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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19th March, 2025

+ **W.P.(C) 530/2025**
JAI DURGA RUBBERISED FABRICS INDIA PVT.
LTD.

.....Petitioner

Through: Mr. Pradeep Jain, Mr. Sbhubhankar
Jha, Mr. Sambhav Jain & Mr. Pranav
Raj Singh, Advs.

versus

COMMISSIONER OF CUSTOMSRespondent

Through: Mr. Aditya Singla, SSC (CBIC) with
Mr. Siddharth Saxena, Mr. Ritwik
Saha and Mr. Umang Misra, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This order reveals a complete COMEDY OF ERRORS.
3. The present petition has been filed by the Petitioner under Article 226/227 of the Constitution of India seeking to quash the impugned order dated 9th October, 2024 passed by Customs Excise And Service Tax Appellate Tribunal (hereinafter 'CESTAT'), New Delhi in Customs Misc. Application No. 50345/ 2024 in Customs Appeal No. 53499/2014
4. The petition reveals an unfortunate situation wherein the CESTAT while intending to correct an error in its initial order passed on 9th December, 2016, continued to make repeated errors resulting in the impugned order and the present challenge.
5. The background of this case, is that the Petitioner had imported certain

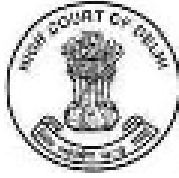


semi-finished Coaxial Cables in the year 2011 and an allegation of under-valuation was raised against the Petitioner. The goods were, consequently, detained on 2nd December, 2011. The Petitioner sought provisional release of the goods and the same was permitted subject to certain conditions including furnishing of a bank guarantee.

6. After completion of investigation, a Show Cause Notice was issued on 31st October, 2012 and customs duty to the tune of Rs.29,66,805/- was demanded. The Bank Guarantee was also proposed to be encashed. In response to the Show Cause Notice, a reply was filed and finally the Order-in-Original was passed on 30th September, 2013. In terms of the said order, the demand of custom duty was confirmed and the goods were confiscated. However, the Authority gave the Petitioner an opportunity to redeem the goods subject to payment of a redemption fine to the tune of Rs.20 lakhs. The operative portion of the said order reads as under:

“xxx xxx xxx
(ii) I, hereby, confiscate the goods totally valued at Rs.1,09,80,032/- involving customs duty of Rs.29,66,805/- provisionally released to the importer under Section 111(d) and (m) of the Customs Act, 1962. However, I provide an opportunity for redemption of the said confiscated goods against payment of Redemption Fine of Rs.20,00,000/- (**Rupees Twenty Lakhs Only**) under Section 125(1) of Customs Act, 1962 and this option is to be exercised within one month of this order.”

7. The said order was appealed by the Petitioner and the Commissioner (Appeals) passed an order dated 31st March 2014 allowing the appeal. The operative portion of the order passed by the Commissioner (Appeals) is set



out below:

“22. It is well settled law that transaction value cannot be rejected without clear and cogent evidence produced by the department with regard to the quantity, quality, country of origin and place and time of import. It is also well settled law that it is for the department to produce the evidence to show that the transaction value is not acceptable in view of the comparable price. The circumstances that permit such rejection and the alternative basis for fixing assessable value are specified in the Valuation Rules themselves. No such legally permissible steps were taken in the present case. Further, the department has not brought anything on record to suggest that the appellant had paid any amount over and above the value declared by the appellant.

23. In view of the foregoing it is evident that the impugned order enhancing the assessable value was not fair and legal based on legally permissible grounds. Therefore, the impugned order is set aside and the appeal is allowed in the light of facts of the case and goods are directed to be valued in the light of contemporary import value, as discussed above and also in the light of case laws 2009 (95) R. L.T 67 (SC), 2008 (89) RLT 494 (CESTAT-Del), 2009 (93) RLT 321 (CESTAT- Mumbai).”

8. The Department challenged this order before CESTAT. The Tribunal *vide* order dated 9th December, 2016 dismissed the second appeal preferred by the Department on account of non-appearance by the Petitioner/Company. Strangely, the Revenue’s Appeal was dismissed due to non-appearance of the Petitioner herein.

9. Thereafter, upon an application by the Department, the previously dismissed appeal, being ***Customs Appeal No.53499/2014 (DB)*** was restored



to be heard on merits *vide* order dated 29th December, 2017.

