IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI

Customs Appeal No. 655 of 2009

Arising out of Order-in-Original Appeal No: 69/2009 CC (E) JNCH, Dated: 31.03.2009
Passed by the Commissioner of Customs (Import), Nhava Sheva

Date of Hearing: 11.03.2019
Date of Decision: 17.09.2019

Mr NEERAJ SHARMA
M/S REMETAL TRADERS, A-30 PURVI APARTMENTS
SUNDERVAN COMPLEX, LOKHANDWALA, ANDHERI (W)
MUMBAI - 400069

Vs

COMMISSIONER OF CUSTOMS (IMPORT)
JAWARHALAL NEHRU PORT TRUST, TAL: URAN, NHAVA SHEVA
DIST: RAIGAD - 400707

Appellant Rep by: Shri VR Sethi, Adv.
Respondent Rep by: Ms PV Sekhar, AC (AR)

Customs Appeal No: 688 of 2009

Arising out of Order-in-Original Appeal No: 69/2009 CC (E) JNCH, Dated: 31.03.2009
Passed by the Commissioner of Customs (Import), Nhava Sheva

AASHUMI CHEMICALS PVT LTD
94 KANSARA CHAWL, 1ST FLOOR, KALBADEVI ROAD
MUMBAI - 400002

Vs

COMMISSIONER OF CUSTOMS (IMPORT)
JAWARHALAL NEHRU PORT TRUST, TAL: URAN, NHAVA SHEVA
DIST: RAIGAD - 400707

Appellant Rep by: Shri ML Grover, Adv.
Respondent Rep by: Ms PV Sekhar, AC (AR)

Customs Appeal No: 689 of 2009

Arising out of Order-in-Original Appeal No: 69/2009 CC (E) JNCH, Dated: 31.03.2009
Passed by the Commissioner of Customs (Import), Nhava Sheva

DILEEP DUGAR
1ST FLOOR, RANGTA BHAVAN
FARASWADI, KALBADEVI ROAD, MUMBAI-400002

Vs

COMMISSIONER OF CUSTOMS (IMPORT)
JAWARHALAL NEHRU PORT TRUST, TAL: URAN, NHAVA SHEVA
DIST: RAIGAD - 400707

Appellant Rep by: Shri ML Grover, Adv.
Respondent Rep by: Ms PV Sekhar, AC (AR)

Customs Appeal No. 690 of 2009

Arising out of Order-in-Original Appeal No: 69/2009 CC (E) JNCH, Dated: 31.03.2009
Passed by the Commissioner of Customs (Import), Nhava Sheva

SANDEEP K VAKHARIA
AASHUMI CHEMICALS PVT LTD 94
KANSARA CHAWL, 1ST FLOOR, KALBADEVI ROAD
MUMBAI - 400002

Vs

COMMISSIONER OF CUSTOMS (IMPORT)
JAWARHALAL NEHRU PORT TRUST, TAL: URAN, NHAVA SHEVA
DIST: RAIGAD - 400707

Appellant Rep by: Shri DH Nadkarni, Adv.
Respondent Rep by: Ms PV Sekhar, AC (AR)

CORAM: C J Mathew, Member (T)
Ajay Sharma, Member (J)

Cus - The issue involved in these matters is whether the appellants had been placed on notice of proposals along with reasons thereon to re-classify the imported goods.

Held: On perusal of notice, it is seen that the proposal is limited to rejection of value of USD 2950 per MT declared in the Bills of Entry to enable the re-assessment u/s 14(2) of the Customs Act to be substituted by tariff value of USD 4524 per MT on imported Brass Scrap and for confiscation of the goods, besides resorting to penal provisions - It appears that conclusion of nature of goods & not as want of includability in the claimed classification but an entirely different description has been presumed to require compliance with Section 18 of Customs Act - The provisions pertaining to assessment based on a statutory determined tariff value is a special law carved out of the general law applicable to *ad valorem* duties specified in the First Schedule to the Customs Tariff Act 1975 - The rate is to be determined by the proper officer u/s 12 of the Act - The charging section is the fount of constitutionally sanctioned levy of Customs duty - The application of *ad valorem* or *specific rate* flows from this authority and it is only on the applicability of the former that the provisions for valuation can be resorted to - It is well settled law that Section 14 of the Customs Act is a measure of value, permitted by legislative sanction, for computation of duty - It was not intended to supplant the basic determination of duty leviability - The starting point of any assessment is the acceptance of declared classification or its substitution with an alternative classification u/s 17, 18 or 28 of the Customs Act - No notification issued by the Govt or by any authority can suffice as basis for levy of duty - Presumption of conformity to description in such

