

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

CUSTOMS APPEAL NO.50643 of 2020

[Arising out of Order-in-Original No.08/2019 dated 03.12.2019 passed by the Commissioner of Customs (Import), Delhi].

M/s. Veera Fragrance Pvt. Ltd.

...Appellant

VERSUS

The Commissioner of Customs (Import)

...Respondent

New Customs House, New Delhi

WITH

CUSTOMS APPEAL NO.50644 of 2020

[Arising out of Order-in-Original No.08/2019 dated 03.12.2019 passed by the Commissioner of Customs (Import), Delhi].

Shri Vaibhav Jain

...Appellant

VERSUS

The Commissioner of Customs (Import)

...Respondent

New Customs House, New Delhi

APPEARANCE:

Shri S. Jaina, Advocate appeared for the appellant

Shri Rakesh Kumar, Authorised Representative for the Respondent -Revenue

CORAM: HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING : 19/04/2023

DATE OF DECISION: 05/07/2023

FINAL ORDER NO.50829-50830/2023

DR. RACHNA GUPTA

Present order disposes of 2 appeals as mentioned above, both being arising out of same set of proceedings and having challenged the same order of the original Adjudicating Authority.

2. The facts in brief relevant for the impugned adjudication are as follows:-

The appellant M/s.Veera Fragrances Pvt. Ltd. is the manufacturer of Aromatic Compounds and was importing aromatic chemical for perfumery preparation from Givaudan, Switzerland. Mr. Vaibhav Jain-another appellant is the Director of M/s. Veera Fragrances Pvt. Ltd. Pursuant to an information about some contravention by the appellants that the searches were conducted in the premises of the appellants and also in the premises of M/s. Ajit Traders on 10.08.2017. At all these premises drums / containers of different weight and size were found with "Aroma Chemical K-100". When those stickers of description were removed another sticker underneath was found, wherein the contents of the container were described as "safranal". *Prima Facie*, believing the said act as an act of misdeclaration that the chemical was seized:

- Nine Drums of 25 Kg. each containing 222.5 Kg. of 'Aroma Chemical K-100' alongwith 450 grams of "safranal" valued at INR. 81,05,586/- were seized from the factory of M/s. Veera Fragrances, Parpad Ganj, New Delhi.
- From both the premises of Ajit Traders were found 34 Tin Containers mentioning to contain "Aroma Chemical K-100" valuing at INR.3,09,65,500/- .
- From another premises of M/s. Veera Fragrances in Noida 50 tin containers of the impugned Aroma Chemical valuing at INR 4,55,37,000/- were seized alleging the seized chemical as liable for confiscation vide seizer memo dated 10.08.2017.

3. Though the appellants in their defense, mentioned that in the year 2016 itself, to maintain the trade secrecy, they in consultation with their foreign supplier that is M/s.Givaudan, Switzerland changed the name of "Safranal" to "Aroma Chemical, K-100". However, based on the investigations and the statements recorded during investigation the said defense was not considered and it was alleged that the appellants have declared the lower value of "safranal" from USD 428 per Kg. to USD 408 per kg. within a very small period of time without any reason. Hence the value of "safranal" need to be re-determined. It was also alleged that for subsequent imports of "safranal" the same was misdeclared as "Aroma Chemical K -100" by way of affixing / getting affixed secondary sticker showing description of goods "safranal". Thus, the value needs to be rejected and determined.

4. With these observations that the Show Cause Notice No. 4237 of 01.02.2018 was served upon the appellants for redetermination of the value of "safranal" and the recovery of the re-assessed value. The differential demand due to mis-declaration, amounting to Rs.19,61,808/-, was proposed to be recovered, in fact to be appropriated from the amount of INR 98,81,642/- already deposited by the appellant. The seized "Aroma Chemical K -100" was reassessed at I.N.Rs. 7,09,75,150/-. Recovery of proportionate interest and imposition of appropriate penalties was also proposed vide the aforesaid Show Cause Notice. The proposal has fully been

confirmed vide the order under challenge. Being aggrieved, the appellant is before this Tribunal.

5. We have heard Shri S. Jaina, Id. Counsel for the appellants and Shri Rakesh Kumar, Authorised Representative for the Revenue.

