CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. III

CUSTOMS APPEAL NO. 51073 OF 2020

[Arising out of the Order-in-Appeal No. CCA/CUS/D-II/Prev./NCH/19/2020-21 dated 19/05/2020 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi.]

Principal Commissioner of Customs, Preventive Commissionerate, **...Appellant**
New Custom House, Near IGI Airport,
New Delhi – 110 037.

Versus

M/s Rajesh Plastics, **...Respondent**
3447/1, Jai Mata Market, Trinagar,
Delhi – 110 035.

APPEARANCE:

Shri Nagendra Yadav, authorized representative for the Department
Shri B. Bhushan, Advocate for the respondent.

CORAM:
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50463/2023

DATE OF HEARING : 24.02.2023
DATE OF DECISION: 12.04.2023

P.V. SUBBA RAO

This appeal has been filed by the Revenue to assail the order-in-appeal dated 19.05.2020[1] passed by the Commissioner of Customs (Appeals), New Delhi, whereby he rejected the Revenue's appeal and upheld the order of the Joint Commissioner dated 07.02.2017. The respondent imported goods declared as

[1] **impugned order**

modified Tapioca Starch valued at U.S. $ 200 per M.T. and filed the bill of entry dated 09.09.2013. The consignment was stopped and on examination and subsequent testing, it was found that what was imported was "Tapioca Starch" and not "modified Tapioca Starch". The price of Tapioca Starch available on the website of Thai Tapioca Starch Association (TTSA) was between U.S. $ 420/- and U.S. $ 440/- per M.T. The respondent paid the differential duty. Thereafter a show cause notice[2] dated 11.09.2015 was issued to the respondent covering the past bills of entry under which the respondent had imported goods described as "modified Tapioca Starch". It is undisputed that those consignments were already cleared and no samples were drawn nor was any test conducted in those consignments. It was also not in dispute that the goods imported in the past were "modified Tapioca Starch". The SCN, however, proposed to reject the assessable value in respect of the past consignments under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[3] (Valuation Rules) and re-determine the value under Rule 5 of the Valuation Rules. It further proposed to recover the differential duty invoking extended period of limitation under section 28 (4) of the Customs Act, 1962[4] and imposed penalty under section 114A of the Act. The Original Authority found that there was not sufficient material on record to reject the value declared by the respondent and re-determine the value as per Rule 5 of the Valuation Rules

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[2] **SCN**
[3] **Valuation Rules**
[4] **Act**

and accordingly dropped the proceedings. The Commissioner (Appeals) has, by the impugned order, upheld this decision.

2. Revenue has filed this appeal on the following grounds:-

(i) The statements of the respondent show that he did not know of the type of modification was done to the Tapioca Starch and the difference between native and modified Tapioca Starch and there was no contract between him and the suppliers in writing for the prices. Coupled with the fact that no chemical analysis report available in respect of the imported goods in any of the shipment reflects to ill intent of the importer to evade customs duty to the Commissioner (Appeals) has rejected the appeal contending that the declared value was rejected solely on the basis of data of TTS, but in fact in the live bill of entry the native Tapioca Starch was valued at US $ 535.63 per M.T. which was accepted by the importer. Comparison of National Import Data Base (NIDB) Data and TTSA rates show that the prices of U.S. $ 200 or 350 per M.T. declared by the respondent were low and they gave enough reason to doubt the transaction value under Rule 12 and re-determine it under Rule 5.

(ii) As per the submission of the respondent it had no documentary evidence like purchase order or contract

or agreement for the prices with the supplier of imported goods.

(iii) The importer, in his statement dated 03.03.2015, admitted to pay the differential duty and had already deposited a sum of Rs. 10 lakhs.

(iv) Therefore mis-declaration of import value of imported goods was done willfully by the respondent with the sole intent to evade duty and the differential duty proposed as per the SCN for the past import needs to be recovered with applicable interest and penalty. It has, therefore, prayed that the impugned order may be set aside and appeal may be allowed.

3. Learned authorized representative for the Revenue forcefully reiterated the above arguments. Learned counsel for the respondent support the impugned order and submits that it calls for no interference.

4. We have considered the submissions on both sides and perused the records.

5. It is evident from the SCN that the demand in dispute is regarding the past consignments which were already cleared as per the declared values by the respondent. The assessment, therefore, attained finality. Once the assessment attained finality, it can be either appealed against to the Commissioner (Appeals) by either side or a notice under section 28 can be issued by the Revenue. While appeal to the Commissioner (Appeals) can be for

any aspect of the assessment, a notice under section 28 can be issued only to recover duty not paid, short paid or erroneously refunded or not levied and it can be issued only by "the proper officer". The notice can be issued within the normal period of limitation of one year under section 28 (1) from the date of clearance of goods for home consumption or, within the extended period of limitation of 5 years if the short payment or non-payment is because of collusion or any willful misstatement or suppression of facts. In this case, the SCN was issued invoking the extended period of limitation and there is not even any allegation of collusion or suppression of facts and the only allegation is of willful mis-statement of the value by the respondent, which was inferred from his statement. A summary of the statements as indicated in the grounds of appeal also shows that these statements indicated that the respondent did not know what type of modification was done to the Tapioca Starch and did not know the difference between the rate and quality of Indian Starch and Thailand Starch and did not know whether modified Tapioca Starch imported by paper industries was the same as the one imported by him and further he did not have a contract in writing for the prices with the supplier. From these statements, coupled with the fact that there was no chemical analysis report in respect of the imported goods, the inference of the revenue is that the respondent had an ill intent to evade custom duty and had evaded custom duty and, therefore, the declared values deserve to be rejected under Rule

12 of the Valuation Rules and value needs to be re-determined. It is also contention of the Revenue that a study of the NIDB and TTSA data shows that modified Starch is generally more expensive than the native starch and therefore the prices declared by the respondent for modified starch could not have been lower than the TTSA prices for the native starch. The third submission by the Revenue is that the respondent had already deposited Rs. 10 lakhs during investigation.

6. If the SCN is issued alleging non-payment or short payment of duty, the basis of such an allegation must be on sound footing, backed by evidence. There is nothing in the SCN and in the grounds of appeal before us which shows that the declared value was incorrect apart from the statements. The statements, as summarized above, only show that the respondent was ignorant of many factors, but it does not establish that the respondent had mis-declared the value. It is also evident that there was no chemical analysis report nor was any sample drawn to allege mis-declaration of the nature of the goods. Therefore, we do not find even a shred of evidence in this case to confirm the demand as proposed in the SCN. Therefore, the Joint Commissioner was correct in dropping the SCN and the Commissioner (Appeals) was correct in upholding the decision in the impugned order.

7. As far as deposit of Rs. 10 lakhs by the respondent during the investigation is concerned, it can only be called as deposit.

The mere fact that some amount has been deposited during investigation does not establish in any way the case of the Department. Needless to say since the respondent has succeeded, the amount so deposited should have been refunded to him, if it has not already been refunded.

8. In view of the above, the impugned order is upheld and Revenue's appeal is dismissed with consequential benefits, if any, to the respondent.

(Order pronounced in open court on 12/04/2023.)

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

(BINU TAMTA)
MEMBER (JUDICIAL)

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