

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

PRINCIPAL BENCH,
COURT NO. IV

CUSTOMS APPEAL NO. 50871 OF 2021

[Arising out of the Order-in-Appeal No. CC (A) CUS/D-II/ICD/PPG/1515-16/2020-21 dated 04-11/02/2021 passed by Commissioner of Customs (Appeals), NCH, New Delhi.]

M/s Universal Offset,
135, Patparganj Industrial Estate,
New Delhi – 110 092.

...Appellant

Versus

Commissioner of Customs (Export),
New Customs House, Near IGI Airport,
New Delhi – 110 037.

...Respondent

**WITH
CUSTOMS APPEAL NO. 50870 OF 2021**

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Shri Vikas Gupta,
M/s Universal Offset,
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...Appellant

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...Respondent

APPEARANCE:

Ms. Priyanka Goel, Advocate for the appellant.
Shri Girijesh Kumar, Authorized Representative for the
Department

CORAM:

HON'BLE DR. MS. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 58231-58232/2024

DATE OF HEARING : 03.06.2024
DATE OF DECISION: 02.09.2024

P.V. SUBBA RAO

The order-in-appeal dated 04.02.2021¹ passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi is assailed by M/s Universal Offset² and its Managing Partner Shri Vikas Gupta³ in these appeals. The impugned order rejected the appeals filed by Universal and Vikas and upheld the order-in-original dated 06.07.2018 passed by the Additional Commissioner of Customs, ICD, Patparganj, New Delhi.

2. Universal is engaged in export of printed banners of various varieties and for this purpose they imported printing machinery at nil/concessional rate of duty under the Export Promotion Capital Goods⁴ Scheme under EPCG licence dated 16.12.2018 issued by the directorate General of Foreign Trade⁵. The EPCG Scheme allows import of capital goods at nil/ concessional rate of duty subject to the condition that the importer exports goods manufactured using the machinery. The export obligation has to be fulfilled in terms of FOB value of the exported goods.

3. Universal filed a shipping bill dated 23.03.2015 to export 30,600 printed banners of size 17" X 27" with digital effects. It declared FOB value of U.S. \$ 7.65 per piece totaling Rs. 1,45,21,020/-. It also submitted invoice and packing list which showed the same value and the goods were to be exported to its

1. impugned order
2. Universal
3. Vikas
4. EPCG
5. DGFT

buyer in Sharjah, UAE. This export consignment was examined 100% by the officers in the presence of the customs broker of the exporter and the quantity of the goods was as declared, but the value appeared to be very high. It was also found that the Universal had exported banners under five shipping bills in 2013. The statement of Shri Santosh Kumar Sinha, Manager (Accounts) of Universal who had come to the customs office in connection with the live consignment was recorded on 06.04.2015 under section 108 of the Customs Act, 1962⁶. In this statement he said that the cost of the PVC sheet was approximately 80 per kg. and that of ink was Rs. 100/- and 200/- per kg. and the banners were designed in-house by their employee who gets a salary of Rs. 20,000/- to 25,000/- per month. He also said that no other cost was involved in manufacturing the banners, but that the export goods were highly over-valued so that the export obligation could be fulfilled in respect of the EPCG machinery imported as the export obligation period was to expire soon. Shri Tarun Jindal was the main person in the buyer's firm at UAE who was in touch with Vikas. He also said that the over-valuation of the export goods was well known to Vikas and the payments for the over-valued exported goods in the past were received in Central Bank of India Account No. 3107421774 of Universal in U.S. dollars and these amounts were further disbursed to paper companies M/s ACME Trade Tax Pvt. Ltd., M/s Amit Sales Corporation, M/s Orient Links Pvt. Ltd. and M/s BSB Paper Pvt. Ltd. He said that these companies were managed by Shri Mukesh Gupta or Vikas,

6. Act

but he did not know how the excess amounts were returned to Shri Tarun Jindal of the buyer firm. The same *modus operandi* was adopted in respect of the past over-valued exports also.

4. Vikas was summoned and appeared on 07.04.2015, but sought time to produce any documentary evidence to justify the value of the export goods. On the belief that the export goods were liable for confiscation under section 113 they were seized by the customs officers and they were handed over to the custodian to the Central Warehousing Corporation for safety. The premises of Universal was searched, but nothing incriminating was found.