notification does not suffice to overcome the onus of proposing an alternative classification or different rate of duty - The conclusions derived from the test reports are not unambiguous - Mere conclusion of non-conformity to declared declaration did not sanction the adoption of an alternative classification which has not even been proposed - Such non-conformity even if acceptable does not empower the invoking of tariff value without undergoing the test of conformity with the description to which such tariff value should be applied - The lack of proposal to subject the goods to an alternative classification and leap over the unabridged chasm of applicability to the notification for assessment of tariff value renders the O-i-O to be unsustainable: CESTAT

Appeals allowed

Case law cited:

Commissioner of Central Excise, Madras v. Systems & Components Pvt Ltd - 2004-TIOL-137-SC-CX... Para 2

FINAL ORDER NOS. A/86733-86736/2019

Per: C J Mathew:

These four appeals, arising out of order-in-original no. 69/2009 CC(E)/JNCH dated 31st March 2009 of Commissioner of Customs (Import), Nhava Sheva, challenge the findings of the adjudicating authority on various grounds including that of having compromised with the principles of natural justice in denying them the right to cross-examine a deponent though the statement has been used to their detriment and the reliance placed on a statement of one of the appellants herein even though retracted promptly and in entirety.

2. However, in the light of a fundamental issue raised by Learned Counsel, we do not propose, at this stage, to go into the merits claimed by either side or the breach of natural justice alleged by the appellants. This is especially so as Learned Authorised Representative places reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Central Excise, Madras v. Systems & Components Pvt Ltd [2004 (165) ELT 136 (SC)]* = ***2004-TIOL-137-SC-CX*** which observed that

'3. The Assistant Collector noted that it was an admitted position that these were all parts of the Water Chilling Plant manufactured by the Respondents and that they had no independent use on their own.

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5……. The Tribunal has noted the Technical details supplied by the Respondents and the letter of the Respondents dated 30th November 1993 giving details of how these parts are used in the Chilling Plant. The tribunal has still strangely held that this by itself is not sufficient to show that they are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning….'
before going on to hold that

'5…… Once it is in admitted position by the party itself, that these are parts of Chilling Plant and the concerned party does not even dispute that they have no independent

use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved.'
to counter the claim of the appellants that the adjudicating authority had travelled beyond the notice which was restricted to application of 'tariff value' on the basis of a presumption of such applicability recorded as a conclusion in the notice. In other words, the issue is whether the appellants had been placed on notice of proposal, along with reasons thereon, to reclassify the imported goods.

3. On perusal of the notice, we find that the proposal is limited to rejection of the value of US $ 2950 per metric ton declared in bills of entry no. 668697/23.02.07 and no. 668896/24.02.072 to enable reassessment under section 14(2) of Customs Act, 1962 to be substituted by tariff value of US $ 4524 per metric ton on the imported 'brass scrap' and for confiscation of the said goods besides resort to penal provisions. We also find that, in the paragraphs immediately preceding the proposals, the conclusion of the investigation that the transaction value was US $ 3720 per metric ton, based on statements recorded, and that goods were not 'copper residue' as claimed in the bills of entry based on test reports, but admitted to be 'brass scrap' are on record. It would, therefore, appear that the conclusion of the nature of the goods, not as want of includability in the claimed classification but under an entirely different description, has been presumed to require compliance with section 18 of Customs Act, 1962.

