

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,****MUMBAI****Customs Appeal No. 85141 of 2021**

(Arising out of Order-in-Original No.34/2019-20/Commr/NS-III/JNCH dated 21.08.2020 passed by the Commissioner of Customs, Nhava Sheva III)

**Commissioner of Customs-Nhava Sheva-III****.... Appellant**

JNPT Custom House, Nhava Sheva, Raigad-400707.

Versus

**M/s Granite India****.... Respondent**

C-1/3 West Enclave Pitampura, New Delhi-110034.

Appearance:

Shri J. C. Patel along with Ms. Shilpa Balani, Advocates for the Appellant  
Shri Manoj Das, Authorized Representative for the Respondent

**CORAM:****HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85666/2022**

Date of Hearing: 21.04.2022

Date of Decision: 29.07.2022

**Per: P. ANJANI KUMAR**

The respondents M/s Granite India have imported segment and saw blank and filed various bills of entry over a period of time; the respondents imported segments vide bills of entry 5137834 and 5137862 both dated 09.02.2018; on the basis of information received, that the respondents have undervalued the imported goods, the officers of SIIB (I) Nhava Sheva examined the containers and initiated investigation; the premises of Granite India situated in New Delhi was searched and incriminating documents and 2 laptops were seized; the imported goods were ordered to be provisionally assessed on furnishing of bond and bank guarantee of 100 percent of differential duty;

statements of Shri Suryaprakash Agarwal proprietor of the respondents, Shri Gopal Singh manager sales of M/s. Shri Ram Granite, Shri Vishal Vora a private person and others were recorded; on conclusion of the investigation it was alleged that the respondents have undervalued the imported diamonds segments and saw blanks; invoices showing lesser value were prepared by the supplier for submitting to the customs; difference in the value and the actual value was being limited to the overseas suppliers through illegal channels; M/s Shambhav Rocks, another importer also imported from the same overseas suppliers and the case of undervaluation was registered against the importer by DRI, Bangalore; M/s Shri Ram Granite and M/s Stones Shippers Ltd. have imported identical goods at higher price which can be used for re-determining the value of the goods imported by the respondents. On completion of the investigation the respondents were issued a show cause notice dated 13.03.2019 seeking to confiscate the imported goods; re-determination of the declared value of the goods imported by the respondents from 261,71,24,488/- to 414,03,08,884/-; recovery of differential duty of Rs. 35,36,19,477/- along with interest; imposition of penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962. The proceedings initiated by the said show cause notice were drafted by Commissioner of Customs vide order dated 24.08.2020.

2. Committee of Chief Commissioners reviewed the above order under the provisions of Section 129D(1) of Customs Act, 1962 and passed the Review Order No. 04/2021 dated 30.12.2020 and accordingly, an appeal have been filed against the impugned order on the grounds of appeal mentioned therein. The grounds as summarized are that the adjudicating authority failed to appreciate/overlooked the provisions of Rules 12, 3 and 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and that the adjudicating authority

- erred in rejecting the parallel invoice retrieved during the investigation; did not appreciate the significance of data

pertaining to contemporaneous imports by others and the domestic sales of the respondents;

- failed to identify the earlier case of under invoicing by the respondents; failed to appreciate the inconsistencies in the statement of the proprietor;
- wrongly relied upon Supreme Court judgment in the case of Century Metal Recycling Pvt. Ltd and ignored the judgment in the case of Bhoor Mull.
- Failed to notice that the evidence presented in the show cause notice was sufficient to hold that the transaction value declared by the respondents was not determinable under Rule 3 (1) of CVR, 2007;
- Erred in holding that the quality and the quantity of comparable goods was different and ignored the provisions of Rule 5 of CVR, 2007;
- erred in holding that the goods imported by M/s Shri Ram Granite are not comparable on the grounds of difference in description though they were imported from the same supplier;
- ignored the statement of Shri Ram Gopal Singh from which it is clear that specific quality of the goods was not mentioned;
- the adjudicating authority has wrongly relied upon the clarification given by the supplier without discussing the authenticity and reliability of the same.

