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Date: 02.05.2025

CESTAT New Delhi- SVB Loading Rejected as Legally Unsustainable

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, allowed the appeal of M/s Rays Engineering Works against the re-assessment of customs duty on imported goods. The Tribunal held that the enhancement of assessable value based on 13% "SVB loading" was illegal and violative of Section 17(5) of the Customs Act, 1962.

Background:

- The appellant declared the value of goods at US\$ 1.25/kg for slew gear and US\$ 0.67/kg for bucket tooth.
- The Assessing Officer enhanced the declared value by 13% citing SVB loading, without issuing a speaking order under Section 17(5).
- Appellant paid the enhanced duty but did not provide written acceptance of the reassessment.

Legal Submissions by Appellant:

- Comparable imports at the same time were at similar or lower prices.
- No contemporaneous import data or evidence was provided by the department.
- The transaction value was genuine and between unrelated parties.
- No extra payment was made to the supplier beyond the declared value.

Tribunal's Key Findings:

1. Violation of Section 17(5):

- No speaking order was issued despite no written acceptance by the importer.
- Section 17(5) mandates that a reasoned order be passed within 15 days where the reassessment differs from self-assessment.

2. Improper Use of SVB Loading:

- Tribunal noted that "SVB loading" has no basis in law under the Customs Act or Valuation Rules.
- Value enhancement must be justified under the Customs Valuation Rules, 2007, following a sequential method as per Rules 4 to 9.
- No reasons for rejecting the declared transaction value were recorded.

3. Distinction from Hanuman Prasad & Sons Case:

- The department relied on the *Hanuman Prasad* case, where reassessment was accepted in writing.
- Tribunal clarified that in the present case, no such acceptance was given, making the legal basis for reassessment flawed.

Final Order:

- The re-assessment based on SVB loading was set aside.
- The order of the Commissioner (Appeals) was quashed.
- Full consequential relief granted to the appellant.

Implications:

This judgment reinforces due process in customs reassessment procedures and highlights the illegality of arbitrary value enhancements without statutory backing. It underscores the need for proper justification, application of Valuation Rules, and adherence to Section 17(5).

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

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Write to us at office@aadrikaalaw.com

Tel: +91-11-4999 2707 | +91-9999005379

www.aadrikaalaw.com

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

CUSTOMS APPEAL NO. 51634 OF 2022

[Arising out of Order-in-Appeal No. CC(A)CUS/D-II/ICD-TKD/1734/2021-22 dated 10.02.2022 passed by the Commissioner of Customs (Appeal), New Delhi]

RAYS ENGINEERING WORKS

.....APPELLANT

BJ-113, West Shalimar Bagh,
New Delhi-110088

Vs.

**COMMISSIONER OF CUSTOMS- NEW
DELHI(ICD TKD)**

.....RESPONDENT

Inland Container Depot,
Tughlakabad, New Delhi

Appearance:

Present for the Appellant : Shri Anil Kumar, Advocate

Present for the Respondent: Shri M.K. Shukla, Authorised Representative

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50542 /2025

Date of Hearing : 07/04/2025

Date of Decision: 30/04/2025

P.V. SUBBA RAO

1. M/s Rays Engineering Works,¹ filed this appeal to assail the order-in-appeal dated 10.02.2022 passed by the Commissioner of Customs (Appeals), New Delhi whereby he upheld the assessment of the Bill of Entry No. 9943472 dated 05.02.2019 by the Assessing Officer and rejected the appellant's appeal.

1 the appellant

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

3. The appellant imported a consignment of Slew Gear and Bucket Tooth from China and filed Bill of Entry dated 05.02.2019 declaring assessable value of US\$ 1.250 per kg in respect of slew gear and US\$ 0.67 per kg in respect of Bucket Tooth. The Assessing Officer re-assessed the Bill of Entry by enhancing the value at the rate of 13% "on account of SVB loading". The appellant paid customs duty on the enhanced value and cleared the consignment. The assessing officer did not issue a speaking order as required under section 17(5) of the Customs Act, 1962² which mandates that "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 a case may, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the Bill of Entry or the Shipping Bill, as a case may be."

