

**IN THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI**

Appeal Nos. C/85590, 85591/2013

Arising out Order-in-Appeals No. 960 to 963/MCH/ADC/Gr.VA/2012, Dated:
11.12.2012

Passed by the Commissioner of Customs (Appeals), Mumbai

Date of Hearing: 15.03.2019

Date of Decision: 15.03.2019

**M/s NITIN BEARING COMPANY
SHRI SHYAMLAL B AGARWAL**

Vs

**COMMISSIONER OF CUSTOMS (IMPORT)
MUMBAI**

Appellant Rep by: Shri N D George, Adv.

Respondent Rep by: Shri R Kumar, AC (AR)

CORAM: C J Mathew, Member (T)

Ajay Sharma, Member (J)

Cus - The appellants imported FAG Ball Bearings & bills of entry had been filed - On adjudication, it was held that the goods had been undervalued - Demand for differential amount of duty was raised, at a figure considerably higher than the original value - The goods were confiscated & penalties were imposed - Such findings were sustained by the Commr.(A) - Hence the present appeals.

Held: The Commr.(A) omitted to examine the appellants' contentions against the O-i-O - In the O-i-O, the while invoking the privilege, and prerogative, of rejection of the declared value by invoking rule 10A of the Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, the re-determination has taken recourse to Rule 8 of the said Rules on the ground that data pertaining to import of identical goods and similar goods under Rule 5 and 6 of the said Rules was not available - The rejection of declared value cannot be a cause of cavil as the declared value of the imported goods were not in consonance with the price list for the goods - The applicability & validity of the price list for determining the value u/s 14 of Customs Act, 1962 is questionable for not being consistent with section 14 of Customs Act & Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 - The proper officer is required to take recourse to the rules sequentially - Assessment of imported goods require that each of the Rules pertaining to identical or similar goods be rejected with cogent reason before resorting to invocation of Rule 8 - Without such sequential application, the O-i-O & O-i-A are incorrect: CESTAT

Assessee's appeals allowed

Case laws cited:

CCE & ST, Noida v. Sanjivani Non- Ferrous Trading Pvt Ltd - 2018-TIOL-447-SC-CUS... Para 3

Commissioner of Customs, Mumbai v. Multimetal Ltd [2002 (144) ELT 574 (Tri-Mumbai)]... Para 4

FINAL ORDER NOS. A/85652-85653/2019

Per: C J Mathew:

These appeals of M/s Nitin Bearing Co. and Shri Shyamlal B Agarwal are against orders-in-appeal nos. 960 to 963/MCH/ADC/ Gr.VA/2012 dated 11th December 2012 of Commissioner of Customs (Appeals), Mumbai I and pertains to the import of 'FAG ball bearings' against six bills of entry filed in 2005. The lower authorities have held that the goods were undervalued and, hence, liable to differential duty of Rs 12,74,090/- on re-assessed value, enhanced by Rs 35,99,455/- from the original value of Rs 1,51,23,265/- besides confiscating the goods and imposing penalties thereon.

2. Learned Counsel for the appellant informs that five of the consignments that had been already cleared and the sixth provisionally assessed on the reasonable belief of being misdeclared, were found to have been misdeclared by the original authority with consequential confirmation of differential duty on all six. It is his contention that invoking of extended period in the show cause notice leading to the adjudication was incorrect as the customs authorities were in possession of the price list of the manufacturer for the relevant period. It is his contention that, in relation to the latest import against bill of entry no. 59166/03.08.2005, they had enabled furnishing of the invoice of the manufacturer which had been sent directly to the Commissioner of Customs and, that, in spite of establishing that the difference was explainable as profit on sale of the ball bearings, the enhancement had been effected. It was also pointed out that it was an error on the part of the lower authorities to confirm and uphold the enhanced values on the earlier imports based on the difference identified in the last consignment.

