ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 19.06.2025

CESTAT Bangalore Reiterates Burden of Proof on Revenue in Valuation Disputes

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Bangalore Bench, allowed the appeals filed by M/s Kottaram Trading Co. and its partner, effectively setting aside customs duty demands, interest, and penalties arising out of allegations of undervaluation in the import of opal glassware.

Background of the Case

Kottaram Trading had imported 53 consignments of opal glassware from M/s ARC International Middle East LLC, UAE, between July 2003 and August 2006. The Directorate initiated proceedings in 2006, alleging undervaluation and invoking Section 114A and Section 112(a) of the Customs Act, 1962.

The adjudicating authority re-determined the value from ₹4.97 crore to ₹7.32 crore and raised a differential duty demand of ₹72.91 lakh, imposing equivalent penalties.

Earlier Tribunal Decision and Remand

CESTAT, in an earlier round (2009), had remanded the matter back to the adjudicating authority, citing that the transaction value was rejected without proper reasoning and the evidence of contemporaneous imports was summarily dismissed. The Tribunal had emphasized that market penetration strategies and discounts offered by foreign suppliers needed proper appreciation.

Arguments Presented

Counsel for the appellant highlighted that:

- The valuation was based entirely on price lists and quotations, not on actual contemporaneous import values.
- No additional consideration or flow-back of money beyond invoice value was proven.
- Discounts were justified due to initial market entry pricing strategies, corroborated by foreign supplier agreements.
- The remittances were made through proper banking channels (LC/bank transfer), refuting any allegation of under-the-table payments.

Relevant Supreme Court precedents including *Eicher Tractors*, *Mirah Exports*, and *Metal Box India* were cited to assert that burden of proving undervaluation lies solely on the Revenue, and rejection of transaction value must meet the threshold under Rule 3(2) of the Customs Valuation Rules, 2007.

CESTAT Findings

CESTAT Bangalore noted:

- The adjudicating authority failed to independently verify contemporaneous import records and did not call for DG (Systems) data as directed.
- There was no evidence of overpayment, remittances through alternate channels, or parallel invoicing.
- Revenue could not rebut the declared value with credible transaction-specific evidence.

In light of these findings, the transaction value was upheld, and the Tribunal set aside the demand and penalties.

Implications

This judgment reaffirms critical legal principles regarding:

- Primacy of declared transaction value under Customs Valuation Rules.
- Limited powers of the Revenue to reject invoice value absent direct and cogent evidence.
- Protection for importers following legitimate market-based pricing strategies.

This case provides a valuable precedent for importers facing arbitrary value rejections and underscores the importance of procedural fairness in customs 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

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

BANGALORE

REGIONAL BENCH - COURT No.-2

Customs Appeal No.1237 of 2010

(Arising out of Order-In-Original No.02/2010 dated 31/03/2010 passed by Commissioner of Customs, Cochin)

M/s Kottaram Trading Co. **.....Appellant**
Mathewsons Building
Payyapilly Road, Koch-35

VERSUS

Commissioner of Customs, Cochin **....Respondent**
Customs House Cochin 682009

AND

Customs Appeal No.1238 of 2010

(Arising out of Order-In-Original No.02/2010 dated 31/03/2010 passed by Commissioner of Customs, Cochin)

Mr. Anthony Thomas, Partner **.....Appellant**
M/s Kottaram Trading Co.
Mathewsons Building
Payyapilly Road, Koch-35

VERSUS

Commissioner of Customs, Cochin **....Respondent**
Customs House Cochin 682009

APPEARANCE:

Mr. M. Balagopal, Advocate for the Appellant

Mr. P. Saravana Perumal, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)

HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO.20792-20793/2023

DATE OF HEARING : 20.07.2023

DATE OF DECISION : 09.08.2023

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding valuation of imported goods. From July 2003 till August 2006, the appellant had imported 53 consignments of Opal glassware manufactured by M/s ARC International Middle East LLC, UEA formerly known as M/s RAK Glass LLC. Goods were cleared on payment of customs duty. On 1.6.2006, alleging that the appellant had resorted to undervaluation of the imported goods leading to significant customs duty evasion, proceedings were initiated. The Adjudication Authority vide Order dated 28.02.2008 confirmed the allegations made against the appellants and re-determined the value of the goods imported under 53 Bill of Entry to Rs.7,32,47,482/- against declared value of Rs.4,97,68,335/- and confirmed demand of differential duty of Rs.72,91,775/-with interest. The Adjudication Authority also imposed penalty of Rs.72,91,775/- under section 114A of the Customs Act 1962 and imposed penalty of Rs.10 lakhs on appellant Shri Antony Thomas under Section 112(a) of the Customs Act, 1962. Aggrieved by the said Order-In-Original, appellant filed appeal before this Tribunal

and after considering the issue in detail, this Tribunal vide Final Order Number 760 & 761 of 2009 dated 17.06.2009 observed that the entire finding is based on the statement given by Managing partner. It is also held that the finding portion of the evidences does not deal anything about revaluation of goods after rejecting the invoice value. This Tribunal also observed

