

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH

CUSTOMS APPEAL NO. 51601 OF 2019

(Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD-PPG/SONEPAT/95-121/2019-20 dated 26.04.2019 passed by Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037)

Commissioner of Customs

ICD Patparganj
Delhi - 110096

.....Appellant

Versus

M/s Hanuman Prasad & Sons

455, Khara Kalan
New Delhi - 110 082.

.....Respondent

**WITH
CUSTOMS APPEAL NUMBERS**

51602/2019	52396/2019	52397/2019	52398/2019
52399/2019	52400/2019	52401/2019	52402/2019
52403/2019	52450/2019	52451/2019	52452/2019
52453/2019	52454/2019	52465/2019	52466/2019
52467/2019	52468/2019	52469/2019	52633/2019
52634/2019	52635/2019	52636/2019	52637/2019
52638/2019	52639/2019	52640/2019	52641/2019
52642/2019	52643/2019	52644/2019	52645/2019
52646/2019	52647/2019	52648/2019	

APPEARANCE:

Shri Sunil Kumar and Shri Rakesh Kumar, Authorized Representatives for the Department

Shri B.L. Narasimhan, Shri Rachit Jain and Shri Ashwani Bhatia, Advocates for the Respondent

**CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

Date of Hearing/Decision: **October 20, 2020**

FINAL ORDER No. 51584-51619 / 2020

JUSTICE DILIP GUPTA :

M/s Hanuman Prasad and Sons¹ and M/s Niraj Silk Mills² had imported various kinds of polyester knitted fabric of different weights and colours³ and had submitted 27 and 9 Bills of Entry respectively, declaring the value of the goods @ 1.2 USD per kg. The Assessing Officer enhanced the assessable value, on the basis of contemporaneous imports data and which value was also accepted by Hanuman Prasad and Niraj Silk in writing, to 1.80 USD per kg for Hanuman Prasad and 1.94 USD per kg Niraj Silk. However, appeals were filed against each of the Bills of Entry by Hanuman Prasad and Niraj Silk before the Commissioner of Customs (Appeals)⁴, who by an order dated April 26, 2019 allowed all the 27 appeals filed by Hanuman Prasad and by an order dated May 08, 2019 allowed all the 9 appeals filed by Niraj Silk. The Department has, accordingly, filed these 36 appeals to assail the orders passed by the Commissioner (Appeals).

2. The records indicate that Hanuman Prasad had submitted 27 Bills of Entry declaring the value of the goods at 1.2 USD per kg and Niraj Silk had submitted 9 Bills of Entry declaring the value of the goods at 1.2 USD per kg. The Assessing Officer believed that he had reason to doubt the accuracy of the value so declared, since it was lesser than the contemporaneous export data. On being confronted with such data, both Hanuman Prasad and Niraj Silk submitted identical letters in connection with the Bills of

1 Hanuman Prasad
2 Niraj Silk
3 the goods
4 the Commissioner (Appeals)

Entry. Hanuman Prasad specifically stated that though it had declared the value of the goods at 1.2 USD per kg but on contemporaneous data having been shown, it agrees for enhancement of the value to 1.80 USD per kg and that it did not want any show cause notice to be issued to it or personal hearing to be provided, nor did it want any speaking order to be passed on the aforesaid Bills of Entry. It further stated that it was voluntarily relinquishing the rights provided to it under sections 124 and 17(5) of the Customs Act, 1962⁵. The letter written by Niraj Silk is identically worded, except for agreeing to the enhancement of the value of the declared goods to 1.94 USD per kg.

3. A copy of one such letter dated January 3, 2019 submitted by Hanuman Prasad to the Assessing officer in connection with the assessment of the Bills of Entry is reproduced below:

“

DT.03.01.2019

To,
The Deputy Commissioner of Customs,
DICT Sonapat Haryana

Subject: Request for Assessment of BE No 9509107 dated 03.01.2019

Respected Madam,

With reference to the above B/E's, we have imported Polyester Knitted Fabric of different Weights & colors. Our Declared Value is 1.20 USD Per Kg. However, we have been shown Contemporaneous data & we agree for enhancement of Value @ 1.80 USD Per Kg.

In this regard, we submit that we do not want any Showcause Notice & Personal Hearing on this matter as envisaged under section 124 of Customs Act, 1962 read with Section 28 of this Act. We do not want any Speaking Order of Aforesaid B/E's. We, therefore,

voluntarily relinquish our Rights provided u/s 124 & 17(5) of Customs Act, 1962.

