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CESTAT Delhi Sets Aside Confiscation and Penalties in Export Valuation Dispute



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The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, recently delivered a significant judgment in the case of *Emerald Overseas vs. Principal Commissioner of Customs* (Customs Appeal No. 51100 of 2022). This decision, dated October 1, 2025, addresses critical issues surrounding the valuation of export goods and the liability of such goods to confiscation under the Customs Act, 1962. The ruling provides much-needed clarity for exporters and customs authorities alike.

Background of the Case

Emerald Overseas, the appellant, had filed eight shipping bills on June 12, 2017, to export garments under a claim of drawback. The declared Free on Board (FOB) value of the goods was ₹4,00,54,751, with a corresponding drawback claim of ₹39,35,402.37. However, customs authorities suspected overvaluation of the goods to fraudulently claim a higher drawback. Following an investigation, the Additional Commissioner re-determined the FOB value to ₹61,36,200 and reduced the admissible drawback to ₹6,02,654. The goods were confiscated under Section 113(i) of the Customs Act, and penalties were imposed under Sections 114(iii) and 114AA.

The appellant challenged this decision, leading to the present appeal before the CESTAT.

Key Issues Addressed

The tribunal examined two pivotal questions:

1. Can the FOB value of export goods be re-determined by customs authorities under the Customs Valuation (Determination of Value of Export Goods) Rules, 2007?
2. Are export goods liable to confiscation under Section 113(i) of the Customs Act if their declared value does not match the value determined by customs authorities?

Tribunal's Observations and Ruling

1. Re-determination of FOB Value

The tribunal emphasized that the FOB value is a transaction value agreed upon between the buyer and the seller. It is not within the jurisdiction of customs authorities to modify this value. The FOB value forms the basis for calculating export incentives like drawback, and any re-determination by customs officers cannot override the transaction value.

The tribunal cited its earlier decision in *M/s Kritika Enterprises vs. Commissioner of Customs (Appeals)*, which held that the FOB value declared by the exporter cannot be altered by customs authorities.

2. Liability to Confiscation

Section 113(i) of the Customs Act provides for the confiscation of goods if their declared value does not correspond to the value determined by customs authorities. However, the tribunal clarified that exporters are obligated to declare the transaction value in their shipping bills. Since the appellant had declared the correct transaction value, the goods could not be deemed liable for confiscation merely because customs authorities determined a different value.

The tribunal further noted that penalties under Sections 114(i) and 114AA could not be sustained, as the appellant had not made any false declarations or omissions.

Final Decision

The tribunal set aside the confiscation of goods, the redemption fine, and the penalties imposed on Emerald Overseas. The appeal was allowed, providing consequential relief to the appellant.

Implications of the Judgment

This landmark ruling reinforces the principle that the transaction value declared by exporters is sacrosanct and cannot be arbitrarily re-determined by customs authorities. It also underscores the importance of adhering to the statutory framework while assessing the value of export goods.

For exporters, this decision provides clarity and assurance that their declared transaction value, if genuine, will be upheld. For customs authorities, it serves as a reminder to exercise caution and adhere to legal provisions while re-determining values and imposing penalties.

Conclusion

The *Emerald Overseas* judgment is a significant step toward ensuring fairness and transparency in export valuation and customs procedures. It highlights the need for a balanced approach that protects the interests of both exporters and the revenue department. This decision will undoubtedly serve as a guiding precedent for similar cases in the future.

Source: CESTAT Delhi

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

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 51100 OF 2022

(Arising out of Order-In-Appeal No. CC(A)/Customs/D-II/ICD/TKD/Export/1249/2020-21 dated 07.01.2021 passed by Commissioner of Customs (Appeals), New Customs House, New Delhi)

Emerald Overseas

House No. 16, Road No. 26,
East Punjabi Bagh,
New Delhi- 110026

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Appellant

Versus

Principal Commissioner, Customs

ICD, Tughlakabad, New Delhi

Respondent

APPEARANCE:

Shri Prem Ranjan Kumar, advocate for the appellant

Shri Rajesh Singh, authorised representative of the department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

Date of Hearing/Decision: October 01, 2025

FINAL ORDER NO. 51520/2025

P.V. SUBBA RAO:

M/s Emerald Overseas¹ filed this appeal to assail the order-in-appeal dated 07.01.2021 passed by the Commissioner of Customs (Appeals), New Delhi wherein he upheld the order-in-original dated 26.11.2018 passed by the Additional Commissioner and rejected the appellant's appeal. The Additional Commissioner had passed the order in pursuance of the show cause notice dated 14.12.2017 issued by the Directorate General of Revenue Intelligence².

1. the appellant

2. DRI

2. We have heard learned counsel for the appellant and learned authorised representative for the revenue and perused the records.

3. The facts of the case are that the appellant had filed eight Shipping Bills dated 12.06.2017 to export garments under claim of drawback. Suspecting the goods to be overvalued to fraudulently avail drawback at higher rate by the appellant, the exports were put on hold by the officers of the Inland Container Depot,³ Tughlakabad, New Delhi.