3. Learned Authorized Representative, appearing for the Revenue, reiterates the grounds of appeal and submits that the Learned commissioner erred in not appreciating that, in terms of *D. Bhoormull - 1983 (13) E.L.T. 1546(S.C.)*, reasons identified in the SCN are to be joined together like dots and this provides adequate material for retaining the reasonable doubt about the truthfulness of the values declared to Customs; Adjudicating authority failed to identify earlier incident of, use of parallel invoicing established and admitted, undervaluation of the imports of the item 'Industrial Diamond Segment/Cutter' from overseas supplier M/s. Fujian Wanlong Diamond Tools Co Ltd. (same as in the present case); the importer approached

Settlement Commission; Adjudicating authority failed to take note of Settlement Commission's order dated 24.03.2014; Adjudicating authority has grossly erred in rejecting the parallel invoice retrieved in the present investigation.

3.1. He submits that parallel invoices both with the No. WX 143069-2 dated 21.11.2014, from the same China based supplier M/s. HXF Saw Co. Ltd, both showing M/s. Granite India as consignee and declared to be Commercial Invoice, one showing the value of USD 80100 and the second showing USD 44152 were found; the lower value invoice was used by the importer to file the Bill of Entry No. 7966010 dated 12.01.15; Adjudicating authority failed to appreciate that both invoices had the same headings 'Commercial Invoice', Invoice No. as 'WX143069-2', date as 'NOV 21, 2014', consignor, consignee, Commodity, specifications, slots, teeth length, raw material, quantity in units and weight; despite all these matching data, the Adjudicating authority accepted importer's plea that invoice with lower value, at a discounted value, was genuine; no details/evidence of such discount was put forth; the Adjudicating authority also erred as the invoice for lower value was unsigned and unstamped, whereas the invoice for higher value was both signed and stamped by supplier/consignor; the unsigned and unstamped invoice with lower value but with same invoice number and date does not declare itself to be either a reissue in suppression of higher value invoice, does not present itself to be an invoice with a discount (of almost 50 per cent) on account of any factor let alone the terms of payment; the Adjudicating authority erred by not considering the parallel invoice as evidence of presentation of 'the fraudulent or manipulated document', a reason specifically illustrated in the sub clause (f) of Explanation 1 (iii) to Rule 12 of the CVR 2007.

3.2. He submits that the Adjudicating authority failed to appreciate the significance of illustration derived in the SCN from domestic sale data of importer in pre demonetization period, during demonetization, and post demonetization period; from the data it can be inferred that the imports were being continuously undervalued and cash component was always part of domestic sale transaction except during demonetization

period; the Adjudicating authority accepted the importer's plea that during demonetization higher sale price for domestic market was due to shortage of goods in market.

3.3. He further submits that the Adjudicating authority overlooked proper application of sub clause (a) of Explanation 1(iii) to Rule 12 CVR, 2007; the Adjudicating authority failed to see reason provided in the SCN regarding higher values at which identical or similar goods were imported at or about the same time; after rejecting the evidence related to value from M/s. Sambhav Rocks or M/s. Stone Shippers Limited, the Adjudicating authority was then required to correctly appreciate the evidence provided in respect of M/s. Shree Ram Granite, Jalore; Adjudicating authority rejected the value of goods, which are similar, imported by M/s Shree Ram Granites from the same supplier M/s Fujian Wanglong Diamond Tool Co. Ltd, on the superficial reason that description mentioned on all invoices and Bills of entry filed by the importer M/s Shree Ram Granite are "Consumable for Granite Cutting & Polishing Machines" with CTH 84649000 whereas the respondents have been importing the impugned goods "Segments and Blades"; the Adjudicating authority ignored the statement dated 18.12.2018, of Shri Gopal Singh, Sales Operation Manager of M/s Shree Ram Granite, Jalore, Rajasthan, wherein he confirmed that the imported goods were segments.

