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

\+ CUSAA 180/2019

M/S. AAA IMPEX ..... Appellant

Through: Mr. Priyadarshi Manish, Ms. Anjali Jha Manish, Mr. Ritaj Kacker and Ms. Jasmeet Kaur, Advocates.

versus

THE COMMISSIONER OF CUSTOMS (IMPORT),ICD, TUGHLAKABAD,NEW DELHI. ..... Respondent

Through: Mr. Amit Bansal, Senior Standing Counsel with Mr. Aman Rewaria and Ms. Vipasha Mishra, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 27.09.2019

1. The Petitioner has preferred the present appeal to assail the order dated 06.03.2019 passed by the CESTAT in appeal No. C/54012/2018-DB. The Tribunal by the impugned order has held that the matter requires consideration and consequently the matter has been remanded to the original Assessing Authority for sharing the basis for reassessment with the Petitioner/Importer. The Assessing Authority had assessed the Petitioner's imported consignment, by which the Petitioner was aggrieved and preferred an appeal. In the first appeal, the reassessment undertaken by the Assessing Authority was set aside. The Respondent, aggrieved by the said order of the first Appellate Authority preferred the aforesaid appeal before Tribunal. All

that the Tribunal has done is to remand the matter to the original Assessing Authority to undertake the assessment. The relevant extract from the impugned order reads as follows:

> "11. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step by step methodology to be adopted for re-determination of the assessable value in certain cases.· The primary requirement for redetermination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the basis for arriving at the assessable value.
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> 12. Perusal of the records of the case indicates that the only reason cited reason ·for re-assessment of value is that the respondent has accepted the enhanced value. No doubt acceptance of the enhanced value in writing waives the requirement of the issue of speaking order under Section 17(5) ibid. However, the requirement of Section 14 cmd the Customs Valuation Rules needs to be satisfied for enhancement of value. Nothing is forthcoming in the record of the case from which the basis for such re-assessment can be made out.
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> 13. Revenue has vehemently argued that the Customs Authorities were justified in enhancement of value since the importer had accepted such enhancement. They have also relied upon the recent decision in which the Tribunal has taken the view that admitted facts need not be proved. In the case of *Sodagar Network (supra),* the Tribunal upheld the enhancement of *value.* The importer had specifically admitted the basis for re-determination of value in his statement. He had also specifically waived the issue of the Show Cause Notice before the Adjudicating Authority. It is to be noted that re-assessment was done by the process of adjudication at the level of Additional Commissioner, and the value was re-determined as per Rule 7 of the Customs Valuation Rules. And the basis for such enhancement was shown to the importer and his concurrence

> recorded by means of statement. The facts are also similar in the case of DJP International (supra). In contradistinction to the facts in these cases, we note that in the present appeal, other than the admission on the part of the importer, we find no basis for the adoption of the enhanced value.
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> 14. We are of the view that in spite of the admission on behalf of the importer, the Revenue is required to satisfy the requirements prescribed under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation. It has been argued by Revenue before us that the Revenue did not record the basis for such enhancement since the requirement of speaking order was waived by importer.
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> 15. In view of the above discussion, the matter is required to be remanded to the Original Assessing Authority for sharing the basis for such re-assessment with the importer. Thereafter he will pass the speaking order after extending an opportunity to the representative of the importer to rebut the basis for such enhancement. To facilitate this, we set aside the impugned order.
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> 16. In the result, the appeal field by Revenue is allowed by way of remand."

2. The Petitioner's submission that the Tribunal could not have remanded the matter to the original Assessing Authority, has no merit. The reasons for the said remand are found in the impugned order extracted hereinabove. The assessment had to be done in accordance with Section 14 of the Customs Act read with the Customs Valuation Rules and the reasons for the same were not forthcoming from the order passed by the original Assessing Authority. The matter could not have been left at large and since the original order was not found to be in accordance with law, in our view, the Tribunal rightly remanded the matter to the original Assessing Authority for carrying out the assessment after sharing the basis for the same with the Petitioner.

3. We accordingly dismiss the present appeal. We make it clear that there

are no observations on the merits of the case and matter shall be examined by the original Assessing Authority on its own merits and in accordance with law.

4. In the light of the aforesaid, no substantial question of law arises for consideration in the present appeal.

VIPIN SANGHI, J

SANJEEV NARULA, J

SEPTEMBER 27, 2019

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