

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Customs Appeal No. 40936 of 2013

(Arising out of Order-in-Original No. 20125/2013 dated 23.01.2013 passed by the Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

Shri. Haji Sumar, : **Appellant**
(Partner, M/s. Diamond Traders),
Old No. 40, New No. 81,
Acharappan Street, Chennai – 600 001

VERSUS

The Commissioner of Customs, : **Respondent**
(Seaport-Export),
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001

WITH

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M/s. Diamond Traders, : **Appellant**
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VERSUS

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Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001

APPEARANCE:

Shri. B. Satish Sundar, Advocate for the Appellant
Dr. S. Krishnanandh, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)****HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)****FINAL ORDER NOS. 41179-41180 / 2019**

DATE OF HEARING: 28.10.2019

DATE OF DECISION: 28.10.2019

PER SULEKHA BEEVI C.S. :

These appeals arise out of the order passed by the Commissioner by which the declared value in Bills-of-Entry dated 19.05.2006 in respect of import of poppy seeds from Turkey were rejected and re-determined at USD 2500 per Metric Tonne (MT) besides confirmation of differential duty along with interest, apart from holding that the goods are liable for confiscation and also imposition of penalties.

2.1 The Ld. Counsel Shri. B. Satish Sundar appeared and argued on behalf of the appellant. He submitted that at the time of import, the proper officer had accepted the declared value of USD 750 per MT and allowed clearance of the goods imported under both Bills-of-Entry dated 19.05.2006. A statement was recorded from the first appellant on 19.07.2010 in which he has denied the charge of undervaluation and has categorically stated that the amounts were paid to the supplier through banking channels.

2.2.1 He submitted that there are no grounds for rejecting the invoiced value. That in a batch of import of similar goods whereupon proceedings were initiated by the Mumbai Customs, the Tribunal had occasion to analyze similar set of facts to hold that there are no grounds for rejecting the transaction value. The evidences relied on by the Department for enhancing the value were also considered and held to be unacceptable. The said

decision was followed by the Tribunal in the case of ***M/s. Unik Traders Vs. Commissioner of Customs, Tuticorin vide Final Order Nos. 42322-42323 of 2017 dated 10.10.2017***

2.2.2 He relied on the decision of ***M/s. Gupta Exports Vs. Commissioner of Customs, Chennai reported in 2002 (146) E.L.T. 361 (Tri. – Chennai)*** to argue that the Department cannot rely upon the value of contemporaneous imports when the quantity of goods imported and the country of origin is different.

2.3 He therefore prayed that the impugned order may be set aside.

3.1.1 The Ld. Authorized Representative (A.R.) Shri. B. Balamurugan appeared on behalf of the Department. He submitted that in the present case, the appellants had declared only USD 750 as the value of the goods imported. The Directorate of Revenue Intelligence ('DRI' for short) vide letter dated 17.03.2007 made reference to the First Secretary (Trade), Embassy of India, Moscow to verify the correctness of the origin of the goods and the export value declared to Turkish Customs. A request was also made to forward copies of the export documents filed before Turkish Customs.

3.1.2 In reply, two export declarations were received from Turkey along with a chart showing the comparison of the values declared at the time of export in Turkey with respect to the value declared in India at the time of import. The said two export declarations pertain to the goods exported by one supplier to M/s. Diamond Traders vide two Bills-of-Ladings dated 31.03.2006. The unit price was shown as USD 2500 (CIF) as against the unit price of USD 750 (CIF). This fact is supported by the statement of the first appellant, who is one of the partners of M/s. Diamond Traders.

3.2 He also submitted that the transaction value has been rightly rejected by the Department and the demand

of duty, confiscation of goods and the imposition of penalties are legal and proper.

4. Heard both sides.

5.1 The main evidence relied upon by the Department is the details (two export declarations) received from Turkish Customs. It is submitted by the Ld. A.R. for the Department that although all the documents except the Phytosanitary Certificate in respect of sets of documents are in language other than English, some of them contain English words. He points out that the words "Diamond Traders, 40 Acharappan Street, Chennai - 600 001", "KGS NETT", "USD/MT", "USD", "FOB" and "CHENNAI" are stated in English. Further, the numbers of the export declarations dated 24.03.2006 tally with the invoice numbers in respect of the Bills-of-Entry dated 19.05.2006 cleared by M/s. Diamond Traders through Chennai Port. Thus, the main argument of the Revenue is that in the export declarations filed before the Turkish Customs, the exporter has shown USD 2500 as the value of goods exported whereas the appellants have declared the value for the imported goods as USD 750 only.

5.2 Shri. Haji Sumar, who is one of the partners of M/s. Diamond Traders, has stated that he is not aware of the exporter's declaration filed before the Turkish Customs and does not know that the unit price declared at Turkey is higher. It is stated by him that he has made remittances to the foreign supplier through bank at unit price of USD 750 as declared in the Bills-of-Entry only. The export documents are not in English and contain only some English words. The discrepancy alleged in the export declaration made by exporter is sought to be corroborated by the statement of the appellant, but he has denied any knowledge. Further, the consideration is received through Bank. Therefore, the discrepancies in the export declaration are not sufficient evidence to reject the transaction value.

6. The other evidence relied on for enhancing the value is the Public Ledger (U.K.) which provides daily and weekly news analysis and market prices for commodities. Again, Commodity Trade Statistics Data (Comtrade) is also relied by the Department to enhance the value.

7. The Tribunal, while disposing of a batch of cases in regard to similar imports of the very same goods and where similar evidence was adduced by the Department, had held that the transaction value cannot be rejected on the basis of such evidence. In the Final Order dated 10.10.2017 in the case of *M/s. Unik Traders (supra)*, the Tribunal has set aside the demand which was raised by relying upon the value shown in Comtrade and Public Ledger (U.K.)

8. Appreciating the facts of the case and following the above decision, we are of the considered opinion that the demand cannot sustain. The impugned orders are set aside.

9. The appeals are allowed with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

Sd/-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Sdd