CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85396 OF 2022

[Arising out of Order-in-Appeal No: MUM-CUSTM-APSC-APP-1060/2021-22 dated 23rd November 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Dinesh Dhola
Hari Darshan Exports Pvt Ltd
FC-4070, Bharat Diamond Bourse,
Bandra Kurla Complex, Bandra (E), Mumbai 400 051 … ***Appellant***

versus

Commissioner of Customs
Air Special Cargo
Awas Corporate Point, Makwana Lane
Andheri-Kurla Road, Air Cargo Complex, Sahar
Andheri (E), Mumbai 400 059. ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85397 OF 2022

[Arising out of Order-in-Appeal No: MUM-CUSTM-APSC-APP-1060/2021-22 dated 23rd November 2021 passed by the Commissioner of Customs (Appeals), Mumbai – III.]

Hari Darshan Exports Pvt Ltd
FC-4070, Bharat Diamond Bourse,
Bandra Kurla Complex, Bandra (E), Mumbai 400 051 … ***Appellant***

versus

Commissioner of Customs
Air Special Cargo
Awas Corporate Point, Makwana Lane
Andheri-Kurla Road, Air Cargo Complex, Sahar
Andheri (E), Mumbai 400 059. ***…Respondent***

APPEARANCE:

Shri K P Singh, Advocate for the appellants

Shri Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86380-86381/2023

DATE OF HEARING: 16/03/2023
DATE OF DECISION: 14/09/2023

PER: C J MATHEW

These appeals have been preferred by M/s Hari Darshan Exports Pvt Ltd and Shri Dinesh Dhola against the order[1] of first appellate authority which, on challenge to order of original authority, assessing the goods on value of ₹1,23,89,870 by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 after rejecting declared value of ₹2,48,95,371 under the authority of rule 12 therein, confiscating the imported goods under section 111 (m) of Customs Act, 1962 but allowing redemption under section 125 of Customs Act, 1962 on payment of fine of ₹12,50,000 and imposition of penalties of ₹10,00,000 and ₹5,00,000 respectively on M/s Hari Darshan Exports Pvt Ltd and Shri Dinesh Dhola under section 112 and penalty of ₹5,00,000 on Shri Dinesh Dhola under section 114AA of Customs Act, 1962 at the behest of jurisdictional Commissioner of Customs, has had the outcome of altering the

[1] [order-in-appeal no. MUM-CUSTM-APSC-APP-1060/2021-22 dated 23rd November 2021]

confiscation without option to redeem while upholding the penalties. Additionally, the original authority had taken it upon himself to restrict outward remittance to the re-determined value though we are not cognizant of any authority to do so under any law. Before the Commissioner of Customs (Appeals), Mumbai-III, several grounds had been adduced, including discrepancy in value, for discarding the validity of certification furnished along with the bill of entry but the impugned order restricted findings to discrepancy in value for holding that the goods were 'prohibited' and, thus, warranting confiscation without recourse to redemption.

2. At this stage itself, it may be noted that, following confiscation, adjudicating authority proceeds to decide on disposition of confiscated goods according to

> *'125. Option to pay fine in lieu of confiscation.—*
>
> *(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:*
>
> *Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28*

or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.'

Though the original authority had held the goods liable for confiscation and considered it appropriate to offer redemption, the impugned order, noting that

'8. xxxxx

(ii) Further I find that impugned KPC does not represent the impugned goods as value mentioned therein does not match with that of impugned goods and mismatch with the details of complete contents of the invoice. Hence it can be said that impugned goods have been imported by the respondent without a valid KPC certificate and thus they have contravened the provisions of Notification No. 21 / 2002-07 dated 26-12-2002 issued by the Directorate General of Foreign Trade (DGFT) and Policy Condition 3 of Chapter 71 of Schedule - 1 (Import Policy), Indian Trade Classification (Harmonized System) of Import Items, 2017 (ITC (HS), 2017).

(iii) Further I also note that as impugned goods have been imported without a valid KPC, thus same falls to be "Prohibited Goods" in terms of Section 2 (33) of the Customs Act, 1962.

