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CESTAT Bangalore set aside the re-determined valuation

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Bangalore Bench, has ruled in favor of M/s Saash Enterprises, setting aside a customs order that had rejected the declared transaction value of imported laminators, binding machines, and related equipment. The Tribunal quashed the re-determined valuation, confiscation, penalty, and fine imposed by the lower authorities.

Case Background:

- The case involved Bill of Entry No. 8730452 dated 11.12.2012 for goods including laminators, wire binding machines, and paper cutters.
- Although the physical description and quantity of the goods matched the import documentation, the customs authorities questioned the declared value and engaged a Chartered Engineer, who estimated a value of USD 69,021 against the declared USD 55,142.06.
- Based on this, customs re-valued the consignment to ₹46.43 lakhs (from ₹30.96 lakhs) and imposed:
 - Redemption fine of ₹5,00,000
 - Penalty of ₹2,00,000 under Section 112(a) of the Customs Act, 1962

Appellant's Grounds:

- Goods were assessed and duty of ₹8.23 lakhs was paid on the same day.
- Invoice discrepancy was due to mistaken stamping by a sister concern and was later clarified.

- Customs rejected transaction value without following the Customs Valuation Rules, 2007.
- Cross-examination of the Chartered Engineer was denied, violating principles of natural justice.
- Cited Eicher Tractors Ltd. (SC) and Century Metal Recycling (SC): mere suspicion is not enough to reject transaction value without evidence of extra payment.

Tribunal's Observations:

- No irregularity in quantity or product description.
- No evidence of extra payment or dual invoicing.
- Chartered Engineer's valuation lacked transparent methodology.
- No legal basis provided for rejecting declared value under Section 14 of Customs Act and Rule 12 of the Valuation Rules.
- Emails and retracted statements were unsubstantiated and inconclusive.

Final Decision:

- The Tribunal set aside the re-determined valuation.
- Quashed the redemption fine and penalty.
- Allowed the appeal with consequential relief.

Significance:

- Reinforces the principle that transaction value is sacrosanct unless rejection is backed by evidence of undervaluation.
- Highlights the need to follow Customs Valuation Rules strictly.
- Affirms that procedural lapses like denial of cross-examination vitiate adjudication.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Bangalore

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21143 of 2015

(Arising out of Order-in-Appeal No. COC-CUSTOM-000-APP-432-14-15 dated 19.02.2015 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Saash Enterprises

0-41/786 (New-LXIV),
1539, C.P. Ummer Road,
Ernakulam - 682 035.
KERALA

Appellant(s)

VERSUS

The Commissioner of Customs,

Custom House,
Cochin - 682 009.

Respondent(s)

APPEARANCE:

Shri Baby M.A., Advocate for the Appellant

Shri K.A. Jathin, Authorised Representative for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

Final Order No. 20510 / 2024

DATE OF HEARING: 29.05.2024

DATE OF DECISION: 27.06.2024

PER : R. BHAGYA DEVI

The appellant, M/s. Saash Enterprises, filed a Bill of Entry No.8730452 dated 11.12.2012 for clearance of different items such as laminators, wire binding machines, paper cutters, etc., along with Bill of Lading, commercial invoice, packing list, certificate of origin and a document with the description of the goods imported. The consignment was examined and the inventory of items which was declared was found to be correct,

however, the department doubted the value and engaged a Chartered Engineer to determine the correct value. The Chartered Engineer estimated the value to be USD 69,021 as against the declared C & F value of USD 55,142.06. Investigations also revealed that there were different invoices for identical sets of items where the buyer and the seller were the same and each of the invoices had declared different values. Thus, based on the investigations and various statements, the original authority rejected the declared value in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and refixed the value at Rs.46,43,362/- as against declared value of Rs.30,96,158/-. The goods were held to be liable for confiscation in terms of section 111(d) of the Customs Act, 1962 and an option was given to redeem the goods on payment of fine of Rs.5,00,000/- and a penalty of Rs.2,00,000/- was imposed on the appellant under section 112(a) of the Customs Act 1962. This order was upheld by the Commissioner (Appeals) holding that the appellant had manipulated invoice and mis-declared the actual value. Against this impugned order, the appeal is filed.

2. The learned counsel submits that large number of items were imported and the customs did not find any irregularity either in the description of the items or in the quantity of these items. It was further submitted that the goods were assessed on 11/12/2012 and based on the assessment, the duty of Rs.8,23,250/- was paid on the same day. On 14/12/2012, the consignments were opened and examined; and the preventive officers found that the commercial invoice filed along with the consignment was issued by M/s. Masaki Corporation (Hong Kong) Ltd. but was signed by M/s. REEM International (Hong Kong) Ltd. After recording various statements from the appellant, it was held that the goods were undervalued and the department redetermined the value based on the Chartered Engineer examination. It is submitted that Section 14 of the Customs Act, 1962 which deals with valuation states that the

transaction value cannot be rejected without substantive reasons as is held by the Hon'ble Supreme Court in the case of **Eicher Tractors Ltd. versus Commissioner of Customs, Mumbai: 2000 (122) ELT 321 (S.C.)**.

