CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. IV

CUSTOMS APPEAL NO. 52057 OF 2019

[Arising out of the Order-in-Appeal No. D-II/Prev-NCH/23/2019-20/1047 dated 27/05/2019 passed by The Commissioner of Customs (Appeals), New Delhi.]

M/s River Side Impex, **Appellant**
H-3/214, 2nd Floor,
Vardhman Plaza, Pitampura,
New Delhi – 110 034.

VERSUS

Commissioner (Preventive), **Respondent**
New Customs House, Near I.G.I. Airport,
New Delhi – 110 037.

APPEARANCE

Shri L.B. Yadav, Consultant – for the appellant.
Shri Rakesh Kumar, Authorized Representative for the Department.

CORAM:
HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 51440/2023

DATE OF HEARING : 02.08.2023.
DATE OF DECISION : 20.10.2023.

RACHNA GUPTA

The appeal has been filed to assail the order-in-appeal No. 231/2019-20 dated 27.05.2019. The facts, in brief, relevant for the impugned adjudication are as follows :

The appellant filed Bill of Entry No. 8051193 dated 02.01.2017 through their CHA M/s Prompt Air and Sea Cargo Pvt.

Ltd. for clearance of the imported goods called Brass Ceramic Cartridge (L) size ½" Parts for use in Sanitary ware. However, the goods covered under the said Bill of Entry were got examined and the container was also weighed. The net weight was found as 21120 kg., however, the weight as per packaging list was 20160 kg. whereas the weight declared in Bill of Entry was 18144 kg. Thus 2976 kg. weight of the consignment was found in excess than the declared weight. The value declared in said Bill of Entry was also observed to be low. Accordingly, goods were seized under section 110 of the Customs Act, 1962. Further investigations and the panchnama of the even date was also drawn on spot. Statement of Shri Sandeep Kumar Goyal, authorized representative of the appellant, was recorded initially on 19.01.2017 and subsequently on 20.01.2017. The invoice was also observed to have no mention about the metal contents of the brass tap cartridge. Open market survey was also got done in presence of said Shri Sandeep Kumar Goyal. Based upon the said statement and the report of market survey that the declared assessable value of Rs. 28,08,128/- in the Bill of Entry No. 8051193 dated 02.01.2017 was rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 hereinafter referred as Valuation Rules and the value was reassessed at Rs. 55,83,280/- with the total reassessed duty of Rs. 14,75,563/-. The already paid duty of Rs. 7,42,139/- was acknowledged to have been paid. The goods were confiscated with an option of getting those released on payment of

redemption fine of Rs. 75,000/- and the penalty of Rs. 7,33,243/- was imposed upon the appellant vide the order-in-original No. 24/ABC/17 dated 23.01.2017 when it was challenged the findings have been confirmed by upholding the order vide the order-in-appeal under challenge. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Shri L.B. Yadav, learned Consultant for the appellant and Shri Rakesh Kumar, learned departmental representative for the Revenue.

3. Learned consultant for the appellant has mentioned that the demand has wrongly been confirmed. There is neither the mis-declaration nor the under valuation in the impugned Bills of Entry. The allegations are vehemently denied with mention that the brass ceramic cartridges have been imported into pieces and the value is per piece based value. The weight has no consequence nor any connection with the value. Otherwise also the container as such including the packaging materials was got weighed. Hence, the same has wrongly been held to be a case of mis-declaration.

4. With respect to the allegation of under valuation, it is submitted that Rule 7 of Valuation Rules has wrongly been straightway adopted otherwise also there was no proper market enquiry as it was conducted from one specific gali of Chawri Bazar, Delhi. There is no evidence that the goods enquired were the imported goods. Learned consultant also impressed upon that

there was no reason with the Assessing Officer to doubt the truth or accuracy of the value declared in relation to the goods imported by the appellant. No evidence subsequently could have been produced. The value has wrongly been rejected under Rule 12 of the Valuation Rules. The Department has also failed to sequentially proceeded from Rule 4 to Rule 9 of the said rules rather had jumped upon Rule 7 without following the requirements even of Rule 7. It is further submitted that there is no corroborative evidence to the value shown in the market survey report. Learned consultant further impressed upon that the appellant opted to pay the differential amount of duty as was re-assessed based on the market report for the sole reason that the appellant was in urgent need of goods and detention and demurrage charge could unnecessarily become the liability due to wrongful detention of goods. It is for this reason only that the appellant offered for waiver of show cause notice and personal hearing. It is impressed upon that the payment of the amount demanded, in such circumstances, cannot be called as admission of alleged mis-declaration and under valuation by the appellant. The said acceptance has wrongly been made the sole basis for confirmation of the demand in the order under challenge. The order is accordingly prayed to be set aside. Learned consultant has relied upon the following decisions :-