4. We take note that, in exercise of powers conferred by section 14(2) of Customs Act, 1962, Central Board of Excise & Customs had, vide notification no. **130/2006-Cus (NT)** dated 1st December 2006, determined tariff value of US $ 4524 for assessment of imported 'brass scrap' under heading no. 74040022 of First Schedule to Customs Tariff Act, 1975. The impugned bills of entry had declared the goods to be 'copper residue' under heading no. 26203090 of First Schedule to Customs Tariff Act, 1975. Not unnaturally, the resort to 'tariff value', instead of the transaction value, is valid only in relation to goods conforming to the description, and the appropriate heading, enumerated in the relevant notification. It is the absence of such proposal in the notice that is claimed to be the irreparable flaw.

5. The provisions relating to assessment, on the basis of a statutory determined 'tariff value', is a special law carved out of the general law applicable to 'ad valorem' duties specified in the First Schedule to Customs Tariff Act, 1975. The rate itself is required to be determined by the 'proper officer' under the authority of section 12 of Customs Act, 1962. This charging section is the fount of constitutionally sanctioned levy of duties of customs; the application of 'ad valorem' or 'specific rate', as the case may be, flows from this authority and it is only on the applicability of the former that the provisions for valuation can be resorted to. It is now well-settled in law that section 14 of Customs Act, 1962 is a measure of value, permitted by legislative sanction, for computation of duty. It was not intended to supplant, or as a surrogate for, the basic determination of leviability of duty. The starting point of any assessment is the acceptance of the declared classification (rate of duty) or the substitution thereof by an alternative classification (rate of duty) in accordance with section 17, 18 or 28 of Customs Act, 1962. No notification issued, under any of the empowering provisions, by Central Government or any other authority can suffice as the basis for levy of duty. Neither does presumption of

conformity to description in such notification suffice to overcome the onus to propose an alternative classification and, thereby, a different rate of duty.

6. Notifications issued under section 14(2) of Customs Act, 1962 have restricted application to enumerated goods upon classification under section 12 of Customs Act, 1962. As a special valuation provision, it is enforceable on claiming of the classification to which it applies. On a finding of substitution by a different classification, the process in section 14 of Customs Act, 1962, for resort to valuation in accordance with rules separately prescribed, is not required to be followed. Hence, the proposal in the notice for rejection of declared value, which is empowered under the prescribed Rules, indicates an intent to redetermine the value on an accepted classification. The impugned order has not taken this proposal to its logical conclusion but resorted to section 14(2) of Customs Act, 1962 which is nothing but an alternative proposed in the notice. This alternative proposal should have been preceded by a proposal to reclassify the imported goods and such a proposal is markedly absent.

7. It merely remains for us, in the circumstances, to ascertain the applicability of the decision cited by Learned Authorised Representative. The issue before the Hon'ble Supreme Court was the determination of rate of duty on goods manufactured out of certain parts which may have had a bearing on the duty liability. The Hon'ble Supreme Court handed down the decision on the admission of the assessee that the goods could have been used only for the product to which the proposed rate of duty applied. The counterclaim of the assessee was that, even with those parts, the classification was to be guided by certain circulars. There was, thus, no dispute on the nature of the goods that went into the manufacture of the final product. On the contrary, the presumption herein of the imported goods being 'brass scrap' is based on statements of individuals, and not in admission by appellant, and the presumption has been, and continues to be, challenged in proceedings. The factual matrix of the decision in re Systems & Components Pvt Ltd is not replicated here.

8. The conclusions derived from the test reports are not unambiguous. While the testing authority did opine that the samples were 'other than copper residue', we find no elaboration commencing therefrom which could lead to the conclusion that the goods are 'brass'. Mere conclusion of non-conformity to declared declaration does not sanction the adoption of an alternative classification which has not even been proposed. Such non-conformity, even if acceptable, does not empower the invoking of 'tariff value' without undergoing the test of conformity with the description to which such 'tariff value' should be applied. The lack of proposal to subject the goods to an alternative classification and the leap, so to speak, over the unabridged chasm of applicability of the notification for assessment on 'tariff value' renders the impugned order to be unsustainable.

9. For the above reason, we set aside the impugned order and allow the appeals.

(Order pronounced in the open court on 17.09.2019)