CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi

PRINCIPAL BENCH – COURT NO. 1

Customs Appeal No.51888 Of 2021

[Arising out of Order-in-Appeal No. IND-Excus-000-APP-23-2021-22 dated 17.06.2021 passed by the Commissioner of (Appeals) Customs, CGST & Central Excise, Indore (M.P)]

M/s Mittal Appliances Limited **: Appellant**
Plot No. 75, Industrial Area,
Sector No. III, Pithampur- 454775

Versus

The Commissioner of Customs, **: Respondent**
3rd Floor, 12/2/7 & 12/2/8, B Zone,
Business Space, Village Pipliya Kumar,
Nipania, Indore (M. P.)-452010 (MP)

APPEARANCE:

None for the Appellant

Shri Mukesh Kumar Shukla, Authorized Representative (DR) for the Department

CORAM :

HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE SHRI P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 50295 /2025

Date of Hearing: 17.12.2024

Date of Decision:10.02.2025

P. V. SUBBA RAO

M/s Mittal Appliances Ltd. Pithampur[1]filed this appeal to assail to order-in-appeal[2] dated 17.06.2021 passed by the Commissioner

[1] the appellant
[2] impugned order

(Appeals) whereby he upheld the order dated 05.02.2021 passed by the Deputy Commissioner and rejected the appellant's appeal.

2. The appellant had filed Bill of Entry No.2460284 dated 22.01.2021 to clear "Copper Scrap Birch/Cliff" imported by it from United Arab Emirates. The appellant self-assessed duty as per the value declared by it. As per Section 17(1) of their Customs Act 1962,[3] the importer has to self- assess the duty and as per Section 17 (4) of the Act the proper officer can re-assess the duty on the imported goods where the self-assessment is not found to be correct.The proper officer raised a query in the Indian Customs Electronic data of Interchange System[4] requesting the appellant to provide material or evidence to justify the value declared by it in theBill of Entry.

3. The importer did not provide any evidence to substantiate the declared value of the goods. Finding that the declared value was lower than the contemporaneous value of the Copper ScrapBirch/Cliff imported during the period,the proper officer re-assessed the Bill of Entry on the basis of contemporaneous values of imports.

4. The appellant sought a speaking order in terms of Section 17(5) of the Act. Therefore, the Deputy Commissioner issued the Order-in-Original dated 05.02.2021. In his order, theDeputy Commissioner listed 15 Bills of Entry filed for import of "Copper scrap and birch/cliff" and the unit assessable value in each case. He also recorded that the appellant was requested to submit material evidence to justify the

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[3] the Act
[4] ICES

value of the goods imported by the appellant to substantiate the value declared by it and no evidence was submitted.

5. In view of the above, the Deputy Commissioner held that the declared value was liable to be rejected under Rule 12 of the Customs Valuation(Determination of Value of Imported Goods) Rules, 2007[5].As per Valuation Rule(3), if the valueof the imported goods cannot be determinedunder Rule 3(1)i.e., as per the transaction value, the valueis to be determined proceeding sequentially through Valuation Rules 4 to 9.Valuation Rule 4 provides for determination of value based on the valueof identical goods.Valuation Rule 5 provides for determination of value on the basis of value similar goods. The Deputy Commissioner found that there were no identical goods and therefore, Valuation Rule 4 could not be applied in the case and determined the value underValuation Rule 5.In the impugned order,the Commissioner (Appeals) recorded that the price declared by the appellant was Rs. 414.54per/kgwhich was significantly lower than the value of similar goods which was between Rs. 465 to Rs. 507 per kg in the 15 Bills of Entry listed in the Order-in-Original.Therefore, hefound no reason to interfere with the Order-in-Original and rejected the appeal filed by the appellant.

6. In this appeal, the impugned order is assailed on the following grounds:-

1) The appellant had correctly declared the transaction value based on which the assessment value should have been finalized.

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[5] Valuation Rules

2) The Bill of Entry was filed declaring the value to Rs. 414.54 per kg. as per the transaction value.