Thanking you.

Your's Faithfully,

For HANUMAN PRASAD AND SONS

Sd/-

(Proprietor)"

4. A copy of a letter written by Niraj Silk in connection with the Bills of Entry is also reproduced below :

"

Date_____

To,
The Deputy Commissioner of Customs,
DICT Sonipat Haryana

Subject: Request for Assessment of BE No 2189854 & 2189909 dated 25/02/2019 & 25/02/2019

Respected Madam,

With reference to the above B/E's, we have imported Polyester Knitted Fabric of different Weights & colors. Our Declared Value is 1.20 USD Per Kg. However, we have been shown Contemperous data & we agree for enhancement of Value @ 1.94 USD Per Kg.

In this regard, we submit that we do not want any Showcause Notice & Personal Hearing on this matter as envisaged under section 124 of Customs Act, 1962 read with Section 28 of this Act. We do not want any Speaking Order of Aforesaid B/E's. We, therefore, voluntarily relinquish our Rights provided u/s 124 & 17(5) of Customs Act, 1962.

Thanking you.

Your's Faithfully,

For NIRAJ SILK MILLS

Sd/-

(Proprietor)"

5. The value of the declared goods was thereafter enhanced by the Assessing Officer to 1.80 USD per kg. in the case of Hanuman Prasad and to 1.94 USD per kg. in the case of Niraj Silk.

6. However, Hanuman Prasad and Niraj Silk challenged the order passed by the Assessing Officer on the Bills of Entry by filing 36 appeals before the Commissioner (Appeals).

7. The Commissioner (Appeals), by two separate orders dated April 26, 2019 and May 08, 2019, allowed the 36 appeals. The relevant portion of the order dated April 26, 2019 relating to the 27 Bills of Entry in the matter of Hanuman Prasad is reproduced below :

“5.3 The appellant has contended that the acceptance of enhanced value proposed by the Revenue during assessment and clearance to save demurrages by the appellant does not preclude from challenging the enhancement by way of appeal. I find considerable force in the contention of the appellant. The issue as to whether an assessee can file an appeal against assessment made in respect of Bill of Entry has been settled by judicial pronouncements. It is settled legal proposition that there is no estoppel in taxation matters. **The Hon’ble Supreme Court** in the case of Dunlop India Limited Vs. UOI reported in 1983(13) ELT 1566(SC) **has laid down that even assuming that there is an acceptance it does not preclude the assessee from challenging by way of appeal as there cannot be an estoppel against law.** Similar view was held in [2015(329) ELT 307(T)] and 2016(343) ELT 963(T).

5.4 The appellant has assailed that the enhancement of assessable value is arbitrary and illegal as the practice of not making the assessment on the declared value in terms of the mandate of Section 14 of the Customs Act, 1962 read with Rule 3 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (CVR, 2007), is against the provisions of law. Rule 3 of CVR, 2007 provides that subject to Rule 12, the value of imported goods shall be the transaction value

adjusted in accordance with provision of Rule 10 and unless the price actually paid for the particular transaction falls within the exceptions in Rule 3(2), the Customs authorities are bound to assess the duty on the transaction value. There is no question of determining the value under the subsequent Rules if the same does not fall within the exception provided therein. The appellant relied upon the above mentioned judgments in their support.

5.5 I find that an obligation was cast on the assessing authority to pass a speaking order disclosing the grounds for rejecting the declared value and then resorting to loading and enhancement in value. The declared value can be rejected on the basis of reasonable and cogent evidence only and Revenue should discharge the heavy burden to prove that invoice value does not represent the true transaction value in the international market.

5.6 I find that in the Bills of Entry for a large period of time the assessable values are being enhanced uniformly which, in my view, is not correct. Parameters like nature, quality, level of import, time etc. are to be looked into while applying the value of contemporaneous imports. Uniform value loading in each Bill of Entry at uniform price on the basis of DRI Alerts, DGoV Circulars and other Standing orders, etc., is not in consonance with the provision of the Customs Act & Rules.

5.7 xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx

5.8 It is settled law by the following decisions of the Hon'ble Supreme Court that unless there is additional consideration involved or any of the exceptions of Rule 4(2) is attracted, transaction value cannot be rejected :

xxxxxxx xxxxxxx xxxxxxx

5.9 If the circumstances mentioned in proviso to Rule 4(2) are not applicable, the Department is bound to assess the duty of transaction value. NIDB data alone cannot be made basis of enhancement of value.

