

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CUSAP No. 2 of 2015 (O&M)
Date of decision: 18.8.2015**

M/s TDT Copper Limited

.....Appellant.

Union of India and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sandeep Goyal, Advocate for the appellant-assessee.
Mr. Sukhdev Sharma, Advocate for the respondents.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the assessee-appellant under Section 130 of the Customs Act, 1962 (in short, "the Act") against the order dated 24.11.2014, Annexure P.13 passed by the Customs Excise and Service Tax Appellate Tribunal (in short, "the Tribunal") in Customs Stay Application No.55163 of 2014 filed by the revenue in Customs Appeal No.54498 of 2014, claiming following substantial questions of law:-

"i) Whether in facts and circumstances of present case, the learned Tribunal was justified in staying the operation of the order passed by Commissioner of Central Excise (Appeals) Delhi III even though the appeal itself was not maintainable in its present form?

ii) Whether the learned Tribunal was justified in passing the

order of stay when the proper officer had failed to follow the provisions of law while assessing the value of the imported goods at a higher rate in ignorance with all settled principles of the Act and the Rules made thereunder and the CCE had passed a correct order?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee is a manufacturer of copper wire rod falling under Chapter 74 of Central Excise Tariff Act, 1985 and is the third largest copper producing company in the country having turnover in the range of approximately of ₹ 1000 crores. For its requirement of raw material in the shape of copper cathode, the appellant had been regularly importing the aforesaid material from Switzerland and United Kingdom. The imports made by the appellant are around 1000 to 1500 MT per month and a custom duty of approximately ₹ 10 crores is paid per month. In the normal course of business, the appellant had entered into various contracts with the suppliers one of them being M/s Transamine Trading, SA, Ganeva, Switzerland vide Annexure A.1 dated 8.4.2013 from April to July 2013 and 350 MT per month from August to December 2014 for copper cathode. As per the price clause of the contract, the price is settled on any day within quotational period plus a premium of USD 35 per MT. Accordingly, the price against the above contract was settled at USD 7141.25 plus USD 35 premium i.e. equal to USD 7176.25 within the quotational period as per pricing certificate issued by the foreign supplier. Based on the above transaction, the appellant had imported a consignment of 100.828 MT copper cathode and filed bill of entry dated 3.11.2013 declaring transaction value of ₹ 7176.25 USD/MT as per

invoice dated 6.9.2013, Annexure A.7. According to the assessee, the imported consignment is allowed to be cleared only after the custom duty as assessed by custom authorities is paid even on the excess value as suggested by the Assistant Commissioner. The total custom duty liable to be paid on the basis of transaction value i.e. invoice price plus 1% loading would have been ₹ 1,03,88,096 but it was assessed by the Assistant Commissioner at ₹ 1,05,92,434/- and thus the appellant was forced to pay an additional custom duty of ₹ 204338.90. Similarly, some other bills of entries filed by the appellant for the period from 18.6.2013 to 23.11.2013 were subjected to similar treatment by the authorities and the appellant was forced to pay the custom duty in excess calculated on a value other than the normal transaction value in terms of Section 14 of the Act. Feeling aggrieved, the appellant filed various appeals before the Commissioner (Appeals), Central Excise, Delhi III at Gurgaon. Vide order dated 24.3.2014, Annexure A.10, the Commissioner (Appeals) allowed the same observing that the declared value was corresponding to the invoices accompanying the consignments which were in tune with the contracts entered between the importer and the supplier but the same had not been accepted by the Assessing Officer. The assessment made in the bill of entry was set aside and the lower authority was directed to reassess the bills of entries accepting the declared value. Aggrieved by the order, the revenue filed appeal before the Tribunal. A stay application was also filed alongwith the appeal. The Tribunal after considering the matter passed order dated 24.11.2014, Annexure A.13 in the stay application whereby operation of the order in appeal passed by the Commissioner (Appeals) dated 24.3.2014 with regard to the direction for reassessment

of the bill of entry on declared value has been stayed. Hence the instant appeal by the assessee.

3. We have heard learned counsel for the parties.

4. The appellant is aggrieved by the interim order dated 24.11.2014, Annexure A.13 passed by the Tribunal staying the operation of the impugned order in appeal passed by the Commissioner (Appeals) dated 24.3.2014, Annexure A.10 whereby direction has been issued to the Assessing Officer for reassessment of the bill of entries accepting the declared value.

5. It was urged by the learned counsel for the appellant that there was no perversity or illegality in the order passed by the Commissioner (Appeals) while remanding the matter to the Assessing Officer. According to him, the Tribunal had erroneously stayed the operation of that order.

6. On the other hand, learned counsel for the revenue submitted that the Commissioner (Appeals) was remiss in directing reassessment of the bills of entries by accepting the declared value. According to him, the direction containing the words “accepting the declared value” could not be given as no special reasons had been given by the Commissioner (Appeals) for doing so.

7. We find force in the submissions of learned counsel for the revenue.

8. The Commissioner (Appeals) while accepting the appeal of the appellant and remanding the case had noticed in its order dated 24.3.2014, Annexure A.10 as under:-

“I have examined the case records. In all these cases the declared value, corresponding to the income accompanying

the consignments, which were in tune with the contracts entered between the importer and supplier, has not been accepted by the Assessing Officer. In turn the value has been enhanced thereby causing the appellant to pay more duty. From the assessed bill of entry it is not forthcoming as to the reasons for rejecting the declared value by the Assessing Officer. At the same time, nothing is forthcoming from the assessed bill of entry the basis on which the enhanced value has been adopted. The importer was also not put to pay notice before enhancement of the declared value. In view of the above factual position, the enhancement of the value is arbitrary and unsustainable. The assessment made in the bill of entry is set aside and the lower authorities are directed to reassess the bill of entries accepting the declared value. The appeals stand disposed of in above terms.”

9. The order passed by the Commissioner (Appeals) nowhere gives any justification for accepting the declared value by giving the reasons for the same. In the absence of any cogent reasons, direction for accepting the declared value by the Commissioner (Appeals) was unjustified. Accordingly, the Tribunal was right in staying the operation of the impugned order in appeal with regard to direction for reassessment of the bill of entry on the declared value. Consequently, the appeal stands dismissed. Needless to say that the appeal filed by the assessee before the Tribunal shall be decided expeditiously. Nothing observed herein shall be taken as an expression of opinion on the merits of the case.

(Ajay Kumar Mittal)
Judge

August 18, 2015
'gs'

(Ramendra Jain)
Judge