

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

**CUSTOMS APPEAL No. 50158 of 2020 [DB]**

(Arising out of Order in Appeal No. CC(A) CUS/D-II/ICD TKD/ 688/19-20 dated 31.10.2019 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi)

**M/s. Bansal Marble Traders**

**...Appellant**

Khasra No.70-1/2,  
Main Marble Market,  
Outer Ring Road,  
Mangolpur Kalan,  
New Delhi – 110085.

**Versus**

**Commissioner of Customs (Import),**

**....Respondent**

Inland Container Depot  
New Delhi

**APPEARANCE:**

Ms.Reena Rawat, Advocate for the appellant

Mr. Rakesh Kumar, Authorized Representative for the Respondent

**CORAM : HON'BLE MR.P.V. SUBBA RAO, MEMBER (TECHNICAL)  
HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)**

Date of Hearing : **04/10/2022**

Date of Decision: **11/11/2022**

**FINAL ORDER No. 51070/2022**

**DR.RACHNA GUPTA**

The order of Commissioner (Appeals) bearing No.688/2019-20 dated 31.10.2019 passed by the Commissioner (Appeals) has been assailed vide the impugned appeal.

2. The appellant is an importer of stones having Import Export Code. On 1<sup>st</sup> June, 2017, the appellant filed a bill of entry No.9918589 for clearance of goods declared as "polished marble slab" classified under CTH 68022190 through their authorised

representative, CHA M/s. Rajiv Chibber. The goods were imported from China through M/s. TBK Industry Company Ltd. vide bill of lading dated 05.05.2017 covered under invoice No.1716 dated 28.04.2017. The declared invoice value of the goods is US Dollar 48100 CIF having gross weight of 81020 Kg. The quantity of the goods was 1202.5 Sq. Mtr. having unit price of US\$ 40 per Sq. Mtr. with assessable value of Rs.31,72,339/- having custom duty of Rs.8,83,823/- thereupon.

3. The Shed Officers, on the basis of doubt, examined the impugned goods initially on 08.06.2017 in presence of appellant's representative subsequently on 13.06.2017 on the request of CHA of the appellant. The consignment was found to contain 1470 Sq. Mtr. (Approximate) granite slabs. The declared polished marble slabs were found only to be 140 Sq. Mtr. (approximate). However, thickness of both types of slab was not exceeding 20 mm. There was a policy condition for granite slab vide Directorate General of Foreign Trade Notification No. 28 & 29/2015 - 2020 dated 17.09.2016 vide which the import of granites slabs was permitted freely provided CIF value is US\$ 50 or above per Sq. Mtr. Since the value declared was less than the said value and the goods were not declared as granite slabs that the officers considered the goods to be the restricted goods. No valid license was found available with the appellants for import of said restricted goods (granite slabs). Resultantly, the appellant was alleged to have intentionally mis-declared the goods by undervaluing the same with the sole intention to evade the payment of customs duty. The value of goods was reassessed by

the proper officer at Rs.52,16,883/- and the reassessed customs duty of Rs.21,14,242/-.

4. Accordingly, the differential duty of Rs.1230419/- was proposed to be recovered from the appellant. The appellant vide their letter dated 13.06.2017 had accepted their mistake and expressed their readiness to pay the said amount of differential duty. They also requested for the waiver of Show Cause Notice. Pursuant there to that the Order-in-Original No.74/2017 dated 07.07.2017 was passed rejecting the declared invoice value of the impugned goods. The goods valued at Rs.20,44,544/- were ordered to be confiscated. The consignment was re-assessed at Rs.52,16,883/- and re-assessed duty at Rs.21,14,242/-. The order was challenged before Commissioner (Appeals), who vide the impugned order has rejected the appeal. Being aggrieved, the appellant is before this Tribunal. Being aggrieved, the appellant is before this Tribunal.

5. We have heard Ms. Reena Rawat, Id. Counsel for the appellant and Mr. Rakesh Kumar, Authorised Representative for the Revenue.