5.10 In the case of M/s Maruti Fabric Impex & Ors., where the enhancement of value was resorted to by the Department and was rejected by Commissioner of Customs (Appeals), Delhi and the matter travelled to the Hon'ble CESTAT by

Department's Appeal, the Hon'ble CESTAT vide Final Order No. C/A/51690-51694/2016-CU(DB) dated 27.04.2016 held that for rejecting the transaction value, first it has to be rejected as incorrect value and there being no evidence to show that the importer has paid over the above the transaction value to the seller of goods, there is virtually no reason to reject the transaction value. Similar view has been held by Tribunal in Final Orders C/A/52972/2016 dated 08.08.2016 and C/A/52685-86 dated 27.07.2016.

5.12 Hon'ble Supreme Court in the case of Noida Vs. M/s Sanjivani Non-Ferrous Trading Pvt. Ltd. (Civil Appeal No. 18300-18305/2017) held vide judgement dated 10.12.2018 that "The normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act. That the declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the declared in the Bills of Entry, Order-in-Original was therefore clearly erroneous."

5.15 **In view of the facts and findings, supra, I set aside the re-assessment of goods covered under the impugned Twenty Seven Bills of Entry. I allow the appeals filed by the appellant accordingly and restore the assessment at the declared values."**

[emphasis supplied]

8. The order dated May 08, 2019 passed relating to 9 Bills of Entry in the matter of Niraj Silk is identical and, therefore, is not being reproduced.

9. Shri Rakesh Kumar, learned Authorized Representative of the Department has made the following submissions:

- (i) The Assessing Officer had reason to doubt the accuracy of the value declared in the Bills of Entry submitted by the importers as they were grossly undervalued as compared to the

contemporaneous import data and since the two importers had submitted letters clearly stating that they have agreed for enhancement of the value to 1.8 USD per kg and 1.94 USD per kg and did not require any personal hearing or a speaking order, the Assessing Officer enhanced the value. Thus, once having accepted the value of the goods in writing, it was not open to the importers to challenge the value of the goods, nor was it open to the importers to file appeals for the reason that the requirement of not passing any speaking order is to reduce litigation;

- (ii)** The decisions relied upon by the Commissioner (Appeals) are clearly distinguishable on facts, as in the present case, letters were submitted voluntarily by the importers accepting the enhanced value based on contemporaneous data;
- (iii)** The findings of the Commissioner (Appeals) that the importers had accepted the value to avoid demurrages and detention is not borne out from the records;
- (iv)** The Commissioner (Appeals) was not justified in making a general statement about uniform enhancement of value by the Assessing Officer on the basis of NIDB data;
- (v)** The finding of the Commissioner (Appeals) that the valuation of the declared goods has to be first rejected under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007⁶, is not correct in the facts and circumstances of the present case;

- (vi) The Commissioner (Appeals) committed an error in observing that the Assessing Officer should have passed a speaking order, in view of the specific statements made by the importers that they did not want a speaking order; and
- (vii) The Commissioner (Appeals) was not justified in holding that the transaction value declared by the importers should have been determined in accordance with the provisions of section 14 of the Customs Act and rule 3 of the Valuation Rules.

10. Shri B.L. Narasimhan, learned Counsel appearing for the importers made the following submissions:

- (i) The issue involved in the appeals stands settled in favour of the importers by the decisions of the Tribunal in **CC, Delhi vs M/s Maruti Fabric Impex, M/s Hanuman Prasad & Sons, M/s Uniexel Polychem Pvt. Ltd., M/s AVS Global and M/s Girik International Pvt. Ltd.**⁷ and **Commissioner of Customs, Noida vs. M/s Hanuman Prasad and Sons**⁸.
- (ii) Section 17 of the Customs Act does not preclude an assessee from filing an appeal against a Bill of Entry;
- (iii) The Department did not follow the procedure contemplated under rule 12 of the Valuation Rules to reject the transaction value declared by the importers. Reliance has been placed on the following decisions :

⁷ 2016 (5) TMI 668 – CESTAT New Delhi
⁸ Customs Appeal No. 70417 of 2019) decided on September 12, 2019