> ***5.*** *We have considered the submissions made in detail by both sides and perused the records. The entire case is regarding the undervaluation of 53 consignments of 'opal glassware' imported by the appellant. The details of the imports are given in the show cause notice as Annexure-A. On the perusal of the Order-in-Original, we find that the entire Order-in-Original is discussing only the statement given by the Managing Partner. In the findings portion on the evidences, we find that it does not deal anything about revaluation of the goods after rejecting the invoice value. We are unable to understand the logic of coming to a conclusion of undervaluation, without rejecting the transaction value.*
>
> ***5.1*** *Be that as it may the Adjudicating Authority has come to the conclusion that the partner of the firm has not retracted his statements and hence, they cannot dispute the authenticity of the documents resumed during the search of the premises. We find that the main thrust of the entire Order-in-Original was based upon the proforma invoices, quotations and pricelists recovered from the premises of the appellant company. The explanations given by the partner in his statements are not at all considered by the Adjudicating Authority. It is his finding that "I also find that the noticees could not offer any satisfactory explanation for the abnormal discount other than the market penetration". This seems to be misconceived, as we find that the very same statement, admits that initially higher discounts were offered by the foreign supplier for the market*

penetrations, subsequently the prices were to be increased. Though, this is noted by the Adjudicating Authority in his Order-in-Original, he has not given any findings why this part of statement cannot be relied upon wherein there is a categorical admission that transaction value will be increased in subsequent consignments. In this case, the finding of the Adjudicating Authority is that re-determination can be done under Rule 5 to 8, occurs only in cases when the actual transaction value cannot be ascertained correctly on the basis of the documents submitted. It is also noticed that in this case, the submissions made by the appellant before the learned Adjudicating Authority, as regards the amount of remittances made by them is exactly the same which is mentioned in the invoices, which were annexed along with the 53 bills of entries. This part of the evidence has not been appreciated by the learned Adjudicating Authority nor has he given any findings on this point. Further, we also find that the Adjudicating Authority has not at all given any findings as regards the contemporaneous import evidences produced by the appellants. In this case, we find that the Adjudicating Authority has summarily dismissed the evidence of contemporaneous imports which were produced by the appellant by observing as under :

"I hold since the documents purportedly showing the value of contemporaneous imports being unauthenticated and unsigned cannot be accepted as an evidence."

We find this is totally irregular. The contemporaneous import details which were produced before us clearly indicate the port of import, bill of entry number, bill of entry date, country of origin, imported items, quantity and declared value of the appellant during the relevant period. The said statement which was produced by the

learned counsel before us would indicate that there were contemporaneous imports during the relevant period and the prices on those bills of entries more or less match. In the absence of any findings given by the learned Adjudicating Authority on this ground, we would not wish to go into the intricacies of appreciating the evidences.

5.2 *In view of this, we find that the impugned order is not a speaking order. It is silent on many of the contentions raised by the appellants and has also not considered the binding decisions submitted by the appellant before him, more specifically the judgment of Hon'ble Supreme Court in the case of Mirah International (supra). It is a settled law that the evidence of contemporaneous import value has to be produced by the revenue to bring home charge of undervaluation. In this case, the appellants having produced the evidence of contemporaneous imports, it should have been appreciated property by the Adjudicating Authority instead of dismissing it summarily.*

5.3 *In sum, we find that appreciation of evidence needs to be done by the Adjudicating Authority. In view of this, we set aside the impugned order and remand the matter back to the Adjudicating Authority to reconsider the issue afresh, after appreciating the evidences which may be led by the appellant before him. It is needless to mention that a conclusion be reached only after granting an opportunity of personal hearing. Appeals are allowed by way of remand.*

2. As per ibid final order, this Tribunal remanded the matter with an observation that the explanations given by the Managing partner in his statements are not at all considered by the Adjudication Authority. Further this Tribunal also observed that in spite of giving details of contemporaneous import, no finding is

given by the Adjudication Authority and the Adjudication Authority has summarily dismissed the evidence of contemporaneous import on the ground that the document purportedly showing the value of contemporaneous import being unauthenticated & unsigned. This Tribunal held that the said finding is totally irregular and cannot be accepted. When an importer had produced details like port of import, Bill of Entry number, date, country of origin, imported items etc. for the relevant period, there were reason to believe that these are contemporaneous import and the prices on those Bill of Entries are more or less matching. Thus considering the above observations and also following the Judgment of Hon'ble Supreme Court in the case of **Mirah Exports Pvt Ltd Vs CC (Reported in 1998 (98) ELT 3 SC** the matter was remanded for appreciation of evidence to reconsider the issue of afresh.

