

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 11063 of 2016- DB

(Arising out of OIA-AHD-CUSTOM-000-APP-372-373-15-16 dated 29/02/2016 passed by Commissioner of CUSTOMS-AHMEDABAD)

Deeplalit Enterprise P Ltd

.....Appellant

13, Rajnigandha Bunglows,
Near Sant Kabir School, Thaltej,
Ahmedabad, Gujarat

VERSUS

C.C.-Ahmedabad

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

With

CUSTOMS Appeal No. 11064 of 2016- DB

(Arising out of OIA-AHD-CUSTOM-000-APP-372-373-15-16 dated 29/02/2016 passed by Commissioner of CUSTOMS-AHMEDABAD)

Lilaram Arjandas Asudani

.....Appellant

13, Rajnigandha Bunglows,
Near Sant Kabir School, Thaltej,
Ahmedabad, Gujarat

VERSUS

C.C.-Ahmedabad

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Vikash Mehat, Consultant for the Appellant

Shri Prashant Tripathi, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10396-10397/2024

DATE OF HEARING: 20.10.2023

DATE OF DECISION: 13.02.2024

RAMESH NAIR

The Appellant M/s Deeplalit Enterprises Pvt. Ltd is engaged in the trading of electronic goods including branded and non - branded flash memory cards which were imported during 2008 -09 and 2009 -10 at Air Cargo, Ahmedabad which after being duly examined by the proper officer for its description and assessment were allowed to be cleared upon payment of duty assessed. The said consignment was imported by M/s. KJ Imports and Exports of Ahmedabad from Hong Kong via Mumbai that the

said goods were seized in Mumbai alleging undervaluation. Based on this seizure at Mumbai an investigation was undertaken at Ahmedabad for past imports undertaken by the said importer. That based on a comparison of the value of imported Flash memory cards at various other Customs station it was alleged that the value declared by the Appellant was grossly undervalued.

1.1 The original adjudicating authority rejected the value declared by the appellant and re-determined the value of goods as per NIDB data under Rules of Customs Valuation Rules, 2007 and assessed bills of entry. Therefore, the Appellant challenged the assessment before the Commissioner (Appeals). However, the Learned Commissioner (Appeals) vide impugned Order-In- Appeal No. (AHD/CUSTOM/000/APP/372 – 15 -16) dated 29.02.1026 has upheld the order of original adjudicating authority. Aggrieved by the said Order in Appeal, the Appellant has filed this appeal.

2. Shri Vikas Mehta, Learned Counsel appearing on behalf of the Appellant submits that the lower authorities have erred in invoking the provisions of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Learned Adjudicating authority without any ground for rejection of declared value have directly invoked Rule 5 of the Customs Valuation Rules, 2007.

2.1 Without prejudice to the above he also submits that both the lower authorities have upheld re- determination of the value of goods merely based on comparison of data for imported goods at other ports as per Rule 5 of the said rules. He submits that for valuation of goods as contemporaneous imports the Learned Authorities have considered the bill of entry accruing to March, May and June 2009 with country of origin as Taiwan and China when the bill of entry filed by the Appellant was that in July 2009 and subsequently no country of origin was showed for the Appellant.

2.2 Without prejudice to the aforesaid, he submits that there is no harmony in consideration of NIDB Data for ascertaining contemporaneous pricing in case of unbranded goods. That NIDB data of 2009 has been

referred to assess pricing of goods considering bills of entry dated 01.04.2010.

2.3 He has further submitted that the Learned Commissioner (Appeals) has alleged that the Appellant has suppressed the actual price of the goods that have been imported that the impugned order has held the Appellants in contravention of Section 14(1) of the Customs Tariff Act, 1975 without adducing any evidence in support of their claims.

2.4 He has argued that the Leaned Commissioner (Appeals) has wrongly held the Appellant in contravention of Section 11 of the Foreign Trade (Development and Regulation) Act 1992. In holding so, the Appellant has been alleged to have not stated the true value of the imported goods to the assessing officer when there was no evidence to show that the value of goods was incorrect to begin with whereas on the contrary the Appellant has claimed to submit all the relevant documents which were assessed by the assessing office.

2.5 He further submits that the Appellant has been alleged to have contravened Section 46 of the Customs Act, 1962 for not declaring relevant information while filing the bills of entry whereas the Appellant had admittedly filed all relevant details and yet the department had no evidence in support of their claim.

