ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 03.05.2025

CESTAT New Delhi- The reassessment was held to be invalid and legally unsustainable

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, ruled in favour of M/s Trina Steelcarb Pvt. Ltd., setting aside a reassessment order that enhanced the assessable value of imported goods without issuing a speaking order as mandated under Section 17(5) of the Customs Act, 1962.

CESTAT's Key Observations:

1. Violation of Section 17(5):

The Tribunal found that the assessing officer failed to issue a speaking order despite the reassessment being contrary to the importer's declared self-assessment and without written acceptance. Section 17(5) mandates issuance of a speaking order within 15 days in such cases.

2. Illegality of Value Loading:

The Tribunal held that:

- The so-called "loading" of value is not recognised under Section 14 of the Customs Act or Customs Valuation Rules, 2007.
- If transaction value is to be rejected, it must be done following Rule 12 of the Valuation Rules.
- Any reassessment must follow the sequential application of Rules 4 to 9, which was not done.

3. Improper Reliance on Case Law:

The Commissioner (Appeals) relied on the *Hanuman Prasad & Sons* case, where reassessment was explicitly accepted in writing. In Trina Steelcarb's case, no such written acceptance existed. Thus, the precedent was inapplicable.

Final Verdict:

- The reassessment was held to be without legal authority.
- The failure to issue a speaking order constituted a procedural illegality.
- The Commissioner (Appeals)'s order was set aside.
- Consequential relief was granted to the appellant.

Implications:

This judgment reinforces the statutory safeguards available to importers and underscores the importance of procedural compliance under Section 17(5). It serves as a clear warning against arbitrary customs valuation and misuse of power by assessing authorities.

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 New Delhi

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

CUSTOMS APPEAL NO. 51627 OF 2022

[Arising out of Order-in-Appeal No. CC(A) Cus/D-II/ICD-TKD/IMP/1733/2021-22 dated 10.02.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

TRINA STEELCARB PVT LTD **……APPELLANT**
BJ-113, West Shalimar Bagh,
New Delhi-110088

Vs.

COMMISSIONER, CUSTOMS-NEW DELHI(ICD TKD) **……RESPONDENT**
Inland Container Depot, TKD, New Delhi

Appearance:
Shri Anil Kumar, Advocate for the Appellant
Shri M.K. Shukla, Authorised Representative for the Respondent

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

FINAL ORDER NO. 50544 /2025

DATE OF HEARING : 07/04/2025
DATE OF DECISION : 30/04/2025

P.V. SUBBA RAO

1. The order dated 10.02.2022 passed by the Commissioner (Appeals) upholding the re-assessment to the Bill of Entry No. 9870054 dated 31.01.2019 by the Assessing Officer is assailed by M/s Trina Steelcarb Pvt Ltd.[1] in this appeal.

2. The appellant imported a consignment of Bucket Tooth from China and filed Bill of Entry dated 31.01.2019 declaring its transaction value of US$ 0.70 per kg for some goods and US$

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1 the appellant

0.665 per kg for certain other goods. The Assessing Officer re-assessed the Bill of Entry after loading and enhancing the value to US$ 1 per kg. The appellant paid customs duty on the enhanced value and cleared the consignment. The appellant had not accepted the re-assessment in writing and, therefore, as per section 17 (5) of the Customs Act, 1962[2], the assessing Officer was required to issue a speaking order within 15 days and he did not do so.