3.4. He also submits that the Adjudicating authority failed to appreciate inconsistencies in the importer's statement for doubting the truthfulness of the declared values; Shri S.P. Agarwal stated that number of visits to china was to ensure quality of the product and discounts; no such discounting factor due to supply of inferior quality was reflected in any of the invoices; Shri S.P. Agarwal further stated that the value of the goods has not changed since 2012 and that they were importing at reasonable value fixed by DRI; prices of the goods had increased since last 6 months but they were getting the goods at the same price as per their verbal agreement before one year ago; copy of the price list said to be effective from 1st March 2018, was sans forwarding e-mail or correspondence showing prior agreeing to

continue with earlier price. Learned Authorized Representative submits that these aspects suggest that the declared import prices subsequent to the period (15.07.2008 to 31.12.2012) settled by Hon'ble Settlement Commission were fixed and not as truthful transaction value; in admitting that the prices had already gone up, but they did not buy at increased prices shows that under-invoicing is accepted/ admitted by the importer more so, when there is no agreement; the Adjudicating authority erred by simplistically accepting the unsubstantiated averment of importer;

3.5. Learned Authorized Representative submits that the material presented in the SCN is sufficient to hold that it shall be deemed that transaction value declared by M/s. Granite India is not determinable in terms of Rule 3(1) of CVR 2007 and hence was liable to be rejected; the contemporaneous goods being not similar with the imported goods, the Adjudicating authority erred in the dealing the matter by saying that the quality and quantum were different; the Adjudicating authority did not appreciate Rule 5(2) of Customs Valuation Rules 2007 which provides for valuation based on value of similar goods and Interpretative Notes to Rules 4 and 5 are applicable. The Adjudicating authority further failed to appreciate that in terms of the provisions of CVR, 2007, there was scope for adjustments in value on account of variation in quantity; he failed to appreciate the judgment of Hon'ble Supreme Court in the case of M/s. Varsha Plastic Pvt. Ltd. & another 2009(235) ELT 193(SC).

4. Shri J. C. Patel along with Ms Shila Balani appearing for the respondents submits that the show cause notice proposes enhancement of the value of "Saw Blanks" imported on the basis of a so called "Parallel Invoice" of the said supplier which was received by the respondents; the adjudicating authority on comparing the invoice against which payment was made with the said parallel invoice found that there were vital differences between the invoices; the so called parallel invoice quoted the price of per piece whereas the invoice submitted quoted price per kg; whereas the invoice submitted to customs had all the details of bank, swift code, beneficiary address and

account no. etc., a so called parallel invoice did not have any such particulars; therefore, the adjudicating authority has rightly held that the so called parallel invoice was in the nature of a Proforma invoice; there was no evidence of any payment over and above the price declared in the invoice submitted to the customs. He submits that though the department was in the possession of a so called parallel invoice, did not raise any objection and cleared the live consignments at the rate of USD 2 per kg; even the so called parallel invoice was only in respect of one bill of entry dated 12.01.2015 and in respect of all other imports of saw blanks from different supplier there is no such parallel invoice; it is pertaining to note that even for the period subsequent to the show cause notice department has assess the imported saw blanks at the rates ranging from USD 1.449 - USD 2.30 per kg.

5. Learned Counsel for the respondent submits that in respect of "Segments (MS with synthetic diamond powder)", which were imported at prices ranging USD 9.80 - USD 10 per kg.; USD 13 per kg, it was proposed to enhance the price to USD 16.48 per kg on the basis of the imports by following the imports of three actual users i.e. Stones Shippers Ltd., Shri Ram Granite and Shambhav Rocks. He submits that the learned Commissioner has analyzed the imports made by the said three actual users (in Para 5.7 to 5.42 of the OIO) and *interalia*, held that

