$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CUSAA 4/2017 & CM Nos. 3326-3328/2017

TIRUPATI TRADING ..... Appellant

Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE COMMISSIONER OF CUSTOMS ..... Respondent

Through: Mr. Harpreet Singh, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**O R D E R**

**% 01.03.2017**

1. Admit.

2. The question of law urged by the Revenue is: *Whether in the circumstances of the case the CESTAT's interpretation of the orders appealed against is correct having regard to their expressed terms*?

3. The assessee had imported – through three bills of entries quantities of imported stock lot of synthetic knitted fabric at a declared value of USD 1.30 per kg. The Assistant Commissioner in the original adjudication, culminating in the order of original, dated 13.03.2006 rejected that value and enhanced the valuation to USD 2.5 per kg. The first time round, the Commissioner of Customs set aside the order by three separate orders and remanded for afresh consideration on 30.03.2016. The remanded proceedings culminated in three separate orders, but based on identical grounds dated 05.11.2012.

4. The Adjudicating Authority stuck to its previous position that the value of the goods was USD 2.5 per kg. Again three separate orders dated 27/28.05.2013 were made setting aside the valuation. The Commissioner held *inter alia* in one of the orders dated 28.05.2013 "*the appeal sustains in toto and the value as declared i.e. USD 1.3 per kg is directed to be considered as transaction value under section 14 of the Act ibid. Therefore the enhancement of value is set aside and also other consequences*". In the circumstances when the assessee sought for refund of the differential amounts paid during the pendency of proceedings, the customs authorities rejected the application contending that two orders made by the Commissioner had merely set aside the penalty. Unfortunately, this view was sustained by the CESTAT.

5. This Court has considered the materials on record. It is not disputed by the Revenue that the orders dated 27/28.05.2013 – made in respect of all the three bills of entry, uniformly found that the declared value was the correct value. They also held that the enhancement of valuation to USD 2.5 per kg was unjustified and not based upon any factual foundation. The error which apparently crept in inadvertently in two orders in appeal (of the Commissioner) was that even after recording express findings on substantial issue, a mere setting aside of the penalty was recorded. The CESTAT mindlessly endorsed those opinions in the assessee's appeal.

6. This Court is of the opinion that the impugned order needs to be set aside. Furthermore, the mechanical and mindless manner in

which the CESTAT has rejected the appeal presented before it is a matter of some concern to this Court. The CESTAT was constituted precisely for the purposes of lightening the burden of the higher judiciary which existed prior to its composition. It cannot view itself mechanically as a body which has an optional jurisdiction or one which chooses not to go into the substantial issue. It is an appellate body charged with the duty of examining the materials and documents presented before it and the submissions of the parties, in the light of the findings rendered to see whether a second look can lead to an alternative or a different conclusion. Failures by such bodies to examine the material, are to be viewed with concern. This Court hopes that in future the corrective measures are taken to avoid such lapses.

7. The appeal is, accordingly, allowed.

**S. RAVINDRA BHAT, J**

**NAJMI WAZIRI, J**

**MARCH 01, 2017**/kk