IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.6033 OF 2020

(Through Video Conferencing)

M/s. IG International Private Limited,
Represented by its Authorized Signatory and
Senior Vice President,
Mr.Vijay Kumar Gupta,
T-B/117, Anna Fruit Market,
Koyambedu, Chennai - 600 092. ...Petitioner

Vs.

1.The Deputy Commissioner of Customs (Group 1),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (NS-III),
Jawaharlal Nehru Custom House,
Nhava Sheva, Tal-Uran,
Raigad District,
Maharastra - 400 707.

3.The Deputy Commissioner of Customs,
O/o. The Commissioner of Customs (NS-III),
Jawaharlal Nehru Custom House,
Nhava Sheva, Tal - Uran,
Raigad District,
Maharastra - 400 707. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Declaration to declare the impugned Valuation Alert Notice dated 08.05.2017 issued in F.No.S/V-Val. Cell-07/2016- 2017 issued by the third respondent with the approval of the second respondent as illegal and arbitrary.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : M/s.R.Hemalatha
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Valuation Alert Notice dated 08.05.2017 bearing reference F.No.S/V-Val.Cell-07/2016-2017 issued by the third respondent.

2. Appearing on behalf of the petitioner, the learned counsel submits that the impugned Valuation Alert is contrary to the provisions of Section 14 of Customs, Act, 1962 and unnecessarily interferes with the assessment by an Assessing Officer.

3. The learned counsel for the petitioner further submits that every time when the petitioner attempts to file a Bill of Entry, the transaction value declared in the Bill of Entry by the petitioner is revised by the respondents in the system in terms of the impugned Valuation Alert. It is submitted that the petitioner is therefore forced to pay higher customs duty on the value imposed by the respondents. It is submitted that the imported goods being natural products (Apple) and being perishable in nature, the petitioner is forced to incur higher duty which indirectly affects the profits of the petitioner.

4. The learned counsel for the petitioner further submits that unless circumstances exist for countermanding the transaction value declared, the question of invoking the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not arise. The value can be determined by proceedings sequentially only under Rules 4 to 9 of the aforesaid Rules if circumstanced warranted. Imposition of Valuation Alert and Benchmark price is not align to the Customs Act, 1962.

5. It is submitted that fixing higher value as per Benchmark price to assess the import consignment as per the impugned Valuation Alert Notice is contrary to the method of Valuation prescribed under Section 14 of the Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

6. It is further submitted that the impugned Valuation Alert is not binding on the Assessing Officers for the purpose of assessment of imported consignments to follow the same and thus interfered with the Assessment of Bill of Entry.

7. The learned counsel for the petitioner has filed copies of their sale contract to show that the transactions with the foreign sellers are negotiated and that the price is sole consideration and there is no suppression in the value and therefore the Impugned Valuation Alert cannot be imposed.

8. The learned counsel for the petitioner further submits that earlier the petitioner has also filed W.P.No.6029 of 2020 for a Mandamus to direct the respondents to follow the order of the Appellate Commissioner dated 01.05.2014 and 31.10.2014 in Order in Appeal C.Cus.No.763/2014 and in Order in Appeal C.Cus.II No.89/2014.

9. The learned counsel for the petitioner further submits that the orders of the Appellate Commissioner are binding on the Assessing Officers in the light of the decision of the Hon'ble Supreme Court in Union of India Vs. Kamalakshi Finance Corporation Ltd., 1991 (55) E.L.T. 433 (S.C.).

10. Appearing on behalf of the respondents, the learned Senior Standing Counsel for the respondent submits that the Impugned Valuation Alert is only an internal communication between the officers and was merely served as a guidance for "The Proper Officers" at the time of assessment.

11. It is therefore submitted that there is no merits in the present writ petition. It is submitted that the present writ petition is not maintainable against the impugned Valuation Alert dated 08.05.2017 of the third respondent.

12. The learned Senior Standing Counsel for the respondents has referred to Paragraph 5 of the counter affidavit, wherein, it has been stated that the valuation of imported goods is done by the first respondent by applying Customs (Determination of Price of Imported Goods) Rules, 2007 and that it is not true to state that the impugned valuation alert dated 08.05.2017 issued by the third respondent in F.No.S/V-Val.Cell-07/2016-17 is the basis for the valuation and that the alerts are meant only for departmental circulation for the guidance of the assessing officers to know the approximate prices that are prevailing in different export countries for the particular commodity. It is submitted that this data helps the officers who has to access the correct determination value.

13. It is further submitted that the impugned Valuation Alert has been issued in line with Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and therefore this writ petition is devoid any merits. It is therefore submitted that the writ petition filed by the petitioner is liable to be dismissed.