- The quantities imported by the said three importers are meager when compared to bulk quantities imported by the Respondent; therefore, the price of the Respondent's goods cannot be enhanced by comparison with the import price of the said three importers;
- While the said actual users imported only 2 to 3 consignments in a year (less than 5 MT in a year), the Respondents' imports were of 20 to 25 MT in each consignment (500 to 1000 MT a year); therefore, the prices cannot be compared for enhancement;
- Also there was difference in the quality of the goods imported by the said actual users and the quality of goods imported by the Respondent; quality of the goods imported by the said actual users

was superior to that imported by the Respondent; description of goods given in the Bills of Entry filed by Stone Shippers Ltd mentioned the goods to be of 'A' quality, which was not the case with the Respondent's goods;

- Supplier had by letter dated 20.02.2018 clarified that the Segments supplied to the actual users/ EOU had copper or cobalt bond and imported diamonds whereas the Segments supplied to the Respondent had iron bond and cheaper low-grade diamonds;
- Customs had got the Respondent's goods tested and the Test Report; test report shows high iron content to the extent of 72 to 83%; respondents relied upon the said letter in Writ Petition Nos. 5058 of 2018, 10210 of 2018 & 13952 of 2018; there is no rebuttal to the said letter in the Show Cause Notice.

6. Learned Counsel submits that the findings of the Commissioner, based on the differences in quantity and quality of the imports of the said actual users and the Respondent's imports, cannot be faulted in view of *Atco Industries Ltd 1992 (57) ELT 654* upheld by the Hon'ble Supreme Court *1996 (86) ELT A76 (SC)* and *Gemplus India P. Ltd 2005 (185) ELT 269*; it has been held that small quantities imported by Actual are not on the same commercial level as bulk imports by a Trader and that therefore, the two are incomparable and the price of the latter cannot be enhanced by comparison with the price of the former. He submits that Rule 4 (b) of the Customs Valuation Rules 2007, clearly provides that comparison can only be made with identical goods which are at the same commercial level and in substantially the same quantity as the goods being valued; in the instant case, the imports by the said Actual users are neither at the same commercial level nor in comparable quantity as the imports of the Respondent.

7. Learned Counsel submits that the Hon'ble Supreme Court in the case of *Basant Industries -1996 (81) ELT 195 (SC)* held that by mere comparison of two invoices, without anything more, it would not be correct to proceed on the premise that there is undervaluation; it is a matter of common knowledge that price which is offered to an old customer may be different from a price which same supplier offers to a



totally new customer; in the present case, the Respondent has been over the years regularly importing the goods in question from the supplier in bulk quantities; therefore, applying the ratio of the said decision of the Hon'ble Supreme Court, the price of the Respondent's imports cannot be enhanced by comparison with Invoice pertaining to import of small quantity by the said actual users.

8. Learned Counsel further submits that the Respondent has placed on record, data of contemporary imports by other importers, which shows imports at prices which are less than or equal to the prices at which the Respondents have imported the said goods; Rule 4 (3) of the Customs Valuation Rules 2007, clearly provides that if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods; therefore, when the data of contemporary imports shows imports at prices lower than the price of the Respondent's goods, the question of enhancing the value of the Respondent's goods does not arise at all.

9. Learned counsel lastly submits that the Commissioner (Paras 5.14 and 5.15 of the OIO) rightly discarded the statement of a private person, Mr. Vishal Vora, who had nothing to do with the present imports and the alleged We-Chat conversations which he claimed to have had with the foreign supplier, as being inadmissible in evidence; such alleged We-chat conversations of a private person unconnected to the imports in the present case have no authenticity and have no evidentiary value at all. He submits that on the contrary, the respondents, vide submissions dated 16.07.2018 filed in reply to appeal and vide submissions dated 10.04.2019 filed during Pre-notice consultation, submitted that respondent's proprietor was interrogated on 19.02.2018 by Mr. Chauhan, Superintendent, SIIB; during such interrogation, the said Superintendent, by assuming the identity of the Respondent's proprietor, sent We Chat messages to the supplier from the Respondent's proprietor's phone asking for the actual invoice with higher price, to which the supplier respondent that there is no such actual invoice with higher price and there is only one invoice which gives the real price. There is no rebuttal in the Show Cause Notice of

the same. He submits that the department's appeal is devoid of any merit and hence, be dismissed.

