CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 788 TO 792 OF 2010

[Arising out of Order-in-Appeal No: 32 to 36 (Gr.II A)/2010(JNCH)/IMP-28 to 32 dated 22nd July 2010 passed by the Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.]

Acmechem Ltd
412/413 GIDC Estate, Panoli, Tal: Ankleshwar
Dist: Bharuch – 394116 … ***Appellant***

versus

Commissioner of Customs (Import)
Mumbai – II
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri J C Patel, Advocate for the appellant

Shri Manoj Das, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 85529-85533/2022

DATE OF HEARING: 10/12/2021
DATE OF DECISION: 09/06/2022

PER: C J MATHEW

This appeal of M/s Acmechem Ltd arises from the enhancement of assessable value from US$ 2.95 per kg to US$ 3.95 per kg on the import of ‘DCBS N’ or ‘N Dicyclohexyl-2 Benzothiazole Sulfenamide’, a rubber accelerator, against five bills of entry comprising five consignments of 12000 kgs each that was upheld by Commissioner of Customs (Appeals), Mumbai -II in order-in-appeal no. 32-36 (Gr IIA)/2010 (JNCH)/IMP-28-32 dated 22nd July 2010 which is impugned herein.

2. Narrating the background, Learned Counsel for the appellant submits that bills of entry no. 834625/30.03.09, no. 861296/17.04.09, no. 894469/12.05.09, no. 949827/19.06.09 and no. 992671/18.07.09, though backed by sales contract and sales invoice for price of US$ 2.95/kg and sufficing to qualify as ‘transaction value’ in the absence of any evidence to the contrary, was assessed at US$ 3.95/kg without the preliminary of show cause notice of intent to do so. Moreover, according to him, the ‘proper officer’ under section 17 of Customs Act, 1962 had failed to comply with the mandate therein for issue of speaking order justifying the re-valuation.

3. It was further submitted that the disposal by the first appellate authority was no less tardy inasmuch as reliance was placed, and ostensibly on furnishment by the assessing group, on the value in bill of entry no. 782991/13.02.09 which was not brought on record for

validation as ‘contemporaneous’ import of identical or similar goods. Citing the decision of the Hon’ble Supreme Court in *Basant Industries v. Addl Collector of Customs, Bombay [1996 (81) ELT 195 (SC)]* and of the Tribunal in *Devika Trading Pvt Ltd v. Commissioner of Customs, Mumbai [2004 (167) ELT 75 (Tri-Mumbai)]* and in *Spices Trading Corporation v. Commissioner of Customs, Madras [1998 (104) ELT 656 (Tribunal)]*, it was contended the a stray invoice was not acceptable as basis for revising assessable value. Interestingly, these decision predate Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 governing the assessment of the goods impugned in these proceedings and the first appellate authority did not appear to have appreciated that transformation of a regime in which the concept of ‘transaction value’ was the ‘gold standard’ for assaying the acceptability of ‘declared value’ to that in which ‘declared value’ was, itself, elevated to the ‘gold standard’ made rejection even more difficult than these decisions suggest. With judicial disapproval of stray evidence for enhancement even in the erstwhile regime, the single bill of entry relied upon in the present instance has no place at all in revising the assessable value.

4. Learned Counsel relies upon the decision of the Tribunal in *Sai Impex v. Collector of Customs [1992 (62) ELT 616 (Tribunal)]*, affirmed by the Hon’ble Supreme Court, to contend that there could no better evidence of ‘transaction value’ than the invoice of the

manufacturer. We find no reason to disagree with the submission that the invoice of manufacturer sufficed to establish the value therein to be the 'transaction value' as one of the documents that could be insisted upon for ascertaining acceptability of 'declared price' of a merchant supplier is invoice of manufacturer. The credibility of the impugned transaction, being one between the manufacturer and the appellant herein, should not have been called into question on the foundation of a stray bill of entry alone without further investigation and evidence.

5. As pointed out by Learned Counsel, the Tribunal, in a *catena* of decisions, *viz*., in *Orion Systems v. Commissioner of Customs, Cochin [2005 (192) ELT 1117 (Tri-Bang)]* and in *Narayan International v. Collector of Customs [1992 (58) ELT 126 (Tribunal)]*, both affirmed by the Hon'ble Supreme Court, as well as in *Dujodwala Products Ltd v. Commissioner of Customs (Import), Mumbai [2009 (235) ELT 266 (Tri-Mumbai)]* has held that, for reliance on evidence of transaction value of contemporaneous imports, the relevant assessment material should have been furnished and congruency with the disputed imports established. Failure to provide the relied upon material, or even record its comparability, deprives the impugned order of judicial acceptability.

6. Learned Authorized Representative drew our attention to the

power conferred on assessing officer for taking recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to reject the declared price in assessment of bill of entry. Reliance was placed by him on the decision of the Hon'ble Supreme Court in *Punjab Processors Pvt Ltd v. Collector of Customs [2003 (157) ELT 625 (SC)]*. We fail see the support that Revenue can garner from this judgement which was rendered on the foundation of non-deniability of invoice value on the part of an importer who had claimed that the actual value was lower than that in the invoice and the observation referred to merely compares the relative options for discarding and disowning.

7. Doubtlessly, rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 empowers rejection of declared upon evidence to the contrary and, by default too, upon non-satisfaction of queries sought by the assessing officer. Two aspects are critical to such rejection: requiring such evidence to be furnished by importer as is necessary for acceptance of declared va`lue as transaction value and, should the declared value be discarded, adoption of such value as is validated by the sequential alternatives in the Rules. There is nothing on record to demonstrate that the necessary pre-requisite in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 had been set in motion; indeed, the entire process, commencing with failure to

issue notice of intent and culminating in refusal to issue speaking order, appears to be devoid of any cognition of the principles of natural justice. Furthermore, resort to rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 should have established that the similar goods contemporaneously imported had been priced so at the time of its import. There is a glaring lack of details that impacts credibility to adoption of the assessable value in bill of entry no. 782992/13.02.09 even though the description therein may correspond to that in the bills of entry impugned before us. That fulfillment of necessary, without fulfillment of satisfactory, condition mars the revision of assessable value.

8. Even though the principles of natural justice stand breached by both the lower authorities, that need not concern the disposal of this dispute which, by the absence of evidence to displace the declared value, calls for the impugned order be set aside on merit. Appeal is allowed.

(Order pronounced in the open court on 09/06/2022)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*