5. The statement of Shri Vikas was recorded in which he gave his personal background and said that Universal was jointly owned by him with his father Shri N.C. Gupta and younger brother Shri Sunil Gupta. He confirmed that the goods were being sold to the clients in UAE and Shri Tarun Jindal was his contact person. As far as the value of the goods was concerned, he asserted that the value was as per the international market and the prices in India are much lower and the difference reflects their profit margin.

6. Statement of Shri Chander Prakash designer of banner of Universal was also recorded. Doubting the truth or accuracy of the declared value, Shri Vikas was again summoned requiring him to produce details of manufacturing cost of the printed banner, but he had not appeared. Thereafter, a general market of survey was contacted and the goods were examined by the

Chartered Engineer Shri Agarwal. Based on the market survey and the report of the Chartered Engineer, the value of the export goods was re-assessed as Rs. 2,75,400/-. A show cause notice⁷ dated 05.10.2015 was issued to Universal and Vikas proposing to:-

- (i) Reject the declared assessable value of Rs.1,45,21,020/- and re-determine it as Rs. 2,75,400/- as per Rule 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007⁸ ;
- (ii) Confiscate the goods under section 113 (h) (i) ;
- (iii) Take penal action under section 114 and 114AA and
- (iv) Restrict the fulfillment of export obligations to the extent of re-assessed value.

7. Neither Universal nor Vikas filed any reply to the SCN. Personal hearing was fixed on 01.05.2018, 24.05.2018, 18.06.2018 and 25.06.2018, but none appeared on behalf of the Universal or Vikas. Thereafter, the Additional Commissioner passed the order-in-original re-determining the value of the export goods, as proposed in the SCN. He also confiscated the goods under section 113 (a) and allowed their redemption on payment of redemption fine of Rs. 35,000/-, imposed a penalty of Rs. 12,00,000/- on Universal under section 114 and penalty of Rs. 50,00,000/- on Vikas under section 114AA. He further held that the fulfillment of export obligation shall be restricted to Rs.

7. SCN

8. Valuation Rules

2,75,400/- of the goods admitted to the exported by shipping bill dated 23.03.2015.

8. Aggrieved, the appellant appealed to the Commissioner (Appeals) who upheld the order of the Additional Commissioner. He observed that the statement of Shri Santosh Kumar Sinha, the Manager, given on 06.04.2015 showed that the goods were over-valued and sufficient opportunity was given to Shri Vikas to substantiate the value of the goods, but he did not appear or produce any evidence. As the goods were peculiar to each export, there cannot be similar or identical goods. He therefore, found that Additional Commissioner was correct in getting the goods examined by a Chartered Engineer and re-determining the value. For the same reason, he found that the confiscation of the goods under section 113 (i) was correct and the penalties imposed on Universal and Vikas also needed to be upheld.

9. Learned counsel for the appellant made the following submissions :

- (i) The impugned order is against law and unjust ;
- (ii) It is not a speaking order as it did not discuss the submissions made by the appellants ;
- (iii) The Commissioner (Appeals) failed to appreciate that the FOB value cannot be rejected and re-determined and the FOB value for the past five consignments was accepted by the Assessing Officer and the exporter was free to sale goods at any profit margin ;

- (iv) The cost of the manufacture of the goods was not relevant to determine the FOB value ;
- (v) It is recorded by the Original Authority that in respect of past export consignment remittances were received and, therefore, there is no basis for alleging over-valuation ;
- (vi) Similar goods were sold in international market at about the same price as stated by Vikas in his statement but the Commissioner (Appeals) gave no findings on this issue;
- (vii) The sole basis for the rejection and re-determination of value was the report by the Chartered Engineer which is not correct. The Chartered Engineer failed to mention the method used to identify the quality and testing technique of the product, the Density Meter and Spectro Photo Meter used to conduct objective analysis of the print quality and color information ;
- (viii) The Commissioner (Appeals) did not consider that five consignments were earlier exported against the same licence and export proceeds were received in full ;
- (ix) The Valuation Rules provide for the proper officer to doubt the truth or accuracy based on certain factors including significant variation in value on which goods of like kind and quality exported at or about the same time, significantly higher value compared to the market value of goods of like kind and quality at the time of export and mis-declaration of description, quality, quantity, year of manufacture or production etc. None of these are present in this case ;
- (x) No prudent businessman would import goods at a price higher in the international market value ;

(xi) There is no evidence of over-valuation of goods nor any cash trail of the amount flowing back to the overseas importer.

10. In view of the above, it has been prayed that the impugned order may be set aside and the appeal may be allowed with consequential relief to Universal and to Shri Vikas.