2.1 He also argued that as per the Customs Valuation Rules, the assessment needs to be done as per the methods prescribed under these Rules. None of these methods have been followed and directly Chartered Engineer's evaluation is being accepted which is not in accordance with the Rules. It is also submitted that there is no evidence to show that the appellant had paid to the buyer any amount more than what is declared in the commercial invoice filed along with the consignment. The request for cross-examination of the Chartered Engineer was also denied and therefore, the allegations of misdeclaration and undervaluation cannot be accepted and the appeal needs to be allowed.

3. Per contra, the learned Authorised Representative for the Revenue has submitted that when the case was investigated, a statement was recorded from the proprietor of the appellant wherein he had stated that the commercial invoice had been altered; the service and freight charges incurred were not part of the invoice value and the value had been mis-declared to the extent of 50% of the actual value. And this statement was corroborated by the purchase order dated 8.10.2012 and various emails that were recovered during the investigation. Therefore, the value had to be re-determined and the recognised Chartered Engineer who had determined the value based on his inspection cannot be ignored.

4. Heard both sides. The Bill of Entry filed by the appellant was for 39 items such as laminators, wire binding machines, paper cutters, etc., and each item had different quantities as it is shown in the list given.

MASAKI CORPORATION(HONG KONG)LTD
ROOM 301 KAM ON BLDG 176 QUEEN'S ROAD CENTRAL CENTRAL HONG KONG

COMMERCIAL INVOICE

INVOICE NO : RMA-121113-116
SHIPMENT FROM : HUANGZHOU, CHINA
TO: M/S : SAASH ENTERPRISES, 41/786, C P UMMEER ROAD,
COCHIN, ERNAKULAM, INDIA. PIN : 682035

DATE: 13TH NOV, 2012
TO: COCHIN, INDIA

PA-223	FM 380 Laminator		pcs	40	256.00	10240.00	
	FM650 Laminator			15	504.00	7560.00	
	T 9029 Wire Binding machine		Nos	40	81.60	3264.00	
	T9027 Wire binding machine		Nos	25	62.40	1560.00	
	520# Paper cutter			4	1350.48	5401.92	
	Blade			4	28.94	115.76	
	- Display board			3	19.29	57.87	
	FM 380 Main Board			20	14.40	288.00	
	FM380 Display and Board			20	9.60	192.00	
	380 Laminator Heating Coll		Nos	30	1.44	43.20	
	Front Roller (up) FM 380			30	15.36	460.80	
	Front Roller (Down) FM 380			25	15.36	384.00	
	Bush FM380		set of 4	10	0.12	1.20	
	Bush FM 650		set of 4	15	0.12	1.80	
	Motor			10	8.16	81.60	
	Core Holder For Film	3'	set	25	0.77	19.25	
	Core Holder For Film	1'	set	25	0.48	12.00	
	Senser		Set	25	0.96	24.00	
	FM 650 Front Roller UP			15	19.20	288.00	
	FM650 roller	Down		10	19.20	192.00	
	FM 650 Heating Coll			20	1.72	34.60	
	380 Rod+plate		Set	25	2.56	76.80	
	650 Rod+plate		Set	25	2.56	76.80	
	650 Cold Laminator		Nos	12	207.00	2484.00	
	Cold laminator	1.3M	Nos	6	316.80	1900.80	
	Manual Paper Cutter 430 MM	858A3	Nos	40	75.00	3000.00	
	PA-248	Wire 6.4MM White		Box of 100 No	60	1.34	80.40
		wire 6.4MM Black		Box of 100 No	160	1.34	214.40
	PA-223A	Calander Hanger 12"	Black	Nos	100000	0.02	2000.00
			White	Nos	50000	0.02	1000.00
PA-242	Thermal Lamination Film	330 x 500 x 3" core	roll	500	7.91	3955.00	
		330 x 200 x 1" core	roll	200	3.31	662.00	
PA-240	PVC Holographic Film	1.27*30*100 Roll=3810Sq meter	Sq meter	3810	0.86	3276.60	
PA-249	Laminated Sheet		sheet	70	3.26	228.20	
PA-243	Stapler	S2072#	Nos	96	13.17	1305.60	
PA-115	Cover Binding machine	DC-100H	Nos	10	384.00	3840.00	
PA-250	Calander Hanger	60CM	Nos	2500	0.072	180.00	
		30CM	Nos	5000	0.045	230.00	
		Hook	Nos	15050	0.027	409.46	
GRAND TOTAL					177.975	55,142.06	

C&F COCHIN

SAY TOTAL USD\$ FIFTY FIVE THOUSAND ONE HUNDRED FORTY TWO AND SIX CENTS ONLY.

For and on behalf of
REFM INTERNATIONAL (H.K.) LTD
麗豐國際(香港)有限公司

Authorized Signature

This is the true copy of the document marked as Exhibit P- referred to in the above case.