6. Ld. Counsel for the appellant submitted that the visual examination of the consignment by the Shed Officers was highly insufficient to conclude that the consignment has mixed variety of goods that is 'marble slabs' as well as 'granite slabs'. It is submitted that bill of entry was filed on the basis of import documents and the invoice for importing the same. Those

documents make it clear that appellant had imported polished marble slab only. The adjudicating authorities are alleged to have committed an error in ignoring these documents. The imposition of redemption fine is alleged to be hefty, grossly disproportionate to the value of the goods. It is submitted that in fact there is no evidence of mis-declaration and enhancement has no basis. The reassessed value has wrongly been upheld by the Commissioner (Appeals). Order imposing penalty is also unreasonable and unjustified. The order under challenge is accordingly, prayed to be set aside.

7. Ld. Counsel has relied upon the following case laws:-

1. Hindustan Steels Ltd. Vs. State of Orissa 1978 (2) ELT (J 159) (SC)
2. Indian Shaving Products Ltd. Vs. Commissioner of Customs, New Delhi reported in 2001 (138) ELT 185 (Tri.-Del.)
3. Jindal (India) Ltd. Vs. Collector of Customs 1992 (60) ELT 135 (Tribunal).

8. While rebutting these submissions, Id. Departmental Representative has mentioned that appellant vide his letter dated 13.06.2017 given to the assessing authorities has accepted that in the impugned Bill of Entry, he has declared the import of polished marble slabs. He also acknowledged that due to human error on supplier side some quantity of granite slabs also got loaded in the impugned shipment. Appellant himself, after accepting his mistake, had paid the differential amount of duty. Not only this, he sought the waiver of Show Cause Notice. Once there is no

denial that some of the goods in the consignment were granite slabs which were not declared, the DGFT Notification of 17.09.2016 comes into play, according to which import of granite slabs of value below US \$ 50 is restricted import. The declared value is admittedly less than US\$ 50. The appellant admittedly had no licence for the same. It is impressed upon that these submissions are sufficient to hold that there is no infirmity in the findings of Commissioner (Appeals). Ld. D.R. has relied upon the following case laws:-

1. Gateway and Commodities Pvt. Ltd. Vs. UOI reported as 2016 (333) ELT 263 (Cal)
2. Jain Exports vs. Union of India reported as 1993 (66) ELT 537 (S.C.)
3. Commissioner of Central Excise, Madras vs. System & Components Pvt. Ltd. Reported as 2004 (165) ELT 136 (SC).
4. Saraswati Sales Corp vs. CCE reported as 2011 (266) ELT 237 (Tri.-Delhi)
5. Sound N Images vs. Commissioner reported as 2000 (117) ELT 538 (SC)

9. Having heard the rival contentions, we observe and hold as follows:-

This is a case of rejection of declared value post the 100% examination of the consignment imported by the appellant in presence of his authorised representative, his CHA. No doubt in terms of Rule 3 of Customs Valuation (Determination of Value of

Imported Goods), Rules, 2007 (hereinafter called as the Valuation Rules) read with Section 14 of Customs Act, 1962, it is the transaction value of such goods i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation or, as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the same, which has to be accepted. This understanding of transaction value is subject to rule 12 of the Valuation Rules. Hon'ble Apex Court in the case of **Century Metal Recycling Pvt. Ltd. Vs. Union of India reported in 2019 (367) ELT 3 (S.C.)** has summarized the provisions of Rule 12 of Valuation Rules in following manner:-

*"15. In the present case, as noticed above, the proper officer doubted the truth or accuracy of the value declared by the importers for the reason that contemporaneous data had a significantly higher value. It was open to the importers to require the proper officer to intimate the grounds in writing for doubting the truth or accuracy of the value declared by them and seek a reasonable opportunity of being heard, but they did not do so. On the other hand, the importers submitted in writing that though they had declared the value of the imported goods at a particular value, but on being shown contemporaneous data, they agreed that the value of the goods should be enhanced. The importers also specifically stated that they did not want to avail of the right conferred on them under section 124 of the Customs Act and, therefore, they did not want any show cause notice to be issued to them or personal hearing to be provided to them. The importers also specifically stated that they did not want a speaking order to be passed on the Bills of Entry. It needs to be noted that section 124 of the Customs Act provides for issuance of a show cause notice and personal hearing, and section 17(5) of the Customs*

