

TRIBUNAL REQUESTED CBEC TO ISSUE APPROPRIATE GUIDELINE TO THE QUASI JUDICIAL AUTHORITIES IN ADMINISTRATIVE JUSTICE SYSTEM TO DISCHARGE THEIR DUTIES PUBLICLY IN ACCORDANCE WITH LAW

A. Brief Facts of the Case:

- A.1 Revenue has come in appeal before the Hon'ble Tribunal against the order passed by Learned Commissioner (Appeals) ("**First Appellant Authority**") setting aside the assessment enhancing the declared value in respect of imported aluminium foil paper. Adjudicating Authority held that the value of the goods declared to be enhanced which resulted in differential duty.
- A.2. The importer preferred an Appeal before the First Appellant Authority who found that the declared value was enhanced without passing any speaking order. He further pointed out that the value of the imported goods was enhanced by the Adjudicating Authority without following Rule 12 of the Customs Valuation Rules, 2007, which was uncalled for. According to him, **that made the revaluation of import illegal, null and void ab initio and there was no mis-declaration of value on the part of the importer.** Rather importer had given protest letter against rejection of the declared value and enhancement.
- A.3 The First Appellate Authority noticed that there was delay in clearance of goods. Accordingly, setting aside the enhancement of value made by the Adjudicating Authority, Learned Commissioner (Appeals) directed that the declared value be accepted and differential duty paid by the importer to be refund along with the interest and in case of denial to make such payment the reason for denial was directed to be given by the Authority denying that.

B. Contention and arguments of the Department:

- B.1 Learned AR appearing on behalf of Revenue submitted a date chart stating the manner how the matter was dealt at the port of discharge and pleaded that there was no delay at all made by customs authority at any stage.
- B.2 According to Revenue, there was undervaluation of goods made by importer as noticed by the customs authority and best judgment assessment was made without mentioning the Rule for enhancement of misdeclared value. **Non-mentioning of such Rule does not make the adjudication fatal since importer was informed all along about the enhancement proposed.** There was proper regard to law by customs authority at all stages to make clearance of the import expeditiously.

- B.3 According to Id. AR, Commissioner (Appeals) ought not have directed the original authority to accept declared value. Rather he should have remanded the appeal before him when he found that adjudication was not made in accordance with law and direction ought to have been given for passing appropriate order. **He having power only to confirm, modify, annul, reduce or enhance the adjudication, there is no power vested on him to pass order in any administrative capacity issuing administrative directions beyond his jurisdiction.** The derogatory remarks made by him in the appellate order as to the delay, if any, made in clearance was uncalled for and that too without having regard to the material facts of the case and circumstances. Conduct of the importer to make mis-declaration of the value of the imports was ignored by learned Commissioner (Appeals).
- B.4 Revenue further argued that the date chart submitted by the department as depicted aforesaid shows that customs authorities are occupied in the customs area with various matters and several clearances take place every day. They were vigilant. There was no unreasonable delay or lapse made by Customs Authority to clear the consignment. Nor also any deliberate act of the customs authority is apparent from record for which no derogatory remarks in the appellate order was called for. Malafide of Customs Authority has not been brought out by the appellate order with cogent evidence. Therefore the remarks made by the Appellate Authority are liable to be expunged.

C. Findings and Observations of the Tribunal:

- C.1 While Revenue argued its case in the above manner and certain comments of the Appellate Authority was apparent from his order, Hon'ble Tribunal called for scrutiny of the appeal record from the office of Commissioner (Appeals).
- C.2 Hon'ble Tribunal observed that nothing was recorded in the order sheet of such appeal record which shows whether any personal hearing was granted by that authority or any appeal was heard by that authority. Further, a sheet showing personal hearing available on record is also not under the signature of learned Commissioner (Appeals). Certain notings in the order sheet appears under signature of one A.D.O. Further, fair copies of Order-in-Appeal were put up to Commissioner (Appeals) for signature and approval of Commissioner (Appeals). There is no signature of Commissioner (Appeals) on order sheet on that date.
- C.3 The Hon'ble Tribunal mulled that **above manner of maintenance of public record shows that an empty formality was followed by the Commissioner (Appeals) for disposal of appeal.** The appeal order was signed by Commissioner (Appeals) undated.

- C.4 In view of the aforesaid factual matrix Hon'ble Tribunal observed that the entire action of the Commissioner (Appeals) is contrary to law and there is no disposal of appeal as yet on his record. It barked if this is the manner an Appellate Authority's acts, and his undated order comes for judicial review, it is difficult to appreciate the very existence of the impugned order itself as to whether that has seen the light of the day.
- C.5 Hon'ble Tribunal placed reliance on the jurisprudence that flows from the judgment of Apex Court in the case of **Gordhandas Bhanji 1952 AIR 16 SC** that when a thing is required to be done in the manner required by law and a public authority should pass public order publicly and public orders made by public authorities are meant to have public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself, it can be said that order of learned Commissioner (Appeals) has no existence in law. Accordingly, the remarks made by appellate Commissioner shall also have no legs to stand.

D. Judgment of the Hon'ble Tribunal:

- D.1 On perusal of the adjudication order, the Hon'ble Tribunal held that the Adjudicating Authority summarily disposed of the proceeding without a speaking order. Therefore, he is directed to issue appropriate notice to the importer clearly bringing out allegations, if any, for the defence of the later and granting reasonable opportunity of hearing. Adjudicating Authority further directed to pass a reasoned and speaking order considering defence plea as well as evidence, if any, led by the importer.

E. Direction of the Hon'ble Tribunal to CBEC:

- E.1 In the above background, Hon'ble Tribunal has issued direction to the Central Board of Excise & Customs ("**CBEC**") that appropriate guideline may be issued to the quasi Judicial Authorities in administrative justice system to discharge their duties publicly keeping in view the spirit of the ratio laid down by Apex Court in the case of **Gordhandas Bhanji (supra)** and in accordance with law. Also the manner how order sheet of public record shall be maintained by such authority while they discharge public duty may be advised.

[Commissioner of Customs (Import) v. M/s. Do Best Infoway in C/Misc./40433/2015 and C/41062/2015]

Date of Judgment: February 29, 2016

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