

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

REGIONAL BENCH - COURT No. III

Customs Appeal No. 41046 of 2016

(Arising out of Order-in-Appeal C.Cus-I No.100/2016 dated 29.01.2016 passed by Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai 600 001)

M/s.HDFC Bank Ltd.

.... Appellant

Wholesale banking Operations, IV Floor,
NP, 115, Dr. R.K. Salai, Mylapore,
Chennai600 004.

VERSUS

The Commissioner of Customs

.... Respondent

Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Dinesh Kumar Agarwal, Consultant
for the Appellant

Ms. Rajni Menon, Authorized Representative
for the Respondent

CORAM :

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

FINAL ORDER No.41459/2025**DATE OF HEARING : 12.11.2025****DATE OF DECISION : 11.12.2025****Per: Shri P. Dinesha**

Brief facts which are relevant for our consideration as could be gathered from the Order-in-Original No.707/2015 (ADC) dated 25.08.2015, impugned Order-in-Appeal C.Cus-I No.100/2016 dated 29.01.2016 and upon hearing both the sides, are that HDFC Bank Ltd. [**Appellant**] had during the relevant period under dispute imported gold bars through their CHA and in the Bills of Entry they had declared a certain value therein. The Revenue under the pretext that due to change in rate of duty from specific duty to *ad valorem* as per Customs Notification No.02/2012 dated 16.01.2012 wanted to ascertain the correct transaction value as the Bills of Entry were assessed based on the declared value only and accordingly vide letter dated 30.03.2012 required the Importer-Appellant to furnish statement of sale of imported goods (Bills of Entry wise) to the buyers

indicating the details of sale price, actual remittances made to the suppliers apart from Customs Duty recovered, local tax including the contracts entered into with the foreign supplier of gold bars. It appears from the record that the Importer-Appellant furnished details through various letters dated. 09.10.2012, 19.10.2012 & 09.11.2012 and upon scrutiny of the same, it was ascertained that the amount actually remitted being higher than the value declared in the Bills of Entry in respect of gold bars covered under 7 Bills of Entry. The above prompted the Revenue to issue a Show Cause Notice dt. 31.10.2012 under Section 28 (1) of the Customs Act, 1962 proposing *inter alia* to demand differential duty in respect of the 7 Bills of Entry along with applicable interest.

2. It appears that the Adjudicating Authority after affording an opportunity of being heard considered the explanation filed by the Importer-Appellant herein and *vide* Order-in-Original No.707/2015 (ADC) dated 25.08.2015 confirmed the proposed demands in the SCN. Aggrieved by the same, the Importer appears to have approached the First Appellate Authority by filing an Appeal and the First Appellate Authority also *vide* impugned Order-in-Appeal C.Cus-I No.100/2016 dated 29.01.2016 having upheld the

demand thereby dismissing the Appeal, the present Appeal has been filed by the Importer-Appellant before this forum.

3. Heard Shri Dinesh Kumar Agarwal, Ld. Consultant for Appellant-Importer and Ms. Rajni Menon, Ld. Deputy Commissioner for the Respondent-Revenue. We have carefully perused the orders of lower authorities and we have also considered the documents placed in the Appeal record before us. Upon hearing both the sides, the only issue that arises for our consideration is, "whether the addition under the guise of short-payment of duty which related to the actual remittances made by the Appellant to its foreign suppliers as compared to the declared/transaction value at the time of import, is justified in law?"

4. Ld. Consultant would submit at the outset, that the authorities below have grossly erred in not appreciating the vital fact that there was no "sale" at the time of import of goods *vide* Bills of Entry since the transaction value was on a consignment basis; the property i.e. gold bars in question continued to vest with the foreign supplier, the sale actually took place on a later date after the import of the gold bars into India. He would refer to Section 14 of the Customs Act,

1962 which pertains to the valuation of goods, for the sake of convenience, the same is extracted herein below :

"SECTION 14. Valuation of goods. — (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as maybe specified in the rule made in this behalf:"*

He would invite our attention to the words "*price actually paid or payable for the goods when sold*" to contend that "sale" being the sole criteria for valuation of imported goods, which did not take place at the time of import itself. He would also refer to Rule 2 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('**CVR**') which defines "transaction value" to mean the value referred to in sub-section (1) of Section 14 of the Customs Act, 1962; also to Rule 3 which describes the determination of the method of valuation which is subject to Rule 12 to mean the value of imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10. It is his case that a harmonious reading of the above

provisions mandates that the transaction value of the goods is only determined when the goods are 'sold for export to India' and such price must be for delivery at the time and place of importation. Laying further emphasis on "sale", he invited our attention to the Advisory Opinion by the Technical Committee on Customs Valuation (constituted under the aegis of Article VII of the General Agreement on Trade & Tariffs (GATT) wherein the Advisory Opinion 1.1. described the concept of 'sale' as under :

Advisory Opinion 1.1. The Concept of 'Sale' in the Agreement

...

List of situations in which imported goods would not be deemed to have been the subject of a sale.

...

II. Goods imported on consignment

Under this trading practice, the goods are dispatched to the country of importation not as a result of a sale, but with the intention that they would be sold for the account of the supplier, at the best price obtainable. At the time of importation no sale has taken place.