10. Heard both sides and perused the records of the case. The issue that needs to be decided in the case is as to whether the allegation of undervaluation against the respondents is substantiated by the evidence that has been put forth by the investigation. We find that, as observed in the impugned order, are as follows.

- Parallel set of invoices (both having No WX 143069 -2 and both dated 29.11.2014 from the supplier M/s. HXF Saw co Ltd) retrieved from the e-mail id of Shri SP Agarwal; one invoice showing the value of 80100 \$ and the second one 44152\$ (filed with Bill of Entry No. 7966010 dated 12.01 15).
- invoices showing contemporaneous imports by M/s Stone shippers Ltd, Kota, Rajasthan and M/s. Shree Ram Granite, Mumbai; invoices are for import of segments from same suppliers M/s. Fujian Quanzhou Wanglong Stone Co Ltd., China and Fujian Wanlong Diamond Tools, Co Ltd China at higher value of USD 21.75/Kg and USD 30/Kg respectively as against USD 9/Kg declared by the noticee; invoices submitted by these importers had signature of the supplier whereas the invoices submitted by the notice at the time of imports did not;
- Imports of segments at a higher value by M/s. Sambhav rocks Ltd, from the same supplier, as evidenced during investigation conducted by DRI, Bangalore;
- A case of, undervaluation of segments and saw blanks against the respondents, booked in 2013 by DRI, Bangalore; the respondent settled the case by paying differential duty, interest and penalty;
- V-Chat, Shri Vishal Vora, an independent person, with the representative of the supplier indicating that the supplier M/s. Fujian Wanglong China, indicating their willingness to provide invoice by showing lower value to the extent of 50-60% and receiving remaining amount through non-banking channels;

- the noticee has been selling the imported goods at higher prices in the focal market and has received part of payment in cash.

11. Regarding the Evidence on the basis of Parallel invoices, we find that the Learned Commissioner enumerated differences between these invoices and held that they are not comparable. Learned Commissioner pertinently finds that the second invoice bears details of Bank, Swift code, Account number of the supplier etc, which are absent in first invoice; second invoice is the actual invoice and the first invoice looks like a Performa invoice; investigation could not find any evidence that the actual payment was made on the basis of first invoice; respondents imported only 1-2 shipments from this supplier; entire SCN is on the supplies from Mis Fujan Quanzhou Wanglong Stone Co Ltd., China and Fujian Wanlong Diamond Tools, Co Ltd China; investigation could not get any single parallel invoices in respect of imports from them; could not produce not even a single evidence of payments made over and above the price shown in the invoice submitted. We find that the Commissioner's finding is correct to this extent and needs no intervention. We find that the value of entire imports over a period of time cannot be arrived at on the basis of a single invoice and that as long as any differential payment is not evidenced, the value declared cannot be rejected. The Principal Bench of this Tribunal at Delhi, in the case of H.S. Chadha & V. Commissioner of Customs (Preventive) [2021 (378) ELT 193 (Tri. Delhi) held as follows:-

*"We find that it is trite law that since the goods were assessed by proper officer based on transaction value, onus lies on the Revenue to prove undervaluation, which it has failed miserably to do so since it did not show any contemporaneous import data of identical or similar items or NIDB data to indicate undervaluation and therefore the invoice value is required be accepted and the transaction value itself and hence could not have been discarded, as held by various judgements of the Hon'ble Supreme Court like CCE Vs Sanjivani Non-Ferrous Trading Pvt. Ltd. MANU/SC/1456/2018 : (2019) 2 SCC 378 and CC Vs South India Television Pvt. Ltd. MANU/SC/2966/2007 : (2007) 6 SCC 373. We find that there is no allegation or finding that the buyer and seller being related or of any extra payment to the supplier beyond the normal authorized banking channels and thus undervaluation is not established as held by this tribunal in Kelvin Infotech Pvt. Ltd. (supra).*