(iv) I find that by violating above said import policy and DGFT notification, they have rendered the impugned goods liable for confiscation under section 111(d).

(v) In this regard, I also note that the para 7 of CBlC's Circular No. 53/2003 - Cus dated 23.06.2003 also recommends absolute confiscation in such cases as it states "In case the goods become liable for confiscation under

> *section 111 of the Customs Act for arty contravention, the goods should be absolutely be confiscated by Customs"'*

held that

> *'(vi) As discussed supra, the impugned Order is liable to be set aside. However without setting the same aside; 1 would rather prefer to modify the same In terms of section 128A(3)(a) ibid by adding the findings detailed supra and by passing an order to confiscate impugned goods absolutely under section 11 l(d) ibid. I also set aside the redemption fine imposed under section 125 of the Customs Act, 1962 as imposition of Redemption Fine after confiscation of goods absolutely becomes Irrelevant. Hence Para 21(ii) of impugned order is modified to the extent discussed supra.'*

even as the protest of the respondent against arbitrariness in determination of value, therein as counter to the appeal, had been allowed to be filed by Commissioner of Customs (Appeals) and was on record.

3. Appellant had imported 13278.23 carats of 'rough diamonds' against bill of entry no. 2157847/22.02.2019 from Belgium with declared value of US$ 345,769.04 and furnished invoice no. P08019/21.02.2109 as well as Kimberly Process Certificate (KPC) no. 00680530/21.02.2019. Valuation, entrusted to 'trade panel', as per prevailing mechanism, elicited the allegation that the actual value was substantially lower leading to proceedings before the original

authority that was found to be not legal and proper by the jurisdictional Commissioner of Customs. The consignment comprised two lots of 6505.25 carats and 6772.98 carats declared to be worth US$ 193986.56 and US$ 151782.48 which were ascertained as limited to US$ 97578.75 and US$ 74502.78 respectively. It is on record that, at the request of the importer, adjudication proceedings were undertaken without issue of show cause notice. Thus, effectively, the plea entered on behalf of jurisdictional Commissioner of Customs was for invoking of section 111(d) of Customs Act, 1962 to be followed by discard of option of redemption as goods were prohibited. The first appellate authority found the goods to be prohibited and declined to exercise discretionary option.

4. The proceedings before the original authority having culminated in invoking of section 111(m) of Customs Act, 1962 must, *sans* show cause notice, be presumed to have been limited to such proposal, and consequences thereon, in the run-up to the issuance of the order. In an order that has led to more grievous detriment on appeal, though appearing to be in excess of jurisdiction but with such proposal in the appeal, due compliance with *proviso* to section 128A(3) of Customs Act, 1962 is also to be presumed.

5. Learned Counsel for appellant contended that, ‘rough diamonds’ being subject to ‘nil’ rate of duty on import, it was not

open to customs authorities to take up value for ascertainment. He also contended that at no stage was there any allegation of the Kimberly Process Certification (KPC) being invalid except upon the post-hearing finding on re-valuation. Reliance was placed on the decision of the Tribunal in *Sahil Diamonds Pvt Ltd and others v. Commissioner of Customs, Ahmedabad [2009-TIOL-2327-CESTAT-AHM]* which had been upheld by the Hon'ble Supreme Court.

6. Learned Authorized Representative submitted that the procedure for clearance of 'diamonds' required ascertainment by 'trade panel' and that repetitive references had been made only at the instance of the appellant. It was further submitted that stipulation in Foreign Trade Policy (FTP) prohibited the import of 'rough diamonds' without corresponding Kimberly Process Certification (KPC) confirming prescribed details and the discrepancies cited in the impugned order were such as to discard the certificate and invoke the detriments following import of prohibited goods. He relied upon the decision of the Tribunal in *Commissioner of Customs, Jodhpur v. Unique Ornaments Pvt Ltd [2012 (3) TMI 42-CESTAT, New Delhi]*, in *Kiran L Ghaghda v. Commissioner of Customs (Airport), Mumbai [2016 (9) TMI 724- CESTAT Mumbai]* and in *Prakash Sancheti v. Commissioner of Customs, Ahmedabad [2013 (292) ELT 273 (Tri-Ahmd)]*.

