

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

**PRINCIPAL BENCH**

**CUSTOMS APPEAL NO. 51101 of 2019**

[Arising out of Order-in-Appeal No. CC (A) CUS/D-I/General/NCT/246/2018 dated 31/08/2018 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi]

**M/s Aestrik Techno-Signs,**

307, Anant Bhuvan, 257/265,  
Bhat Bazar, Masjid Budra (W),  
Mumbai, Maharashtra – 400 059.

**...Appellant**

**Versus**

**The Commissioner of Customs,**

New Customs House, Near I.G.I. Airport,  
New Delhi – 110 037.

**...Respondent**

**APPEARANCE:**

Shri Devraj Kansara, Advocate for the appellant.  
Shri Rakesh Kumar, Authorised Representative for the Department.

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**  
**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING: 04.03.2021**

**DATE OF DECISION: 04.03.2021**

**FINAL ORDER No. 51146/2021**

**P.V. SUBBA RAO**

This appeal is filed against order-in-appeal No. CC (A) CUS/D-I/General/NCT/246/2018 dated 31/08/2018.

2. Heard both the sides and perused the records.
3. The facts of the case, in brief, are that the appellant M/s Aestrik Techno Signs imported goods through Fedex Airway Bill No. 808815275160 declaring them as "small printer part, big printer part and data cable" and the quantity as 22 and declared assessable value as Rs. 15,141/- and filed Bill of entry No. 408577. The Customs authorities examined the goods in the presence of two independent witnesses. Reckoning the contemporaneous import data of the goods that were actually imported, the total value of imported goods was re-determined as Rs. 9,21,951/- and the customs duty leviable thereon was assessed

as Rs. 1,60,327/-. The importer submitted a letter dated 21 July 2016 accepting the value and duty as assessed by the customs and further stated that did not want a show cause notice or a personal hearing in the matter. Further, they requested to release their consignment on nominal fine and penalty and stated that they are ready to bear the fine and penalty. Based on this letter, the Additional Commissioner of Customs passed order dated 11 May 2016 as follows :-

“(i) I reject the declared assessable value Rs. 15,141/- for goods under AWB No. 808815275160 in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine as Rs. 9,21,951/- in terms of Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 readwith Section 14 of the Customs Act, 1962.

(ii) I confiscate the goods covered under AWB No. 808815275160 and relevant Bill of Entry No. 406577 dated 06/05/2016, having re-determined value of Rs. 9,21,951/- under Section 111 (m) of the Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of fine of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 125 of the said Act.

(iii) I also impose a penalty of Rs. 90,000/- (Rupees Ninety Thousands only) on the importer under Section 112 (a) readwith 114AA of the Customs Act, 1962.

(iv) The redemption fine and penalty shall be in addition to the Customs duty leviable on the goods alongwith applicable interest”.

4. The appellant appealed to the First Appellate Authority who, by the impugned order, partly modified the order of the Original Authority reducing the redemption fine from Rs. 2 Lakhs to Rs. 1 Lakh and also reducing the penalty imposed upon the appellant under Section 112 (a) from Rs. 90,000/- to Rs. 40,000/-.

5. Aggrieved by the impugned order, the present appeal is filed on the following grounds :-

(a) the impugned order is not legal, proper or assessable ;

(b) in the case of **Handtex versus Commissioner of Customs, Raigad – 2008 (226) E.L.T. 665 (Tri. – Del.)**, it has been held that every change made by the Assessing Officer during the course of assessment whether relating to the rate of duty or value need not lead to an inference of mis-declaration by the importer and, therefore, the find and penalty need to be set aside ;

(c) in the case of **Nitish Tools Pvt. Ltd. – 2009 (237) E.L.T. 482 (Tri. – Chennai)**. The above order in the case of **Handtex** was relied upon and the fine and penalty were set aside ;

(d) the Commissioner observed that false documents were submitted to evade customs duty. Actually they have submitted all the documents which they received from their supplier ;

(e) they had received the goods for a price only Rs. 15,141/- and, therefore, the same was declared ;

(f) the goods were for trial and testing and, therefore, they were charged a nominal sum and rejection of the declared value and its re-determination by the learned Adjudicating Authority was totally erroneous ;

(g) they had agreed to enhancement of value but the same cannot be held as admission of guilt ;

(h) that the goods were imported for trial and testing and no margin of profit was to be derived by the appellant and, therefore, imposition of fine of Rs. 1 lakh is just unjustified and may be set aside. They are filed bill of entry merely on the basis of the documents received from the supplier and, therefore, imposition of fine and penalty is just unjustified. Therefore they urge that the order of the Commissioner may be set aside with consequential relief.