3) There is no evidence that the invoice was fake or fabricated or that there was any relationship between importer and exporter.

4) The percentage of copper in the bills of entry whose values were relied on in the Order-in-Original is not indicated.

5) There is no scrap is similar to any other scrap and therefore, no any comparison between two bills of entry.

7. No one has appeared on the behalf of the appellant and no one had appeared on any of the previous dates when the matter was listed. Learned Authorized Representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference. He submitted that the Bill of Entry had beenfiled through faceless assessment throughthe ICES system.Having found that the value of scrap declared in the Bill of Entry was much lower than contemporaneous values for similar scrap, the proper officer sought justification or evidence from the appellant for the lower pricesbut none was provided. Therefore, the proper officer re-assessed the Bill of Entry rejecting the transaction value underValuation Rule 12. Having found that there were no identical goods, he re-assessed the Bill of Entry based on the value of similar goods.Thereafter, on the appellant's request he also passed the speaking order which has been upheld in the impugned order by the Commissioner (Appeals).

8. We have considered the submissions and have gone to records of the case.

9. The appellant's contention is that the transaction value in the invoice should have been accepted and assessment should have been finalized accordingly. We find that transaction value is not the only basis for assessment of the duty. The Valuation Rules as well as Section 14 of the Act provide for rejection of transaction value. When rejecting the transactionvalue, the customs officer does not modify the transaction value but only rejects it as the assessable value for determination of the duty.

10. There are various grounds on which the transaction valuecan be rejected under Valuation Rule 12.This rule 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.
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> (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:-
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> (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 rule 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 –
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> (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;
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> (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
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> (c) the sale involves special discounts limited to exclusive agents;
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> (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;
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> (f) the fraudulentor manipulated documents."

11. As per ValuationRule 3, assessment must be done as per the transaction value subject toValuationRule 12. In other words, if the transaction value is rejected under ValuationRule 12, then assessment cannot be done as per transaction value.If it is not rejected under Valuation Rule 12, then assessment must be done as per the transaction value.If the transaction value is rejected under Valuation Rule 12,valuation must be done as per Valuation Rules 4 to 9 sequentially.

12. Rule 4 provides for valuation as per the value of identical goods. If value cannot be determined as per Rule 4 because there are no contemporaneous imports of identical goods then the valuation must be done as per contemporaneous goods of similar case under rule 5.

13. In this case, the Deputy Commissioner recorded that there were no imports of identical goods during the relevant period. There is no

evidence contrary to thisfinding. The Deputy Commissioner, therefore, determined the value based on the value of similar goods. Here also listed 15 Bills of Entry under which similar goods for imported goods during the relevant period. Therefore, this clearly meets the requirement of Valuation Rule 5.

14. The appellant's contention is that there cannot be similar goods in scrap. This contention cannot be accepted. Infact, scrap is classifiedas per ISRI standards and different types of copper scrap have been given different names. In this case the imported copper scrap is birch/cliff. Copper scrap is globally traded and it was also imported by the appellant as per ISRI classification. Therefore, copper scrap birch/ cliff as is known in the market is similar to other imported birch/cliff.The Deputy Commissioner has correctly considered only the value of birch/cliff imported during the relevant period. He was therefore, correct in holding that such imports were imports of similar goods and in re-determining the value assessing the duty accordingly.

15. We also find that and contention of the appellant is that there were no evidence that the buyer and seller were related. It is also the contention that there was no evidence that the transaction value was fake or fabricated. We findthat as per the Valuation Rules,it is not necessary to establish the invoice was fake or fabricatedin order to reject the transaction value. It is also not necessary to establish that the buyer and seller were related. It is sufficient if the proper officer has reasonable doubt for the transaction value to be rejected under Valuation Rule 12.

16. In view of the above,the Deputy Commissioner was correct in rejecting the transaction value and re-assessing the duty as per the values of similar goods and the Commissioner (Appeals) was correct in upholding order of the Deputy Commissioner.

17. The impugned order is upheld and the appeal is dismissed.

(Pronounced in the open Court on **10.02.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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