

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

REGIONAL BENCH - COURT No. I

Customs Appeal No.40293 of 2015

(Arising out of Order-in-Appeal No.133/2014-TTN (CUS) dated 17.11.2014 passed by Commissioner of Central Excise (Appeals-II) at Trichy, No.1, Williams Road, Cantonment, Tiruchirappalli 620 001)

M/s. MBM (India) Pvt. Limited
No.87, Seniamman Koil Street,
Tondiarpet,
Chennai 600 081.

.... Appellant

VERSUS

The Commissioner of Customs
No.1, Williams Road,
Cantonment,
Tiruchirappalli 620 001

... Respondent

APPEARANCE :

Shri R.R. Padmanabhan, Consultant, for the Appellant
Shri N. Satyanarayanan, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41287/2024

DATE OF HEARING : 24.09.2024
DATE OF DECISION : 16.10.2024

Per: Shri P. Dinesha

It is the case of the original authority that there was a huge variation between the declared value and the value of the similar goods as per NIDB database and hence, the declared value could not be accepted as the true transaction value. He thus holds that the value declared by the importer was liable for rejection under Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 [**CVR** for short] and that the value was required to be re-determined in terms of Rule 5 *ibid* since, according to him, there was no import data available for the import of identical goods to decide the value under Rule 4.

2. Rule 12(1) of CVR mandates the rejection of transaction value when the proper officer has 'reason' to doubt the truth and accuracy of the value declared. From the order in original however, we do not find any such 'reason' to doubt the truth and accuracy of the declared value; the adjudicating authority has proceeded to re-determine the transaction value after rejecting the declared value under Rule 12(1) *ibid*. When the Rule specifically mentions that when the proper officer has "reason" to doubt, such reason cannot be implied or on surmises, but is to be made available on record, to be shared with the concerned importer since, if the declared value is rejected or proposed to be rejected, then at least such importer will have an opportunity to adduce all such evidences in support to justify its declared value.

3. It is the case of Sri R. R. Padmanabhan, Id. Chartered Accountant appearing for the appellant, that the data about

the alleged contemporaneous import was not at all shared with them for their effective rebuttal and in this regard, he has relied on the decision of Apex Court in *Gira Enterprises Vs CC Ahmedabad* – 2014 (304) 209 ELT (SC).

4. Per contra, Sri N. Satyanarayanan, Id. Asst. Commissioner has relied on the findings of the lower authorities.

5. We have heard both sides and carefully considered the documents placed on record, we find that the only issue to be decided is, whether the revenue is justified in rejecting the transaction/declared value and thereby re-valuing the imported goods by adopting NIDB data?

6. From the orders of lower authorities, we do not find any disputes as regards the relationship between the appellant and the supplier abroad; they are independent entities. It is the well settled position of law that the transaction value cannot be thrown out unless proved incorrect; such assertion has to be made not on assumptions or surmises, but based on evidences. In case, mere reliance on NIDB data alone to reject the declared value is insufficient, it is held by various Benches of CESTAT that mere adoption of NIDB data without there being any other evidence in support to reject the transaction/declared value as unacceptable, is not justified. Chennai Bench has in the case of *M/s. Atlantis Trading Company Vs. Commissioner* [vide Final Order No. 40988 / 2023 dated 03.11.2023 - 2023 (11) TMI 178-CESTAT Chennai] upheld the said proposition after following the similar Orders of co-ordinate Benches. The said ratio has even followed very recently by

this very Bench in the case of *Albany Molecular Research Hyderabad Research Centre Pvt. Ltd. Vs CC Chennai* vide Final Order No. 41280/2024 dated 09.10.2024 in Customs Appeal No. 40767 of 2015.

7. In view of the above discussion, we are of the view that the rejection of declared value based on NIDB data by the AA which was upheld by the FAA vide impugned order is unsustainable and hence, we set aside the same.

8. We therefore allow the appeal with consequential benefits if any, as per law.

(Order pronounced in the open court on 16.10.2024)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)