

Undervaluation needs to be proved basis valid evidence by the Revenue, in the absence of which, invoice price as declared shall be accepted – SC

12 October 2023



## Summary

The Supreme Court (SC) has upheld the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) Mumbai bench, wherein it was held that unattested and unverified export declarations were not valid evidence for rejecting invoice value. The SC opined that the invoice price could not be rejected without any cogent reason. The transaction value (the price actually paid or payable for the goods) should be the primary basis for customs valuation, and other valuation methods shall be invoked sequentially only when there is evidence to doubt the correctness of the declared transaction value. The SC further stated that undervaluation needs to be proved by valid evidence by revenue, in the absence of which, the benefit of the doubt must be given to the importer, and the invoice price, as declared, shall be accepted.

## Facts of the case

- M/s. Ganpati Overseas (the assessee), had imported tuners and saw filters from M/s. Arise Enterprises (the supplier) based in Hong Kong. On the basis of secret information received, the Directorate of Revenue Intelligence (DRI/department) had alleged that such imports were undervalued, leading to evasion of Customs Duty.
- The DRI carried out an investigation and scrutinised all the relevant material along with the export declaration filed by the supplier before the Hong Kong Customs and Excise Department. The DRI stated that the same revealed that the price declared therein was much higher than the invoice price declared before the Indian Customs Authority at the time of import.
- Basis the above, the DRI contended that the value of imported goods should be enhanced and computed on the basis of the export declarations. Accordingly, the DRI issued a show cause notice and raised a demand for differential duty along with interest and penalty. Additionally, since the value of imported goods was misdeclared and undervalued, it was stated that they were liable to be confiscated.
- The DRI had also stated that the directors of the supplier and the owner of the assessee had, in their respective statements had, admitted that the value as declared in the export declarations was the actual price of imported goods, and the assessee had deliberately undervalued the imported goods in order to evade Customs Duty.
- The assessee, in response, had denied the allegations in totality. It was stated that the copies of the export declaration were unattested and should not be relied upon by the department.
- Moreover, the export declarations reflected wrong values due to the inadvertence of the supplier's staff, which was duly rectified by filing fresh ones along with payment of the requisite penalty. It was stated that the tuners and saw filters were supplied to the assessee at a lower price because the supplier had initially obtained the same on a stock-clearance basis.
- The assessee further stated that the statements, subsequently retracted, were obtained through coercion and under duress and shall also not be relied upon.

- The Commissioner of Customs (the Adjudicating Authority) did not accept the assessee's response and relied upon the export declarations to confirm the demand.
- The assessee challenged the order before the CESTAT.

**CESTAT observations and order [Appeal No. C/1347 and 1374/2002; order dated 27 June 2008]**

- The CESTAT stated that unattested photocopies of export declarations cannot be considered valid evidence for the enhancement of the value of imports. Additionally, the supplier had duly submitted corrected export declarations indicating prices which were congruent to the price as declared in import invoices.
- The CESTAT invoked the trite position that the onus of proving the undervaluation of imports lies on the department. Accordingly, in the absence of incriminating evidence or any contemporary imports of higher value, the transaction value, as declared by the importer, shall be accepted.
- Additionally, the assessee had also submitted invoices of contemporaneous imports evidencing a similar price as the one declared by them. In view of the above, the CESTAT set aside the impugned demand order of the Adjudicating Authority.
- The department had challenged the order of the CESTAT before the SC.

**Supreme Court observations and judgement [Civil Appeal Nos. 4735-4736/2009; order dated 06 October 2023]**

- **Unattested photocopies of export declarations are not valid evidence:** The SC agreed with the CESTAT's observation that the department and the Adjudicating Authority had erred by

relying upon the unattested photocopies of export declarations. The SC asserted that a relied-upon document has evidentiary value only when the authenticity of the same is proved or verified. The SC also stressed the fact that the corrected export declarations subsequently filed by the supplier and accepted by the Hong Kong Customs Authority eliminate the initially filed export declarations. Therefore, the same cannot be construed as valid evidence for proving undervaluation and tax evasion.

- **Statements recorded under duress or coercion are not admissible as evidence:** The SC observed that the Customs Law empowers customs officers to summon and record statements in order to determine if there is any violation. Such statements would be admissible as evidence and can be used against such a person. The SC stated that the statements recorded under duress or coercion do not conform to minimum judicial standards and, therefore, would not be admissible as evidence. Accordingly, the SC held that the Adjudicating Authority was obligated to ensure that the statements of the directors of the supplier and owner of the assessee recorded by the DRI were not under duress and coercion.
- **Invoice price shall be accepted in the absence of contemporaneous imports at higher prices:** The SC stated that the transaction value or the invoice value cannot be rejected arbitrarily without giving any valid reasons. The SC opined that the allegations of undervaluation should be buttressed by valid evidence or the price of contemporaneous imports of comparable goods. In the absence of the above, the benefit of the doubt must be given to the importer and the invoice

price as declared shall be accepted. Accordingly, the SC upheld the order of the CESTAT.

### **Our comments**

Recently, the SC, in the case of M/s Aggarwal Industries Ltd., had ruled that the Customs Department cannot reject the authenticity of the invoice produced by the importers of the consignment on the basis of mere suspicion. Any doubt about the value of such an invoice must be based on some material evidence and not on a mere suspicion or speculation of the authorities.

Earlier, the CESTAT Delhi in Wall Street Impex had held that in terms of the valuation provisions, the value of imported goods shall be comparable value of identical goods. If such value is not found, then comparable value of similar goods. In the absence of both, the value shall be determined by adopting deductive method of valuation i.e., based on price of similar or identical goods sold domestically. The CESTAT held that in terms of the valuation provisions, the value should be first determined as per the value of contemporaneous imports of identical goods.

Even, the CESTAT Chennai in Kaveri Silks & Jute Private Limited had accepted the transaction value as declared by the importer assessee when the contemporaneous import value was not conclusive.

The present ruling by the SC is in line with the above and is a welcome ruling which should set precedence in similar matters. The ruling will provide relief and safeguard taxpayers from undue hardship caused by the authorities in similar cases.

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