4. The declared value in these eight Shipping Bills was Rs. 4,00,54,751/- with drawback claim of Rs. 39,35,402.37/-. The goods were examined under a Panchnama dated 28.07.2017 and representative samples were also drawn. After examining the samples and their market price in the domestic market and conducting other investigation, the FOB values declared by the appellant were rejected by the Additional Commissioner and the total value in the eight Shipping Bills was re-determined as Rs. 61,36,200/- and the drawback admissible as Rs. 6,02,654/-. The Additional Commissioner also confiscated the goods under section 113(i) of the Customs Act, 1962⁴. As the goods had already been released, he imposed a redemption fine of Rs. 16,00,000/- in lieu of the confiscation under section 125 of the Act. He restricted the drawback payable Rs. 6,02,654/-. He also imposed penalties under section 114(iii) and 114AA of the Act.

5. Two short questions to be answered in this case are:

(i) whether the Free on Board⁵ value of the export goods can be re-determined by the proper officer under Customs Valuation

3. ICD
4. the Act
5. FOB

(Determination of Value of Export Goods) Rules, 2007⁶ based on the examination of goods and;

(ii) Whether the export goods which do not correspond to the value finally determined by the proper officer will be liable to confiscation on that ground under section 113(i) of the Act.

6. As far as the first question is concerned, we find that the Free on Board or FOB is one of the INCOTERMS- which are used in international commerce. These terms decide the costs, risks and liabilities of the buyer and the seller in any transaction. If goods are sold on FOB basis, the seller is responsible until the goods are put on Board the vessel or aircraft. All costs and risks thereafter are on the buyer's account.

7. Similarly if the goods are sold on C & F basis, the seller shall, in addition to the FOB value, be also responsible for the freight of the goods up to the destination. If goods are sold on CIF basis, the seller's responsibilities will also include the transit insurance. In other words, the cost of the goods, the freight and transit insurance upto destination are on the seller's account.

8. Thus FOB value, C&F value and CIF value are transaction values i.e., the price paid or payable by the buyer to the seller as consideration for the goods or FOB, C&F or CIF terms.

9. These are products of negotiation between the buyer and the seller. No stranger to the contract including any Customs officer can modify the FOB value (or C&F value or CIF value).

10. Since drawback is to be paid as a percentage of the FOB value and not as a percentage of the value determined by the officer under

6. Export Valuation Rules

the Customs Act, drawback should be paid as a percentage of FOB value regardless of what value the officer determines.

11. It must be noted that drawback and other export incentives come with a responsibility on the exporter to bring in remittance of the value of the export goods. This responsibility of the exporter will also be as per the transaction value (FOB, C&F or CIF) and not as per the value determined by the Customs Officer. For instance, if the transaction value of the goods is US\$ 1,000 and the Customs Officer re-determines the value under the Customs Act and Export Valuation Rules to US\$ 500, the exporter's obligation to obtain remittance of foreign exchange will be of US\$ 1,000 and it will not be US\$ 500 determined by the Customs Officer. The exporter will also be entitled to drawback and other incentives as a percentage of the FOB value of US\$ 1,000. It has been decided in a series of orders of this Tribunal that the FOB value of export goods cannot be re-determined by the proper officer. In **M/s Kritika Enterprises Vs. Commissioner of Customs (Appeals)** Final Order No. 50472/2025 dated 09.04.2024 also this view was taken.

12. The next question is of the liability of the export goods to confiscation. Section 113(i) reads as follows:

"The following export goods shall be liable to confiscation:

- (i) **any goods entered for exportation which do not correspond in respect of value** or in any material particular **with the entry made under this Act** or in the case of baggage with the declaration made under section 77;

****"

13. From the above, it is clear that if the goods do not correspond in value or in any other particular with the entry made under the Act,

they will be liable to confiscation. The "entry made under this Act" for exports is the Shipping Bills. The question which arises is what value the exporter can and must declare in the Shipping Bills. It is undisputed that the exporter had declared in these Shipping Bills the transaction value as per the invoices. It is not a case where any parallel set of invoices or the actual transaction value was discovered which was different from the declared value.

14. The case of the department is that the value of the export goods was much higher than the market value of the goods in domestic market and also much higher than the price at which the exporter had procured the goods and, therefore, the value can be re-determined by the officer under the Export Valuation Rules. It is true that it is open to the officer to re-determine the value under Export Valuation Rules. However, if it is held that goods will become liable to confiscation if the declaration in the Shipping Bill by the exporter does not correspond to the value which the officer may ultimately decide, it will result in absurd consequences because it is impossible for the exporter to anticipate if the proper officer would accept the transaction value as the value under section 14 or if he would reject the transaction value and re-determine the value following some other method and if so, what value he would determine.

15. It must be noted that as per rule 8 of the Export Valuation Rules, the transaction can only be rejected by the proper officer. Nothing in section 14 or in the Export Valuation Rules empowers the exporter to reject his own transaction value. Therefore, the only thing possible for the exporter to declare in the Shipping Bill is the transaction value. The exporter had declared the transaction value and there is no dispute about it. Simply because the officer

determined some other value different from the transaction value, the export goods will not be liable to confiscation under section 113(i) of the Act. The penalty under section 114(i) is for acts or omissions which rendered the goods liable to confiscation under section 113. Since the confiscation cannot be sustained, neither can the penalty under section 114(i). Penalty under section 114AA is knowingly or intentionally making false statements and declarations in transactions under the Act. The appellant had correctly declared his transaction value on FOB basis. Therefore, penalty under section 114AA also cannot be sustained.

16. In view of the above, we find in this case the confiscation of the goods under section 113(i), redemption fine under section 125 and the penalties under section 114(i) and 114AA cannot be sustained. The impugned order is set aside and the appeal is allowed with consequential relief to the appellant.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Kritika