6. Ld. Counsel for the appellant has mentioned that the appellants have imported the "Aroma Chemical K -100" for being used in perfumery purposes vide 32 bills of entries. The "Aroma Chemical" was initially imported under the name of "safranal" and later under the name of "Aroma Chemical K-100". It is mentioned by the Id. Counsel that said change of description is wrongly alleged as misdeclaration and is wrongly alleged to be a case of undervaluation. Ld. Counsel submitted that "safranal" as well as "Aroma Chemical K-100" is one and the same Aroma chemical. The generic name for both these products is same which is 2, 6, 6 - trimethylcyclohexa-1, 3 diene - 1 - carbaldehyde. It is submitted that the price of the imported aroma chemical is the transaction value arrived at after negotiation between the exporter and the importer. The prices got negotiated based on the fact that the contracted quantity ordered was in bulk. It is impressed upon that since bulk orders were placed, the prices got revised by the seller / exporter and the negotiation stands duly confirmed by the exchanged emails between the exporter M/s. Givaudan, Switzerland and the appellant. It is impressed upon that the appellant is also distributor of Givaudan, hence, is a bulk buyer. Thus, the reduction in price was merely a commercial consideration which has wrongly been alleged as

an intentional mis-declaration with an intent to undervalue the import.

7. It is further impressed upon that price reduced from 428 USD per Kg. to 408 USD per Kg. even when the goods were imported as "safranal". This price of 408 USD per Kg. remained the same when the Aroma Chemical was imported as "Aroma Chemical K-100". Above all, the Director Mr. Vaibhav Jain has nowhere admitted the undervaluation of the goods. The genuine reason submitted was the maintenance of secrecy in the trade. There is no evidence for any *malafide* intent on the part of Mr. Vaibhav Jain. Finally, it is submitted that in the given circumstances, there was no reason with the Department to reject the transaction value. Reassessment has also not been done in the manner as prescribed. Resultantly, neither the seized goods are liable for confiscation nor penalty is imposable upon the appellants, the company as well as its Director. With these submissions, Id. Counsel for the appellant has prayed for setting aside of the order under challenge and for the appeal to be allowed.

8. While rebutting these submissions, Id. D.R. has submitted that the total assessable value of goods imported by the appellants from foreign suppliers was rejected for the reason that the goods were grossly undervalued by misrepresentation and misdeclaration with respect to the description of the imported goods. The actual invoice value was also suppressed by submitting less values with respect to the same goods by misdeclaring the description of goods as "Aroma Chemical K-100" instead of "safranal". No justification has been

provided by the appellants for differently describing the chemical carried out. No plausible reason is given as to why the same product has been imported at different lower values in a very short span of time. The findings in para No. 38.6 and 38.7 are impressed upon to be reasonable and justified. Impressing upon no infirmity in the order under challenge, appeal is prayed to be dismissed. Ld. D.R. has relied upon the following decisions:-

1. M/s. S.D. Overseas vs. Joint Commissioner of Customs New Delhi reported in 2022 (6) TMI 177 – CESTAT, New Delhi
 2. Prasant Glass Works P. Ltd. vs. Collector of Customs, Calcutta reported in 1996 (87) ELT 518 (Tri.-Del.)
 3. Harshita International vs. Commissioner of Cust. (Prev.), Mumbai reported in 2008 (229) ELT 386 (Tri.-Bom.)
 4. Toplane vs. Commr. of Customs (Prev.) Kolkata reported in 2009 (238) ELT 95 (Tri.-Kolkata)
 5. Chandni International vs. Commissioner of Cust. (Import), Mumbai reported in 2003 (153) ELT 312 (Tri.-Del.).
 6. Anil Kumar Tiwari vs. Commissioner of Customs, Tuticorin reported in 2016 (344) ELT 1051 (Tri.-Chennai)
 7. CCE & ST, Noida vs. Sanjivani Non-ferrous Trading Pvt. Ltd. reported in 2019 (365) ELT 3 (S.C.)
9. Having heard the rival contentions and perusing the record, we observe and hold as follows:-

The impugned demand was raised and confirmed by rejecting the transaction value of the import on 2 counts:-

(1) That when the Aroma Chemical is imported as "safranal" its value has reduced within a very short time alleging the same as an act of under-valuation.

(2) The same Aroma Chemical "safranal" has subsequently been imported as "Aroma Chemical K-100" and at still lower prices. Hence, alleging misdeclaration as a cause for under-valuation.

10. The Adjudicating Authority below while confirming both these allegations has rejected the transaction value reassessed it and has confirmed the differential amount to be recovered from the appellants and has also ordered the confiscation of the recovered Aroma Chemical from four of the premises of the appellants. In addition, has imposed penalty on both the appellants. To adjudicate the reasonableness of these findings, we foremost need to look into the definition of transaction value and the procedure for arriving at transaction value. We observe that Duties of customs are levied on goods imported into and exported from India at the rates specified in the Schedules to the Customs Tariff Act, 1975. On some goods, the levy is based on quantity (specific duty), and other goods it is based on value (ad valorem). If the duty is to be levied based on value, valuation for the purpose has to be done as per Section 14 which reads as follows:

Section 14. Valuation of goods. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, **the value of the imported goods and export goods shall be the transaction**

value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall **include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges** to the extent and in the manner specified in the rules made in this behalf:

