

Appellant Rep by: Shri Anil Balani, Adv.
Respondent Rep by: Shri R K Dwivedy, AC (AR)

CORAM: D M Misra, Member (J)
Sanjiv Srivastava, Member (T)

Cus - The second appellant and the fourth appellant imported several consignments of Medium Density Board 9MDF with Veneer Face, from Thailand - The first appellant is director of the second appellant company and a partner in the fourth appellant company - The DRI commenced investigations into the valuation and allied aspects of the imports - The evidence gathered was a series of emails exchanged between the appellant's supplier in Thailand and another importer - From these communications, it gathered that the supplier sent several consignments to the appellants at value much higher than what was declared by them for clearance of the goods - Statements of the directors and partners of the second and fourth appellants were recorded u/s 108, wherein they admitted undervaluation of goods and also furnished incriminating information regarding the quantity of the goods imported - In the BoE, the thickness of the board though not declared was admitted to be 2.5 mm and it was admitted that at their instance, the thickness of the boards was deliberately not shown by the supplier on the invoices - On completion of investigations, SCNs were issued by the DRI alleging misdeclaration of quantity and value of the goods - Demand for differential amount of duty was raised, along with proposal to confiscate the goods and impose penalties.

Held - The charges of mis-declaration of value and quantity in the present case has been made based on e-mail correspondence between the foreign supplier and another importer - On the basis of email correspondence and statements recorded during investigation, charges of under-valuation and mis-declaration of quantity were levelled against the appellant - In such cases the evidenced that are being relied on need to be established in the adjudication proceedings as per Section 138B and 138C of the Customs Act - Where the evidence relied on by the Revenue is not direct but is recovered during investigation against some party, the relevance of personal hearing increases many fold - As the order was passed without hearing the appellants, the order is found to be passed in violation of principles of natural justice - Hence the matter warrants remand to the adjudicating authority: CESTAT

Case remanded

FINAL ORDER NOS. A/86993-86996/2019

Per: Sanjiv Srivastava:

Four appeals under consideration are directed against order in original as detailed in table below of the Commissioner Customs (Import) Mumbai I.

Appeal No	Appellant	Order In Original No & Date
C/1068/2009	Aslam Usman Moulvi	116 dated 28.07.2009
C/1070/2009	Tropical Woods Pvt Ltd	
C/1077/2009	Aslam Usman Moulvi	115 dated 29.07.2009
C/1079/2009	Metro Trading Company	

1.2 By the impugned order Commissioner held as follows:

a. Order No 115 dated 29.07.2009

i) I order to reject the declared assessable value of Rs 95,77,590/- in respect of the 7 consignments under Rule 10A of the Customs Valuation Rules, 1988 and the revised assessable value of Rs 4,15,28,938/- under Section 14(1) of the Customs Act, 1962 read with

Rule 4(1) of the Customs Valuation Rules, 1988 shall be adopted in respect of aforementioned consignments for the purpose of customs assessment.

ii) I confirm the demand of duty Rs 1,26,31,043/- (Rupees One Crore Twenty Six Lakhs Thirty One Thousand and Forty Three only) along with interest as applicable under proviso to Section 28(1) and Section 28AB respectively of the Customs Act, 1962.

iii) I order confiscation of the 7 consignments of MDF with Veneer Face, totally valued at Rs 4,15,28,938/- under Section 111(m) of the Customs Act, 1962. However, I give the option to the importer redeem the same on payment of redemption fin of Rs 84,00,000/- (Rupees Eighty Four Lakhs Only) under Section 125 of the Customs Act, 1962

iv) I impose a penalty of Rs 1,26,31,043/- (Rupees One Crore Twenty Six Lakhs Thirty One Thousand and Forty Three only) on M/s MTC under Section 114A of the Customs Act, 1962.

v) I impose a penalty of Rs 30,00,000/- (Rupees Thirty Lakhs only) on Shri Akhtar Usman Moulvi, Partner of M/s Metro Trading Company.

vi) I impose a penalty of Rs 30,00,000/- (Rupees Thirty Lakhs only) on Shri Aslam Usman Moulvi, Partner of M/s Metro Trading Company.

a. Order No 116 dated 28.07.2009

i) I order to reject the declared assessable value of Rs 6,62,36,023/- in respect of the 54 consignments under Rule 10A of the Customs Valuation Rules, 1988 and the revised assessable value of Rs 29,36,65,190/- under Section 14(1) of the Customs Act, 1962 read with Rule 4(1) of the Customs Valuation Rules, 1988 shall be adopted in respect of aforementioned consignments for the purpose of customs assessment.

ii) I confirm the demand of duty Rs 9,16,73,444/- (Rupees Nine Crore Sixteen Lakhs Seventy Three Thousand Four Hundred and Forty Four only) along with interest as applicable under proviso to Section 28(1) and Section 28AB respectively of the Customs Act, 1962.

iii) I order confiscation of the 54 consignments of MDF with Veneer Face, totally valued at Rs 29,35,65,190/- under Section 111(m) of the Customs Act, 1962. However, I give the option to the importer redeem the same on payment of redemption fin of Rs 5,88,00,000/- (Rupees Five Crore Eighty Eight Lakhs Only) under Section 125 of the Customs Act, 1962

iv) I impose a penalty of Rs 9,16,73,444/- (Rupees Nine Crore Sixteen Lakhs Seventy Three Thousand Four Hundred and Forty Four only) on M/s TWPL under Section 114A of the Customs Act, 1962.

v) I impose a penalty of Rs 1,00,00,000/- (Rupees One Crore only) on Shri Akhtar Usman Moulvi, Director of M/s Tropical Woods Pvt Ltd.

vi) I impose a penalty of Rs 1,00,00,000/- (Rupees One Crore only) on Shri Aslam Usman Moulvi, Director of M/s Tropical Woods Pvt Ltd.