14. By way of rejoinder, the learned counsel for the petitioner submits that every time the petitioner had filed a Bill of Entry, there is a pop-up in the dash board of the ICEGATE Web Portal, as a result of which, the petitioner is

constrained to pay Customs Duty in excess and is forced to litigate. It is submitted that such litigation results not only in waste of time but also in waste of money and therefore submits that the writ petition filed by the petitioner deserves to be allowed by directing the second and third respondents who are the jurisdictional proper officers to assess the Assessment Bill of Entry in accordance with the Provisions of the Customs Act, 1962.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents. I have perused the Impugned Valuation Alert of the third respondent. The relevant portion of the impugned Valuation Alert reads as under:-

> "The prices given in the table above are the benchmark prices that are applicable to the specific variety, grade and count of Fruit per carton/pack. Hence, due care should be taken to ensure that all parameters are correctly declared in the Bill of Entry.
>
> Accordingly, officers at all Customs House are advised to consider these prices as benchmarks prices while assessing the Bill of Entry of fresh fruits. As and when change is notices in the description or value of the goods at this Custom House, the same may please be informed immediately and assessments may be done at higher prices as and when such evidence comes to the notice. The assesing groups should do their due diligence at the time of assessment and the benchmark prices are only for the reference purpose. This valuation alert is for guidance purpose only and should not be quoted in adjudication orders.

16. Section 14 of the Customs Act, 1962 reads as under:-

> 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, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price

is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions andbrokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,—

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation.—For the purposes of this section—
(a) -rate of exchange means the rate of exchange—

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) -foreign currency and -Indian currency have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

17. As per Section 14 of the Customs Act, 1962, 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, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf.

18. The first proviso to Section 14 of the Customs Act, 1962 clearly states that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

19. It is for an importer to declare the correct "transaction value" which is the negotiated price with the foreign supplier/seller for the purpose of assessment under the provisions of the Customs Act, 1962 and have the assessment completed.

20. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 spells out the manner in which the Valuation has to be determined. Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 reads as under:-

3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
(ii) the deductive value for identical goods or similar goods;
(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

21. A reading of the above Rules makes it clear that valuation cannot be based on any Benchmark price. Assessment can be based on the "transaction value" where such value exists and where the value declared by an importer does not represent the transaction value. The value is to be determined by proceeding sequentially through Rules 4 to 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

22. An Assessing Officer who is the proper officer is merely required to ascertain the "transaction value" and unless there are reasons to countermand on the value declared by an importer, the question of following Rule 4 to Rule 16 sequentially also does not arise.

23. In fact, even the Central Board of Excise and Customs is not empowered to issue any circular under Section 151A of the Customs Act, 1962 which interferes with the assessment proceeding. Third respondent who is merely an officer under the Customs Act, 1962 cannot issue such diktats howsoever innocuous they may appear on an apparent reading.

24. Impugned Valuation Alert published and flashed in the public domain and the official Website though may appear innocuous, yet they do interfere with the assessment process. It is therefore to be held that the impugned Valuation Alter is neither binding on the petitioner nor on the Assessing Officers.

25. Therefore, assessment based on such Valuation Alert would be contrary to Section 14 of the Customs Act, 1962. Issue of such Valuation Alert is also not contemplated under the scheme of the Act. It is therefore ultra vires the provision of the Customs Act, 1962.

26. This matter has been settled by the Hon'ble Supreme Court long back in the case of Eicher Tractor Limited Vs. Commissioner of Customs, Mumbai, 2000 (122) ELT 321 (SC).

27. If a assessing officer assessing the goods has any valid reasons to countermand the value declared by an importer, the assessing officer can do so and impose higher value by invoking the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Alternatively, assessment can be provisional and the imported consignment can be allowed to be cleared after securing the interest of the revenue by getting adequate security from the importer or by issuing a notice under Section 28 of the Customs Act, 1962 to recover duty if the assessment is completed and goods have been allowed to be cleared.

28.The first respondent as an assessing officer is to be only guided the provisions in Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the law declared by the Hon'ble Supreme Court.

29. If the respondents have programmed their ED System/ Website, as a result of which, assessment is being completed based on Bench Mark Price in the impugned Valuation Alerts, the respondents shall take suitable steps to remove such feature from the their website/systems forthwith.

30. The information in the impugned Valuation Alter can be exchanged internally for the purpose of guidance if the value declared by the importers is far below the accepted prevailing international price and/or in case of any suspicion. The respondents may use their discretion to secure the interest of the revenue.

31. In the light of the above, this Writ Petition stands disposed by holding that the impugned Circular is neither binding the petitioner nor the respondents under the provisions

of the Customs Act, 1962. Respondents are directed to ensure the impugned Valuation Alerts is removed from the EDI system/Website and assessment is completed strictly in accordance with the provisions of the Act. No cost.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

arb / jen

To

1.The Deputy Commissioner of Customs (Group 1),
Custom House, No.60, Rajaji Salai,
Chennai - 600 001.

2.The Commissioner of Customs (NS-III),
Jawaharlal Nehru Custom House,
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Maharastra - 400 707.

+1cc to M/s.R.Hemalatha, Advocate Sr.No.68089

W.P.No.6033 of 2020

PCH(CO)
RVM(08/02/2022)