7. The decision to deny option of redemption had been premised on prohibition on import of ‘rough diamonds’ without accompanying Kimberly Process Certificate (KPC) and based on the finding that the certificate submitted was not in conformity with other supporting documents. We have perused the invoice and airway bill, both of which have declared the weight and value of the ‘rough diamonds’ and the cavil on the lack of segregation in accordance with ‘lots’ comprising the consignment appears to be more procedural than substantive; indeed, there is no finding of variation in total quantity to cast doubts on the certificate. Thus, the only discrepancy that the lower authorities could fall back on was the value of the goods and, that too, by ascertainment in accordance with a procedure peculiar to the diamond industry. If the certification was suspected to be faulty or not pertinent to the impugned goods, necessary verification should have been initiated with issuing authorities and taken to its logical conclusion. No such exercise was undertaken and thus the denial is to be tested solely on conformity of the re-determination with law.

8. On the issue of valuation adopted for the ‘diamond’ industry, the Tribunal did have cause to consider it in depth on cross-appeals of Revenue[2] and M/s Kiran Gems Pvt Ltd[3] against order[4] of Commissioner of Customs (Appeals), Mumbai-III in similar

[2] [customs appeal no. 87726 of 2022]
[3] [customs appeal no. 87811 of 2022]
[4] [order-in-appeal no.MUM-CUSTM-APSC-APP-1374-1379/2022-23 dated 15th September 2022]

circumstances. The order[5] of the Tribunal held that

> *'11. All that remains for resolution in the dispute is that of valuation of impugned goods. Value, at the best of times, is difficult to ascertain for, ultimately, it remains a buyer-seller transaction and their mutual agreement on the price to be paid. More so, in a commodity such as 'rough diamonds' which is surrendered to Man by Mother Earth and, in the nature of all primary produce that is, generally, not used as such, 'price discovery' is a complex tangle of factors. Insofar as these goods, as presented for clearance, are concerned, its appearance is highly deceptive and contingent upon skill in cutting to reveal capability of capturing light for reflecting it back. Value of the impugned consignment was ascertained on three different occasions. The first, by a 'panel member' that took place on 2nd April 2019, certified the declared value to be 'fair' but the one undertaken by Committee of Panel Members, as certified in reports of 3rd April 2019 and 15th April 2019, elicited values, of ₹ 41.55 crores and ₹ 113.68 crores respectively, that are marginally lower than that declared at the time of import. The reliability of report, consequent upon a further examination by Mr Surajratan Agrawal, an Income Tax Department-approved valuer, undertaken on 18th September 2019 at the request of the investigators and accepted by the adjudicating authority, is at the core of the controversy. Needless to say, it is the persistence in seeking out certifications until an acceptable one had been elicited that is a cavil of the appellants and the whole of it resting on deviation from procedure devised by customs authorities in view of the peculiarities of the trade, such as limited stylized expertise, preference for secrecy and the locii of players in the diamond industry. Thus, value, in*

[5] [final order no. A/85978-85983/2023 dated 22nd June 2023]

addition to compliance with Rules notified under the prescription in section 14 of Customs Act, 1962, must also adhere to the process of ascertainment, save by 'transaction value' of 'identical' or 'similar' – effectively inapplicable to 'rough diamonds' – goods, spelt out in instructions [public notice no. 30/2018 dated 19th December 2018] intended for Bharat Diamond Bourse (BDB). The foundation of this administrative instrument is 'identity' of consignment and 'anonymity' of the importer.

