

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST BLOCK NO 2, R K PURAM, NEW DELHI - 110066**

**C/Stay/51306/2018 and  
Appeal No. C/54012/2018-DB**

Arising out of Order-in-Appeal No. CC(A)Cus/D-II/ICD-TKD/IMPORT/2194/2018, Dated:  
11.9.2018

Passed by the Commissioner OF Customs (Import), ICD, TKD, New Delhi

**Date of Hearing: 21.02.2019**

**Date of Decision: 06.03.2019**

**COMMISSIONER OF CUSTOMS  
(IMPORT), TKD, NEW DELHI**

**Vs**

**AAA IMPEX**

**Appellant Rep by:** Shri Sunil Kumar, DR  
**Respondent Rep by:** Shri Sagar Rastogi, Adv.

**CORAM:** V Padmanabhan, Member (T)  
Rachna Gupta, Member (J)

**Cus** - The dispute is regarding the valuation of goods imported by assessee - The Assessing Authority re-assessed the imported goods at values higher than what was declared by assessee in the Bill of Entry for self assessment - Perusal of records of case indicates that the only reason cited reason for re-assessment of value is that the assessee has accepted the enhanced value - No doubt acceptance of enhanced value in writing waives the requirement of issue of speaking order under Section 17(5) ibid - However, the requirement of Section 14 and Customs Valuation Rules need to be satisfied for enhancement of value - Nothing is forthcoming in the record of the case from which the basis for such re-assessment can be made out - Revenue has vehemently argued that the Customs Authorities were justified in enhancement of value since the importer had accepted such enhancement - In spite of admission on behalf of the importer, Revenue is required to satisfy the requirements prescribed under Section 14 of Customs Act read with Customs Valuation Rules before any enhancement of valuation - It has been argued that Revenue did not record the basis for such enhancement since the requirement of speaking order was waived by importer - The matter is remanded to the Original Assessing Authority for sharing the basis for such re-assessment with the importer: CESTAT

**Matter remanded**

**Case laws cited:**

***CC (Import) Vs. Sodagar Knitwear -2018 (362) ELT 819 (Tri.-Del.)... Para 6***

***DJP International Vs. CC (ICD), New Delhi - 2015-TIOL-2046-CESTAT-DEL... Para 6***

***Laxmi Colour Lab Vs. CC -1992 (62) ELT 617 (Tribunal)... Para 7***

***CCE Vs. Hingora Industries Ltd. - 2009 (237) ELT 318... Para 7***

**FINAL ORDER NO. 50319/2019**

**Per: V Padmanabhan:**

The stay application No. 51306/2018 has been listed today. The stay application have been filed by Revenue in the Revenue's Appeal No. 54012/2018. Through the said application the Revenue has prayed for staying the Order-in-Original No. 2194/2018 dated 11.9.2018

2. Heard Shri Sunil kumar, Id. AR on behalf of the Revenue as well as Shri Sagar Rastogai, Id. Advocate on behalf of the respondent.- assessee

3. After hearing both sides for some time, we find that the appeal itself is taken up for a decision with the concurrence of both the sides.

4. The respondent imported certain goods and filed Bill of Entry No. 2998587 dated 28.8.2017 at ICD, TKD, New Delhi. The imported goods included mobile accessories such as ear plug, data cable etc. electronic items; PVC table covers etc. The Customs duty on the imported goods was paid by the respondent on the basis of selfassessment of duty on the transaction value. The Customs authorities held that the transaction value declared by the respondent was low and proposed to increase the value of the imported goods for purposes of assessment. The increase proposed by the Customs authorities was agreed to by the CHA on behalf of the importer on 18.9.2017. Subsequently, the Bill of Entry was assessed at higher value. The goods were cleared on payment of duty at the enhanced value. It is pertinent to record that no assessment order was issued by the Customs Assessing Group as per required under Section 17(5) of the Customs Act, 1962.

5. The respondent subsequently filed appeal before the Commissioner (Customs), New Customs House, New Delhi against the increase in the valuation by the Customs Assessment Group. It was contended that the assessment was arbitrary and illegal and the mandate of Section 14 of the Customs Act read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 was not followed. The Commissioner (Appeals) decided the matter by issue of the impugned order. He decided in favour of the importer and set aside the enhancement of value. Aggrieved by the decision, the Revenue has filed the present appeal.

6. Arguing the grounds of appeal, the Id. DR submitted as follows:

(i) He submitted a copy of the document in which the CHA, on behalf of the importer, has accepted the enhancement of value. He submitted that since the CHA on behalf of the importer has given acceptance for value enhancement, the same cannot be subsequently challenged before the Commissioner (Appeals). He submitted that the department was not required to pass speaking order in terms of sub-section 5 of Section 17 in cases where the importer confirms his acceptance of the said reassessment in writing. He further contended that if the enhancement was not accepted by the importer, the due process of re-assessment in terms of Customs Valuation Rules would have been followed and speaking order would have been issued.

(ii) The Id. DR further submitted that once the value has been accepted by the importer there is no need for the Customs authorities to prove such enhanced value. In this regard, he relied on the decision of Tribunal in case of *CC (Import) Vs. Sodagar Knitwear -2018 (362) ELT 819 (Tri.-Del.)*. The said decision has been approved by Hon'ble Supreme Court and reported as 2019 (362) ELT A213 (SC).

