

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No. III**

CUSTOMS APPEAL No.40844Of 2017

(Arising out of Order-in-Appeal C.Cus.II No.117/2017 dated 16.02.2017 passed by Commissioner of Customs (Appeals - II), Custom House, 60 Rajaji Salai, Chennai 600 001)

M/s. Vikram Trading Company
304, Cassia, Zircon Coop HSG Society,
Viman Nagar, Pune 411 014,
Maharashtra.

.... Appellant

Versus

The Commissioner of Customs
Chennai II Commissionerate,
Custom House, 60 Rajaji Salai,
Chennai 600 001.

...Respondent

APPEARANCE :

Ms. Hari Radhakrishnan, Advocate
For the Appellant

Mr. Harendra Singh Pal, Assistant Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : 17.08.2023
DATE OF DECISION: 24.08.2023**

FINAL ORDER No. 40718/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

1. Brief facts are that the appellant filed bills of entry for import of polished porcelain tiles. The Directorate General of Valuation, Mumbai vide letter dated 12.12.2000, alerted the field formations about under valuation of import of ceramic tiles and consequently the consignments were provisionally assessed by taking the price as USD 10 per sq.m. Thus the bills of entry were assessed provisionally pending verification of the declared values by taking bond and bank guarantee from the appellant. Later based on the letter received from the Directorate General of Valuation, Mumbai dated 19.03.2008, wherein it was intimated to finalise the provisional assessment by taking the contemporaneous value, prevalent during the period of importation of the goods, the adjudicating authority finalised the provisional assessments. The value of the goods imported from Malaysia was enhanced under Rule 8 of the Customs Valuation Rules 1988 read with section 14 of the Customs Act 1962, vide order dated 23.12.2010. The appellant contented that they did not receive the said order in original and had received the same much later after filing RTI application. After receipt of the copy of the order in original, they filed an appeal before the Commissioner (Appeals). The appeal was dismissed by Commissioner (Appeals) on the ground of limitation vide order dated 03.09.2015. Aggrieved by such order the appellant preferred an appeal before the Tribunal and by the final order dated 15.11.2016, the Tribunal remanded the matter to the Commissioner (Appals) with the direction to conduct enquiry as to

whether the order-in-original was served on appellant and to resolve the issue at his level. In such remand proceedings the Commissioner (Appeals) directed the department to produce evidence as to the proof of service of order-in-original upon the appellant. No such evidence was produced by the department and the Commissioner (Appeals) held that the contention of the appellant that they had received the order-in-original only on 05.06.2015 pursuant to their application under RTI was acceptable. The appeal was thus taken up for disposal on merits by the Commissioner (Appeals). The Commissioner (Appeals) passed the impugned order by which the enhancement of value was set aside in regard to three bills of entry accepting the declared value. However, in respect of five other bills of entry the Commissioner (Appeals) upheld the finalisation of assessment passed by the original authority enhancing the declared value. Aggrieved by such order the appellant is once again before the Tribunal.

2. The learned counsel Shri Hari Radhakrishnan appeared and argued on behalf of the appellant. The details of the bills of entry filed by the appellant for import of polished porcelain tiles and the value enhanced by original authority are given as under.

Sl.No.	Bill of Entry No. & Date	Country of Origin	Size	Declared Unit Price in USD	Assessed Unit Price in USD
1.	374465/21.01.2002	China	600x600	5.0	5.00
2.	420785/27.08.2002	Indonesia	500x500 600x600	3.75 4.85	3.75 4.85
3.	436389/29.10.2002	Indonesia	500x500 600x600	3.75 4.85	3.75 4.85
4.	500077/16.06.2003	Malaysia	500x500 600x600	3.10 3.30	3.10 3.30
5.	532825/18.09.2003	Malaysia	600x600	3.30	4.30
6.	544611/21.10.2003	Malaysia	600x600	3.30	4.30

			800x800	3.90	4.30
7.	544610/21.10.2003	Malaysia	600x600	3.30	4.30
8.	559592/01.12.2003	Malaysia	600x600	3.30	4.30

3. It is submitted by the Ld. counsel that the bills of entry at Sl.no.1-3 in the above table relates to imports made from China and Indonesia. The Commissioner (Appeals) had accepted the declared value in regard to the imports made from China and Indonesia and set aside the order passed by original authority enhancing the value of these imports.