xxxxx

13. The first appellate authority appears to be proficient in 'dialectics' which, as seen from the disposal of two issues raised by appellants - limited cross-examination permitted and serial resort to valuers in breach of instructions on examination procedure – before her, is not to be faulted but suitability for deployment in determination of legal and proper is in question. It was concluded that a representative of each of the institutions concerned with examination had been subjected to requirement of section 138B of Customs Act, 1962 which sufficed to overcome any threshold objection to repudiation of that which had been permitted by the predecessor 'incumbent in office' empowered to adjudicate and that, notwithstanding the impropriety of seeking third examination, the difference in value elicited by the 'proper' second examination justifies confiscation under section 111(m) of Customs Act, 1962 for, thereby, not disturbing the order itself. In our view, invoking of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 thus in appellate jurisdiction, by confining the testing of adjudicatory determination of value not by aptness of substituted value of the impugned goods to rule 3(4) of Customs Valuation (Determination of Value of Imported

Goods) Rules, 2007 but only for validating rejection of declared value goes against the grain of

> *Explanation.- (1) For the removal of doubts, it is hereby declared that:-*
>
> *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 rules 4 to 9…..'*

in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The impugned order has failed to approve, modify or reject the value adopted by the adjudicating authority by recourse to the said Rules. An appellate authority steps into the shoes of the adjudicating authority in merit review and not as an external examiner evaluating the term paper of a graduate student. Hence the finding in the impugned order that

> *'In view of above discussions, though I note there are procedural violations by the AA, yet those are not having major bearings negatively on the appellant. As no duty is applicable on impugned goods, the RF under section 125 will depend upon the value re-determined of the goods. As department never relied upon the report of the 2nd Panel Members and said report will not affect impugned order except having some bearing on the quantum of the RF. I proceed further with the 3rd report as the base of the order only considering that it actually helped the appellant in getting lesser RF and they will not be aggrieved with the lesser RF imposed on them on the basis of the 3rd report relied upon by the department. Thus by saying so, I find myself in agreement with the AA as far as Order part is concerned. …' (emphasis supplied)*

is not only in breach of mandate devolving on appellate authority but is also fatal to the consequent detriments.

14. Repelling the allegation that the some prior arrangement, arising out of personal relationship between the owners of the importer and supplier entities, Mr Sujay

Kantawala, Learned Counsel for importer, denied any connections and, submitting that such relationship even if evidenced would not have sufficed for discarding value unless in accordance with rule 3(2) and rule 3(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, he also drew attention to the findings in the impugned order which, with reference to economics of the purported transaction, cast doubts on 'round tripping' as the motive for the alleged overvaluation. Furthermore, he contended that, with the stringent procedures of public notice no. 30/2018 dated 19th December 2018, any attempt at 'misdeclaration' would be farthest from the minds of any entity importing through Precious Cargo Customs Clearance Centre (PCCCC) of Bharat Diamond Bourse (BDB). Both Learned Authorized Representative and he elaborated upon Kimberly Process International Certification scheme, the internationally acknowledged system for auditing of 'rough diamonds' established for cleaning up the transborder trade in that prized commodity.

15. From their elucidation, we gather that the regime was established in 2003, following the Fowler Report and resolution adopted at the World Diamond Congress at Antwerp in July 2000, with contracting States agreeing to implement safeguards on shipment of 'rough diamond' from mines to the buyers engaged in cutting and polishing of the stones by taking responsibility for verifying provenance from country of export and certifying provenance upon export from the country for satisfaction of authorities of the next country in the chain. The threshold implementation by the contracting States envisages integrity of 'chain of possession' through audit of warranty declaration on sales invoice and acceptance of consignments only in sealed condition accompanied by prescribed certificate. Thus, it would appear

that the efficacy of the scheme rests upon the self-interest of the authorities in the country of export to remain within the 'trade route' of this lucrative article. It is not in dispute that the impugned consignments were accompanied by Kimberly Process Certificates (KPC) issued by the competent authority in Dubai and there is no evidence on record to conclude that the authorities at that end were less than diligent in administering the process; nor was any attempt made to verify any suspicion thereto from the issuing authority. It is, therefore, not surprising that the original authority rendered the crucial finding that the certification was valid for the consignments as received.