(iii) He also relied on the decision of the Tribunal in the case of *DJP International Vs. CC (ICD), New Delhi - 2017 (350) ELT 294 (Tri.-Del.) = 2015-TIOL-2046-CESTAT-DEL*, where similar view has been taken by the Tribunal. This decision also stands approved by the Hon'ble Supreme Court and reported as 2017 (350) ELT A65 (SC).

(iv) The Id. DR further argued that the decisions cited by the Id. Commissioner (Appeals) in the impugned order were delivered in the context of the Section 17 of the Customs Act, before the amendment carried out on 8.4.2011.

7. Countering these arguments, the Id. Advocate appearing on behalf of the respondent submitted that the order passed by the Commissioner (Appeals) merits no interference. He argued that the importer had agreed to enhancement of value with a view to clearing the goods expeditiously and to save the demurrage charges. He placed reliance on the various case laws already explained in the Order-in-Appeal and submitted that unless the circumstances in Rule 4(2) of the Customs Valuation Rules are prevalent the Customs authorities are bound to assess the duty on the transaction value.

(i) He also submitted a chart, said to be print out from NIDB data base with reference to one of the items imported i.e ear plug for mobile. He submitted that the transaction value declared by the importer in the Bill of Entry was in fact comparable or higher than most of the contemporaneous imports. He submitted that the enhancement of value was not justified and supported the order passed by the Commissioner (Appeals).

(ii) In this connection., the Id. Advocate also relied on the decision of the Tribunal in the case of *Laxmi Colour Lab Vs. CC -1992 (62) ELT 617 (Tribunal)*. The said decision also has been approved by the Hon'ble Supreme Court and reported in 1997 (90) ELT A183. In the said decision importer accepted the enhanced value fixed by the department due to urgency to clear the goods, but challenged the enhancement by way of appeal. He also relied on the decision of the Tribunal in the case of *CCE Vs. Hingora Industries Ltd. - 2009 (237) ELT 318* wherein it has been observed that there is no estoppel in law.

8. Heard both sides and perused the record.

9. The dispute in the present case is regarding the valuation of the goods imported by the respondent. The Assessing Authority re-assessed the imported goods at values higher than what was declared by the respondent in the Bill of Entry for self assessment. The respondent accepted the enhanced value. To this effect CHA, the authorised agent of the respondent, has signed a note accepting the enhanced value. In view of such admission, no speaking order was issued as per requirements for Section 17(5) of the Customs Act, 1962. In spite of the acceptance before the Assessing Authority, the importer/ respondent challenged the valuation by filing appeal against the assessment. The impugned order passed by the Commissioner (Appeals) set aside the re-assessment of the goods and restored the self assessment. The Commissioner (Appeals) has observed in the impugned order that transaction value declared by the

importer should form the basis of assessment unless the same is rejected, for the reasons set out in Rule 4(2) of the Customs Valuation Rules. He has further observed that this view finds support in a catena of decisions.

10. The Revenue has challenged the said order in the present appeal. The main ground raised is that the respondent had given his written acceptance of the enhanced values and thereby has forgone his right to speaking order under Section 17(5) of the Customs Act. They have also relied upon several decisions.

11. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step by step methodology to be adopted for re-determination of the assessable value in certain cases. The primary requirement for re-determination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the basis for arriving at the assessable value.

12. Perusal of the records of the case indicates that the only reason cited reason for re-assessment of value is that the respondent has accepted the enhanced value. No doubt acceptance of the enhanced value in writing waives the requirement of the issue of speaking order under Section 17(5) *ibid*. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming in the record of the case from which the basis for such re-assessment can be made out.

13. Revenue has vehemently argued that the Customs Authorities were justified in enhancement of value since the importer had accepted such enhancement. They have also relied upon the recent decision in which the Tribunal has taken the view that admitted facts need not be proved. In the case of *Sodagar Network (supra)*, the Tribunal upheld the enhancement of value. The importer had specifically admitted the basis for re-determination of value in his statement. He had also specifically waived the issue of the Show Cause Notice before the Adjudicating Authority. It is to be noted that re-assessment was done by the process of adjudication at the level of Additional Commissioner, and the value was re-determined as per Rule 7 of the Customs Valuation Rules. And the basis for such enhancement was shown to the importer and his concurrence recorded by means of statement. The facts are also similar in the case of *DJP International (supra)*. In contradistinction to the facts in these cases, we note that in the present appeal, other than the admission on the part of the importer, we find no basis for the adoption of the enhanced value.

14. We are of the view that, in spite of the admission on behalf of the importer, the Revenue is required to satisfy the requirements prescribed under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation. It has been argued by Revenue before us that the Revenue did not record the basis for such enhancement since the requirement of speaking order was waived by importer.

15. In view of the above discussion, the matter is required to be remanded to the Original Assessing Authority for sharing the basis for such re-assessment with the

importer. Thereafter he will pass the speaking order after extending an opportunity to the representative of the importer to rebut the basis for such enhancement. To facilitate this, we set aside the impugned order.

16. In the result, the appeal filed by Revenue is allowed by way of remand.

(Pronounced in Court on 06.03.2019)