(a) **Century Metal Recycling Pvt. Ltd. versus Union of India**[1] **;**

[1] **2019 (367) E.L.T. 3 (S.C.)**

(b) **CCE & ST, Noida versus Sanjivani Non-Ferrous Trading Pvt. Ltd.[2] ;**

(c) **Golden Agro Corporation versus Commissioner of Customs, Jaipur – I[3] ;**

(d) **Tini International versus Commr. of Customs (Import), Mumbai[4] ;**

(e) **Vijaya International Impex versus C.C. (Seaport – Import), Chennai[5] ;**

(f) **Hanil Automotive India Pvt. Ltd. versus Commissioner of Cus. – III, Chennai[6] ;**

(g) **Handtex versus Commissioner of Customs, Raigad[7] ;**

(h) **Kirti Sales Corpn. Versus Commr. of Cus., Faridabad[8] ;**

(i) **Dunlop India Ltd. & Madras Rubber Factory Ltd. versus Union of India and Others**[9] **;**

(j) **Mohan Textile Mills versus Commr. of C. EX. & ST., Ludhiana[10] ;**

(k) **Joint Commr. of Income Tax, Surat versus Saheli Leasing & Industries Ltd.[11]**

5. Rebutting these submissions, learned departmental representative has mentioned that on examination there was found excess weight of 2976 kg. in the consignment imported by the appellant. This was a reasonable ground to doubt the declaration as far as the quantity and also as far as the value of consignment is concerned. Hence, the value was rightly rejected

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2 **2019 (365) E.L.T. 3 (S.C.)**
3 **2017 (354) E.L.T. 655 (Tri. – Del.)**
4 **2018 (364) E.L.T. 436 (Tri. – Mumbai)**
5 **2018 (359) E.L.T. 270 (Tri. – Chennai)**
6 **2021 (376) E.L.T. 522 (Tri. – Chennai)**
7 **2008 (226) E.L.T. 665 (Tri. – Del.)**
8 **2008 (232) E.L.T. 151 (Tri. – Del.)**
9 **1983 (13) E.L.T. 1566 (S.C.)**
10 **2018 (363) E.L.T. 536 (Tri. – Chan.)**
11 **2010 (253) E.L.T. 705 (S.C.)**

under Rule 12 of the Valuation Rules. The contemporary import data was duly shown to the appellant, which was accepted by their authorized representative in writing. The value was determined based on the market enquiry, which was conducted in the presence of the authorized representative of the appellant. The said representative had voluntarily accepted the enhanced value of the consignment @ Rs. 55,83,280/-. It is impressed upon that once the value has been accepted in writing at the time of import, no subsequent evidence is to be brought by the department in light of the statutory provision i.e. section 17 (5) of the Customs Act, 1962. In view of the noticed discrepancies in the impugned Bill of Entry/ import of goods, there is no infirmity in the order when the said goods are ordered to be confiscated under section 111 (m) of the Customs Act, 1962 nor there appears any illegality in imposition of penalty upon the appellant under section 114A of the Act. It is further submitted that absence of any corroborative evidence to the market report cannot be the ground to set aside the order because once the alleged under valuation was accepted by the appellant, department was no more required to look for any other evidence for the sole reason that admission needs no further proof. The decision of Hon'ble Supreme Court in the case of **Commissioner of Central Excise Madras versus System & Components Pvt. Ltd.**[12] has been relied upon. **Sound N Images versus Commissioner**[13] and decision of this Tribunal also in the case of

[12] **2004 (165) E.L.T. 136 (S.C.)**
[13] **2000 (117) E.L.T. 538 (S.C.)**

Saraswati Sales Corp. versus CCE[14] has been relied upon. It is also mentioned that in light of section 17 (5) of Customs Act, the Adjudicating Authority was not supposed to pass a detailed speaking order. Decision of this Tribunal in the case of **Commissioner of Customs versus M/s A.R. Fabrics** as per final order No. 51856/2019 dated 19.07.2019 is also relied upon. Impressing upon no infirmity in the order under challenge, appeal is accordingly prayed to be dismissed.

6. Having heard the rival contentions of the parties and perusing the entire record, we observe that the basis of the order under challenge has been the market enquiry and the valuation in terms of Rule 7 of the Valuation Rules coupled with the acceptance of reassessed value by the appellant. The modus operandi for reassessment has been objected by the appellant. Hence foremost we need to look into as to what do we mean by valuation; when it can be rejected and how it should be reassessed. For the purpose, we need to look into section 14 of the Customs Act, 1962 and the valuation rules specifically 3, 7 and 12. After perusing these rules we opine as follows :-

As per Section 14 of the Act, value of the imported goods shall be the transaction value of such goods, which means the price actually paid or payable for the goods when sold for export to India where the buyers and sellers are not related and the price fixed is the sole consideration for sale.