5. Ld. Consultant would further submit that in terms of Rule 3 of CVR, if the imported goods comply with the requirements of Section 14 *ibid*, the value of imported goods for the purpose of levy to Customs duty would be

the transaction value subject to other conditions; on the other hand, if requirements of Section 14 are not satisfied, then only, recourse is to fall back to Rule 3(4) of CVR. He would thus contend that the proper officer has the power to reject the transaction value declared under Rule 3 in terms of Rule 12 of the CVR and hence, if the transaction value is rejected then the Department has to sequentially proceed through Rules 4 to 9 of CVR.

6. In the above background, he would draw our attention to the findings of the First Appellate Authority that *"... In such circumstances, the date on which the ownership is transferred to the Appellant and the place at which the goods were available at the subject time have to be deemed as the date and place of import..... It is also found that the date on which the ownership transfers to the Appellant has to be taken as the deemed date of importation...."*, to contend that the Commissioner has seriously erred in introducing a **deeming** fiction in Section 14 *ibid* which is not appearing in the statute itself and therefore, above conclusion is illogical. He would further contend that the Commissioner (Appeals) had proceeded on a wrong premise insofar as the taxable event is concerned since the sale of goods took place on a much

later date after import and consequently, the transaction value as prevailing on the date of import should be adopted if available, in terms of Section 14 *ibid*. In this regard, he has relied on (i) **Garden Silk Mills Ltd. Vs Union of India** - 1999 (113) ELT 368 (SC) (ii) **Kiran Spinning Mills Vs Collector of Customs** - 1999 (113) ELT 753 (SC) - in support of his contention that the taxable event would occur when the Customs barrier is crossed, any other event taking place cannot be deemed to be the taxable event of import.

7. In addition, the Id. Consultant also relied on 'Master Circular on Import of Goods and Services' issued by the Reserve Bank of India dated July 01, 2011 and invited our attention to Clause 12 which reads as under :

"C.12 Import of Gold / Platinum / Silver by Nominated Banks / Agencies

C.12.1 Import on consignment basis

Gold may be imported by the nominated agencies/banks on consignment basis where the ownership will remain with the supplier and the importer (consignee) will be acting as an agent of the supplier (consignor). Remittances towards the cost of import shall be made as and when sales take place and in terms of the provisions of agreement entered into between the overseas supplier and nominated agency/bank. These instructions would also apply to import of platinum and silver."

8. Taking shelter under the above circular, he would submit that in the case on hand there is no denial of the fact that the Appellant being a nominated bank, had imported gold on consignment basis, the ownership remained with the supplier; the Importer/Appellant acted as an agent of the supplier/consignor and hence, remittances towards the cost of import has been made as and when sales took place, which is also in terms of provisions of Agreement entered into between the Overseas Suppliers and the Appellant-Bank. In view of the above, he would submit that the impugned order which sustained the demand is not in accordance with law and hence, he prayed for setting aside the impugned order by allowing the Appeal.

9. *Per contra*, Ms. Rajni Menon, Ld. Dy. Commissioner supported the findings by the lower authorities. She also submitted that whole exercise was required due to the change in rate of duty from specific duty to *ad valorem* duty in terms of Customs Notification No.02/2012 *ibid* and, in any case, the Appellant has not denied the fact of remitting higher amount than what was declared at the

time of import which admittedly was paid to the foreign supplier and hence, the same should be considered as correct transaction value. The same having not been declared, has resulted in short-levy of duty and hence, the demand confirmed in the Order-in-Original which stands upheld in the impugned Order-in-Appeal is correct and in accordance with law. In so far as reliance on case law is concerned, she would submit that the facts are totally different and that there was no finding in those cases as to the remittances of higher value than what was declared at the time of import and hence, they are not applicable to the present case. She would thus request for upholding the impugned order.

10. Having heard both sides, we are unable to accept the first limb of the arguments advanced by the Id. consultant; the Appellant denies that there was no 'sale' at the time of import as the gold was not 'sold for export' to India. In the same breath, the Appellant claims that the subsequent sale price should not be considered as the correct transaction value, which in effect means that the gold imported on consignment basis by the Appellant remained 'unsold'. The Appellant cannot have multiple choices, one to suit its claim about 'sale' and another to

suit its claim of 'transaction value' being the one paid when Bills of Entry came to be filed. We are *prima facie* of the view that the claim of the Appellant as to 'no sale' at the time of filing Bills of Entry does not carry any merit and therefore the same cannot be entertained.

11. It is an undisputed fact that the duty was paid on the declared value which was the internationally prevailing gold price as on the date of import. The same is also apparently based on the suppliers' invoices. If there was any doubt on the above prevailing price, then ideally there should have been attempts to find out the transaction value of identical goods sold for export at or about the same time, which is not done, it is not as though there was no such import of gold at or about the same time.

12. In the light of our observations, we now venture into the correctness of rejection by the Revenue of the declared transaction value by the Appellant on which duty stood paid at the time of import. Any postponement of duty payment cannot have any impact on transaction value since the same is the one admittedly paid at the time of import. When the Appellant claimed that there

was no sale at the time of import, but was only on consignment basis, then why no duty was paid when sale took place actually and the supplier was paid the consideration? Therefore, the so-called sale at a later date only determined the actual value which created the liability to the supplier whereas for the purpose of Customs duty, the duty remitted based on the invoice of foreign supplier tantamount to 'import' which is the key stage to determine transaction value.

13. In view of the above discussion, the rejection of transaction value was uncalled for; the demand of alleged short-payment made by the Revenue is unjustified and hence, the impugned Order-in-Appeal which has sustained the above demand cannot sustain. Accordingly, we set aside the same and allow the Appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 11.12.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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