



Undervaluation under Customs law must be proved by lawful evidence.

***Commr. of Customs (Import) Mumbai v. Ganpati Overseas.*¹**

The Supreme Court of India upheld the decision of the Tribunal, Mumbai and dismissed the appeal on the ground that the alleged undervaluation of imported goods must be backed by lawful evidence but was not proved by the Revenue Department.

Facts of the case:

- The Appellant-Department, upon receipt of information, initiated proceedings against Respondent-Importer alleging that they have imported Tuners and Saw Filters from a supplier in Hong Kong, by grossly undervaluing the goods, which was imported from an entity controlled by a relative of the importer.
- The Directorate of Revenue Intelligence ('DRI') alleged that the transaction was grossly undervalued, as against the higher value declared before the Hong Kong Customs authority, and this fact was accepted by the Respondents in their statements. The said undervaluation resulted into evasion of Customs duty. The demand made by the revenue Department came to be confirmed.
- The matter travelled to the Tribunal, Mumbai wherein the Respondent-Importer contended that

an incorrect price had been erroneously mentioned in the export declarations made by the supplier, which was later rectified by filing correct declarations before the Hong Kong Customs and Excise Department (exporter jurisdiction) along with payment of penalties. Hence, the export declarations could not form the basis for enhancing the value of imported goods in India. It was also observed by the Tribunal that the export declarations were unattested photocopies.

- The Tribunal discussed the judgement of the Apex Court in the case of ***KI. Pavunny v. Ast. Collr.(HQ) & Ors. Cochin***² and held that the statements (of proprietor of the importer entity and the owner of the exporter entity) cannot be relied upon, as the same were obtained under coercion and duress and later some of these were retracted. It was also highlighted that there were some inconsistencies in these recorded statements. Besides, it was held that inculpatory statements could be relied upon if backed up, i.e. corroborated by other evidence.
- It was further held that there was no evidence of contemporary imports, which had higher value when compared to the subject goods. Furthermore, the burden to prove undervaluation by evidence or

¹ 2023 (10) TMI 364

² 1997 (2) TMI 97



information about comparable imports is on the Revenue Department, and for this, reliance was placed on the judgement of the Supreme Court in the case of **Commissioner of Customs, Calcutta v. South India Television (P) Ltd.**³.

- It was also noted that the cases relied upon by the Appellant-Department could not be applied in the present case, as nothing incriminating had been recovered whether in the form of fax communication, messages etc. It was held that in the cases relied upon, the supplier (exporter) had issued false invoices, at the request of the Indian importer and so, these cases were factually different.
- Against this backdrop, the Tribunal set aside the adjudication order and held that enhancement of the value of the imported goods as well as imposition of penalties could not be sustained in the present case. Aggrieved by this decision of the Tribunal, the Appellant-Department preferred an appeal before the Hon'ble Supreme Court.
- The Supreme Court discussed the aspect that unattested photocopies of export declarations which were used as evidence against the respondent-importer, should have been proved as is understood in law. It was observed that in the present case, unattested photocopies of the relied upon documents without anyone proving or owning up the veracity of the same would not have any evidentiary value.
- It was held that Customs officers empowered under Section 108 of the Customs Act, 1962 ('Customs Act'), have the onerous responsibility to see that the statement recorded is in a fair and judicious manner, so as to meet the standard of basic judicial principles and natural justice. Thus, it was once again declared that any statement recorded under coercion, cannot be used against the person making the statement.
- Placing reliance on the judgement of this Court in the case of **Eicher Tractors Ltd. v. Commissioner**

of Customs, Mumbai⁴, the Court declared that the price paid by the importer in the ordinary course of business shall be deemed to be the value in the absence of any special circumstances indicated in Section 14(1) of the Customs Act and particularised in Rule 4(2) Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. However, when the transaction value under Rule 4 is rejected, the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Customs Valuation Rules.

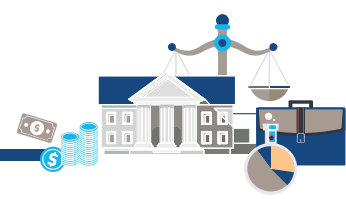
- Based on the above observations, the Supreme Court held that Tribunal was justified in setting aside the adjudication order and that the Revenue Department, in this case, was not justified in rejecting the import invoice price declared and further in enhancing the price by invoking Rule 8 of the Customs Valuation Rules.

Dhruva Comments

The top Court reaffirmed the settled position that in absence of lawful evidence to support undervaluation, the benefit of doubt must go to the importer; that allegation of under valuation must be proven by cogent material/evidence.

³ 2007 (7) TMI 9

⁴ 2000 (11) TMI 139



ADDRESSES

Mumbai

1101, One IndiaBulls Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Pralhadnagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434

Delhi / NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000

Pune

305, Pride Gateway,
Near D-Mart, Baner,
Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Abu Dhabi

Dhruva Consultants
1905 Addax Tower, City of Lights,
Al Reem Island,
Abu Dhabi, UAE
Tel: +971 26780054

Dubai

Dhruva Consultants
Emaar Square Building 4, 2nd Floor,
Office 207, Downtown,
Dubai, UAE
Tel: +971 4 240 8477

KEY CONTACTS

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com

Niraj Bagri

niraj.bagri@dhruvaadvisors.com

Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

Kulraj Ashpni

kulraj.ashpni@dhruvaadvisors.com

Dhruva Advisors has been consistently recognised as the “India Tax Firm of the Year” at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.

Dhruva Advisors has also been recognised as the “**India Disputes and Litigation Firm of the Year**” at the ITR Asia Tax Awards 2018 and 2020.

WTS Dhruva Consultants has been recognised as the “**Best Newcomer Firm of the Year**” at the ITR European Tax Awards 2020.

Dhruva Advisors has been recognised as the “**Best Newcomer Firm of the Year**” at the ITR Asia Tax Awards 2016.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for General Corporate Tax** by the International Tax Review’s in its World Tax Guide.

Dhruva Advisors has been consistently recognised as a **Tier 1 Firm in India for Indirect Taxes** in International Tax Review’s Indirect Tax Guide.

Dhruva Advisors has also been consistently recognised as a **Tier 1 Firm in India for its Transfer Pricing** practice ranking table in ITR’s World Transfer Pricing guide.

Disclaimer:

The information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and professional opinions. Before acting on any matters contained herein, reference should be made to subject matter experts, and professional judgment needs to be exercised. Dhruva Advisors LLP cannot accept any responsibility for loss occasioned to any person acting or refraining from acting as a result of any material contained in this publication