(i) Eicher Tractors Ltd. Vs. Commissioner of Customs, Mumbai⁹

(ii) Century Metal Recycling Pvt. Ltd. Vs. Union of India¹⁰

(iv) NIDB data cannot be the sole basis to reject the transaction value without any cogent reasons. Reliance has been placed on the following decisions:

(i) M/s Sai Exports Vs. Commissioner of Customs¹¹

(ii) Commissioner of Customs, New Delhi Vs. Rainbow Impex¹²

(iii) Commissioner of Customs, New Delhi Vs. Century Metal Recycling Pvt. Ltd.¹³

(iv) Commissioner of Customs, New Delhi Vs. Marble Art¹⁴

(v) Commissioner of Central Excise, Rohtak Vs. Sail Sales Corporation¹⁵; and

(v) The burden of proof lies upon the Department to prove the charge of under valuation, which burden has not been discharged in the present case.

11. The submissions advanced by the learned Authorized Representative for the Appellant and the learned Counsel for the respondent have been considered.

9 2000 (122) ELT 321 – CESTAT (SC)
 10 2019 (367) ELT 3 – CESTAT (SC)
 11 2019(8) TMI 432 – CESTAT Chennai
 12 2013(296) ELT 207 – (Tri.-Del.)
 13 2013(295) ELT 726 – (Tri.-Del.)
 14 2013(289) ELT 346 – (Tri.-Del.)
 15 2012(278) ELT 197 – (Tri.-Del.)

12. What transpires from the records is that both Hanuman Prasad and Niraj Silk had declared the value of the goods in the Bills of Entry as 1.2 USD per kg. Section 14 of the Customs Act deals with 'Valuation of Goods' and is reproduced below:

"Section 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided xxxxxx xxxxxx xxxxxx"

13. It would be seen that section 14 of the Customs Act provides that the transaction value of goods shall be the price actually paid or payable for the goods when sold for export to India where the buyer and the seller of the goods are not related and the price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. The Valuation Rules have been framed in exercise of the powers conferred by section 14 of the Customs Act. Rule 12 deals with rejection of the declared value and is reproduced below :

"Rule 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the

value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule(1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.”

14. Rule 12 provides that when the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of rule 3(1). Explanation (iii) to rule 12 provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons, which may include any of the six reasons contained therein, one of which is that there is a significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

15. The proper officer doubted the value of the goods declared by Hanuman Prasad and Niraj Silk since the contemporaneous data in respect of the goods imported by Hanuman Prasad was 1.80 USD per kg, while that for Niraj Silk was 1.94 USD per kg. On being confronted with this contemporaneous data, both Hanuman Prasad and Niraj Silk submitted letters. Hanuman Prasad specifically stated that it agrees for enhancement of the value of goods to 1.80 USD per kg. and that it did not desire that any show cause notice to be issued or personal hearing to be provided, as is contemplated under section 124 of the Customs Act. It also stated that it did not desire that a speaking order, as

contemplated under section 17(5) of the Customs Act, should be passed on the Bills of Entry. A similar letter was written by Niraj Silk.

16. The relevant portion of section 17(5) of the Customs Act is reproduced below:

“Section 17. Assessment of duty.- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

17. It would be seen that though in a case where re-assessment has to be done under sub-section (4) of section 17 of the Customs Act, the proper officer is required to pass a speaking order on the re-assessment, but if the importer or exporter confirms his acceptance of the re-assessment, a speaking order is not required to be passed.

18. In view of the specific requests made in the letters that were submitted by Hanuman Prasad and Niraj Silk in regard to all the 36 Bills of Entry that they had agreed for the declared value of the goods to be enhanced to 1.80 USD per kg and 1.94 USD per kg, the assessing officer assessed the value of the goods at 1.80 USD per kg for Hanuman Prasad and 1.94 USD per kg for Niraj Silk.

19. It is after the payment of duty on the aforesaid assessments made by the assessing officer that Hanuman Prasad and Niraj Silk filed 36 Appeals before the Commissioner (Appeals), which Appeals were ultimately allowed by orders dated April 26, 2019 and May 08, 2019.