2.1 Appellant No 2 (M/s Tropical Woods Pvt Ltd) and Appellant No 4 (M/s Metro Trading Company) imported several consignments of Medium Density Board 9MDF) with Veneer Face over a period of time (2003-06) from Thailand. Shri Aslam Usman Moulvi is Director with Appellant No 2 and Partner in Appellant 4. The goods imported were assessed as per the declared value and quantity as indicated in table below:

Importer	Quantity in CBM	Unit Price in US\$
M/s Tropical Woods Pvt Ltd	9137.05	160/m3
M/s Metro Trading Company	1281	160/m3

2.2 Investigations were initiated by DRI into valuation and allied aspects of the imports. The evidences gathered was a spate of e-mail communications between the supplier of appellants in Thailand and another importer M/s SGS Corporation. From these communications it was gathered that the supplier had supplied several consignments to the appellants at value much higher than that was declared by them for clearance of the said goods. Statement of Director and Partners of Appellant 2 and 4 were recorded under Section 108. In their statements they admitted undervaluation of goods and also furnished incriminating information regarding the quantity of goods imported. In the B/E, though the length & breadth of each board was stated in feet, the total volume of the imported goods deliberately indicated in m³. The thickness of boards though not declared was admitted by them to be 2.5 mm. Also they admitted that at their instance the thickness of the boards was deliberately not shown by the supplier on the invoices. Statements of partner in SGS Corporation, CHA and Shipping Lines were also recorded. On completion of investigations show cause notices were issued by ADG DRI, Chennai, alleging misdeclaration of quantity & value of the goods and demanding differential duty thereon, proposing to confiscate and impose penalties.

2.3 The show cause notice have been adjudicated as per the impugned orders referred in para 1, supra. Aggrieved by the impugned orders appellants have preferred these appeals.

3.1 We have heard Shri Anil Balani, Advocate for the Appellants and Shri R K Dwivedi, Additional Commissioner, Authorized Representative for the revenue.

3.2 While reiterating the submissions made in appeal, the learned counsel for appellant, stated that the order has been passed in gross violation of natural justice as they were not heard before the order was passed in the matter. It is fact on record that the matter was posted for hearing several times however they sought adjournment for the reason that they were pursuing the matter in respect of RTI Application filed by them in the matter. The information sought had definite bearing in the matter. By the letter dated 08.06.2009 they had sought adjournment of hearing on the ground that the appeal filed by them before Central Information Commissioner was listed for arguments on 11.06.2009. However without considering the request for adjournment Commissioner adjudicated the matter. Since there was no effective hearing in the matter the order has been passed in gross violation of principles of natural justice.

3.3 Arguing for the revenue the learned Authorized Representative, while reiterating the findings in the order submitted that sufficient opportunities were given to the appellants to present their case by the adjudicating authority. However appellants have themselves chosen to abstain from the hearing. Since appellants have abstained themselves from hearings they cannot complain about violation of principles of natural justice.

4.1 We have considered the impugned order along with submissions made in appeals and during the course of arguments of appeals.

4.2 In order No 115 date dated 29.07.2009, in para 14.1 Commissioner has recorded as follows:

"14.1 . In this case the first personal hearing was fixed on 23.03.2009 which was not attended by the noticees/their advocate Shri Sujay Kantawala. As such the next P H was fixed on 08.04.2009 which was later rescheduled for 24.07.2009. The noticees/ their advocate did not appear for hearing on the appointed date. Vide their letter dated 27.04.2009, they requested that the personal hearing be adjourned to 1st/ 2nd week of June 2009. Hence PH was fixed on 12.05.2009 which they again failed to attend and instead submitted request via letter dated 12.05.2009 which they again failed to attend and instead submitted a request vide letter dated 12.05.09 through their advocate requesting to adjourn the PH and give another suitable date preferably at the end of June 2009. The PH was re-fixed on 9.6.2009 which was again not

attended by them. The advocate submitted a letter dated 8.6.2009 and requested for another adjournment of hearing."

4.3 Same things has been recorded in order No 116 dated 28.07.2009, at para 14.1.

4.4 Undisputedly in the present cases the charges of mis-declaration of value and quantity in the present cases has been made on the basis of e-mail correspondences between the foreign supplier and another importer M/s SGS Corporation. On the basis of the e-mail correspondences and statements recorded during the course of investigation charges of under valuation and misdeclaration of quantity made against the present appellants. In our view in such cases were the evidences that are being relied upon need to be established in the adjudication proceedings in terms of Section 138B and 138C of the Customs Act, 1962. In such case where the evidences relied upon by the revenue are not direct but have been recovered during the investigations against some party, in present case M/s SGS Sales Corporation, the relevance of personal hearing in the adjudication proceedings increase many fold. Since the order has been passed without hearing the appellants in the facts and circumstances of these cases we are constrained to observe that orders have been passed in violation of principles of natural justice.

4.5 Since we find that orders have been passed without a effective hearing before the adjudicating authority we are of the view that ends of justice will be met if the matter is remanded back to the adjudicating authority. While remanding the matter we make it clear that we are not expressing any opinion on the merits of any issue in the matter and keep all the issues open for the consideration of adjudicating authority. Appellants are also directed to fully co-operate in the adjudication proceedings in remand and should attend the personal hearings on the appointed date.

5.1 In view of discussions as above, appeals are allowed by way of remand to the adjudicating authority to afford an opportunity of personal hearing to the appellants. All issues are kept open. As far as practicable, the matter be decided within four months from the date of communication of this order.