2.6 He also submits that the Learned Commissioner (Appeals) under section 111(m) and 114 A of the Customs Act 1962 has held the good liable for confiscation and imposed Penalty on the Appellant. He submits that the adjudicating authority has levied the said imposition without authority of law as the past imports were called upon for investigation which were cleared after examination without any objection so being raised in terms of mis-declaration in the first place. He has placed reliance on the following decisions:-

- Metro Tyre vs. Collector – 1994 (74) ELT 964
- West Cost Papers Mills Ltd. vs Commissioner – 2001 (130) ELT 259
- Liladhar Pasoo Forwarders P. Ltd vs Commissioner of Customs – 2000 (122) ELT 737 (T).
- Hindustan Steel Ltd. vs State of Orissa AIR 1970 SC (253)

- Akbar Badruddin Jiwani vs Collector of Customs 1990 (47) ELT 161 (SC)
- Hari Impex vs. Collector of Customs 1999 (105) ELT 503
- Amba Exports vs. Commissioner of Customs 2006 (199) ELT 734
- Asha Enterprises vs. Collector of Customs 1998 (100) ELT 441
- Eicher Motors Ltd. vs Union of India 1999 (106) ELT 3 (SC)

3. Shri Prashanth Tripathi, Superintendent (AR) appearing on behalf of the Revenue has reiterated the findings of the impugned order.

4. Heard both the sides and perused the records.

4.1 The dispute in the present case is regarding the valuation of goods that were imported by the Appellant. The Assessing Authority re-assessed the imported goods at values that were higher than that declared by the Appellant in the Bills of Entry. The Revenue has enhanced the value of the said goods relying on NIDB data. It is observed that the Custom Valuation Rules outline a detailed chronological methodology that should be adopted in order to reject and re-determine assessable value. Section 14 of the Customs Act 1962 read with Custom Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as assessable value. In the event where transaction value is rejected thereafter Custom Valuation Rules need to be satisfied for enhancement of the value. In the instant case no basis of such re-assessment can be made out as the department has failed to warrant reasons for rejection of transaction value in the first place. We observe that rejection of value declared on a Bill of Entry is a serious action that should be supported by compelling provision, evidence and justifiable reasons.

- a) Relevant provisions as regards rejection of the transaction value and re-assessment of value have been produced below:-

“5. Transaction value of similar goods. -

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) 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;

(b) 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;

(c) no part of the proceeds of any subsequent 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 10 of these rules; and

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

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

(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 10 and cost incurred by the seller in sales in which he and the buyer are not related;

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

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

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) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.”

From a cursory reading of the above provisions, it is evident that Rule 5 is to be read subject to Rule 3 which should be read with Rule 12 of the Customs Valuation Rules, 2007 which brings us down to the very essence of the Valuation Rules that in order to re-determine assessed value, transaction value should be rejected based on cogent reasons and evidence. The transaction value of the appellant has been rejected merely on the ground that similar goods have been imported at higher value at various other custom stations without providing any evidence in support of their claim and failing to examine the applicability of Rule 12 of Customs Valuation Rules in the present case. Reference has been made to the judgement laid down by the Hon'ble Supreme Court in Eicher Tractors.

b) *Eicher Tractors* [[2000 \(122\) E.L.T. 321](#) (S.C.)] laid down very categorical as follows:-

“6. Under the Act customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the

value is not so fixed the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation - in the course of international trade. The word 'ordinarily' necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale.....".

Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the rules framed in this behalf

7. *The rules which have been framed are the Customs, Valuation (Determination of Price of Imported Goods) Rules, 1988. The rules came into force on 16th August, 1988. Under Rule 3(i) "the value of imported goods shall be the transaction value". "Transaction value" has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4(1) in turn states :*

"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."

8. *Reading Rule 3(i) and Rule 4(1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2), namely :-*

(a) 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;*

(b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent 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

(d) 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)."

7. *These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price*

actually paid for the particular transaction falls within the exceptions, the Customs authorities are bound to assess the duty on the transaction value.