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[14] **2011 (266) E.L.T. 237 (Tri. – Del.)**

Section 14(1) of the Act was interpreted by the Apex Court in Eicher Tractors Limited, Haryana v. Commissioner of Customs, Mumbai [(2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.)].

The interpretation was also given in Eicher Tractors Limited (supra) as to the meaning of the word 'payable' used therein saying that the word 'payable' used in Section 14(1) refers to the particular transaction and the payability in respect of 'the transaction'. It refers to the notional value, *albeit* the transaction value as declared in the bill of entry plus the amount which has to be added in terms of Rule 10 of the 2007 Rules

Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta v. South India Television (P) Ltd. [(2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.)] again explained that :

> "Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

7. We also opine that as per the first proviso to Section 14(1) of the Act, the transactional value for the purpose of Customs duty would include amounts paid or payable as costs and services like commission, brokerage, engineering, design work, cost of transportation, etc., as may be specified in the rules made in this

behalf. These amounts are to be added to the declared transactional value. Accordingly, in terms of Rule 10 of the 2007 Rules, the value and price of costs and services are added to the price actually paid or payable for the imported goods for determining the transaction value.

Rules 3 and 12 of the 2007 Rules i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were enacted and enforced with effect from 10th October, 2007 replacing and superseding the 1988 Rules. [Rule 3(1) of Valuation Rules states that value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the 2007 Rules which Rule, as observed above, deals with the costs and services which are to be added to the price actually paid or payable for the imported goods for determining the transaction value. Sub-rule (1) to Rule 3 is however subject to Rule 12 and therefore give primacy to Rule 12 which we shall subsequently elaborate and explain. The proviso then vide different clauses sets out the pre-conditions for accepting value of the imported goods. Rule 11 provides for declaration to be given by the importer or his agent certifying that they had disclosed full and accurate details of the value of the imported goods and any other statement, information and document including invoice of the manufacturer or producer of the goods where the goods are imported from or through a person other than the manufacturer of goods, as considered necessary by the proper officer for valuation of the imported

goods. Sub-rule (2) states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after an enquiry in consultation with the importers.

As per sub-rule (4), where the value cannot be determined under sub-rule (1) to Rule 3, the transaction is to be valued by step wise applying Rules 4 to 9. Rule 4 deals with transaction value based on identical goods. Rule 5 deals with transaction value based on similar goods. Rule 6 deals with the determination of value where the transactional value cannot be determined under Rules 3, 4 and 5. Rules 7 and 8 deal with deductive value and computed value respectively. Rule 9 prescribes the residual method for computing the transaction value. What is important to note is that Rules 4 to 9 are subject to the provisions of Rule 3 thereby giving primacy to Rule 3 which in turn gives primacy to Rule 12 of the 2007 Rules.

Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise, which can be summarised as under :

> (a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

Proper officer can therefore reject the declared transactional value based on 'certain reasons to doubt the truth or accuracy' of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out above-mentioned conditions when the 'reason to doubt' exists. These instances are not exhaustive but

are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared. The expression "reason to doubt" cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.

The expression 'reasonable doubt' has been explained by Hon'ble Supreme Court in In *Ramakant Rai* v. *Mad an Rai & Ors.* - (2003) 12 SCC 395 as under :

> "24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

8. It is therefore held that in the context of the proviso to Section 14 read with Rule 12 and clause (iii) of Explanation to the 2007 Rules, the doubt must be reasonable and based on 'certain reasons'. The proper officer must record 'certain reasons' specified in Clause (a) to (f) Rule 12 or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It

refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable.

Hon'ble Apex Court in *M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd.* (supra), while interpreting the provisions of Section 14 and Rules 3, 4 and 12 of the 2007 Rules, had held as under :

> "10. The law, thus is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to *ad valorem* duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. This is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction

> value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which Assessing Officer arrives at his own assessable value."

In Commissioner of Customs v. Prabhu Dayal Prem Chand, [2010 (13) SCC 535 = 2010 (253) E.L.T. 353 (S.C.)] the Supreme Court had rejected the plea that the Revenue was justified in redetermining the value of brass and copper scrap on the basis of information received from London Metal Exchange on the price of the said metals on the ground that the importer was not confronted with any contemporaneous material for enhancing the transaction value. This Court affirming the order of the Tribunal in Prabhu Dayal Prem Chand (supra) held that the order-in-original had not indicated details of any contemporaneous import or other material in the form of corroborative material which had necessitated the enhancement in the transaction valuation.

9. Reverting to the facts of the present case and applying the above opinion, we observe that the only reason to invoke Rule 12 of Valuation Rules was the difference in weight of the goods. It has been the apparent submission of appellant since the very first stage of interception of goods that the goods have been

imported on piece basis and not on the basis of weight. The value arrived is also per piece basis. We observe the same as correct from the Bills of Entry on record. These observations are sufficient for us to hold that there was no cogent reason to doubt the truth and accuracy of the value declared. Hence the transaction value mentioned in the Bills of Entry should have been accepted Rule 12 should not have been invoked. We also observe that reassessment has also not been done in the way as discussed above.