3. On remand for *de-novo* adjudication, the Adjudicating Authority vide impugned Order-In-Original dated 31.03.2010 confirmed demand of duty, interest and penalty. Learned Counsel appearing on behalf of the appellant submitted that the scope of *de novo* adjudication was limited to comparing the details of contemporaneous import and to assess the value. The learned counsel draws our attention to the judgment of Hon'ble High Court of Mumbai in the matter of **Commission of Customs (EP) versus National Steel & Agro Industries Ltd. reported in 2015 (322) ELT 690 (Bom.)**

> ***"4.*** *We have with the assistance of learned counsel appearing for the parties perused the order passed on 28th February, 2012 by the Commissioner of Customs (EP), New Customs House, Mumbai. We have also perused the order passed by the Tribunal and impugned in this appeal. The Tribunal had clearly concluded the issue that the activity of the respondent-assessee could be termed as "manufacture". In these circumstances, the only limited issue and which was being dealt with by*

the Tribunal is whether the assessee has produced documents to satisfy that the imported materials under the Advance Licensing Scheme have been correctly utilised as per the terms and conditions of the scheme read with relevant notifications."

Maintained in 2015 (323) ELT A79 (Supreme Court)

Thus the counsel for the appellant submitted that the impugned order is issued in total violation of the directions of this Hon'ble Tribunal.

4. Regarding allegation of undervaluation, Learned Counsel further submits that law is well settled that the burden of proving the charge of undervaluation is on the revenue by bringing on record cogent evidence of contemporary import, repatriation of extra money, existence of parallel invoices, admission of import etc. However, in the appellant's case there was no such evidence available on record to sustain the finding regarding undervaluation

5 Regarding discounts offered to appellant, Learned counsel submitted that there is no difference in the prices reflected in performa and commercial invoices. It is given based on the price list of the supplier and the counsel submitted that it is well settled that quotation/pricelist of the supplier cannot be the basis for customs valuation. The price was mutually agreed after negotiation with a view to market penetration and to compete with Chinese opal products. As per the terms of the agreement, the price of the item imported was increased progressively and to reach the normal discount offered by foreign suppliers from UAE in the year 2006. Ld Counsel for the appellant further submitted that this Tribunal while issuing the order (supra) found that the statement given by the Managing partner is sufficient to justify the discount availed by the appellant compared to price list of the supplier.

6. Regarding statement recorded under section 108 of the Customs act, 1962, from the Managing partner of the appellant, The Learned Council draw our attention to the statements dated 06.09.2006, 07.9.2006 and 22.02.2007 and submitted that finding in para 11 of the impugned order that a fabricated price mutually agreed by appellant and overseas supplier is factually wrong. From the said statements, no such presumption can be drawn that the Managing partner had made an admission regarding undervaluation. He only stated that the price is mutually agreed by the importer with overseas supplier. Partner of the appellant had never made any admission either with respect to the under-valuation or with respect to flow back of funds/repatriation of extra payments over and above the invoice value. There was not even a single question put up to the Managing partner or any other responsible person of the appellant regarding the mode of transferring excess payment to substantiate the allegation of undervaluation. With respect to the findings in impugned order on foreign remittance made by the appellant, it is submitted that such findings are totally extraneous to the allegations made out in the Show Cause Notice. Moreover, all such payments were either by way of LC or by way of Bank Remittance. It is a common knowledge that no person will or can repatriate unaccounted money by way of LC or bank transfer. Therefore, also such findings have no logic or is sustainable in facts or in law. when there are no evidence with respect to the under-valuation either by way of admission or by way of evidence regarding repatriation of extra payment or evidence of contemporaneous imports, the revenue cannot bring home the charge of under-valuation.

7. To substantiate the above submissions, learned counsel draws our attention to following judgments/final order.

(a) Hon'ble Supreme Court in **Eicher Tractors Ltd. v. Commissioner of Customs, 2000 (122) E.L.T. 321**

(S.C.) has clearly held that neither Section 14(1) nor the Valuation Rules allow determination of the ordinary international value of the imported goods on the basis of date other than the price actually paid for the goods. There is no allegation nor finding that anything more than the price declared of the subject imported goods have been paid in the instant case. Hence, transaction value as declared, cannot be rejected and the Commissioner has erred in law in doing so. The onus to establish undervaluation of the goods, which was and is on the Customs Authorities, and shifted to the appellant, by methods known to law and in a satisfactory manner, as held by the Supreme Court in Sounds-N-Images v. Collector of Customs, 2000 (117) E.L.T. 538 (S.C.), cannot be said to have been satisfied in the instant case. Hence there is no justifiable legal basis or reason whatsoever not to accept the Transaction Value of the said goods declared by the appellant and determine the assessable value thereof on this basis.

