

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

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10211 of 2019 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-254-18-19 dated 16/11/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Ajay Traders

Opp. Water Tank, Anand-sojitra Road,
Anand, Gujarat

.....Appellant

VERSUS

C.C.-Mundra

Office Of The Principal Commissionerate Of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

.....Respondent

APPEARANCE:

Shri Vinay Bairagra, Advocate for the Appellant

Shri R R Kurup, Superintendent (AR) for the Respondent

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

Final Order No. 12680/2023

DATE OF HEARING: 02.11.2023

DATE OF DECISION: 30.11.2023

RAMESH NAIR

The brief facts of the case are that appellant filed bill of entry No. 5257202 dated 13.05.2016 for clearance of stock lot of Jute Bags (new Jute bags) classifying the same under CTH 6305 1040 having gross weight 48,065 Kgs. valued Rs. 11,45,747 (CF). A first cheque was given and as per the examination report the goods were examined 10% under the supervision of superintendent (DOCS) and in presence of brokers representative, verified products description, weight, quantity with respect to invoice, packing list and also verified that goods were new.

1.1 In view of the examination, the custom has enhanced the value in the bill of entry. Accordingly, assessed to duty on the enhanced value at Rs. 62.44 per Kg valued at Rs. 30,84,726/- contending that the importer has consented vide order dated 19.05.2016. Being aggrieved by the enhancement of the value the appellant filed appeal before

Commissioner(Appeals) who vide Order-in-Appeal No. MUN-CUSTOM-000-APP-002-17-18 dated 07.04.2017 has remitted the matter with direction to examine available facts, documents, submissions and case Laws relied upon by them and then pass a speaking order in case after following principle of natural justice and adhering to the legal position.

1.2 On the remand proceeding the Adjudicating Authority rejected the declared value of the appellant, in the bill of entry and upheld the value enhanced for the assessment and re-determined the value at Rs. 62per Kg as per Rule 3(4) read with Rule 5 of Customs Valuation Rules, 2007 and bill of entry has been assessed accordingly.

1.3 Being aggrieved by the de-novo Oder-in-Original dated 06.04.2018, the appellant filed an appeal before the commissioner (Appeals). who vide impugned Order-in-Appeal dated 16.11.2018 rejected the appeal and upheld the Order-in-Original dated 06.04.2018. Therefore, the present appeal filed by the appellant.

2. Shri Vinay Bairagra, Learned Counsel appearing on behalf of the appellant submits that there is no basis of enhancement of the value, no contemporaneous goods were found.

2.1 He further submits that the entire enhancement of the value is based on the data taken from the Zuaba Portal and authenticity of the same is not known, there is no evidence of the genuineness of the data in Zuaba. He submits that in the present case goods were imported from Bangkok, whereas, the data which was relied upon is in respect of Bangladesh. The quality of the goods whether identical or otherwise is also not known. Particularly, when the consignment in the present case is stock lot of Jute Bags, therefore, the basis for enhancement of the value is not correct. In respect of his submission, he placed reliance on the following Judgments:

- Commissioner of Customs Import Mumbai Vs. Ganpati Overseas 2023 SCC OnLine SC 1259
- KVS Traders and others Vs. CCE Jamnagar (Preventive) final order No. A/11104-11106/2023 dated 03.05.2023.

3. Shri R R Kurup, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He placed reliance on the following judgment:

- Lan Eseda Industries LTD. V. Commissioner Of Customs, Mumbai-2010 (258) ELT 3 (SC)

4. We have carefully considered the submission made by both the sides and perused the records. We find that the appellant has imported stock lot of Jute Bags, which was declared in the bill of entry. The department has enhanced the value on the basis of data gathered from the website of Zuaba. It is undisputed fact that the authenticity of the platform of Zuaba has not been established or department has not made any effort to verify the authenticity of the same. It was also a submission of the appellant that it is not approved by any government agency and the same is a private platform. Therefore, the sole reliance made on the data appearing on Zuaba platform, in our view is not correct and legal.

4.1 Moreover, even from that data it does not appear that the goods imported by the appellant is identical to the goods described in the data of Zuaba platform. It is also clear that in the data of Zuaba the country of origin is Bangladesh, whereas, in the present case the goods were imported from Bangkok, for this reason also the data relied upon by the department is absolutely incorrect.

4.2 In our view, since the data of Zuaba is not authentic, there is no any other evidence to doubt the value declared by the appellant. The department has not discharged the burden in rejecting the declared value. Even from the

data of Zuaba which was relied upon by the department that the goods appearing on that data are not similar or identical to the one imported by the appellant. A perusal of the description of the said goods mention in the said table. Such as 'New Binola Jute Bags', 'Vegetable Oil Treated New Jute Bags' etc. are not identical to the goods under import. The goods in question are stock lot of goods, which though new, in any case cannot be compared with the goods which have been mentioned in the said Table. The stock lot, if not of the same quality of which the new goods are, and thus, the stock lot is available at a lesser price in the market. Therefore, we do not find any basis for rejecting the declared value by the appellant.

4.3 as regard the Hon'ble Supreme Court judgment in case of LAN Eseda Industries Ltd (Supra) relied upon by the Learned AR, on careful analysis of the said judgment, we find that in that case Hon'ble Apex Court considered the matter among others on the very important fact that the importer and supplier were related persons, which is not the fact in the present case. Therefore, the ratio of the judgment in LAN Eseda industries Ltd cannot be applied in the facts of the present case. Hence, same is clearly distinguished.

5. Accordingly, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in the open court on 30.11.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)