3. Aggrieved by the Bill of Entry, the appellant filed an appeal before the Commissioner (Appeals), New Delhi who, by the impugned order, rejected the appeal and upheld the re-assessment by the Assessing Officer. The reasons for rejecting the appeal were recorded by the Commissioner (Appeals) in paragraph 5.2, 5.3 and 5.4 of the impugned order which are reproduced as below:

> "5.2 In this case the appellant is contesting the assessment of the impugned Bill of Entry at the enhanced value.
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> 5.3 On going through the records, I find that duty on enhanced value was paid by the appellant without any protest. Though at the time of personal hearing, the appellant submitted that duty was paid under protest and they would submit evidence to this effect in a week's time, the appellant has not produced/submitted any evidence regarding payment of duty under protest in respect to the said Bill of Entry till date. From this it can be deduced that the appellant has no document to support their contention. This shows that no protest was lodged and enhanced duty was paid voluntarily by them. There is no protest lodged with the department regarding payment of duty on enhanced value. Further, no correspondences have been brought on record by the appellant that they had challenged the value enhancement with the Assessing Officer. Thus, to contest the voluntarily accepted value enhancement at this forum is devoid of merits and lacks any force.
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> 5.4 In view of the admittance of the enhanced value by the appellant, the facts of the case are different from the case cited by them and thus, I find that ratio of said case law is not applicable in this case. It was their acceptance of the enhanced value that formed the basis for re-determination of the value. The decision relied upon by the appellant to support the

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2 the Act

> contention sought to be raised are, therefore, of no benefit to them. Thus, I am of the considered view that in view of the facts of the case, the challenge to the enhanced value does not sustain. My above view finds consonance with the decision of Hon'ble CESTAT, Principal Bench New Delhi in Commissioner of Customs vs. M/s Hanuman Prasad & Sons[2021-TIOL-30-CESTAT-DEL.]. Thus, the appeal is devoid of merits and enhanced value is liable to be accepted for the said Bill of Entry".

4. We have heard learned counsel for the appellant and the learned authorized representative appearing for the department and perused the records.

5. The facts of the case are that the Assessing Officer enhanced the value from US$ 0.70 per kg for certain goods and US$ 0.665 per kg for certain other goods to US$ 1 per kg. There is nothing on record to show that the appellant had either accepted the enhancement and consequential re-assessment or given any letter to that effect. The Commissioner (Appeals) erred in concluding that since the appellant had paid the duty as per the re-assessment without recording protest, that implies that the appellant voluntarily accepted the value enhancement. There is no basis for such a presumption. Once the goods are assessed or re-assessed, the importer has to pay duty as per the assessment to clear the goods. The appellant had done so. As far as the assessing Officer is concerned, if he re-assessed the Bill of Entry differently than as per the self-assessment by the importer, he was bound to issue a speaking order within 15 days as per section 17(5) of the Act which reads as follows:

> "Section 17(5): Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking

> order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be."

6. The Assessing Officer committed a grave error in not issuing the speaking order because there is nothing on record to show that the appellant had accepted the re-assessment in writing. The reliance placed by the Commissioner (Appeals) on the order of this Tribunal in case of **Commissioner of Customs** vs. **Hanuman Prasad & Sons**[3] is highly mis-placed. In that case, the assessee had accepted the re-assessment in writing and, therefore, no speaking order was issued. We had, therefore, held in that case that the assessing Officer was correct in not issuing a speaking order.

7. Even on merits, the Commissioner (Appeals) recorded in the impugned order that the Assessing Officer had "loaded the value". Neither section 14 of the Customs Act nor the Customs Valuation Rules provide for any "loading of value" by the Assessing Officer. The transaction value shall be the assessable value unless it is rejected following the procedure prescribed under Rule 12. If it is so rejected, when the value should be re-determined sequentially following rules 4 to rule 9 of the Valuation Rules. None of these Rules or Section 14 empower the Assessing Officer to load the value.

8. Therefore, the re-assessment of the Bill of Entry by the Assessing Officer was without any authority of law and he also committed an illegality in not issuing a Speaking Order as mandated under section 17(5) of the Act. The impugned order of

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the Commissioner (Appeals) wrongly upheld such re-assessment. Therefore, it cannot be sustained. The appeal is allowed and the impugned order is set aside along with the re-assessment of the Bill of Entry by the assessing Officer. The appellant will be entitled to consequential relief.

[Order pronounced on **30/04/2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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