

**In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

Appeal No. C/11799-11801/2017-DB

[Arising out of OIA-MUN-CUSTM-000-APP-135-136-17-18 dated 08.08.2017 passed
by CC kandla]

M/s Siemens Gamesha Renewable Power Pvt. Ltd. Appellant

Vs

C.C.Mundra Respondent

Represented by:

For Appellant: Sh. H.D. Dave (advocate)

For Respondent: Sh. J. Nagori (AR)

CORAM :

HON'BLE MR. RAMESH NAIR, HON'BLE MEMBER (JUDICIAL)

HON'BLE MR. RAJU, HON'BLE MEMBER (TECHNICAL)

Date of Hearing:04.07.2018

Date of Decision06.08.2018

Final Order No. A/ 11657-11659 /2018

Per : Mr. Ramesh Nair

These three appeals are directed against the orders passed by
the Commissioner. The details of the appeals are as under:-

Appeal No.	OIA No. & date	Value of the goods	Redemption fine	Penalty
C/11799/2017	OIA-MUN-CUSTM-000-APP-135-136-17-18 dated 08.08.2017	28,86,87,612.68	2,50,00,000/-	70,00,000/-
C/11800/2017	OIA-MUN-CUSTM-000-APP-135-136-17-18 dated 08.08.2017	56,44,64,784.58	3,75,00,000/-	45,00,000/-
C/11801/2017	OIA-MUN-CUSTM-000-APP-135-136-17-18 dated 08.08.2017	10,89,46,360	1,70,00,000/-	50,00,000/-

2. The brief facts of the case in all the appeals are that the appellant have imported prime hot rolled steel plates shotblasted/ coated with Zinc Silicate. At the time of import in terms of DGFT Notification No. 38/2015-2020 dated 05.02.2016, the minimum import price was fixed on iron steel under chapter 72 of ITCHS, 2012. The appellant declared the price of the imported goods which is below the minimum import price fixed by DGFT for import of such goods. Therefore, the Revenue, on the ground that the appellant have violated the condition of Foreign Trade Policy, confiscated the goods, imposed redemption fine and enhanced the value from the declared price to equal to minimum import price fixed by DGFT. Therefore, the present appeals filed by the appellants.

3. Sh. H.D. Dave, Ld. Counsel appearing on behalf of the appellant submits that as regard the enhancement of the value, the same cannot be done only on the basis of minimum import price fixed by the DGFT as a restriction of import of the subject goods. There is no dispute that the value declared by the appellant in the bill of entry based on the invoices is a transaction value and in accordance with Section 14 of Customs Act, the said value was to be accepted. The Revenue has enhanced the value only on the basis of minimum import price which is not relevant for the purpose of valuation under Section 14 of the Customs Act, therefore, the enhancement of value is illegal and incorrect. He further submits that the DGFT has no power to fix the

minimum import price in terms of Section 3 of FT(D&R) Act 1992. In this regard the power vested with the Parliament and not with DGFT, therefore, the notification issued by DGFT is without authority of law, therefore, the same cannot be considered. He further submits that the huge redemption fine and penalties were imposed only for a minor lapse that the appellant have allegedly violated the condition of import. He submits that there is no monetary gain or duty involved in violation of such condition. Therefore, the harsh redemption fine and penalty was not warranted. In support of his submission he placed reliance on the following judgments.

- Crystal Granite & Marble Pvt. Ltd. vs CCE Pune 2017 (7) GSTL 121 (Tri. Mum)
- S. Mira Commodities Pvt. Ltd. vs UOI 2009 (235) ELT 423 (Mad.)

4. Sh. J. Nagori Ld. Additional Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that by notification 38/2015-2020 dated 5.2.2016, a condition of import by fixing the minimum import price was imposed which is well within power of DGFT in terms of Section 3 of FT (D&R) Act, 1992, therefore, the power for issuance of notification cannot be challenged by the appellant.

5. We have carefully considered the submissions made by both the sides and perused the records. We find that the issue to be decided by us is as under:

- 1) Whether DGFT has power to issue notification under Section 3 of FT(DR) Act, 1992 for fixing the minimum import price?

- 2) Whether enhancement of the value for the purpose of assessment on the basis of MIP is legal and correct?
 - 3) Whether redemption fine and penalty for the violation of Foreign Trade Policy is legal and correct?
6. As regard, the issue of power of issue of notification by DGFT which is conferred by Section 3 and FT (D&R) Act, 1992 reproduced below:

“3 Powers to make provisions relating to imports and exports.

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the [import or export of goods or services or technology]: [Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefits under the foreign trade policy or is dealing with specified services or specified technologies.]

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.”