20. The Commissioner (Appeals) allowed the Appeals primarily for the following reasons :

- (i) The acceptance of the enhanced value proposed by the Revenue does not preclude an assessee from filing an Appeal to challenge the assessment order;
- (ii) An obligation was cast on the assessing officer to pass a speaking order disclosing the grounds for rejecting the declared value and

only thereafter the proper officer could have resorted to enhancement of the value;

- (iii) The declared value can be rejected on the basis of reasonable and cogent evidence only and the Revenue has to discharge this burden by proving that the invoice value did not represent the true transaction value in the international market;
- (iv) For a considerable period of time, the Bills of Entry were being enhanced uniformly, which in the opinion of the Commissioner (Appeals), was not correct. Parameters like nature, quality, level of import, time etc. were required to be looked into while applying the value of contemporaneous imports;
- (v) Unless there is an additional consideration involved or any of the exceptions of rule 4(2) of the Valuation Rules are attracted, the transaction value cannot be rejected. NIDB data alone cannot be made the basis of enhancement of value; and
- (vi) In view of the judgment of the Supreme Court in **C.C.E. & S.T., Noida vs. Sanjivani Non-Ferrous Trading Pvt. Ltd.**¹⁶, the transaction value has to be arrived at on the basis of the price that is actually paid as provided by section 14 of the Customs Act and the declared price can be rejected only by giving cogent reasons, but no such exercise was undertaken by the Assessing Authority to reject the value declared in the Bills of Entry.

21. The Commissioner (Appeals), despite a categorical statement made by the importers that they did not desire a speaking order to be passed, observed "an obligation was cast on the assessing authority to pass a speaking order disclosing the grounds for rejecting the declared value and only then the assessing officer could have enhanced the value." This finding of the Commissioner (Appeals) is perverse as it is clearly contrary to the specific statement made by the importers in the letters submitted by them to the assessing officer. What has also to be kept in mind is that section 17(5) permits the importer to waive this right.

22. It is seen from a perusal of section 17(4) of the Customs Act that the proper officer can re-assess the duty leviable, if it is found on verification, examination or testing of the goods or otherwise that the self-assessment was not done correctly. Sub-section (5) of section 17 provides that where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer, the proper officer shall pass a speaking order on the re-assessment, except in a case where the importer confirms his acceptance of the said re-assessment in writing.

23. In the present case, as noticed above, the proper officer doubted the truth or accuracy of the value declared by the importer for the reason that contemporaneous data had a significantly higher value. It was open to the importers to require the proper officer to intimate the grounds in writing for doubting

the truth or accuracy of the value declared by them and seek a reasonable opportunity of being heard, but they did not do so. On the other hand, the importers submitted in writing that though they had declared the value of the imported goods at 1.20 USD per kg., but on being shown contemporaneous data, they have agreed that the value of the goods should be enhanced to 1.80 USD per kg for Hanuman Prasad and to 1.94 USD per kg. for Niraj Silk. The importers also specifically stated that they did not want to avail of the right conferred on them under section 124 of the Customs Act and, therefore, they did not want any show cause notice to be issued to them or personal hearing to be provided to them. The importers also specifically stated that they did not want a speaking order to be passed on the Bills of Entry. It needs to be noted that section 124 of the Customs Act provides for issuance of a show cause notice and personal hearing, and section 17(5) of the Customs Act requires a speaking order to be passed on the Bills of Entry, except in a case where the importer/exporter confirms the acceptance in writing.

24. It is no doubt true that the value of the imported goods shall be the transaction value of such goods when the buyer and the seller of goods are not related and the price is the sole consideration, but this is subject to such conditions as may be specified in the rules to be made in this behalf. The Valuation Rules have been framed. A perusal of rule 12(1) indicates that when the proper officer has reason to doubt the truth or accuracy of the value of the imported goods, he may ask the importer to furnish further information. Rule 12(2) stipulates that it is only if

an importer makes a request that the proper officer shall, before taking a final decision, intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared and provide a reasonable opportunity of being heard. To remove all doubts, Explanation 1(iii)(a) provides that the proper officer can have doubts regarding the truth or accuracy of the declared value if the goods of a comparable nature were assessed at a significantly higher value at about the same time.

25. Explanation (1)(i) to rule 12 of the Valuation Rules, however, provides that the rule only provides a mechanism and procedure for rejection of declared value and does not provide a method for determination of value and if the declared value is rejected, the value has to be determined by proceeding sequentially in accordance with rules 4 to 9.

26. In **Century Metal Recycling**, the Supreme Court summarized the provisions of rule 12 of the Valuation Rules and the observations are as follows :

"15. The requirements of Rule 12, therefore, can be summarised as under :

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence.