- 8. The respondent's submission is that the phrase "the transaction value" read in conjunction with the word "payable" in Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained on the basis of data other than the price actually paid for the goods. This, according to the respondent, would be in keeping with the overriding effect of Section 14(1). We cannot agree.*
- 9. It is true that the Rules are framed under Section 14(1A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly relatable to Section 14(1). Both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularized in Rule 4(2).*
- 10. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.*
- 11. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India." If the phrase 'the transaction value' used in Rule 4 were not limited to the particular transaction, then the other Rules which refer to other transactions and data would become redundant.*
- 12. It is only when the transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in*

Rule 4(2), there is no question of determining the value under the subsequent Rules.

13. *The Assistant Collector in this case determined the value of the imported goods under Rule 8. The question is whether he should have determined the transaction value under Rule 4 at the price actually paid by the appellant for the 1989 bearings. Naturally, if Rule 4 applies to the facts of this case, the Assistant Collector's reasoning under Rule 8 must, by virtue of language of Rule 3(ii), be set aside.*
14. *The Assistant Collector appears to have proceeded on the law as it was prior to the 1988 Rules when 'special considerations' on the basis of which a transaction was held not to be an ordinary sale in the course of international trade within the meaning of Section 14(1), had not been statutorily particularised.*
15. *As to what would constitute such "special consideration" has been considered in several decisions of this Court. For example, a special quotation for the importer singling him out from other importers in India was held to be a special consideration in *Padia Sales Corporation v. Collector of Customs, Bombay (supra)* justifying the rejection of price paid as the transaction value. On the other hand in *Basant Industries v. Addl. Collector of Customs, Bombay* - [1996 \(81\) E.L.T. 195](#) (S.C.), a special quotation for an "old and valued customer" was upheld as not being a special.*
16. *The decision in *Sharp Business Machines Pvt. Ltd.*, relied upon by the respondent is another case where the transaction value was rejected. In that case, the importer had wrongly misdescribed the imported goods and sought to defraud the Revenue by attempting to surreptitiously import items prohibited under the import policy. It was found that there was justification, in the circumstances, for rejecting the price shown in the invoice. The transaction value having been rejected, assessment of value was made on the basis of the price list of the foreign vendor.*
17. *Both the decisions *Padia Sales Corporation* and *Sharp Business Machines Pvt. Ltd.* were distinguished subsequently in *Mirah Exports Pvt. Ltd. v. Collector of Customs* - [1998 \(98\) E.L.T. 3](#). As the facts of this case are somewhat similar to the case before us, it is dealt with in some detail.*
18. *Mirah Exports Pvt. Ltd. along with other importers had imported bearings at high rates of discount. The declared value was rejected by the Customs authorities, on the basis of the price list of the vendors. This Court set aside the decision of the respondent authorities accepting the argument that a discount is a recognised feature of international trade practice and that as long as those discounts are uniformly available to all and based on logical commercial bases, they cannot be denied under Section 14. It appears from the judgment that a distinction was drawn between a discounted price special to a particular customer and discounts available to all customers*

19. *As already noted all these cases dealt with imports made prior to the coming into force of the Rules in 1988. Now the 'special considerations' are detailed statutorily in Rule 4(2).*
20. *In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a misdescription of the goods imported as was the case in Padia Sales Corporation. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially acceptable measure, which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one time sale of 5 year old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to any one else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1).*
21. *In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was not the "ordinary" sale price of the bearings imported".*
- c) Similar view has been expressed by the Apex Court again in case of Tolin Rubbers Pvt. Ltd. [2004 (163) E.L.T. 189 (S.C.)], South India Televisions [[2007 \(214\) E.L.T. 3](#) (S.C.)], Motor Industries [[2009 \(244\) E.L.T. 4](#) (S.C.)] etc.

4.3 We find that, neither the Adjudicating authority nor the Commissioner (Appeals) have established such circumstances as prescribed by law for rejection of transaction value and rejected it merely on the ground that goods have been imported at a higher value without properly examining the applicability of Rule 5 read with Rule 12 of Customs Valuation Rules, 2007.

4.4 As regards the enhancement of value done by the Department, it has been concluded based on value of contemporaneous imports. In this context, we find that the relevant provision for understanding similar goods

under Customs Act are as follows:-

”Rule 2(1)[(f (i))

(f) "similar goods" means imported goods -

- (i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;*

Rule 12 – Explanation 1(iii)

(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;”*

From the above provisions it is clear that to re – assess value under Rule 5, it is important to establish that the goods were similar. In the present case Appellants have disputed that though the contemporaneous import goods were relied upon, both the adjudicating authorities failed to establish goods of contemporaneous imports are similar to the goods of the assessee. We observe that in the present case no effort was made by the adjudicating authority to ascertain quality, quantity and characteristics of the goods of the contemporaneous import, the authorities have failed to carry out any test to ascertain that the goods of contemporaneous import are similar under what circumstances. Only reports of NIDB have been relied upon. No assessment with regards to comparable quantity and quality of the goods have been established by the Department when re-assessing the value of the said goods. Based on the facts we note that the data relied upon by the department does not wholly correspond to the time at which the investigation was conducted and different parameters ought to have been considered while adjudicating upon such serious allegations.