10. On 18th January, 2018, which is the order that has caused the confusion leading up to the present petition, the CESTAT observed as under:

“xxx xxx xx

4. After hearing both the parties and on perusal of the record, it appears that the imported goods were in semi-finished condition and same were not available in the retail market. The market inquiry was made out in the prevailing market price and Government approved Valuer in his valuation report dated 29.11.2011 submitted his report based on weight components of the constituent materials of the said semi-finished co-axial cables.

5, But on the other hand, Commissioner (Appeals) has accepted the value on the basis of NIDB data. The respondent has also fled a copy of VAT return where the value was declared and the same support the value at the time of return. From the Record, it appears that the Chartered Engineer certified that appellants have imported a semi-finished goods in terms of prevailing international price of the material for the purpose of reducing the value. The said Chartered Engineers was never cross examined. But the Commissioner (Appeals) has accepted the value on the basis-of NIDB data of the same product.

6. In view of the above, the order passed by the Commissioner (Appeals), which is based on NIDB data is not maintainable.

7. In the result, appeal filed by the Revenue, is dismissed.”

11. A perusal of the above order would show that the CESTAT was of the opinion that the Commissioner (Appeals) had accepted the value based on the NIDB data. However, the said Engineer who had certified that the Petitioner had imported semi-furnished goods was not cross-examined. Thus, the



CESTAT was of the opinion that the Commissioner (Appeals)'s order was not sustainable. However, strangely once again, the Revenue's appeal was dismissed when the logical consequence of the said conclusion, was to either remand the matter or to fully allow the appeal of the Revenue.

12. In view of the mistake that had occurred in the order, the Department then filed an application seeking rectification. In the said rectification application, the following order dated 5th April, 2019 was passed:

"Heard the parties on the ROM application filed by the Revenue against

the Final Order dated 18.01.2018.

2. The order-in-appeal (impugned order) was passed by the Commissioner (Appeals), whereby the Commissioner (Appeals) had accepted the valuation declared by the importer /respondent in the bill of entry. Being aggrieved, the appellant/Revenue was before this Tribunal, in appeal. In para-6 of the Final Order, it has been observed as follows:

"6 In view of the above, the order passed by the Commissioner (Appeals), which is based on NIDB data is not maintainable."

3. Whereas in para-7 of Final Order, it is mentioned, "In the result, appeal filed by the Revenue is dismissed".

4. Thus, we find that there is apparent conflict between para-6 and 7 of the Final Order.

5. In this view of the matter, we recall the Final Order dated 18.01.2018 and also restore the appeal to its original number.

6. Put up for final hearing on 16.05.2019."

13. Thus, as can be seen from the above order dated 5th April, 2019, the CESTAT instead of correcting paragraph 7 of the previous order, recalled the entire order and put up the matter for final hearing once again. The parties then filed written submissions, etc.,



14. For the third time, confusion was again perpetuated and confounded by a further order dated 18th March, 2024 which reads as under:

“The appeal was heard in the presence of both the parties and was disposed of by order dated 18.01.2018. Thereafter, ROM was filed by the Department in view of the contradiction between para 6 and 7 of the order dated 18.01.2018. The matter was listed on 21.11.2023 and as last opportunity, time was granted to the respondent, but it appears that on subsequent dates on 02.01.2024 and 16.01.2024 none appeared for the respondent. Matter is listed today, however, the respondent is still absent.

2. We have heard learned Authorised Representative for the Revenue and have perused the records of the case and we find that the error pointed out in the order dated 18.01.2018 seems to be correct. The observation in para 6 and 7 are quoted below:

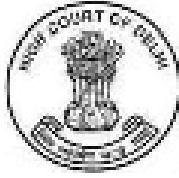
"6. In view of the above, the order passed by the Commissioner (Appeals), which is based on NIDB data is not maintainable.

7. In the result, appeal filed by the Revenue, is dismissed."

3. From the above, it appears that the order of the Commissioner relying on the NIDB data has not been found to be maintainable and, therefore, the appeal filed by the Revenue was required to be allowed. Hence, we modify the order to that extent that the appeal filed by the Revenue is allowed and para 7 of the Final Order dated 18.01.2018 shall read as under:

“7. In the result, appeal filed by the Revenue, is allowed.”

15. In the above order, the CESTAT, without considering its own order dated 5th April 2019, took up the rectification application and paragraph 7 of the order dated 18th January, 2018 is modified to the effect that the Revenue's



appeal is allowed.