4. Despite the explicit provisions and the fact that the appellant had not given its acceptance in writing, the assessing officer did not issue a speaking order.

5. Aggrieved by the re-assessment, the appellant filed appeal dated 18.04.2019 before the Commissioner (Appeals) on various grounds including that:

- (i) the prices at which other importers imported identical items from the same companies at or about the same time were either comparable to or less than the declared values;
- (ii) No import data of contemporaneous import was produced by the department to indicate that the appellant had mis-declared the value of imports;
- (iii) Duty of imported goods should be charged on the transaction value of the goods and the value declared by them was the transaction value of the goods;
- (iv) The supplier of the goods and the appellant were not related persons; and
- (v) There is no evidence on record that any amount in excess of what has been declared was paid by the appellant to the supplier and there was no ground to reject the transaction value.

6. Personal hearing was held by the Commissioner (Appeals) on 07.12.2021 during which the appellant reiterated the above submissions.

7. The Commissioner (Appeals) rejected the appeal on the ground that "the Assessing Officer had enhanced the value at the

rate of 13 % on account of SVB loading” and that the duty on enhanced value was paid by the appellant without any protest. Therefore, the Commissioner concluded that the appellant had “admitted to enhanced value” and rejected the appellant’s appeal. He placed reliance on the decision of this Tribunal in **Commissioner of Customs vs. Hanuman Prasad & Sons**³.

8. The reliance placed by the Commissioner (Appeals) on **Hanuman Prasad** is completely mis-placed. In that case the importer had accepted in writing the re-assessment done by the proper officer and, therefore, it was held that the proper officer was not required to issue a speaking order as per section 17(5) of the Act. After accepting the re-assessment in writing, the importer had filed an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) set aside the re-assessment on the ground that no speaking order was passed. It is in that factual matrix that the order of this Tribunal in **Hanuman Prasad** held that once the importer gives in writing that he accepts the re-assessment, there was no need for the proper officer to issue a speaking order. Therefore, it was held that the Commissioner (Appeals) had erred in setting aside the re-assessment on the ground that no speaking order was passed.

9. This case is different inasmuch as the appellant had not given its acceptance of the re-assessment in writing. Unless said written acceptance is given by the appellant, the proper officer was duty bound to issue a speaking order within 15 days as per section 17 (5) and the Assessing Officer did not issue a speaking order.

10. Coming to the merits of the re-assessment itself, as per Section 14 of the Customs Act, the assessable value shall be the transaction value for import at the time and place of importation i.e, the CIF value of the imported goods. Transaction value is the price paid or payable by the importer for the goods. However, Section 14 itself provides for some exceptions and empowers the Government to frame rules to deal with such situations. The Customs (Determination of value of Imported Goods) Rules, 2007⁴ provide for rejection of the transaction value by the proper officer under certain circumstances and re-determination of the assessable value through some other methods if the transaction value is rejected. As per Rule 9, if the proper officer has reason to doubt the truth or accuracy of the transaction value he can call for further information. If no information is provided or after considering the information which has been provided, if the proper officer still has a reasonable doubt about the truth and accuracy of the transaction value it can be rejected. Rule 12 reads as follows:

“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.”

11. If the transaction value is rejected then the value should be determined sequentially through Rules 4 to 9.

12. In this case no reasons for rejection of transaction value were recorded at all by the Commissioner (Appeals) or by the proper officer. Further, the re-determination of the value was also not done through any of the Valuation Rules indicated, let alone following the Valuation Rules sequentially.

13. According to the impugned order, the value was loaded at the rate of 13 per cent "on account of SVB loading". We find that there is no provision either in the Customs Act or in the valuation rules called "SVB loading".

14. Therefore, the re-assessment of the Bill of Entry by the Assessing Officer was without any authority of law and also contrary to the provision of section 17 (5). The Commissioner (Appeals) committed an illegality in upholding such re-assessment.

15. In view of above, the impugned order as well as the re-assessment to the Bill of Entry by the Assessing Officer are set aside with consequential relief to the appellant.

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

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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