(b) Hon'ble Supreme Court in **Mirah Exports Pvt. Ltd. Vs. Collector of Customs reported in 1998 (98) E.L.T. 3 (SC)** held that;

12. The legal position is well settled that the burden of proving a charge of under-valuation lies upon Revenue and Revenue has to produce the necessary evidence to prove the said charge. "Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs" and what is to be examined is "whether the revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the true sale price." [See : *Union of India* v. *Mahindra & Mahindra*, (supra),

(c) CC, Mumbai Vs. M/s. J.D. Orgochem Ltd. [2008 (226) E.L.T. 9 (SC)]

(d) Century Metal Recycling Pvt. Ltd. Vs. Union of India reported in 2019 (367) E.L.T. 3(SC),

(e) CCE & ST, Noida Vs. Sanjivini Non-Ferus Trading Pvt. Ltd. reported in 2019 (365) E.L.T. 3 (SC),

(f) **Qzurt Systems Pvt. Ltd. Versus Commissioner of Customs, Visakhapatnam reported in 2016 (332) E.L.T. 381 (Tri.-Bang.)**

(g) CC, Bangalore Vs. CMC Ltd. reported in 2016 (343) E.L.T 929 (Tri.-Bang.),

8. Learned D.R. reiterates the finding given by the Adjudication Authority and submitted that no comparison can be made between the price of goods claimed to be the contemporaneous import by the appellant with the goods imported by the appellant. Hence the Adjudication Authority has not adapted the details of contemporaneous import and proceed with assessment of the goods based on the statement recorded from the appellant.

9. We have gone through the submissions made by both the sides. Regarding the sustainability of *de-novo* adjudication the case law relied by the learned counsel in the case of Sony Impex V/s Commissioner of Central Excise, Customs reported in 2006 (202) E.L.T. 486 (Tri.-Kolkata) is not squarely covered in the present case. While remanding the matter this Tribunal has not directed the Adjudication Authority to consider any specific ground but directed to reconsider the issue afresh. In such situation there is no infirmity in reopening the entire issue. However, the Adjudication Authority ought to have considered the findings given by this Tribunal regarding the sustainability of the finding regarding statement recorded from the Managing partner. Moreover in spite of furnishing details like port of import, Bill of Entry number, date, country of origin, imported items etc. for the relevant period and even after specific directions to consider the evidence produced by the appellant regarding contemporaneous

import by this Tribunal, no efforts were made by the Adjudication Authority to call for the records available in the data bank regarding said imports to verify the facts after sharing such information with appellant before de-novo adjudication. As regard the findings related to overseas remittance, the Adjudication Authority has stated that the importer did not produce statement covering the entire period of import. However, on perusal of the statement recorded from the Managing partner, no question were put to him regarding any overseas remittance and also during the investigation, no attempt was made by the investigating officer to find out remittance through any other source to cover the alleged undervaluation. The repatriation of the amount mentioned in the impugned order over and above 53 LC payment cannot be made as excess payment since no such payment can be made by way of LC or by way of bank remittance. Regarding assessable value of contemporaneous import, the value declared by the appellant during relevant time is higher than the value of contemporaneous imports. When there is no evidence with respect to the under-valuation either by way of admission or by way of evidence regarding repatriation of extra payment or evidence of contemporaneous imports, the revenue cannot bring home the charge of under-valuation. The Hon'ble Supreme Court in the case of ***Eicher Tractors* v. *CC* (supra)** held that the transaction value cannot be rejected unless the imports attract any of the exceptions noted in Rule 3(2) of Customs Valuation Rules, 2007. Revenue has not been able to establish that imported goods attracts exception noted in Rule 3(2) of Valuation Rules**.** Regarding trade discounts claimed by the appellant, this Tribunal in **Qzurt Systems Pvt. Ltd(supra)** considered the claimed discount at the range of 87% to 97% from the supplier's price list and following the judgment of Hon'ble Supreme Court in ***Mirah Exports Ltd.* v. *CC* [1998 (98) E.L.T. 3 (S.C.)] (supra)** and in ***Metal Box India Ltd.* [1995 (75) E.L.T. 449 (S.C.)] (supra)** held that, it is not unusual for foreign supplier to give a higher discount when imports are in much larger quantity and in such

cases, it cannot be said that there has been undervaluation in the invoice.

In the present appeals, we find that there has not been sufficient evidence with the Department to reject the transaction value. Hence appeals are allowed, penalty imposed on appellants are set aside with consequential relief if any.

(Order pronounced in the Open Court on **09.08.2023**)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Nihal