6. Learned Departmental Representative takes the Bench through the facts of the case as narrated above and submits that this is a case of import of printer parts by the appellant. On the reasonable belief of the declared value was incorrect and it had to be rejected under Rule 12 of Customs Valuation Rules, 2007 readwith Section 14 of the Customs Act, the officers of Customs Preventive detained the goods and after examining the goods which were actually imported and the contemporaneous import data, found that the goods were under-valued. The appellant had accepted the enhanced value in writing and also requested that no show cause notice may be issued and also that they do not require any personal hearing. They also agreed to pay the fine and penalty. Accordingly, the value of the goods was enhanced from Rs. 15,141/- (as declared by the appellant) to Rs. 9,21,951/-. Correspondingly, the customs duty on the imported goods was re-assessed from Rs. 2,634/- (as per declaration) to Rs. 1,60,327/-. The goods were ordered to be confiscated for mis-declaration under Section 111 (m) and were allowed to be redeemed on payment of fine of Rs. 2 lakhs under Section 125 of the Customs Act. This fine was reduced by the Commissioner (Appeals) to Rs. one lakh. A penalty of Rs. 90,000/- was imposed on the importer under Section 112 (a) readwith Section 114AA of the Customs Act which was reduced to Rs. 40,000/- by the Commissioner (Appeals) in the impugned order.

7. Learned Departmental Representative submits that this is a case of re-determination of the duty under Section 17 (4) of the Customs Act, 1962 which authorises the Assessing Officer to reassess the duty leviable based on verification, examination, testing of the goods or otherwise. Section 17 (5) specifically states that a speaking order on the reassessment has to be issued by the Assessing Officer "in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing". In this case, the appellant has not only accepted the re-assessment but also specifically requested not to issue show cause notice or hold a personal hearing and only prayed that a reasonable fine and penalty may be imposed. Section 14 of the Customs Act deals with the valuation of the imported/exported goods. Rule 12 of the Customs Valuation Rules, 2007 specifically provides for the proper officer to reject the declared value if he has reason to doubt its truth and to re-determine the value and duty leviable on them. Accordingly, the value was re-determined and the appellant has accepted not only the re-determination of the value but also prayed that no show cause notice may be issued to them and they agreed to accept the reassessed duty and only prayed that a reasonable amount of fine and penalty may be imposed.

8. The issue of re-determination of the duty under Section 17 when the importer gives in writing that he does not want the show cause notice and accepts the re-determination was decided by this Bench and the batch of appeals in the case of **Commissioner of Customs versus Hanuman Prasad & Sons** reported in **MANU/CE/0151/2020 dated 20 October 2020**. Paras 31, 35, 46 and 47 of which were as follows:-

"31. In this connection, it would be useful to refer to a decision of this Tribunal in **Advanced Scan Support Technologies versus Commissioner of Customs, Jodhpur – 2015 (326) E.L.T. 185 (Tri.-Del.)**, wherein the Tribunal, after making reference to the decisions of the Tribunal in **Vikas Spinners versus Commissioner of Customs, Lucknow – 2001 (128) E.L.T. 143 (Tri.-Del)** and **Guardian Plasticote Ltd. versus CC (Port), Kolkotta – 2008 (223) ELT 605 (Tri.-Kol)**, held that as the Appellant therein had expressly given consent to the value proposed by the Revenue and stated that it did not want any show cause notice or personal hearing, it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring no further investigation or justification. Paragraph 5 of the decision is reproduced below:

"5. We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by Revenue and expressly stated that it did not want any Show Cause Notice or personal hearing. Even the duty was paid without

protest. By consenting to enhancement of value and thereby voluntarily foregoing the need for a Show Cause Notice, the appellant made it unnecessary for Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put Revenue in an impossible situation as the goods are no longer available for inspection and Revenue rightly did not proceed to further collect and compile all the evidences/basis into a Show Cause Notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no Show Cause Notice, could/would have invited allegation of harassment and delay in clearance of goods. When Show Cause Notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail as with the goods not being available and valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so re-assessment of value in the absence of goods will not be possible. The case of *Eicher Tractors v. Union of India* (supra) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value.

”[emphasis supplied]

.....

35. The following position emerges from the aforesaid decisions of the Tribunal:

- (i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation;
- (ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and
- (iii) The burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntarily accepted.

46. Learned counsel for the respondent has also emphasized that NIDB data cannot be the sole basis to reject the transaction value without any cogent reasons. As seen above, the importers had in writing accepted the transaction value and it is perhaps for this reason that they did not require any show cause notice to be issued to them or a personal hearing to be granted to them. The respondent is, therefore, not justified in asserting that the transaction value has been determined on the basis NIDB data. It was their acceptance of the value that formed the basis for determination of the value. The decisions relied upon by the respondent to support the contentions ought to be raised are, therefore, of no benefit to them.