11. Learned authorized representative for the revenue vehemently supported the impugned order and asserted that it is correct and proper and calls for no interference.

12. We have considered the submissions advanced by the learned counsel for the appellant and learned authorized representative for the revenue and perused the records.

13. The short questions to be answered are : whether the Commissioner (Appeals) was correct in upholding the decision of the Additional Commissioner whereby (a) he rejected the declared export value of Rs. 1,45,21,020/- and re-determined the value as Rs. 2,75,400/-; (b) confiscated of the goods under section 113 (i) and allowed them to be redeemed on a payment of fine of Rs. 35,000/- and (c) imposed penalty of Rs. 12,00,000/- on Universal and Rs. 50,00,000/- on Vikas; and (d) restricted the fulfillment of export obligation by the shipping bill to Rs. 2,75,400/- upon its export.

14. We find that the EPCG Scheme allows exporters to import capital goods on nil/concessional rate of duty subject to the

condition that using that machinery then exporter manufactures and exports goods for several times the value of the duty forgone on the capital goods. The export obligation to be fulfilled is indicated in the licence by the DGFT. The duty forgone on the capital goods is the amount of duty assessed by the customs officers as payable, but for the licence.

15. The export obligation has to be fulfilled by exporting goods of value (Free on Board – FOB) of a number of times of the duty forgone as indicated in the licence.

16. The FOB value is the value which the buyer agrees to pay to the seller as a consideration for the goods without including the cost of transportation and transit insurance. C&F, on the other hand includes the FOB value + the cost of transportation up to the port of destination. CIF includes the FOB value + the cost of transportation + the cost of transit insurance up to the port of destination. International trade is done, among others, in all three forms. It is for the buyers and the sellers to decide in what form the price will be sold, the currency in which it is to be paid and the value for the goods. This transaction value (either in FOB or CIF or C&F) is a product of negotiation between the buyer and the seller. It is the consideration which the buyer pays to the seller for the goods. This transaction value cannot be altered by anyone who is a stranger to the contract including the customs officers. What the officers can determine under the Customs Valuation Rules is whether to accept the transaction value as the

value under the Customs Act to assess duty or to reject it and determine the value following some other method prescribed in the Valuation Rules. In other words, what the officer decides is the assessable value of the goods under the Customs Act. In the normal course, the transaction value is the assessable value. However, there are exceptions under section 14 read with the Valuation Rules. The Valuation Rules indicate conditions under which the proper officer can doubt the transaction value and reject it. If the transaction value is rejected as the assessable value, then it has to be determined under any of the other methods provided in the Valuation Rules.

17. What needs to be noted is the customs officer does not and cannot alter the transaction value, but can only reject the transaction value and re-determine the assessable value through some other methods. An illustration will make the distinction clear. "A", living in U.K., sells his luxury car to "B" in India for GBP 1,000/-. The Customs Officer, finding this value too low and not reflecting the true value of the car, rejects this transaction value and re-determines the value of the car as GBP 10,000/-. Duty has to be paid as per the re-determined assessable value of GBP 10,000/-. However, the transaction value continues to be GBP 1,000/- and will not change. Therefore "B" has to remit only GBP 1,000/- to "A" as consideration for the car as agreed to between them. However, he will have to pay duty on the value determined, by the proper officer i.e. on GBP 10,000/-. This distinction is significant and applies in almost every case of

import and export. Besides the mutual obligations between the buyer and the seller, the foreign exchange remittances or, as the case may be, the obligation to receive remittance of foreign exchange under the Foreign Exchange Management Act depends on the transaction value. In this case, for instance, the transaction value agreed to between the buyer and the seller is equivalent to Rs. 1,45,21,020/- in U.S.D. If the goods are exported, Universal will have to receive a remittance of equivalent amount within the stipulated time. Even if the customs officer re-determines the value as Rs. 2,75,400/- even if such re-determination is upheld in appeals, the obligation of the overseas buyer to remit an amount equivalent to Rs. 1,45,21,020/- does not reduce. It is a product of negotiation between the buyer and the seller. The responsibility of the exporter to get remittance of this amount under FEMA also does not get diminished because the officer re-determines a different value as the assessable value.

18. Therefore, if the obligation under the Foreign Trade Policy is with reference to FOB value, it can only mean the FOB value as per the agreement between the buyer and the seller which remittance the exporter is also mandated to bring into India as per the FEMA.