16. Though the declared classification has been referred to, and discussed with reference to the representative samples drawn by the expert valuers, and concluded thereto on conformity with prescriptions, nothing turns on that for any detriment under section 111 of Customs Act, 1962 directly; indeed, that was not an aspect agitated in appeal of importer before the first appellate authority. That, however, caused alarm for consequence on the value declared in the bills of entry and the impugned order has taken note of

> *'(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 –*
>
> *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;*
>
> *the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
>
> *the sale involves special discounts limited to exclusive agents;*
>
> *the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of*

manufacture or production;

the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

the fraudulent or manipulated document'

(emphasis supplied in impugned order)

in Explanation (1) below rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as enabling recourse to rule 12, thereby, with notice, as intended therein, having been communicated in the show cause notice leading to adjudication and culminating thereafter by the impugned order. From this, it can be clearly deduced that classification itself was not an issue with the lower authorities except insofar as it enabled invoking of rule 12 and, thereupon, rule 9, of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. We have already made our observations supra about the catalytical, even if pivotal as such generally are, role of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in valuation – not as an end in, or of, itself – of imported goods by recourse to enumerated methods. We may also add to it, at this stage, with the observation that reliance upon the text of that rule is valid only within the context of the rubric in the Explanation.

17. These appeals, thus, are concerned only with the validity of resort to rule 9, as the only available option, and resort, for want of any other option, to rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Our concern is more with a legal conundrum that transcends procedural closure and deserves no little attention. Before doing so, and indeed for ascertaining conformity of adopted valuation, such as it is in the light of reservations in the impugned order noted supra, with rule 9

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, we turn to the rival submissions.

xxxxxxxx

22. We have no doubt about the intention of circular no. 53/2003-Cus dated 23rd June 2003 of Central Board of Excise and Customs (CBEC) in aligning customs procedure to conform to the global crusade against 'conflict diamonds' but such a peremptory direction which deprives an adjudicating authority of inherent latitude in exercising powers conferred statutorily is certainly poor, even if well-intentioned, execution of such intent. After all, statutory exercise of power, in adjudication process, is also an acknowledged check on policy formulation that transcends legislative intent which should have been reasonably overcome, in overriding circumstances for conformity with the comity of nations, only by amendments in statute. A circular of an attached office of the Central Government to its subordinate formations is not to be presumed as articulation even of policy intent let alone legislative intent when it circumscribes statutory conferment. In the light of failure to contest the easing of restrictions on re-export, the argument of Learned Authorized Representative for absolute confiscation is unacceptable.

23. Considering the attention paid to resort to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, we must tarry awhile on that even if, to us, that is of peripheral relevance. From a plain reading of

'……

(2) No value shall be determined under the provisions of this rule on the basis of -

the selling price in India of the goods produced in India;

a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

the price of the goods on the domestic market of the country of exportation;

the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

the price of the goods for the export to a country other than India;

minimum customs values; or

arbitrary or fictitious values.'

in rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, it cannot but escape our attention that it is not a free flowing empowerment but one designed to be consistent with rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, in addition, to be irrefutably in conformity with stipulations supra. From the reports of the expert valuers, we are unable to ascertain that conformity; indeed, we note that in cross-examination at the adjudication stage, Mr Surajratan Agrawal was disinclined to disclose the manner in which the suggested value could be justified lest it compromise his professional and commercial interest. The lack of credibility of such reports cannot be overstated ever.

24. It is quite possible that purposeful misdeclaration of value by importers of articles, such as 'rough diamonds', may warrant recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 but the peculiarities of a trade upon which customs officials may be entirely dependent for expertise and whose activities may, even validly, be veiled under layers of secrecy may not be found by assessing officers to be of concern but the law cannot be ignored. That supervisory level of customs

officialdom may have found it necessary to bypass impediments to proper resort to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not make up for that want of credibility. It is the remit of the administration to find a solution but the solution, whatever that may be, should conform to the law – a law of valuation that was devised by them to be congruent with multilateral engagement. We cannot carve out exceptions to the law and, if at all, such opinion is to be relied upon, the valuer must, unequivocally, be prepared to narrate, and stand by, the justifications for such value. Absent that, substituted value will fail the test of law, as it does in the present dispute, and will have to be held as untenable even at the cost of declaring such instructions, if any, as not implementable.