47. The general observations made the Commissioner (Appeals) in the impugned order that the value declared in the Bills of Entry

were being enhanced uniformly by the Department for a considerable period of time was uncalled for. The Commissioner (Appeals) completely failed to advert to the crucial aspect that the importers had themselves accepted the enhanced value. The Commissioner (Appeals) in fact, proceeded to examine the matter as if the assessing officer had enhanced the declared value on the basis of other factors and not on the acceptance by the importers. This casual observation is not based on the factual position that emerges from the records of the case”.

9. We have considered the submissions on both the sides.

10. The facts are not in dispute. The goods were imported declaring a certain value which was doubted by the officers and so the goods were opened and examined. After opening and examining and comparing the goods with the value of corresponding goods in contemporaneous imports the officer founds that the goods were mis-declared in terms of value. Therefore, he sought to reassess the duty. Section 17 (5) of the Customs Act requires the officer to pass a speaking order in case of reassessment unless the importer accepts the reassessment in writing. In this case, the importer accepted the reassessment in writing. Further he also gave in writing that he does not want a show cause notice or a personal hearing. He further undertook to pay fine and penalty. The extent of undervaluation found by the officers was substantial. The declared value was only Rs. 15,141/- whereas the actual value was calculated to be Rs. 9,21,951/-. The duty leviable was correspondingly increased from Rs. 2,634/- as per the declaration to Rs. 1,60,327/-. Since the declaration by the importer did not correspond to the actual value of the goods as determined they were confiscated under Section 111 (m) of the Customs Act and were allowed to be redeemed under Section 125 of the Customs Act on payment of a fine of Rs. 2 lakhs. A penalty of Rs. 90,000/- was also imposed on the appellant under Section 112 (a) readwith Section 114AA of the Customs Act.

11. On appeal, the First Appellate Authority upheld the assessment of duty and only reduced the fine from Rs. 2 lakhs to Rs. 1 lakh and penalty from Rs. 90,000/- to Rs. 40,000/-

12. Given the factual matrix of the case, we find that the appellant had indeed declared the value of the goods incorrectly and on being pointed out agreed to reassessment of duty and waived his right to show cause notice and personal hearing. The appellant also undertook to pay the fine and penalty. Therefore, the Assessing Officer is not

required to issue a speaking order. The reassessment of the duty is final as it was uncontested. Considering the declared value was only about 2% of the actual value as re-determined, we find that the Adjudicating Authority was correct in confiscating the goods under Section 111 (m). This section reads as follows :-

**“SECTION 111. Confiscation of improperly imported goods, etc.**

The following goods brought from a place outside India shall be liable to confiscation :-

- (a) ....
- (b) ....
- (c) ....
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-Section (1) of Section 54”.

13. Since, the appellant has, by mis-declaration rendered the goods liable for confiscation under Section 111 the importer is liable for penalty under Section 112 (a) readwith Section 114AA, which read as follows :-

**“SECTION 112. Penalty for improper importation of goods, etc.**

- Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act”

(b) .....

.....

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

**Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order

of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

**SECTION 114AA** reads as follows :

**SECTION 114AA. Penalty for use of false and incorrect material.** - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods”.

14. Coming to the quantum of redemption fine imposed upon the appellant under Section 125, we find that second proviso to Section 125 places an upper limit of fine that it should not exceed the market price of the goods confiscated. In this case, the assessable value of the goods which are confiscated is Rs. 9,21,951/- and the penalty imposed was only Rs. 2 lakhs, which was further reduced to Rs. 1 lakh by the First Appellate Authority. The amount of fine imposed is, therefore, only about 11% of the assessable value which given the facts and circumstances of the case is just and fair. The amount of penalty imposed under Section 112 (a) upon the appellant cannot exceed to 10% of the duty sought to be evaded or Rs. 5,000/- whichever is higher. The penalty imposable under Section 114AA can be upto five times the value of the goods (Rs. 9,21,951/-). In the present case, the actual duty was re-determined as Rs. 1,60,327/-, whereas the duty which would have been paid as per the assessee declaration was only Rs. 2,634/-. Thus, the duty sought to be evaded was over Rs. 1,50,000/- and the penalty imposed under Section 112 (a) readwith Section 114AA was only Rs. 90,000/-, which was further reduced to Rs.

40,000/- by First Appellate Authority. In our view, this is a fair amount of penalty. In view of the above, we find that the impugned order is correct and calls for no interference and needs to be upheld and we do so.

15. The impugned order is upheld and the appeal is rejected.

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(P.V. SUBBA RAO)  
MEMBER (TECHNICAL)**

PK