19. We now proceed to examine the question as to whether the Additional Commissioner was correct in rejecting the declared

value and re-determining the value under the Customs Valuation Rules based on the Chartered Engineer's certificate.

20. Rule 8 of the Customs Valuation Rules reads as follows :-

"Rejection of declared value.- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)".

21. As may be seen it requires a proper officer to have some reason to doubt the truth or accuracy for the value declared and if he does he can call for further information. On receiving additional information or in the absence of any response, if the proper officer still has reasonable doubt about the truth or accuracy of the value declared it shall be deemed that the value cannot be determined as per the transaction value and then it can be determined sequentially through Rule 4 to 6. Rule 4 provides for determination of value of the export goods based on the transaction value of goods of like, kind and quality exported at or about the same time to other buyers in the same

destination country. Rule 5 provides for a computed value based on the cost of production or manufacture, or processing of export goods, charges if any for the designer or brand and an amount towards profit. Rule 6 is the residual method to be employed if the value cannot be determined as per Rule 4 and 5 using reasonable means consistent with the rules.

22. In this case, the transaction value was rejected under Rule 8 and re-determined as per Rule 6. The reason for rejection of the transaction value under Rule 8 is that during examination the goods appeared to the officer to be over-valued, therefore, the statement of Shri Santosh Kumar Sinha, Manager (Accounts) of the exporter was recorded on 06.04.2015 in which he gave the approximate cost of the raw material i.e. PVC Sheet and of the ink. He also said that design was done by an in-house employee. He also said that the goods were highly over-valued to fulfill the export obligation. He further said that the goods were similarly over-valued in the past consignment and remittances as per the values for received in the Central Bank account of the exporter. He further said that the amount was thereafter distributed to four companies which according to him were only paper companies. It does not appear that any further investigation was conducted by the Customs Officers to see if there was any flow back of the money to the buyer in those cases. Shri Santosh Kumar Sinha had said that he did not know the exact process adopted by the exporter to send back the differential amounts. This appears to have given the proper officer the reason to doubt the truth and

accuracy of the transaction value. Therefore, he issued summons to Shri Vikas, Managing Partner and recorded his statement. He asserted that the price was correct and was comparable to the price of similar goods in international market. He further said that it cannot be compared with the price in the domestic market or to the cost of production and that their margin was quite large compared to the cost of production. Some other statements were also recorded and a market survey was conducted which showed the price of the goods in the domestic market, the price of the raw material etc. Shri R.K. Agarwal, the Chartered Engineer gave statement regarding the cost of production of the materials taking into consideration the price of raw material, printing cost, wastage etc. and thereby he assessed a fair market value. He also said that the panels were not digital or screen printed. For these reasons, the Additional Commissioner rejected the transaction value under Rule 8.

23. What emerges from the above is that the only basis for alleged over-valuation is the statement of Shri Santosh Kumar Sinha. Even in his statement, he asserted that remittances have been received as per the value declared in the shipping bills in the past in the account of the exporter. He said that the amounts were further distributed to other paper companies and he does not know how the money was returned to the buyer in UAE. Even if the statement is taken at face value, the remittances were received as per the declared transaction value. There is no allegation, let alone evidence, of any flow back to the buyer. The

second ground for rejection is that the cost of the raw material including inks and the cost of printing of the banners, which were to be exported was much lower than the transaction value. The third reason given is that the value of such banners in the domestic market is much lower. The fourth reason is the report of the Chartered Engineer who determined the cost of production of the goods. In our considered view, these do not form sufficient grounds to reject the transaction value under Rule 8. The cost of manufacture of the goods could be much lower than the export price. What needs to be checked is that the values are consistent on the values of goods like, kind and quality exported to other buyers. There is no information about export to other buyers and the appellant's own exports in the past are also said to be over valued. This also on record that remittances in respect of the past shipping bills were received and there is no evidence of flow back to the buyer in UAE.

24. In view of the above, we find that there was no reasonable doubt regarding truth or accuracy of the transaction value in this matter. The transaction value, therefore, was wrongly rejected under Rule 8 and re-determined based on the cost of manufacture of like articles in India as per the Chartered Engineer's certificate.

25. In view of the above, we find that the value declared in the shipping bills deserves to be accepted. The question of

confiscation, fine, penalty etc., therefore, become immaterial.
The impugned order deserves to be set aside.

26. The impugned order is set aside and both appeals are allowed with consequential relief to the appellants.

(Order pronounced in open court on 02/09/2024.)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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