12. On the issue of considering the value at which M/s Shree Ram Granites and others imported the goods, Learned Commissioner finds that the description mentioned on all the invoices and bills of entry are 'consumables for granite cutting & polishing machines with CTH 84649000, where as the respondents were importing goods under Chapter; this difference was not noticed by the investigation team; M/s Shree Ram Granites is a 100% EOU and has not paid import duty on these item; the volume of imports by Shree Ram Granites are meager compared to the volumes imported by respondents; whereas M/s Shree Ram Granites and others were actual users who imported only 2 to 3 consignments in a year(less than 5 MT in a year), where as the respondents imported 20 to 25 MT in each consignment (500 to 1000 MT a year); foreign supplier vide letter dated 20.02.2018, clarified that EOU stone plant looking for copper bond or cobalt bond faster cutting tools of longer life span than massive market product using sometimes iron bonds; some commercial invoices of Ms. Shree Ram Granites are also unsigned.

13. The respondents submit that they are the major buyers in India for the suppliers M/s. Fujian Quanzhou Wanglong Stone Co Ltd., China and Fujian Wanlong Diamond Tools., Co Ltd China and their volumes of imports are not comparable to other importers; they are major buyers for these suppliers and account for nearly 85% of the total import from these suppliers in JNCH. We find that these three importers imported very less quantity compared to the noticee; M/s. Shree Ram granites Ltd and Ms Stone shippers Ltd have imported only 5-6 consignments each during the entire period from these suppliers. In addition to the volumes, one needs to take in to account the quality of goods also. It was submitted that there were also different types of bond in same size of segment mainly iron bond, copper bond with silicon cobalt bond etc, the different bond with different grade of raw material would affect the cost and price. Commissioner observed that PMI test report dated 16.02.2018 given by M/s Dinesh Metal Testing Services clearly shows the presence of Iron (Fe) more than that of other metals. We find that the value at which M/s Sambhav Rocks imported, as evidenced by DRI, Bangalore investigation was also put forth by the SCN.

14. We find that M/s Sambhav Rocks did not import from the suppliers in question ie M/s. Fujian Quanzhou Wanglong Stone Co Ltd, China or Fujian Wanlong Diamond Tools, Co Ltd China. On going through the impugned order we find that the learned commissioner has gone through the evidences submitted, analyzed them and has given elaborate and detailed findings on each of the evidences relied upon in the SCN for determining the value of goods imported by the respondents. He has also discussed the legal provisions of Rules 12, 4 & 5 of Customs Valuation Rules and arrived at the conclusion in a logical manner and on the basis of legally tenable reasons. Learned commissioner has rightly found that the imports of others cannot be considered as contemporaneous prices for valuing the imports in question by the respondents.

15. We find that in the case of *Global Industries Vs. Commissioner of Customs, Cochin [2011(272)ELT724 (Tri. bang)]* it was held that in the absence of data relating to the imports of goods of same quality, quantity and commercial level with higher transaction value, contemporaneous import cannot be accepted. In this instant case, Revenue has not placed any data to evidence contemporaneous imports; rather the Adjudicating Authority found that there are no contemporaneous imports. We find that Apex Court, in the case of *Basant Industries 1996 (81) ELT 195 (SC)* held that

*3. Ordinarily, this Court would not like to interfere in a matter of price fixation, but at the same time it seems necessary to impress upon the Department that by a mere comparison of two invoices without anything more, it may not be correct to proceed on the premise that there is undervaluation. The relationship between the supplier and importer has also to be kept in mind because it is a matter of common knowledge that a price which is offered by a supplier to an old customer may be different from a price which the same supplier offers to a totally new customer. ....*

16. We find that the investigation has not taken in to account the volume of the imports made by the appellant; their relation with the supplier and the discounts offered. The submissions of the appellants were brushed aside stating that the discounts were not reflected in the invoice and that there were inconsistencies in the statements of Shri Agarwal. In view of the discussion above and the judgments cited, we

find no case has been made for comparing the imports of the respondents with that of others and re-determine the value accordingly.