25. Even as we hold so, another aspect, alluded by us supra, is of overwhelming concern. The orders of the lower authority appear to show concern about compliance with section 46 of Customs Act, 1962, as rightly should be, for, in matters of clearance of goods by an importer, that is the 'starter's pistol, so to speak, which brings the importer in contact with customs law. In relation to such imported goods, that initiates the implementation of Customs Act, 1962 and, hence, of consequence, it is the conclusion of the process by

> *'47. Clearance of goods for home consumption.*
>
> *Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:*

that renders a finality to the filing of bill of entry and it is, thereby, that the 'proper officer' therein is vested with authority to grant clearance, upon which the goods cease to be 'imported' for purposes of Customs Act, 1962; such

'proper officer' is permitted to interfere with clearance only if the appropriate duty has not been paid and/or the goods are subject to some prohibition.

26. It is not the case of the lower authorities that any prohibition, 'under Customs Act, 1962 or any other law for the time being in force', stood in the way of clearance for home consumption upon assessment of bill of entry; a subsequent proceeding under Customs Act, 1962 cannot rest upon a prohibition that, at the time of clearance, was not in existence for resort to section 124 of Customs Act, 1962 proposing confiscation of goods under section 111 of Customs Act, 1962. Nor is it the case of the lower authorities that duty was to be collected or was short-collected on clearance for invoking section 28 of Customs Act, 1962. There is, thus, no scope for barring clearance for home consumption. The sole bar, as we can garner, is the finding that the goods were subjected to re-determination of value, arising from rejection of declared value under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, even if for no purpose other than as a puzzle to be solved for it has been held that no duty liability arises either. To postulate that empowerment to confiscate, under section 111(m) of Customs Act, 1962, on the ground that misdeclaration of value empowers resort to valuation provisions of the statute, intended for specific purpose, is to put the cart before the horse and effect before cause.

27. The process that commenced with filing of bill of entry, under section 46 of Customs Act, 1962, acknowledges the importer in relation to the imported goods for further action thereto and requires section 17 of Customs Act, 1962, as the mechanism, to enable closure under section 47 of Customs

Act, 1962. The determination of duty liability calls for application of the charging provision in

> *'(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.'*

of section 12 of Customs Act, 1962 that, necessarily and save for exception therein which is not an issue here, has, in the first instance to proceed to First Schedule to Customs Tariff Act, 1975 for ascertainment of rate of duty liability - ad valorem or specific - as Customs Tariff Act, 1975 authorizes. The next step of

> ***'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'*

arises only if, for the purposes of Customs Tariff Act, 1975, duty is to be determined on basis of value, with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to be resorted to in accordance therewith, and not in any other circumstances.

28. The orders of the lower authorities leave no room for doubt that there is no difference in rate of 'nil' duty, corresponding to either of the tariff items – declared or substituted – in dispute, with the implication that the Customs Tariff Act, 1975 is not germane to the impugned goods. It is also not the case of the lower authorities that any other law, requiring declaration of 'value' in bill of entry for any purpose other than assessment to duty, has been breached insofar as the present dispute in concerned. In such circumstances, section 14 of Customs Act, 1962, or any Rules framed thereunder, is not of relevance to the impugned goods.

> *Consequently, the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 cannot be brought to bear on the impugned goods. The valuation is purely academic and we, thus, reiterate our earlier observation that agencies of the State must restrict their statutory intervention only within the intent of the statute. Any excess of that will not only imperil their action but also have consequences in law.'*

9. In the light of the decision of the Tribunal *supra*, it is not just the legality of the re-valuation that is relevant in the present dispute but even the legality of considering the certification, based on declaration of supplier in country of export to appropriate authorities there, as liable to be discarded on the basis of a finding, such as it is, of re-valuation undertaken by customs authorities, empowered restrictedly and in a context, for purpose so limited as not to extend to verification of one detail in a certificate prescribed by law for furnishing at the time of import. The impugned order is not in accordance with law.

10. Accordingly, the impugned order is set aside and appeals allowed.

(Order pronounced in the open court on 14/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*