Rule 7 has straightway wrongly invoked. As already discussed, sequentially Rule 4 to Rule 9 have to be followed to arrive at reassessed value. Admittedly no contemporaneous import data of related period nor any enquiry w.r.t. similar imported goods sold in bulk is on record.

10. We also observe that the Rule 7 has not even been properly applied. The Rule envisages following conditions :-

> "It is seen that the instant Rule and Notes to the Rule inter alia, envisage certain conditions e.g. –
>
> (i) corresponding goods should be imported goods,
>
> (ii) there should be a sale in the greatest aggregate quantity in India,
>
> (iii) deductions towards commission, profits, general expenses, cost of transport and insurance, customs duties & other taxes have to be made and
>
> (iv) sale should be at the first commercial level after importation. We observe that in the instant matter,
>
> > (i) it is not known whether corresponding goods are imported or indigenous,
> >
> > (ii) there is no sale of any corresponding goods,

> (iii) although deductions have been made but there is no specific mention towards commission, profits (whole seller & retailer), general expenses, cost of transport and insurance, customs duties & other taxes etc., and
>
> (iv) since there is no sale, the point as to whether it is the first commercial level sale after importation, becomes infructuous".

11. None of the said conditions are applicable to the present set of facts and circumstances. Hence, we hold that Rule 7 has wrongly been applied and has straightway been wrongly invoked. Sequentially Rule 4 to Rule 9, apparently and admittedly have not been applied by the Department while arriving at the re-assessed value.

12. We observe that the Adjudicating Authority has mentioned the market survey report to be based on contemporaneous import data, but no such data has been mentioned in the order. It is rather coming as an admitted fact that few shops in the wholesale market were visited and the samples which was drawn at the time of examination of impugned imported goods were shown to the different vendors. The original Adjudicating Authority in its order has observed that the imported goods were observed to be of cheaper quality and many of the shop keepers expressed to not to have similar items with them. It is only one shop keeper who has similar items, as were imported vide the impugned Bill of Entry. But there is no evidence brought on record by the department that the said shop keeper also had imported the goods. These observations of the Adjudicating Authority are sufficient for us to hold that the Department has

not followed the statutory procedure nor has produced the cogent evidence while confirming the allegations of under valuation and while confirming the differential duty.

13. It appears that the sole ground for the confirmation is the admission of the authorized representative of the appellant in his statement dated 20.01.2017. The said statement is perused vide which the said authorized representative has accepted the reassessed value and offered to pay differential duty along with the applicable fine and penalty. He also opted for not being served with any show cause notice or the opportunity of personal hearing with the request to dispose of the case at the earliest. However, we perused that the statement of said authorized representative was recorded a date prior also i.e. on 19.01.2017, wherein he had mentioned that the appellant's firm is engaged in the business of import of sanitary goods including the impugned goods, in bulk. The appellant provided the purchase order only when personally visited to China after due negotiations and the impugned goods are imported on piece basis. He also stated that assessment was done per piece based, hence, the weight found in excess than the declared weight has no relevance. The excess weight otherwise includes the weight of packaging boxes and other packaging material also. He specifically stated that the appellant had declared the correct import value of the impugned goods. He also stated that the reason for the value as declared in the impugned bill of entry is that the gods are imported directly from the manufacture in China, that too in bulk quantity and

pursuant to their personal negotiations with the said manufacture. Hence, he re-asserted on 19.01.2017 that the rate declared in the bill of entry are correctly mentioned by them. Appellants therefore have no reason to be concerned about the actual selling price of the impugned goods in the retail market. He also conveyed vide the said statement that their supplier i.e. manufacturer in China is not related to them except that they have continuous business relations with the said manufacturers. In the light of this statement, we are not convenience to accept the statement of the appellant made the very next day as a cogent admission. We observe that in the original submissions made on behalf of the appellant, it is mentioned that to avoid any delay and the demurrage charges, in case the consignment is held by the Customs Authority, that the appellant opted to pay the differential amount demanded by them. The voluntary payment hence cannot be called as admission of the appellant towards alleged mis-declaration for value from the above discussion. Since it is apparent that the Department has not followed the statutory procedure nor there was any mis-declaration of quantity as alleged, the mere acceptance of the re-assessed value and payment thereof will not be sufficient to confirm the allegations of under valuation. The burden was still on the Department to prove the allegations levelled. The said burden has not been discharged.

14. Consequent to the above discussion, we hereby set aside the order under challenge. Accordingly, the appeal stands allowed with the consequential relief.

(Order pronounced in open court on 20/10/2023.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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