7. As per above section, in our considered view, the DGFT is empowered to impose restriction for import. The fixing of MIP is not to enhance the value of the goods but only to impose of restriction. any type of restriction can be imposed by the DGFT by issuing the Notification, therefore, the DGFT is well within the power under Section 3 of FT (D&R) Act, 1992 to impose any condition for import.
8. As regard the judgment of Hon’ble Madras High Court on the identical issue in the case of S Mira Commodities (supra) we find that it is a case of virus, it can be challenged before the court of law. This

Tribunal being creature under the Customs Act, read with FT (D&R) Act, do not have power to hold any law as ultravirus, therefore, the inherent power vested in the higher courts cannot be exercised by this Tribunal. Therefore, we respectfully distinguish the judgment of Hon'ble Madras High Court in this regard.

9. As regard the enhancement of the valuation by the Customs Authority merely on the basis of minimum import price fixed by the DGFT, we are of the view that the Customs valuation is governed by Section 14 according to which the transaction value if otherwise not disputed should be accepted for the purpose of assessment. In the facts of the case the only reason for enhancement of the value is MIP fixed by DGFT. The MIP fixed by DGFT is only as a measure of restriction imposed for import of such goods. DGFT has not enhanced the value of the goods imported. If at all the custom intent to fix the value for the purpose of assessment in that case it can be done by issue of notification under the customs act for fixing the tariff value which is not the case here. Moreover, the custom authority have not carried out any investigation or brought any material on record to discard the value declared by the appellant. Therefore merely on the basis of MIP fixed by DGFT, the Customs valuation cannot be disturbed. The identical issue has been decided by the Tribunal in the case of Crystal Granite and Marble (supra) where in the coordinate bench has taken the view as under:

“5. We have carefully gone through the facts of the case and records. We find that the demand has been raised mainly on the basis of DGFT circular fixing the minimum import price of the imported Marble Blocks. However we find that there is no evidence of any manipulation in transaction value changed by the appellant to their buyers. The sale has been made to the independent buyers and the price is the sole consideration of sale. In case of *M/s Eicher Tractors Ltd. v. Commissioner* - [2000 \(122\) E.L.T. 321](#) (S.C.) the Hon'ble Apex Court held that unless the “special circumstances” exists, the Transactional value cannot be

rejected. The minimum imported price of the Marble blocks cannot be used as basis to assess the fix sale price of marble slabs cleared by the appellant automatically. We do not find any legal reason to do so. The minimum import price fixed for imports cannot be automatically considered as cost of raw material imported by the importer. The reasoning given by the adjudicating authority is thus fallacious. There is no investigation/findings that the importer has paid the amount equal to minimum import price to the seller of the Marble blocks. The application of Rule 8 of the Valuation Rules by reckoning the Minimum Import Price as the base price is not an approved method under the Customs law and the valuation arrived at by this method is not correct. Even otherwise there is no comparison of appellant's sale price with the market price during the relevant period so as to term the transaction value as incorrect. The price in the domestic market is driven by lot of factors and when the transaction is between the appellant and unrelated buyer there are no reasons to doubt the said value. The demand of duty is solely based upon the ground and reasoning that the Minimum Import Price fixed by the DGFT of the Marble Blocks is much higher and therefore the transaction value is not correct. We are unable to appreciate the same. We therefore hold that the impugned order does not sustain. In view of our above findings and discussion we set aside the impugned order and allow the appeal with consequential reliefs.”

In view of the above judgment, the customs valuation cannot be altered or enhanced on the basis of minimum import price fixed by the DGFT. Accordingly, we set aside the enhancement of the value ordered by the lower authority.

10. As regard the redemption fine and penalty imposed by the lower authorities, we are of the view that there is indeed violation of Foreign Trade Policy that despite the minimum import price fixed by the DGFT, the appellant have imported the goods which is carrying the value below minimum import price, therefore, they have violated the condition, however, this violation does not result into any Revenue loss to the Government or any undue gain to the appellants. Therefore, looking to the gravity of offence and considering the setting aside the enhancement of value, we are of the view that lower authority have imposed the redemption fine and penalty disproportionately. Accordingly we reduce the redemption fine and penalty as under:

Appeal No.	As per Impugned order		Reduced as per this order	
	R.F.	Penalty	R.F.	Penalty

C/11799/2017	2,50,00,000/-	70,00,000/-	25,00,000/-	7,00,000/-
C/11800/2017	3,75,00,000/-	45,00,000/-	37,00,000/-	5,00,000/-
C/11801/2017	1,70,00,000/-	50,00,000/-	17,00,000/-	3,00,000/-

11. Accordingly we reduce the redemption fine and penalty as mentioned in the above chart. The impugned orders stand modified to the above extent. All the appeals are partly allowed in above terms.

(Pronounced in the open court on 06.08.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Neha