Advocate

There is no dispute about the description or quantity of the items declared. The value is also declared as per the commercial invoice filed along with the Bill of Entry. On verification, the only objection seems to be that the commercial invoice filed along with the Bill of Entry was from the supplier M/s. Masaki

Corporation (Hong Kong) Ltd. but was signed by M/s. REEM International (Hong Kong) Ltd; based on which investigations were conducted and statements were taken. The appellant had placed on record a letter dated 17th December 2012 issued by M/s. Masaki Corporation (Hong Kong) Ltd., wherein it was stated that by mistake their sister concern M/s. REEM International (Hong Kong) Ltd.'s stamp was placed on the invoice generated by them. Emails recovered during investigation showed multiple invoices for the same set of goods where the buyer and supplier were one and the same. But there was nothing on record to prove that the amount paid to the buyer was more the value declared in the commercial invoice filed by the appellant along with the Bill of Entry. The statements have been retracted and the cross-examination of the Chartered Engineer has been denied, which is against the principles of natural justice.

5. The Hon'ble Supreme Court in the case of **Eicher Tractors Ltd.** (supra) has held as follows:

"22. In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis-description of the goods imported as was the case in *Padia Sales Corporation*. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value.

23. In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was not the "ordinary" sale price of the bearings imported".

6. The Hon'ble Supreme Court in the case of **Century Metal Recycling Pvt. Ltd. versus Union of India: 2019 (367) E.L.T. 3 (S.C.)** held that:

7. Section 14 has to be read with Rule 12 of the 2007 Rules. Rule 12 uses the expression '*the proper officer has reason to doubt the truth or accuracy of the value declared in relation to the imported goods*'. This expression is distinctly different from the words and preconditions imposed for rejecting the declared transactional value under the repealed Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 ('the 1988 Rules', for short) and the pre-amended Section 14(1) of the Act which were considered and interpreted by this Court in *Eicher Tractors Limited, Haryana v. Commissioner of Customs, Mumbai* [(2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.)]. In fact, the judgment in *Eicher Tractors Limited* (supra) had not considered Rule 10-A of the 1988 Rules enforced with effect from 19th February, 1998 as the imports therein related to the year 1993. Rule 10A brought the concept of 'reason to doubt the declared value' in place of special or extraordinary circumstances particularised in Rule 4(2) of the 1988 Rules. However, the interpretation given to Section 14(1) in *Eicher Tractors Limited* (supra) as to the meaning of the word '*payable*' used therein would be still applicable. The word '*payable*' used in Section 14(1) refers to the particular transaction and the payability in respect of 'the transaction'. It refers to the notional value, *albeit* the transaction value as declared in the bill of entry plus the amount which has to be added in terms of Rule 10 of the 2007 Rules.

11. The second proviso to Section 14(1) deals with different situations, enumerated under the three clauses; (i) when buyers and sellers are deemed to be related; (ii) when there is no sale, or buyers and sellers are related or the price is not the sole consideration for sale, etc. and (iii) where the proper officer has reason to doubt the truth or accuracy of such value. When the conditions specified in the second proviso are satisfied, the transactional value for the purpose of charging of Customs duty is to be made as per rules framed in this behalf.

12. Rules 3 and 12 of the 2007 Rules i.e., Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were enacted and enforced with effect from 10th October, 2007 replacing and superseding the 1988 Rules. Rule 3(1) of the 2007 Rules states that value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the 2007 Rules which Rule, as observed above, deals with the costs and services which are to be added to the price actually paid or payable for the imported goods for determining the transaction value. Sub-rule (1) to Rule 3 is however subject to Rule 12 and therefore give primacy to Rule 12 which we shall subsequently elaborate and explain. Sub-rule (2) to Rule 3 states that value of the imported goods under sub-rule (1) shall be accepted i.e. accepted by the Customs authorities. The proviso then vide different clauses sets out the pre-conditions for accepting value of the imported goods. Rule 11 provides for declaration to be given by the importer or his agent certifying that they had disclosed full and accurate details of the value of the imported goods and any other statement, information and document including invoice of the manufacturer or producer of the goods where the goods are imported from or through a person other than the manufacturer of goods, as considered necessary by the proper officer for valuation of the imported goods. Sub-rule (2) states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after an enquiry in consultation with the importers.”

7. Section 14 of the Customs Act, 1962 clearly stipulates that the transaction value has to be accepted unless there are compelling reasons to reject the same. Moreover, any transaction value to be rejected has to be done as per the Customs Valuation Rules. In the instant case, none of these has been followed. The goods have been examined by the Chartered Engineer and value is being redetermined without giving any reason of the methodology that was followed. It is surprising that there are 39 items in the consignment note and each item is different and each one of them has a different quantity and the value is being redetermined without any evidence as to how

each one of these items have been valued at. There was absolutely no methodology followed but randomly the total value is being redetermined, which appears to be absolutely against the Rule of Law. Moreover, the emails and the statements do not suggest that that any extra payment was made to the buyer by the appellant in excess of what has been declared in their commercial value; therefore, the question of enhancing the value based on some random emails and statements without any corroboration has no evidentiary value.

8. In view of the ratio laid down by the Hon'ble Supreme Court in the above referred decisions, we do not find any reason to uphold redetermination of the value. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Order pronounced in Open Court on 27.06.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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