17. Regarding the reliance on the case of, undervaluation of segments and saw blanks against the respondents, booked in 2013 by DRI, Bangalore against the respondent, learned commissioner finds that-

*“the SCN placed reliance on the said settlement order with a purpose to establish that Noticee had engaged in under valuation in past also; but there is no attempt made in the SCN for the present case by establishing the identical or similar nature of the goods of the other importers whose invoices have been referenced with that of the noticee; in the absence of any such thing the reference to the previous DRI case can only to emphasize the point that importer's antecedent of undervaluing the goods; but that is not going to be an evidence to establish undervaluation in the present case; even if it is for claiming that the noticee has the propensity to commit the offence, when the offence in the present SCN itself is not yet established with clinching evidences the claim of propensity of offence will remain as a mere insinuation though the commercial fraud investigations need not prove the offence to the mathematical precision, at least few clinching evidences are required before claiming the propensity; it is also pertinent to mention that the Noticee has settled the SCN with a purpose to end the dispute and reduce legal cost in the said final order price of impugned goods was deemed to be fixed; instant SCN has questioned the declared value of contemporaneous import of Notices in the year 2014, which was more than value fixed in settlement order.”*

18. In this regard, we find that the findings of the commissioner are correct. Antecedents cannot be an evidence for the alleged undervaluation of the goods. At best antecedents may be a reason for creating a suspicion and be a reason for causing an enquiry or Investigation. Mere propensity of the respondent is not enough proof of undervaluation. Therefore, we hold that antecedents of an importer

or their propensity to violations cannot be in itself an evidence prove a contravention in a completely different proceedings.

19. Regarding the evidence relied upon in the Show Cause Notice on the V-Chat by a private person with the supplier, learned Commissioner observed that *he refrains from discussing the evidence gathered by a private investigator by the name Vishal Vora as it is not legally sustainable and such engagement is not permitted under any provision of the Customs Act, 1962 or any rule made under it; the Government of India is sovereign in the matter of revenue and depends upon its own personnel for gathering information and intelligence unless a private person approaches as informer as per established procedure for giving information, which is not the case here; the mode and manner of his working style and his alleged interaction with Noticee is not above suspicion as contended by Noticee.*

20. We find that the *bona fides* or credentials of the said Shri Vora; his link to the impugned case and his role in the imports by the respondent are not forthcoming. We fail to understand as to how the authorities have permitted to engage the services of a private person in the investigation leave alone permitting the same to be part of the evidence while issuing a Show Cause Notice. If a private person approaches the agencies as an informer giving information the same may be used following the standard operating procedures. Even then understandably, the sanctity and the secrecy of the informant become paramount. Be it so, using the service of a private person, engaging to have a chat with the supposedly with the supplier, is a dangerous trend. In the competitive market, there would be no dearth of such persons coming forth and the department would not find number of cases wanting. We are of the considered opinion that such an evidence, being totally unconnected and not relevant cannot be used to sustain a case of under valuation.

21. In view of the above, we do not find any reason whatsoever, so as to interfere with the order of the learned Commissioner. We find as per the discussions above, Revenue has not made out any case against the

impugned order. We also find that the appeal filed by the Revenue is devoid of any merit and hence, is liable to be rejected.

22. In the result, appeal C/85141/2021 is dismissed.

(Order pronounced in the open court on 29.07.2022)

**(S. K. Mohanty)**  
**Member(Judicial)**

**(P. Anjani Kumar)**  
**Member (Technical)**

Sinha/ys