Provided further that the **rules** made in this behalf **may provide for,-**

- (i) the circumstances in which the **buyer and the seller shall be deemed to be related;**
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or **price is not the sole consideration for the sale or in any other case;**
- (iii) **the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:**

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) XXXXXXXX

11. From the above definition, we observe that the value to be considered for calculating the Customs duty shall be the transaction value subject to five conditions:

- a) The buyer and seller are not related.
- b) Price is for delivery at the time and place of importation, i.e., all costs up to the point of import are to be included. For instance, if the sale is on Free on

Board (FOB) basis, the costs of transportation to the place of import, transit insurance, etc. will have to be added.

- c) Price is the sole consideration for sale.
- d) Some amounts indicated in the first proviso to sub-section 1 of section 14 must be included.
- e) Valuation will be as per any other conditions as may be specified in the Rules.

12. Thus, the default position is that the valuation has to be done on the basis of the transaction value and not based on any fixed value. The second proviso to sub-section (1) of Section 14 provides for Rules to be made in this behalf to provide for:

- a) the circumstances in which **the buyer and the seller shall be deemed to be related;**
- b) the manner of determination of value in respect of goods
when there is no sale,
- c) the manner of determination of value in respect of goods if **the buyer and the seller are related,**
- d) the manner of determination of value in respect of goods where **price is not the sole consideration for the sale;**
- e) the manner of determination of value in respect of goods in
any other case; and
- f) the manner of **acceptance or rejection of value** declared by the importer or exporter, as the case may

be, **where the proper officer has reason to doubt the truth or accuracy of such value,** and determination of value for the purposes of this section.

13. **The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** (hereinafter called as Valuation Rules) were framed as per the second proviso to sub-section 1 of section 14. It has 13 Rules in all of which Rules 1 and 2 are Preliminary Rules. Rule 3 states that subject to Rule 12, the value shall be the transaction value adjusted according to Rule 10. Rule 10 provides for certain costs to be included in the transaction value. Rule 12 provides for the proper officer to reject the transaction value if he has reason to doubt its truth and accuracy. **Thus, unless the proper officer rejects the transaction value under Rule 12, the valuation has to be** based on transaction value as per Rule 3 with some additions, if necessary, as per Rule 10.

14. In case the valuation cannot be done under Rule 3 /Rule 10. It must be done sequentially under rules 4 -9 sequentially.

15. In the present case the appellants are observed to have imported Aroma Chemical for perfumery preparation vide 32 different bills of entries as shown below:-

No.of Bill of Entry	Period in which B.o.E. filed	Description of Goods	Qty in (Kg.)	Unit price (USD/Kg.)
1	11.02.2016	Safranal (Aromatic Chemical for perfumery preparation)	500	428
4	08.03.2016 to 2104.2016	Sarfanal (Aromatic Chemical for perfumery preparation	2000	408

5	04.05.2016 to 29.07.2016	Aroma Chemicazl K100 (Aromatic Chemical for Perumery Preparation)	2500	408
7	08.09.2016 to 17.12.2016	Aroma Chemical K100 (Aromatic Chemical for Perfumery Preparation)	3500	400
15	09.01.2017 To 04.07.2017	Aroma Chemical K100 (Aromatic Chemical for Perfumery Preparation)	7550	380

16. We further observe from the documents on record that these bills of entries are based on the invoices issued by Givaudan with reference to the purchase orders against which they supplied the same to the appellants. There are 3 purchase orders:-

(1) Purchase order dated 09.12.2015 has two transaction values for the Aroma Chemical imported i.e. @ 428 and 408 USD per Kg.

(2) The purchase order dated 27.06.2016 the value mentioned is at the rate of 400 USD per Kg.

(3) The purchase order dated 13.12.2016 is at the rate of 380 USD per Kg.

17. We also observe from the extract of Emails placed on record that after receiving the first consignment in February, 2016 there is a common order confirmation for purchase of 5000 Kg. "safranal". However, prior to the said order was completely dispatched there have been exchange of emails for modifying the agreed price at the rate of 428 USD per Kg. to 408 USD per Kg. and based on said communication that the order confirmation got modified with respect to undispached quantity of "safranal". These observations to our

understanding are sufficient to hold that though the time period has been short but there is a reasonable genesis for reduction in price while importing Aroma chemical as "safranal". We also observe a certificate being issued by M/s.Givaudan, the importer, acknowledging the quantity imported by the appellant and the prices for the same. The said certification is in complete conformity of the description and the price in the impugned bill of entries.

