

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No.40881 of 2015

(Arising out of Order-in-Appeal C. Cus. II No. 336/2014 dated 24.12.2014 passed by the Commissioner of Customs (Appeals – II), Chennai)

M/s. Oswal Metal Works

New No. 6, Old No. 14
Narayana Mudali Street
Chennai – 600 079.

Appellant

Vs.

Commissioner of Customs

Chennai III Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

Respondent

APPEARANCE:

Dr. S. Krishnanandh, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorized Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41262/2024

Date of Hearing : 29.08.2024

Date of Decision: 08.10.2024

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal No. 336/2014 dated 24.12.2014 passed by the Commissioner of Customs (Appeals – II), Chennai.

2. Brief facts of the case are that the appellant filed Bill of Entry No. 425288 dated 13.9.2002 for the clearance of 'Globe' brand and 'Lucky' brand padlocks. The value was declared at USD 6337.31 CIF. Another importer namely M/s. Gurudev Trading Co. also filed Bill of Entry No. 417496 dated 13.8.2002 for the same item. Both the imports were made from M/s. Shanghi Light Industries Equipment (Groups) Co. Ltd. China. The department suspecting under-invoicing obtained quotation

from M/s. Shanghi Light Industries, China and M/s. Guangdong Agriculture Machinery Import & Export Corporation, China and found that there was a big difference in values between the quotation and the declared invoice value. Meanwhile, in a similar import done by one M/s. Evergreen Enterprises from the same supplier viz. M/s. Shanghi Light Industries, China, the department enhanced the value based on the quotation with the acceptance from the importer. Based on the above facts, the Additional Commissioner (SIIB) passed Order in Original dated 22.4.2003 in respect of Bill of Entry No. 425288 dated 13.9.2002 redetermining the declared value, confiscated the goods with an option to redeem the goods and imposed penalty. The appeal filed by the appellant herein was allowed by the learned lower Appellate Authority. Department preferred appeal before CESTAT and the Tribunal vide Final Order No. 681 and 682/2012 dated 14.6.2012 remanded the matter back to the Commissioner (Appeals). On remand, the impugned order has been passed rejecting the appeal filed by the respondent. Hence the present appeal.

3. The learned Advocate Dr. S. Krishnanandh appeared for the appellant and Smt. Anandalakshmi Ganeshram, learned Authorized Representative appeared for the respondent.

3.1 The Ld. Advocate for the appellant submitted that they had been offered a discount of 50% as stock clearance sale of Globe Brand Padlocks and the Appellants as well as the suppliers had accepted the said discounted value and imports were effected on the basis of the said value and therefore the value declared by them were true and correct. He further stated that enhancement of value based on quotations is impermissible under the Customs Valuation Rules, 1988

(CVR 1988) and that the values attributable to M/s. Evergreen Enterprises, which was much later than the imports effected by the Appellants, cannot be a basis for enhancement of values declared by the Appellant, despite the fact that M/s. Evergreen Enterprises had accepted the enhanced value as proposed by the department. Further, the Original Adjudicating Authority, enhanced the declared values under Rule 8 of the CVR 1988, despite there being contemporaneous Imports at lower prices and confiscated the entire goods Imported under the above referred Bill of Entry and imposed a redemption fine for the release of goods and also imposed a penalty. Aggrieved by the same, the Appellants filed an appeal before the Commissioner of Customs (Appeals), who allowed their appeal by setting aside the order of the Lower Authority. The Ld. Counsel placed reliance on the following orders / Judgments, for the proposition that, neither a Quotation or Proforma Invoice can be the basis of the declared values:-

- a. 2008 (232) ELT 730 (Tri. Mumbai) Chirag Enterprises Vs. Commissioner of Customs (EP), Mumbai.
- b. 2006 (206) ELT 625 (Tri.- Chennai) - Commissioner of Custom Chennai Vs. Metro Trading Co.
- c. 2006 (206) ELT 548 (Tri.- Chennai) Chennai – Commissioner of Customs Vs. Sahara Enterprises
- d. 2002 (148) ELT 704 (Tri. Del.) - ABM International Ltd., Vs, Commissioner of Customs, Kandla
- e. 2002 (144) ELT 432 (Tri. Chennai) Sheraton Overseas Vs Commissioner of Customs, Chennai
- f. 2001 (132) ELT 207 (Tri.- Mumbai) Leela Dhar Maheswari Vs Commissioner of Customs (Import), Mumbai

He stated that their prayer may be allowed and the impugned order be set aside.

