



adjudication :

"Whether to accept the Transaction value as declared by the importer or the price of imported goods be determined on the basis of LME Prices."

Briefly stated the material facts giving rise to the present appeal are as follows :

The respondent assessee filed two Bills of Entry dated 16th September, 1988 and 17th December, 1998 for clearance of Brass Scrap and copper Scrap as per ISRI grade "Honey" and Birth/Cliff" respectively. The Bills of Entry were assessed at the declared invoice value, viz., CIF US \$ 1100 and US \$ 1300 PMT respectively. After inspection, the goods were cleared on payment of customs duty assessed.

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Subsequently, on the basis of the information received from the London Metal Exchange, (for short, "the LME") to the effect that the price of the said metals in the LME as on the date of import was more than the price declared by the respondent, an additional duty amounting to Rs. 90,248/- and 1,94,035/- respectively was demanded from the assessee on the said two Bills of Entry. The additional demand having been confirmed by the Deputy Commissioner of Customs, the assessee preferred appeal to the Commissioner (Appeals) but without any success.

Aggrieved, the assessee carried the matter in further appeal to the Customs, Excise and Gold(Control) Appellate Tribunal, New Delhi, (for short "the Tribunal") as it then existed. By the impugned order, the Tribunal has allowed the appeal and quashed the additional amount of duty demanded from the respondent. While accepting the plea of the assessee that they were not confronted with any contemporaneous material relied upon by the revenue for enhancing the price declared by them in the bills of entry, the Tribunal has observed thus :

"In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. Therefore, assessment in this case has to be taken as having been made purely on

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the basis of LME Bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allowed the appeal."

Not being satisfied with the said order, the revenue is before us in this appeal.

We have heard Mr. Biswajit Bhattacharya, learned Additional Solicitor General on behalf of the revenue. The assessee remains unrepresented.

Learned counsel submits that since the LME bulletin is a true indicator of current international prices of metals, the adjudicating authority was justified in adopting the price of the said two metals as notified by the LME, and therefore, the Tribunal was not justified in quashing the additional customs duty determined to be payable on the imports in question.

We are unable to persuade ourselves to agree with the learned counsel. It is manifest from the afore-extracted order of the Tribunal that no details of any contemporaneous imports or any other material indicating the price notified by the LME had either been referred to by the adjudicating Officer in the adjudication order or

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such material was placed before the Tribunal at the time of hearing of the appeal. Learned counsel for the Revenue has not been able to controvert the said observations by the

Tribunal. In that view of the matter no fault can be found with the order passed by the Tribunal setting aside the additional demand created against the assessee.

Consequently, the appeal being devoid of any merit, is dismissed with no order as to costs.

.....J.  
[ D.K. JAIN ]

.....J.  
[ T.S. THAKUR ]

NEW DELHI,  
APRIL 22, 2010.