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on certain reasons which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

16. Proper officer can therefore reject the declared transactional value based on certain reasons to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression grounds for doubting the truth or accuracy of the value declared has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the reason to doubt exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared."

27. It is non-consideration of the factual position emerging from the statements made by Hanuman Prasad and Niraj Silk that led the Commissioner (Appeals) to believe that the declared value could be rejected only on the basis of reasonable and cogent evidence, which burden the Revenue failed to discharge as it

could not prove that the invoice did not represent the true transaction value in the international market.

28. Despite the specific requests made by the importers in the letters submitted by them, it was sought to be contended by the importers in the Appeals filed by them before the Commissioner (Appeals) that the transaction value of the imported goods alone should have been treated to be the value of the goods, as provided for under rule 3(1) of the Valuation Rules, since none of the conditions stipulated in the proviso to sub-rule (2) of rule 3 were attracted and in any case, if the declared value could not be determined under sub-rule (1) of rule 3, it was required to be determined by proceeding sequentially through rules 4 to 9.

29. Rule 3 of the Valuation Rules is, therefore, reproduced below:

“Rule 3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that –

- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
 - (i) are imposed or required by law or by the public authorities in India; or
 - (ii) limit the geographical area in which the goods may be resold; or
 - (iii) do not substantially affect the value of the goods;
- (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below:

(3) xxxxxxxx xxxxxxxxxx xxxxxxxxxx

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9."

30. The very fact that the importers had agreed for enhancement of the declared value in the letters submitted by them to the assessing authority, itself implies that the importers had not accepted the value declared by them in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importers had accepted the enhanced value, it was really not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under rule 3(1) for the reason that the declared value has been rejected under sub rule 2, that the value of the imported goods is required to be determined by proceeding sequentially through rule 4 to 9. As noticed above, the importers had accepted the enhanced value and there was, therefore, no necessity for the assessing officer to determine the value in the manner provided for in rules 4 to 9 of the Valuation Rules sequentially.

31. In this connection, it would be useful to refer to a decision of this Tribunal in **Advanced Scan Support Technologies vs Commissioner of Customs, Jodhpur¹⁷**, wherein the Tribunal, after making reference to the decisions of the Tribunal in **Vikas Spinners vs Commissioner of Customs, Lucknow¹⁸** and **Guardian Plasticote Ltd. v. CC (Port), Kolkotta¹⁹**, held that as the Appellant therein had expressly given consent to the value proposed by the Revenue and stated that it did not want any show cause notice or personal hearing, it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring no further investigation or justification. Paragraph 5 of the decision is reproduced below:

"5. We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by Revenue and expressly stated that it did not want any Show Cause Notice or personal hearing. Even the duty was paid without protest. By consenting to enhancement of value and thereby voluntarily foregoing the need for a Show Cause Notice, the appellant made it unnecessary for Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put Revenue in an impossible situation as the goods are no longer available for inspection and Revenue rightly did not proceed to further collect and compile all the evidences/basis into a Show Cause Notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no Show Cause Notice, could/would have invited allegation of harassment and delay in clearance of goods. When Show Cause Notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail as with the goods

17 2015 (326) ELT 185 (Tri.-Del)

18 2001 (128) ELT 143 (Tri.-Del)

19 2008 (223) ELT 605 (Tri.-Kol)

not being available and valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so re-assessment of value in the absence of goods will not be possible. The case of Eicher Tractors v. Union of India (supra) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value."

[emphasis supplied]

32. In **Vikas Spinners**, the Tribunal dealing with a similar situation, observed as under :

"7. In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants. Admittedly, the price of the imported goods declared by them was US \$ 0.40 per Kg. but the same was not accepted and loaded to US \$ 0.50 per Kg. **This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 7-5-1999.** After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008/- on 19-5-1990. **Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally estopped from taking somersault and to deny the correctness of the same.** There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in *Sounds N. Images*, (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/Special Attorney and paid the duty thereon accordingly."