3. Learned Counsel also placed reliance on the decision of the Hon'ble Supreme Court in *CCE & ST, Noida v. Sanjivani Non- Ferrous Trading Pvt Ltd [2019 (365) ELT 3 (SC)] = 2018-TIOL-447-SC-CUS* holding that cogent reason for rejection of the invoice price is a necessary prerequisite for enhancement.

4. Learned Authorised Representative contends that the decision of the Tribunal in *Commissioner of Customs, Mumbai v. Multimetal Ltd [2002 (144) ELT 574 (Tri-Mumbai)]* holding that

8. The reliance upon the Supreme Court's judgment in Eicher Tractors Ltd. v. CCE - 2000 (122) E.L.T. 321 = 2002-TIOL-06-SC-CUS is misplaced. The ratio of that judgment that the transaction value has to be accepted, except in cases where any of the exceptions contained in sub-rule (2) of Rule 4 of the Valuation Rules applies. However, the "transaction value" that is relied upon in this case is the value of scrap. Now, each of the consignments comprised around 30% of prime material. The value declared by the importer as transaction value in this case would be the value of the goods that have been claimed by the importer, i.e. the total of 34 tons of scrap. If the goods themselves are different, the transaction value in this case appears to have been

not for just scrap, but of goods which is a third category as prime material. Therefore, the price that is mentioned in the invoice is not transaction value specified in Rule 4 of the Valuation Rules. The distinction between the declared value and transaction value as is evident. We are therefore of the view that the value of the prime material ought to be determined independently of the value of the scrap of which it formed the part. It is not submitted to the Commissioner before valuation on the basis of price revealed in the London Metal Exchange. The goods under consideration are those that are commonly imported, and it would be easy, should not be difficult to obtain value of import of identical or similar goods at the time of import. If that is not available, value has to be determined in accordance with the remaining provisions of the Valuation Rules. We therefore set aside the Collector's order accepting the declared value of the goods and remand it for determination.

and affirmed by the Hon'ble Supreme Court, clearly established the legality of the impugned order.

5. We find from the impugned order that the first appellate authority has not examined the contentions of the appellant against the order of the adjudicating authority. Even in the order of the adjudicating authority, we take note, that while invoking the privilege, and prerogative, of rejection of the declared value by invoking rule 10A of the Customs Valuation (Determination of Value of Imported Goods) Rules, 1988, the re-determination has taken recourse to Rule 8 of the said Rules on the ground that data pertaining to import of identical goods and similar goods under Rule 5 and 6 of the said Rules was not available. It was also stated that the importer had not submitted the data of wholesale price of imported goods as well as the manufacturing cost which ruled out applicability of rule 7 of the said Rules. The enhancement has been effected on the basis of the published price of the manufacturer after extending permissible discount and the adjudicating authority has restricted the duty liability to 70% of the list price of 2002/01/1st March 2002 .

6. The rejection of the declared value cannot be cause of cavil as the declared value of the imported goods were not in consonance with the price list for the said goods. However, the applicability, and validity, of the price list for determining the value under section 14 of Customs Act, 1962 is questionable for not being consistent with section 14 of Customs Act, 1962 and rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988. The proper officer is required to take recourse to the rules sequentially. We are unable to accord credence to the submission of the Learned Authorised Representative, and findings of the adjudicating authority, that the said goods were not being imported into India. Ball bearings were regular items of imports; an economy with such levels of industry and lacking domestic production, is inevitably, a large importer. Assessment of imported goods requires that each of the Rules, pertaining to identical or similar goods, rejected with cogent reason before proceeding to invoke rule 8 of the said Rules. In the absence of such sequential application, the adjudication order, and the impugned order upholding it, cannot be said to be correct in law.

7. Accordingly, we set aside the impugned order and remand the matter back to the adjudicating authority for fresh consideration of the value in accordance with Section 14 of Customs Act, 1962, including the Rules framed thereunder, and, after taking into

account all the contentions of the appellant in matter of invoking of extended period,
pass fresh orders.

(Operative part pronounced in Court)