18. These observations are also sufficient for us to hold that the findings of adjudicating authority below in para 38.2 of the order that there was no written proof regarding the offer of discount and even the declaration of overseas supplier i.e. M/s. Givaudan is silent about the price are wrong being contrary to the documents on record. Thus, we hold that value of Aroma Chemical while being imported as "Safranol" though was at reduced price for subsequent transaction but the same cannot be rejected for it being the transaction value. The transactions are held to be the ordinary sales. For this conclusion, we rely upon the decision of Hon'ble Apex Court in the case of **Eicher Tractors Ltd. Haryana vs. Commissioner of Customs Mumbai-1 reported as (2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.)** wherein the Hon'ble Court held as follows:-

"6. Under the Act Customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are *ordinarily sold*, or offered for sale, for delivery at the *time and place of importation* - in the course of international

trade. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale ...". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the Rules framed in this behalf.

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9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

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12. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to Customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

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13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule 4 were not limited to

the particular transaction then the other rules which refer to other transactions and data would become redundant.

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22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a misdescription of the goods imported as was the case in *Padia Sales Corpn.* [1993 Supp. (4) SCC 57] It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1)."

19. In another decision in the case of **Commissioner of Customs, Visakhapatnam vs. Aggarwal Industries Ltd. reported as (2012) 1 SCC 186 = 2011 (272) E.L.T. 641 (S.C.)** Hon'ble Supreme Court has held as follows:-

"10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to *ad valorem* duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved

out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value."

20. In the present case, we observe that appellant has not misdeclared the price actually paid. Thus, in the light of the above discussed settled proposition of law and the discussion about documents on record in the form of purchase orders, order confirmations, invoice and certification of the importer we hold that transaction value of Aroma Chemical when imported as "Aroma Chemical K-100" also cannot be rejected. For subsequent imports also there are corresponding invoices and Emails negotiating the price on record of these appeals. These documents have miserably been ignored by the adjudicating authority. The decision rejecting the transaction value and reassessing the same without following the sequence of Rules 4-9 of Valuation Rules as discussed above is not sustainable.

21. Coming to the allegations of misdeclaring "safranal" as "Aroma Chemical K-100", we take the judicial notice of the fact that "safranal" is an organic compound, derived from a component of Spices called Safran which is stigmas and styles of crocus flower. This chemical organic compound is responsible for the Aroma. The chemical composition of this organic compound is $C_{10}H_{14}O$ and IUPAC name for

"Safranal" is 2, 6, 6 - trimethylcyclohexa-1, 3 diene - 1 - carbaldehyde. We also judicially notice that the IUPSC name and the chemical composition for Aroma Chemical K-100 is also same. Not only this, we observe that HSN Code for "Safranal" as well as Aroma Chemical K-100 for perfumery preparation is 29122990. This is apparent from the bills of entries placed on record. It is also apparent from those documents that the rate of customs duty for "Safranal" as well as K-100 is also same. Thus, even if the imported Aroma Chemical is named as K-100, which initially used to be imported as "Safranal", no benefit has accrued to the appellant. Resultantly, we hold that there is no question of any *mens rea* with the appellants with an intent to evade customs duty while declaring "safranal" as "Aroma Chemical K-100."

22. The another important observation of ours is the another important aspect as observed is that the value was reduced while importing Aroma Chemical as "safranal" itself. As already mentioned above, there is no unreasonability in the said reduction of value, hence, no question arises for the rejection of transaction value when it reduced from USD 428 per Kg. to 408 USD per Kg. Appellant has given explanation in defence that the reduction in price was purely out of negotiations prior receiving the subsequent consignment. No evidence is produced on record to falsify the said defence nor the emails and the certificate of importer as produced on record by the appellant. Department also failed to produce any evidence to prove that 'safranal' and "Aroma Chemical K-100" are two different compounds. Both are observed to be the one and the same chemical.

23. We also observe that when Aroma Chemical was imported as "Aroma Chemical K-100", several consignments were imported at the same value of USD 408 per Kg. as was initially got negotiated for "safranal". The above discussion is sufficient for us to hold that the change of name from "safranal" to K-100 does not amount to be an act of misdeclaration as there is no evidence of evasion of customs duty while mentioning "safranal" as D-100 on the consignments as well as on the storage tins/containers. The entire case made out against the appellant is therefore, held to be an act of misunderstanding and the findings are nothing but the result of presumptions and assumptions. Once there was no intent to evade the customs duty and the required duty has already been paid by the appellant. Once, there is no evidence of alleged misdeclaration and undervaluation for the reasons as discussed above, there arises no question of imposition of penalty either on the importing firm or on its director. Hence, the orders under challenge cannot be sustained.

24. In the light of entire above discussion, the order under challenge is hereby set aside. Consequent thereto both the appeals stands allowed.

[Pronounced in the open Court on 05.07.2023]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)