[emphasis supplied]

33. In **Guardian Plasticote Ltd.**, the Tribunal after placing reliance on the decision of the Tribunal in **Vikas Spinners**, had also observed as follows :

"4. The learned Advocate also cites the decision of the Tribunal in the case of M/s. Vikas Spinners v. C.C., Lucknow - 2001 (128) E.L.T. 143 (Tri.-Del.) in support of his arguments. We find that the said decision clearly holds that enhanced value once settled and duty having been paid accordingly without protest, importer is estopped from challenging the same subsequently. **It also holds that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden of the department to establish declared value to be incorrect.** In view of the fact that the Appellants in this case have not established that they had lodged any protest and on the contrary their letter dated 21-4-1999 clearly points to acceptance of the enhanced value by them, the cited decision advances the cause of the department rather than that of the Appellants contrary to the claim by the learned Counsel."

[emphasis supplied]

34. In **BNK Intrade (P) Ltd. vs Commissioner of Customs, Chennai**²⁰, the Tribunal observed as follows :

"2..... It is also to be noted that the importer had also agreed for enhancement of the price based on contemporaneous prices available with the Department. We, therefore, find no merit in the contention raised in the appeal challenging the valuation and seeking the refund of the differential duty paid by the appellants on enhancement."

35. The following position emerges from the aforesaid decisions of the Tribunal:

(i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation;

²⁰ 2002 (140) ELT 158 (Tri.-Del)

(ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and

(iii) The burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntarily accepted.

36. Learned Counsel appearing for the Respondent has, however, placed reliance upon certain decisions passed by the Tribunal to contend that the transaction value has to be first rejected and thereafter the assessing officer can re-assess with reasons and in accordance with the provisions of the Valuation Rules.

37. The first decision is **Maruti Fabric Impex**, a matter concerning the present appellant. The Tribunal observed:

"2. As per facts on record, the respondents imported fabrics and filed bills of entries declaring the transaction value as the assessable value in terms of the provisions of Section 14 of Customs Act. The bills of entries were assessed by the proper officer by enhancing the declared assessable value. The respondents cleared the goods on payment of duty on the enhancement.

3. The Appellate Authority took into consideration various facts including the issue as to whether an assessee can file an appeal against assessment made in the bills of entries, once he pays duty on the same and clears the goods, observed that acceptance of enhanced value proposed by the Department by an assessee does not preclude him from challenging the enhancement by way of appeal.

As regards enhancement of assessable value, he observed that no reasons stand given by the Revenue for such an enhancement. There is no rejection of the transaction value and in such a scenario, the transaction value has to be adopted as the assessable value. He also observed that though no reasons stand reflected in the Revenue's assessment but the same seems to have been done on the basis of a DRI Alert dated 9-5-2011.

XXXXX

XXXXX

XXXXX

6. As regards the second issue, we find that Commissioner (Appeals) has gone into detailed examination of the provisions of Section 14 as also the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. **As rightly observed by him, for adopting the provision of Customs Valuation Rule, the transaction value is required to be rejected as incorrect value. There being no evidence to show that the importer has paid over and above than the transaction value, to the seller of the goods, there is virtually no reasons to reject the transaction value.** It is also a settled law that DRI Alerts cannot be adopted as a reason for enhancing the value. As such, we find no infirmity in the views adopted by Commissioner (Appeals) so as to interfere in the impugned order. Accordingly, the appeals filed by the Revenue are rejected.”

[emphasis supplied]

38. The Tribunal noticed that with regard to the enhancement of the assessable value, the Appellate Authority had observed that no reasons had been recorded by the assessing officer for such enhancement and there was no rejection of the transaction value. It needs to be noted that there is nothing in the decision which may indicate that the importer had himself accepted the transaction value indicated by the proper officer in writing or that he had forgone his right to a speaking order.

39. This decision of the Tribunal in **Maruti Fabric Impex** was followed in **Hanuman Prasad**.

40. The next decision relied upon by learned Counsel for the Respondent is **Artex Textile Private Limited**. The Tribunal observed that:

“2. The brief facts are that the respondent importer of polyester knitted fabrics were filing Bill of Entry from time to time at ICD Sonapat on the basis of self assessment of duty on the declared transaction value. **The Bills of Entry were assessed by Assistant/Deputy Commissioner of Customs, by enhancing the value over and above the declared**

value. However, no speaking order was passed giving reasons for rejection of the declared value and enhancement thereof.