16. The Petitioner then filed another application seeking recall of the said order which resulted in the impugned order. In the impugned order dated 14th October, 2024, the CESTAT again observed as under:

“11. May be, that in our order on 18.03.2024 we had not mentioned about the order dated 5.04.2019, however, that does not render the order liable to be recalled. In arriving at this conclusion, we are supported by the observations of the Delhi High Court in Deeksha Suri (supra), that merely because the Tribunal overlooked an interim order of its own while deciding the appeal, finally, (assuming it to be so) it will not render the judgement void or a nullity. At worse it may be an order vitiated by an irregularity of procedure or an illegality. Such an order cannot be 'recalled'.

12. The second limb of the application that suitable order may be passed on account of monetary limits in view of the Instructions dated 02.11.2023 issued by the CBIC cannot be the scope of application for recalling of the order as it would amount to opening the Pandora box in all the disposed of matters. This is not the correct stage as the appeal has already been disposed of by a final order.

13. Hence, we do not find any error in our order dated 18.03.2024, whereby the appeal was finally disposed of. We, therefore, dismiss the application.”

17. Thus, in effect the Petitioner is aggrieved by the fact that the Revenue's Appeal which was initially dismissed and fixed for final hearing, has now been allowed. Thus, three different orders have been passed by the CESTAT in the same appeal.

- (i) Firstly, *vide* order dated 18th January, 2018, the appeal was dismissed;

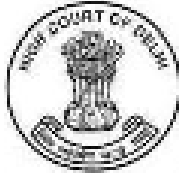


- (ii) Secondly, *Vide* order dated 5th April, 2019, the order dated 18th January 2018 was recalled and the appeal was listed for final hearing; and
- (iii) Thirdly, *Vide* order dated 18th March, 2024, the Revenue's appeal was allowed.
- (iv) Fourthly, the impugned order dated 14th October 2024 is passed and no consideration is given to the order dated 5th April 2019 to hear the matter on merits.

18. Such contradictory orders could not have been passed by the CESTAT in the same appeal. The final order dated 14th October, 2024 again shows that CESTAT has not considered that the matter was to be finally heard in terms of order dated 5th April, 2019. The proper course of action would have been for CESTAT to completely re-hear the matter on merits which it has not done.

19. At this stage, reliance is also placed upon the INSTRUCTION dated 2nd November, 2023, issued by the CBIC wherein monetary limits have been fixed for filing of appeals by the Department. In terms thereof, for CESTAT appeals, the monetary limit would be to the tune of Rs.50 lakhs. The relevant portion of the circular is extracted below:

“In exercise of the powers conferred by Section 131BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F. No. 390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes & Customs (hereinafter referred to as the Board) fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Court and the Supreme Court:



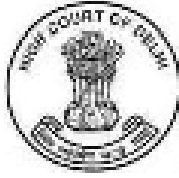
<i>S. No.</i>	<i>Appellate Forum</i>	<i>Monetary limit</i>
1.	<i>SUPREME COURT</i>	<i>Rs. 2 Crore</i>
2.	<i>HIGH COURTS</i>	<i>Rs. 1 Crore</i>
3.	<i>CESTAT</i>	<i>Rs. 50 Lakh</i>

”

20. This Court has considered the matter. The entire dispute dates back to 2011 when provisional release took place. A bank guarantee has been furnished by the Petitioner for the last more than 14 years which is now lying with the Respondent/Department. The Petitioner has incurred substantial costs in the matter.

21. The present dispute would, in the opinion of this Court, be clearly covered by the circular dated 2nd November, 2013, as the amount involved is less than Rs. 50 lakhs. Upon hearing both the parties in detail, this Court is of the opinion that in view of the said instructions, the appeal of the Department before CESTAT deserves to be dismissed. Accordingly, in exercise of powers conferred under Article 227 of the Constitution of India, the appeal filed by the Department before CESTAT stands dismissed, in view of the monetary limits. The bank guarantee shall be released within a period of 8 weeks.

22. The Court acknowledges that the appeal was filed before the Instruction dated 2nd November, 2023 came into effect and finds no lapse on the part of the Department. However, the present order has been passed considering the fact that disregarding the Instruction dated 2nd November, 2023 would serve no useful purpose, as it would necessitate the restoration of the appeal for a fresh hearing. It would also mean that the Bank Guarantee would continue to be kept alive incurring further costs. Considering the monetary limit of the



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Instruction would apply even to pending matters, the CESTAT would also inevitably follow the same course of action. Thus, instead of remanding the matter, considering that the monetary value in the Appeal before CESTAT is Rs. 29,66,805/- plus Rs. 20 lakhs, which is below the limit fixed for CESTAT appeals, the appeal before CESTAT deserves to be dismissed on this short ground itself.

23. Accordingly, the petition is allowed and disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 19, 2025

Rahul/Ar.