3.2 The Ld. AR stated that due to the huge variations observed in the declared value of the impugned goods with prices of similar goods as per quotations obtained and hence it could not be accepted as the transaction value under Rule 4 of the CVR 1988. Accordingly, the value of the goods was determined by the Original Authority by proceeding sequentially through the subsequent Rules 5 to 8 of the CVR 1988. Since the importation of similar goods was not noticed the value of the subject goods could not be determined under Rule 6, *ibid*. In the absence of quantifiable data, the value could not be arrived at under Rule 7 & 7A *ibid*. Hence, the value was determined under Rule 8 *ibid*. In view of the misdeclaration of value, the subject goods were confiscated under section 111(m) of the Customs Act, 1962 and for rendering the goods liable for confiscation, the appellant was correctly liable to penalty under section 112(a) of the Customs Act, 1962. She hence prayed that the appeal may be rejected.

4. We have carefully gone through the facts of the case and have heard the rival parties. We find that the imports in the impugned case was made from M/s. Shanghi Light Industries Equipment (Groups) Co. Ltd. China.

5. There are two stages in the cases of redetermination of value. The first stage involves the process of rejecting the declared value and the second stage involves determining the value by proceeding sequentially from Rule 4 to 9 of the CVR 1988.

6. Having rejected the declared value based on quotations received from M/s. Shanghi Light Industries Equipment, the Ld. Original Authority went on determine the value by adopting the prices in the

quotation as he found them to be reasonable and having being accepted by M/s Evergreen Enterprises.

7. We find that it has been held by a Division Bench of this Tribunal in **Commissioner of Customs, Chennai Vs Sahara Enterprises** [2006 (206) E.L.T. 548 (Tri.-Chennai)] that a proforma invoice is in the nature of a quotation or offer and hence does not constitute valid basis for enhancement of value of the imported goods. It held as under;

“3. After careful consideration of the submissions, we find that, admittedly, value of the goods was enhanced by the original authority on the basis of proforma invoice issued in December 2001 by the supplier of the goods, to another party. The subject import was made in July 2002. There is a gap of more than six months between the two. Even otherwise, as rightly noted by the Commissioner (Appeals), a proforma invoice is in the nature of a quotation or offer and hence does not constitute valid basis for enhancement of value of the imported goods. This finding of the lower appellate authority is squarely supported by the Tribunal’s decision in the case of Mahavir Spinning Mills Ltd. reported in 1996 (84) ELT A147 and the Hon’ble Supreme Court’s judgment in Civil appeal No. 5263/92 in the case of M/s Sai Impex - (S.C.). In the circumstances, we do not think that it is necessary to look into the issue whether it was open to the lower appellate authority to admit additional evidence. Valuation done by the original authority on the basis of quotation was not on any legally sustainable basis. Learned Commissioner (Appeals) has set things right. The impugned order does not call for interference. The appeal stands dismissed.”

(emphasis added)

[Also see: **Commissioner of Customs, Chennai Vs Metro Trading Co.** [2006 (206) E.L.T. 625 (Tri.-Chennai)]. It is a well-accepted norm of judicial discipline that a Bench of co-equal strength must follow the decision of another Bench of co-equal strength.

8. The transaction value based on a much later day import where the value proposed by the department was accepted by another importer in his own case, cannot be the basis of valuation in the impugned case, where there is no such consent. It is only when a

transaction value arrived at by mutual consent, between the importer and the department, is subjected to the rigorous of examination and meets statutory requirements that an Authority may be able to determine and assess its probative value in another case. Otherwise it would amount to using a third party data, the foundation of which the party concerned has had no opportunity to excavate. Transaction value is a function of price, however there was no evidence to show that there is a flow back or that the importer in the impugned matter has paid any amount over and above the declared transaction value. Thus, Revenue has not proved its case and the impugned order hence merits to be set aside.

9. In the facts and circumstances and after considering the legal issues involved, we set aside the impugned order. The appellant is eligible for consequential relief if any as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 08.10.2024)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

Rex