XXXXXX

XXXXXX

XXXXXX

7. Having considered the rival contentions, we find that assessing officer have been making enhancement in a routine manner and the respondent who are regular importers are left with no choice but to sign on the dotted line for taking delivery of their goods to carry on their business, and also save the demurrage charges if the consignment is delayed in the port for want of clearance. Relying on the precedent Final Order No. 63455- 63456/2018 dated 25.10.2018 of this Tribunal and also in view of the Order-in-Appeal No. CC(A)/CUS/D- II/ICD/788-1083/2014 dated 31.12.2014 had been accepted in respondent own case, we uphold the impugned common order(s) in appeal. Accordingly, these appeals by Revenue are dismissed being without merit. The stay applications also stand disposed of accordingly."

41. A perusal of the aforesaid decision also does not indicate that the importer had accepted the declared value in writing or that the importer had waived his right to a speaking order. In fact, only a general statement has been made that the assessing officer have been making enhancement in a routine manner and that an importer has no choice but to sign in order to save demurrage charges.

42. It has to be noted that the two importers, Hanuman Prasad and Niraj Silk, had not made any statement that they have accepted the value of the goods proposed by the Revenue to save demurrage charges nor did they state in the letter that the value was being accepted by them under protest and they would agitate the matter in appeal. It is only in this appeal that it has been suggested that the value was accepted to save demurrage

charges, perhaps prompted by the observations made by the Tribunal in **Artex Textile Private Limited**.

43. Learned Counsel for the Respondent also relied upon the decision of the Tribunal in **Commissioner of Customs, New Delhi (ICD TKD) vs M/s Uniexcel Polychem Pvt. Ltd**²¹. The Tribunal observed that :

"4. On the merit of enhancement of value, we are in agreement with the findings in the impugned order. **No detailed reason has been given by the Original Authority for rejection of the transaction value. Apparently he was guided only by DRI alert which formed basis of enhancement of value.** It has been repeatedly held by this Tribunal as well as Hon'ble High Courts that the transaction value cannot be rejected mechanically based on suspicion or general alert without supporting evidence to the effect that the invoice value does not reflect the transaction value required for assessment. In the present case, we find that no evidence of any nature has been brought out or discussed before such enhancement. Even contemporaneous value of similar or identical goods have not been examined and discussed."

44. This decision also does not indicate that the importers had accepted the value of the goods proposed by the Revenue in writing or that the importers had waived their right to a speaking order. In fact, it was the DRI alert that formed the basis of enhancement of value.

45. The Supreme Court observed in **Eicher Tractors Ltd.**, which decision has also been relied upon by the learned counsel for the Respondent, that it is only when the transaction value under rule 4 of the Valuation Rules is rejected that the transaction value is required to be determined by proceeding sequentially through rules 5 to 8. The decision of the Supreme Court in **Century Metal**

21. 2016 (8) TMI 829- Cestat New Delhi

Recycling also holds that if the declared transaction value is rejected, then it has to be determined in accordance with the procedure prescribed in rules 4 to 9. These decisions of the Supreme Court, for the reasons stated above, do not help the respondent.

46. Learned counsel for the respondent has also emphasized that NIDB data cannot be the sole basis to reject the transaction value without any cogent reasons. As seen above, the importers had in writing accepted the transaction value and it is perhaps for this reason that they did not require any show cause notice to be issued to them or a personal hearing to be granted to them. The respondent is, therefore, not justified in asserting that the transaction value has been determined on the basis NIDB data. It was their acceptance of the value that formed the basis for determination of the value. The decisions relied upon by the respondent to support the contention sought to be raised are, therefore, of no benefit to them.

47. The general observations made the Commissioner (Appeals) in the impugned order that the value declared in the Bills of Entry were being enhanced uniformly by the Department for a considerable period of time was uncalled for. The Commissioner (Appeals) completely failed to advert to the crucial aspect that the importers had themselves accepted the enhanced value. The Commissioner (Appeals) in fact, proceeded to examine the matter as if the assessing officer had enhanced the declared value on the basis of other factors and not on the acceptance by the importers.

This casual observation is not based on the factual position that emerges from the records of the case.

48. Thus, for all the reasons above, the Commissioner (Appeals) was not justified in setting aside the orders passed by the assessing officer on the Bills of Entry.

49. When on merits it has been found that the Commissioner (Appeals) committed an error in allowing the appeals, it is not necessary to decide whether the appeals against the accepted transaction value were maintainable or not.

50. All the 36 orders passed by the Commissioner (Appeals) that have been impugned, therefore, deserve to be set aside and are, accordingly, set aside and the 36 Appeals filed by the Commissioner of Customs are **allowed**.

(Order pronounced in the open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

JB/Babita