

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOM Appeal No. 10712 of 2021

[Arising Out Of OIO-AHD-CUSTM-000-APP-78-21-221 Dated 13/05/2021 Passed By
Commissioner Of CUSTOMS-AHMEDABAD-I(Appeal)]

GUJARAT PICKERS INDUSTRIES LIMITED

.....Appellant

11- Panchratna Industrial Estate,
Sarkhej- Bawla Highway
Ahmedabad,
Gujarat

VERSUS

C.C.-AHMEDABAD

.....Respondent

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

APPEARANCE:

Shri Rahul Gajera, Advocate for the Appellant
Shri. Viajy G. Iyengar, Superintendent (Authorized Representative) for the
Respondent

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

FINAL ORDER NO.A / 11290 /2022

DATE OF HEARING: 03.10.2022

DATE OF DECISION:26.10.2022

RAMESH NAIR

The present appeal is directed against the OIA No. AHD-CUSTM-000-APP-78-21-22 dated 13-5-2021 passed by the Commissioner of Customs (Appeals) Ahmedabad by which Commissioner, appeals has upheld the Order-In-Original dated 28.02.2020 of the Joint Commissioner, Ahmedabad confirming demand of differential duty of Rs. 4,02,602/- under section 28(2) of the Customs Act, 1962 along with interest and equal penalty under section 114A of the Act.

2. Briefly stated the facts are that Gujarat Pickers Industries Limited (here-in-after referred to as "Appellant") imported the consignment of PVC Flex Sheet LF-238 by way of filing Bills of Entry and cleared the imported goods for

Home Consumption from ICD, Customs, Sabarmati, Ahmedabad, the details of which are as under:

Sr.No.	Bill of Entry No. and date	Description of Goods	HSN Code	Declared /Assessed at CIF value (US\$ per SQM)	Qty (In SQM)	Inv. No. & Date
1	621798 05-04-2006	PVC Flex Sheet LF-238 - 340 GSM	39199090	0.30/0.30	54036	TC-06-0011/ 02-03-2006
2	623739 19-06-2006	--do--	--do--	0.23/0275	53685	TC-006-GU-1/ 25-05-2006
3	624753 25-07-2006	--do--	--do--	0.23/0275	53439	TC-006-GU3/ 23-06-2006

2.1 The appellant was served upon a Show Cause Notice dated 06-10-2006 raising a demand of Custom Duty amounting to Rs. 4,02,602/- under section 28(1) of the Customs Act, 1962 along with interest under section 28AB (1) of the Act and further proposed penalty under section 114(A) of the Act. It was the case of the department in the notice that the appellant imported the PVC Flex Sheet LF 238 – 340 GSM from the foreign supplier named Zhejiana Tianchang Plastic Fabric Co. of China (here-in-after referred to as “Supplier”) and that the said supplier has sold the said import items to another Importer namely Tower overseas of Ahmedabad at the Higher CIF rate of 0.43\$ per SQM which is much higher than the price declared in the Bill of entry of Appellant and therefore appellant was called upon as to why a uniform price of USD 0.43 per SQM on appellant’s imported goods should not be adopted. The Adjudicating authority vide Order-in-Original (OIO) No. 03/ADDL. COMMR/ICD/Sabarmati /IMP/2007 dated 31-01-2007 after considering the reply of the appellant confirmed the demand made in the show cause notice.

The appellant preferred appeal against the OIO and Commissioner of Customs (Appeals), Ahmedabad vide Order-in-Appeal (OIA) No. 79/2008/Cus/Commr(A)/AHD dated 07-11-2008 upheld the OIO; upon further appeal by the appellant, this Tribunal vide Order No. A/1175/2018 dated 07-02-2018 set aside the OIA and remanded the matter to the adjudicating authority inter alia with a direction that the matter is to be decided after supplying to the appellant a copy of import documents of the imports by the said Tower Overseas.

2.2 It is not in dispute that the said copies of documents of imports were thereafter supplied to appellant vide letter dated 30-08-2019 and after considering the submissions of the appellant, adjudicating authority vide its OIO dated 20-02-2020 again confirmed the demand of duty and further imposed penalty under section 114A of the Act and the said OIO was upheld by Commissioner (appeals) by his OIA dated 13.05.2021. It is against this order of Commissioner (appeals) Ahmedabad, appellant has preferred the present appeal.

3. Shri Rahul Gajera, Learned Counsel appearing for the appellant submitted that Commissioner (appeals) erred in upholding the OIO dated 20.02.2020 without appreciating that the value was already enhanced at the time of re-assessment and hence value cannot be enhanced again without having carried in appeal the said assessment which has become final. In this behalf reliance was placed by him on the following decisions of CC v Lord Shiva Overseas - 2005(181) ELT 213, Malhotra Impex v. CC - 2006 (203) ELT 561 and CC v. Paras Electronics, 2009 (246) ELT 231. He submitted that by passing the impugned order contrary to the assessment order which has become final, department has brought two orders in existence in respect of the same imported goods running contrary to each other, which cannot be permissible in law. He further submitted that neither the products of the appellant and that of Tower Overseas are comparable in description nor the same can be

said contemporaneous; that this Tribunal itself in previous round of litigation has held vide order dated 07.02.2018 that prima facie the goods cannot be held as identical. He further submitted that imports by Tower Overseas are of February 2006 and that of appellant are of April to July 2006; that market of PVC Flex Sheet during that period was volatile, in that view imports not being of the same time; the import value of that Tower Overseas are not comparable at all. It is his submission that during the same period of imports by the appellant, there have been imports of the similar item @0.27USD/SQM at the port of Mumbai by Yash Enterprise which is lesser than the price at which appellant imported the said items during the month of June 2006. It was further submitted that in any event, transaction value of the imported goods as declared should have been accepted in absence of any allegation or evidence of violation of any of the clauses of proviso to Rule 4(2) of the Rules, and since there is no allegation or evidence of payment of any amount over and above the invoice value of the supplier, the transaction value should be accepted.

4. Shri Vijay G. Iyengar, Learned Superintendent (Authorized Representative) for the Revenue reiterated the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the records.

5.1 As regard application of the contemporaneous price, we find that imports by Tower Overseas are of February 2006 and that of appellant are of April to July 2006. For applying the price of contemporaneous goods, it is also one of the condition that the import should be at same time. Moreover there is force in the submission of the appellant that market of PVC Flex Sheet during that period was volatile, in that view imports not being of the same time; the import value of that Tower Overseas are not comparable at all. The fact was also placed on record by the appellant that during the same period of imports

by the appellant, there have been imports of the similar item @0.27USD/SQM at the port of Mumbai by Yash Enterprise which is lesser than the price at which appellant imported the said items during the month of June 2006. It is also settled law that while applying the price of contemporaneous goods, when more than one price are available then the lowest of the prices should be taken for the assessment. Therefore for this reason the price could not have been enhanced in respect of the goods in question.

5.3 Since we have expressed our view in the facts of this case as discussed above, we are not addressing other issues raised by the appellant.

6. As a result impugned order is not sustainable, accordingly the same is set aside. The appeal is allowed.

(Pronounced in the open Court on 26.10.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)