4.5 We note that this was erroneous on the part of the Department as they have not carried out proper analysis towards the nature, characteristics, and quantity of the goods before re – assessment under Rule 5. We find that identical issue has been considered by this tribunal in the case of Sedna Impex India P Ltd v CC – Mundra 2023 (3) TMI 1080 and Pooja Money vs CC – Mundra 2023 (10) TMI 508

The relevant portions have been extracted from the said judgements: -

“Para 4.7 We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. Tribunal in the case of Neha Intercontinental Pvt. Ltd. v. Commissioner of Customs, Goa [2006 (202) E.L.T. 530 (Tri.-Mum.)] has held in the absence of rejection of transaction value, invoice value requires acceptance and when the contemporaneous import of similar goods is not established, value cannot be enhanced. In the case of Commissioner of Customs v. Modern Overseas [2005 (184) E.L.T. 65 (Tri.-Del.)] NIDB data was held to be insufficient, in the absence of clarity about various parameters. The list of such decisions is unending, and it is sufficient to say that NIDB data has been held to be insufficient for enhancement of value, in the absence of any other independent evidence. Admittedly in the present cases, there is no such evidence produced by the Revenue except with reference to the NIDB data. In view of the discussions above, we hold that in the present case, the enhancement of value on the basis of NIDB data cannot be accepted.”

Pooja Money vs Commissioner of Customs – Mundra 2023 (10) TMI 508

“Para 10. We also find that in the instant case, there is nothing on record to indicate that the proper officer having doubted the transaction value on the basis of NIDB data, sought any further information from the appellant by way of documents or evidence or even in the absence of such information had applied its mind to the truth or accuracy of the value declared as per above requirement. We also find that there is no mention from the department’s side about recording of reasons for doubts. The truth or accuracy and communication of the same even when requested at the de novo remand stage of litigation by the appellant’s importers. Further it is also for the proper officer to give opportunity of hearing before deciding transaction value in terms of Valuation Rules 2007. We find that the above procedure required as per Rule 12 and also mandated by the Apex Court has been jettisoned by the department. What has been decided by settled law is woefully lacking in the present proceeding, while rejecting transaction value. Rejection is therefore improper.

11. Above failure of the department in the instant case makes the impugned order fit for setting aside, we therefore order accordingly.”

Therefore, since no other material has been relied upon to enhance value of the said goods other than the NIDB data, and department was unable to adduce evidence in support of their claim as regards undervaluation, the same is insufficient to establish that the assessee have suppressed the value.

4.6 As regards the alleged violation of Section 111(m) of the Customs Act, the said provision has been produced below: -

“SECTION 111. *Confiscation of improperly imported goods, etc . - The following goods brought from a place outside India shall be liable to confiscation:-*

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

4.7 We find that the department in its show cause notice issued to the appellant has not raised any discrepancy towards the declared quantity of goods in order to attract confiscation under Section 111(m) of the Act. Neither from the records is it evident that any misdeclaration of value in respect of any entry has been made under the Customs Act nor was the Commissioner (Appeals) able to adduce any evidence regarding their claims. Reliance on the tribunal judgements in the case of West Cost Paper Mill Ltd. (supra) has been correctly placed as the Hon'ble Tribunal has observed that penalty is not sustainable when bonafide of the importer are not in doubt and there is no intent to mis - declare the goods and Asha Enterprises (supra) wherein it has held by the Tribunal that once goods are cleared without any objection, it would be reasonable to hold that on examination, the goods were found to confirm to the description unless there are evidence to the contrary. In this view confiscation of the goods does not sustain and is set aside. Accordingly, penalties are also set aside.

5 In view of our above discussion and settled legal position, we set aside the impugned orders and allow the appeals with consequential relief to the appellant, if any, in accordance with the law.

(Pronounced in the open court on 13.02.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)