*Act requires a speaking order to be passed on the Bills of Entry, except in a case where the importers/exporters confirm the acceptance in writing.*

*16. It is no doubt true that the value of the imported goods shall be the transaction value of such goods when the buyer and the seller of goods are not related and the price is the sole consideration, but this is subject to such conditions as may be specified in the Rules to be made in this behalf. The Valuation Rules have been framed. A perusal of rule 12(1) therein indicates that when the proper officer has reason to doubt the truth or accuracy of the value of the imported goods, he may ask the importer to furnish further information. Rule 12(2) stipulates that it is only if an importer makes a request that the proper officer shall, before taking a final decision, intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared and provide a reasonable opportunity of being heard. To remove all doubts, Explanation 1(iii)(a) provides that the proper officer can have doubts regarding the truth or accuracy of the declared value if the goods of a comparable nature were assessed at a significantly higher value at about the same time."*

10. Reverting to the facts of the case, there is appellant's own letter dated 13.06.2017 acknowledging that the shipment was imported while declaring the shipment of polished marble slabs (CTH) 68022190. There is sufficient acceptance that on 100% second time check by the competent officers that instead 1202.5 Sq. Mtr. of polished marble slabs only 140 Sq. Mtr. of polished marble slabs were found in the shipment. In addition, there were found granite slabs of 1470 Sq. Mtr. approx. quantity, which were not declared in the Bill of Entry. There is no denial to this fact that on appellant's own waiver of Show Cause Notice that the proper officer had assessed the duty based upon the value of

polished marble slabs declared by appellant himself and the minimum value of granite slabs as per DGFT Notification No. 28 & 29/2015 – 2020 dated 17/9/2016. Apparently and admittedly no protest was raised by the appellant. A speaking order was passed by the officer on 07-07-2017 based on the examination report and the explanation by the appellant.

11. The appellant's contention that goods should be assessed as per the invoice even though imported goods were different from what was mentioned in the invoice cannot be accepted because the duty of customs under section 12 of Customs Act, 1962 is to be charged and the restrictions under section 11 of the Act or under any other law for the time being in force are as "the goods imported into India" and not as "the goods declared to be imported in the invoice". In this case, the goods were correctly assessed to duty and the prohibitions or restrictions on imports were applied as the goods actually imported as was found on examination of the goods.

12. We further observe that the grounds of appeal herein above are same as were raised before Commissioner (Appeals). He has properly dealt with the ground of goods being visually examined only. We have no reason to differ with the findings of Commissioner (Appeals) in para 5.4 of the order-under-challenge. We draw our support from the decisions of this Tribunal in the case of **Advanced Scan Support Technologies vs. Commissioner of Customs, Jodhpur-10**, wherein the Tribunal, after making reference to the decisions of the Tribunal in **Vikas Spinners vs. Commissioner of Customs, Lucknow** reported

**as 2001 (128) ELT 143 (Tri.-Del.) and Guardian Plasticote Ltd. vs. CC (Port), Kolkata reported as 2008 (223) ELT 605 (Tri-Kol),** has held that as the appellant therein had expressly given consent to the value proposed by the Revenue and stated that it did not want any show cause notice or personal hearing, it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring no further investigation or justification.

13. In the another decision of this Tribunal in the case of **M/s. Vikas Spinners v. C.C., Lucknow - 2001 (128) E.L.T. 143 (Tri.-Del.)**, it was held clearly that the enhanced value once settled and duty having been paid accordingly without protest, importer is estopped from challenging the same subsequently. It also holds that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden of the department to establish declared value to be incorrect.

14. The case law as relied upon by the appellant does not seems to the rescue of the appellant in the light of the above discussed case law. Hon'ble Supreme Court also in the case of **Sound N Images vs. Commissioner reported as 2000 (117) ELT 538 (S.C.)** has held that the loaded value once accepted and duty having been paid without protest or objections, the importer is estopped from challenging the same subsequently.

15. In the light of entire above discussion, we do not find any infirmity in the order under challenge. As a result, the order of Commissioner (Appeals) is hereby upheld. Consequent thereto, the appeal stands dismissed.

[Pronounced in the open Court on 11/11/2022]

**(P.V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

**(DR.RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Anita