4. The enhancement has been held as valid with regard to the imports made by the appellant from Malaysia. The Ld. counsel submitted that there is no reason put forth by the department to reject the transaction value. Para 5 of the order in original was adverted to by the Ld. counsel to argue that the assessments have been finalized by taking the NIDB data into consideration. Commissioner (Appeals) has noted in para 6 that after perusal of NIDB data the declared values were found to be lower than the contemporaneous imports of such goods. The details of higher price noted as per the NIDB data is given in the said paragraph. In para 9, the original authority has noted that Rule 5 of the Customs Valuation Rules Act 1988, which is applicable for identical goods is not adoptable on the basis of the NIDB data as the goods imported cannot said to be identical since the manufacturer of these goods are different. Similarly it is stated that, Rule 6 of the Valuation Rules is also not adoptable as certain other parameters are not similar. Rule

7 and 7A are not adoptable as the quantifiable data for the respective imports is not available for adopting deductive or computed value method. It is stated that the values are therefore re-determined under Residual Rule 8 of the Customs Valuation Rules. The Ld. counsel pointed out that the original authority has proceeded to finalise the assessment under Rule 8 by adopting the contemporaneous value as available from the NIDB data. *Per se*, it can be seen that the original authority has not considered the parameters at commercial level in regard to the quality and the quantity of the goods imported and the comparable imports. For this reason itself, the enhancement of valuation cannot be sustained.

5. The Ld. Counsel submitted that there is undue delay in finalising the assessment. Though the imports had taken place in 2002/2003 and the duty was assessed provisionally, the finalisation of assessment has been done only in December 2010. There are no reasons put forward by the department or intimated to the appellant so as to doubt the transaction value declared by the appellant. The decision in the case of Century Metal Recycling Pvt. Ltd. Vs. Union of India [2019 (367) E.L.T. 3 (S.C.)] was relied by the Ld. Counsel. It is argued that the department has to intimate to the importer in writing as to the reasons for doubting the truth and accuracy of value declared. The said mandate of sub Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory. It is argued by the Ld. Counsel that no reasons are intimated to the appellant by way of

issuance of Show Cause Notice or by stating in the order in original as to the basis for doubting the transaction value and rejecting the same.

6. The Ld. Counsel asserted that the enhancement of value without giving reasons to reject the transaction value is erroneous and illegal. Further, there is no evidence to show that the contemporaneous imports are comparable in regard to quality and quantity of similar goods. The Courts have always cautioned in using the NIDB data for enhancement of declared value. The decision in the case of Agarwal Foundries (P) Ltd. Vs. Commissioner of Customs [2020 (371) E.L.T.859 (Tri. - Hyd.)] was relied to support this argument. The decision of the Tribunal in the said case was maintained by the Hon'ble Supreme Court as reported in 2020 (371) E.L.T. A 295 (SC). The Ld. counsel prayed that the appeal may be allowed.

7. The Ld. AR Mr.Harendra Singh Pal appeared and argued for the Department. The findings in the impugned order was reiterated.

8. Heard both sides.

9. The issue to be decided is whether the enhancement of value by rejecting the transaction value is legal and proper. During the relevant period the appellant had imported goods from China, Indonesia and Malaysia. The Commissioner (Appeals) has set aside the enhancement of value with regard to the imports made from China and Indonesia. As per Rule 4 of Customs valuation

(determination of price of imported goods) Rule 1988 which was applicable during the relevant period Rule 4 speaks as under:

4. Transaction value.

(1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted:

Provided that—

²(a) the sale is in the ordinary course of trade under fully competitive conditions;

(b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;

(c) the sale does not involve special discounts limited to exclusive agents;

(d) objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value;]

²(e) 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;

(f) 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;

(g) no part of the proceeds of any subsequently 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 9 of these rules; and

(h) 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 similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

³(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 9 of these rules and cost incurred by the seller in sales in which he and the buyer are not related;

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

10. Rule 10A provides for situations in which the transaction value declared value can be rejected. It says that if the proper Officer has reasons to doubt the truth or accuracy of the value

declared by importer, he can proceed to redetermine the value of the goods after rejecting the transaction value. In the present case, there is no evidence put forward by the department as to the reason for doubting the transaction value. In para 5 of the order in original it is merely stated that as per the letter received from the Director of Valuation, Mumbai dated 19.03.2008 the provisional assessment is finalized by taking the NIDB data into consideration. As per the instructions given by the Directorate of Valuation, Mumbai to finalise the assessments on the basis of NIDB data, the original authority has proceeded to redetermine the value and enhance the same. The department has failed to establish the grounds to reject the transaction value. Further, in the case of Agarwal Foundries (P) Ltd. (supra) the Tribunal has held that NIDB data can only be a guideline to the Customs to arrive at the value of the goods and cannot be applied directly, unless the value given therein falls within the parameters of identical goods or similar goods. The said decision has been upheld by the Hon'ble Apex Court. Similar decision was taken in the case of Eicher Tractors Ltd. Vs. Commissioner of Customs, Mumbai 2000 (122) E.L.T. 321 (SC).

11. After appreciating the facts and following the decisions stated above, we are of the considered opinion that the enhancement of value of imported goods without giving proper reasons to reject the transaction value cannot be sustained. The impugned order is modified to the extent of setting aside the enhancement of value in regard to the bills of entry at sl no. 4-8 in

the table given in the para 3. In the result, the appeal is allowed with consequential reliefs, if any.

(Pronounced in court on 24.08.2023)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

ra