I, which upheld the enhancement of value of imported goods, by recourse to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in adjudication by the original authority, and, thereby, recovery of differential duty of ₹ 6,33,903 as well as penalty of ₹ 2,40,000 in lieu of confiscation on goods that had been provisionally released earlier besides imposition of penalty of ₹ 1,00,000 under section 112 of Customs Act, 1962.

2. On perusal of the impugned order which allowed the differential duty liability and other detriments to pass muster, it appears that the proceedings was marked by conceptual confusion evident in

> *'6. Vide letter dated 24.10.2008, the Assistant Commissioner of Customs group VIIC, Mumbai was informed of the Commissioner of Customs (EP)'s order to release the said goods provisionally on Bond of 32 Lakhs with Bank Guarantee of Rs 8 Lakhs. Subsequent to the fulfillment of said conditions the B/E No. 855244 dated 08.08.08 were provisionally assessed.*
>
> *XXXX*
>
> *29. .....*
>
> *(ii) The subject goods valued at Rs 43,76,105.81/- covered by Bills of Entry No. 855422 dt. 08.08.2008 are confiscated in terms of Section 111(d) and section 111(m) of Customs Act, 1962. The goods were provisionally released*

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[1] [order-in-appeal no. 312/MCH/ADC/EP/2012 dated 13th May 2012]

> *against Bond and Bank Guarantee, therefore, I impose a penalty of Rs 2,40,000/- (Rs Two Lakhs and Forty thousand only) in lieu of confiscation towards redemption.*
>
> *xxxx*
>
> *(iv) The Bill of Entry No. 855244 dt 08.08.2008 is finalised on these terms.'*

3. We are unable to determine from the order of the original authority if, in the light of instructions of the jurisdictional Commissioner set out *supra*, the goods were provisionally assessed for subsequent finalization in the said order or, having been provisionally released, which could have been in consequence of seizure under section 110 of Customs Act, 1962, were proceeded with on its own assessment. Resort to provisional assessment under section 18 of Customs Act, 1962 vests with the 'proper officer' uninfluenced by higher authority and, yet, the said order directs finalization even while resigned to non-availability of impugned goods owing to which penalty, a detriment unknown to Customs Act, 1962, has been fastened on the goods. Surprisingly, the competent authority under section 129D of Customs Act, 1962 does not appear to have reviewed this eminently reviewable adjudication order and the first appellate authority, too, did not take note either.

4. Be that as it may, we press forward with disposal of appeal restricting ourselves to the grounds adduced by the appellant, *viz.*, that

there was no evidence of undervaluation to warrant subjecting the declaration in bill of entry to sequential recourse authorized by rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5. Briefly, 45925 kgs of 'stainless steel coils/sheets of 201', valued at US $ 41935.85, imported by the appellant herein and sought to be cleared *vide* bill of entry no. 855244/ 08.08.2008 was found, on examination, to be more aptly describable as 'stainless steel coils/sheets of 201 prime grade' and to be taken up for rejection of declared value. The explanation of the appellant that the impugned goods, though not disputed as to be of 'prime quality', but, yet, not misdeclared as far as value was concerned, was, from having been portion of excess production, available for negotiated sale, was ignored by the original authority who proceeded with the proposal to re-determine the value which was not interfered with by first appellate authority leading to the present appeal. The original authority relied upon the 'National Import Data Base (NIDB)', maintained by the Directorate General of Valuation (DGoV) of Central Board of Excise and Customs (CBEC), to adopt value for assessment of the goods.

6. Learned Counsel for the appellant submitted that the lower authority had breached the principle espoused by the Hon'ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs, Mumbai [2001*

(1) SCC 315]. Learned Authorized Representative placed reliance on the decision of the Hon'ble High Court of Kerala in *Commissioner of Customs v. PV Ukkru International Trade [2009 (235) ELT 229 (Ker.)]*.

7. We find that the decisions cited by both sides is not contemporaneously relevant to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inasmuch as the deficiencies in re-determination, noted by the Hon'ble Supreme Court in *re Eicher Tractors Ltd*, were overcome by introduction of rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 in February 1998 and continued, with appropriate amendments, in the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which was in vogue at the time of import of impugned goods. The decision in *re PV Ukkru International Trade* pertains to the rules of 1988.

8. On a perusal of the order of the lower authorities, we find that the revision is not in compliance with rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, instead, proceeded directly to rule 5 therein which was to be preceded by rejection of the declared value, with its own restrictive framework, and test of applicability of rule 4 therein first. The reliance placed on the data base available with attached office of the Central Board of Excise and Customs does not fulfill the requirement of rejection under rule 12 of Customs Valuation (Determination of Value of Imported Goods)

Rules, 2007 nor is in conformity with rule 5 of the said Rules.

9. Consequently, the impugned order, being without basis in law, is set aside to allow the appeal.

(Order pronounced in the open court on 01/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*