

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

REGIONAL BENCH – COURT NO. III

Customs Appeal No.42382 of 2014

(Arising out of Order-in-Appeal No.87/2014 dt. 21.08.2014 passed by Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli]

M/s.Sai Exports

No.85, Maruthachalapuram
(Opp. To Go Go Garments)
Kottai Thottam, 60 Feet Road,
Tirupur 641 603.

Appellant

VERSUS

Commissioner of Customs,

Custom House,
New Harbour Estate
Tuticorin 628 004

Respondent

APPEARANCE :

Ms. K. Nancy, Advocate for the Appellant

Ms. T. Usha Devi, DC (A.R) for the Respondent

CORAM :

**HON'BLE MR. P.VENKATA SUBBA RAO, MEMBER(TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

DATE OF HEARING : 01.08.2019
DATE OF DECISION : 01.08.2019

FINAL ORDER No. 40992 / 2019

PER P.VENKATA SUBBA RAO

This appeal is filed by the appellant against Order-in-Appeal No.87/2014 dt. 21.08.2014.

2. The appellants imported 100% Knitted Polyester Fabrics from China declaring the price of US\$ 2.30 per kg. Department felt that the unit price declared by the importer was low and enhanced it by comparing the same with prevalent data in the NIDB database maintained by department. Accordingly, the Asst.

Commissioner vide Order No.75/2014-A.C. (Imports) dt. 13.02.2014 enhanced the value and redetermined the amount of duty payable accordingly. On appeal, the first appellate authority upheld the order of the lower authority and rejected the appeal. Hence this appeal.

3. Ld. Counsel for the appellant submits that in their own case in Appeal C/40938 & 40939/2014 decided vide Order No.40521-40532/2018 dt. 1.3.2018, this Bench has allowed their appeal and held that it a well settled principle that NIDB data cannot be used to enhance the value of imported goods in the absence of any evidence that the transaction value was not correct. [2018 (6) TMI 715 - CESTAT CHENNAI]. Therefore, following the ratio this appeal may also allowed.

4. Per contra, Ld. D.R reiterates the findings of the lower authorities and asserts that the enhancement has been correctly done.

5. We have considered the arguments on both sides and perused the records. We do not find anything in the order of the Asst. Commissioner to establish that the invoice value declared by the appellant is not the correct transaction value and therefore can be rejected.

6. The relevant portion of the OIO were as follows :

“On assessment of the goods imported under the cover of the above said Bills of entry, it is noticed that the unit price declared by the importer for the above said goods, when compared with the prevalent NIDB data and with the unit price assessed for similar cargo through Tuticorin Port, seems to be low and cannot be taken as the transaction value under Rule 3 of the Customs Valuation Rules, 2007 for the purpose of assessment and liable for rejection under Rule 12 of the Customs Valuation Rules, 2007.....”

“In the present case, I find that the declared unit price @ 2.30 USD / kg-FOB appears to be very low. Hence the unit price declared by the

importer cannot be taken as the transaction value under Rule 3 of the Customs Valuation Rules, 2007 for the purpose of assessment and liable for rejection under Rule 12.....”

7. The First Appellate Authority, in the impugned order has upheld the above view that since the value declared by the assessee is lower than the values of other similar imports in the NIDB data, the declared value of other similar imports in the NIDB data, the declared value is liable to be rejected as the transaction value.

8. Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007, the declared value can be rejected if the proper officer has “reasonable doubt” about the truth and accuracy of the declared value. This Rule reads as follows :

“RULE 12.Rejection of declared value. — (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, **the proper officer still has reasonable doubt about the truth or accuracy of the value so declared**, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)

Explanation. - (1) For the removal of doubts, it is hereby declared that :-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;

- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
- (e) thereon declaration of parameters such as brand, grade, specifications that have relevance to value;
- (f) the fraudulent or manipulated documents.”

9. Simply because the value declared by the appellant is lower than the value found in the NIDB database, the value cannot be revised by the department. Such difference in value does not constitute in itself a reasonable doubt needed to reject the transaction value under Rule 12. Consequently, the impugned order is liable to be set aside and we do so.

10. The appeal is allowed and the impugned order is set aside with consequential relief if any.

(operative part of the order pronounced in court)

(P.Venkata Subba Rao)
Member (Technical)

(P. Dinesha)
Member (Judicial)

