CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 12443 of 2019-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-016-028-19-20 dated 30.07.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

METENERE LIMITED .... **Appellant**
Survey No. 590,591 & 593, Village Bhimasar, Taluka
Anjar, Kutch, Gujarat -370240

VERSUS

Commissioner of Customs, Kandla .... **Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

WITH

(i) Customs Appeal No. 12444 of 2019 METENERE LIMITED
(ii) Customs Appeal No. 12897 of 2019 METENERE LIMITED
(iii) Customs Appeal No. 12898 of 2019 METENERE LIMITED
(iv) Customs Appeal No. 12899 of 2019 METENERE LIMITED
(v) Customs Appeal No. 12900 of 2019 METENERE LIMITED
(vi) Customs Appeal No. 12901 of 2019 METENERE LIMITED
(vii) Customs Appeal No. 12902 of 2019 METENERE LIMITED
(viii) Customs Appeal No. 12903 of 2019 METENERE LIMITED
(ix) Customs Appeal No. 12904 of 2019 METENERE LIMITED
(x) Customs Appeal No. 12905 of 2019 METENERE LIMITED
(xi) Customs Appeal No. 12906 of 2019 METENERE LIMITED
(xii) Customs Appeal No. 12907 of 2019 METENERE LIMITED
(xiii) Customs Appeal No. 12908 of 2019 METENERE LIMITED
(xiv)Customs Appeal No. 12909 of 2019 METENERE LIMITED
(xv) Customs Appeal No. 12910 of 2019 METENERE LIMITED
(xvi) Customs Appeal No. 12911 of 2019 METENERE LIMITED
(xvii)Customs Appeal No. 12912 of 2019 METENERE LIMITED
(xviii)Customs Appeal No. 12913 of 2019 METENERE LIMITED
(xix) Customs Appeal No. 12914 of 2019 METENERE LIMITED
(xx) Customs Appeal No. 12915 of 2019 METENERE LIMITED
(xxi)Customs Appeal No. 12916 of 2019 METENERE LIMITED
(xxii)Customs Appeal No. 12917 of 2019 METENERE LIMITED
(xxiii)Customs Appeal No. 12918 of 2019 METENERE LIMITED
(xxiv)Customs Appeal No. 12919 of 2019 METENERE LIMITED
(xxv)Customs Appeal No. 12920 of 2019 METENERE LIMITED
(xxvi)Customs Appeal No. 12921 of 2019 METENERE LIMITED
(xxvii)Customs Appeal No. 12922 of 2019 METENERE LIMITED
(xxviii)Customs Appeal No. 12923 of 2019 METENERE LIMITED
(xxix)Customs Appeal No. 12924 of 2019 METENERE LIMITED
(xxx)Customs Appeal No. 12925 of 2019 METENERE LIMITED
(xxxi)Customs Appeal No. 12926 of 2019 METENERE LIMITED
(xxxii)Customs Appeal No. 12927 of 2019 METENERE LIMITED
(xxxiii)Customs Appeal No. 12928 of 2019 METENERE LIMITED

(xxxiv)Customs Appeal No. 12929 of 2019 METENERE LIMITED
(xxxv)Customs Appeal No. 12930 of 2019 METENERE LIMITED
(xxxvi)Customs Appeal No. 12931 of 2019 METENERE LIMITED
(xxxvii)Customs Appeal No. 12932 of 2019 METENERE LIMITED
(xxxiii)Customs Appeal No. 12933 of 2019 METENERE LIMITED
(xxxix)Customs Appeal No. 12934 of 2019 METENERE LIMITED
(xxxx)Customs Appeal No. 12935 of 2019 METENERE LIMITED
(xxxxi)Customs Appeal No. 12936 of 2019 METENERE LIMITED
(xxxxii)Customs Appeal No. 12937 of 2019 METENERE LIMITED
(xxxxiii)Customs Appeal No. 12938 of 2019 METENERE LIMITED
(xxxxiv)Customs Appeal No. 12939 of 2019 METENERE LIMITED
(xxxxv)Customs Appeal No. 12940 of 2019 METENERE LIMITED
(xxxxvi)Customs Appeal No. 12941 of 2019 METENERE LIMITED
(xxxxvii)Customs Appeal No. 12942 of 2019 METENERE LIMITED
(xxxxviii)Customs Appeal No. 12943 of 2019 METENERE LIMITED
(xxxxix) Customs Appeal No. 12944 of 2019 METENERE LIMITED
(l) Customs Appeal No. 12945 of 2019 METENERE LIMITED
(li) Customs Appeal No. 12946 of 2019 METENERE LIMITED
(lii) Customs Appeal No. 12947 of 2019 METENERE LIMITED
(liii) Customs Appeal No. 12948 of 2019 METENERE LIMITED
(liv) Customs Appeal No. 12949 of 2019 METENERE LIMITED
(lv) Customs Appeal No. 10114 of 2020 TENERON LIMITED
(lvi) Customs Appeal No. 10115 of 2020 TENERON LIMITED
(lvii) Customs Appeal No. 10116 of 2020 TENERON LIMITED
(lviii) Customs Appeal No. 10117 of 2020 TENERON LIMITED
(lix) Customs Appeal No. 10118 of 2020 TENERON LIMITED
(lx) Customs Appeal No. 10119 of 2020 TENERON LIMITED
(lxi) Customs Appeal No. 10120 of 2020 TENERON LIMITED
(lxii) Customs Appeal No. 10121 of 2020 TENERON LIMITED
(lxiii) Customs Appeal No. 10122 of 2020 TENERON LIMITED
(lxiv) Customs Appeal No. 10123 of 2020 TENERON LIMITED
(lxv) Customs Appeal No. 10124 of 2020 TENERON LIMITED
(lxvi) Customs Appeal No. 10125 of 2020 TENERON LIMITED
(lxvii) Customs Appeal No. 10126 of 2020 TENERON LIMITED
(lxviii) Customs Appeal No. 10127 of 2020 TENERON LIMITED
(lxix) Customs Appeal No. 10129 of 2020 TENERON LIMITED
(lxx) Customs Appeal No. 10130 of 2020 TENERON LIMITED
(lxxi) Customs Appeal No. 10131 of 2020 TENERON LIMITED
(lxxii) Customs Appeal No. 10132 of 2020 TENERON LIMITED
(lxxiii) Customs Appeal No. 10133 of 2020 TENERON LIMITED
(lxxiv) Customs Appeal No. 10134 of 2020 TENERON LIMITED
(lxxv) Customs Appeal No. 10135 of 2020 TENERON LIMITED
(lxxvi) Customs Appeal No. 10136 of 2020 TENERON LIMITED
(lxxvii) Customs Appeal No. 10137 of 2020 TENERON LIMITED
(lxxiii) Customs Appeal No. 10138 of 2020 TENERON LIMITED
(lxxix) Customs Appeal No. 10139 of 2020 TENERON LIMITED
(lxxx) Customs Appeal No. 10140 of 2020 TENERON LIMITED
(lxxxi) Customs Appeal No. 10141 of 2020 TENERON LIMITED
(lxxxii) Customs Appeal No. 10142 of 2020 TENERON LIMITED
(lxxxiii) Customs Appeal No. 10143 of 2020 TENERON LIMITED
(lxxxiv) Customs Appeal No. 10144 of 2020 TENERON LIMITED
(lxxxv) Customs Appeal No. 10145 of 2020 TENERON LIMITED
(lxxxvi) Customs Appeal No. 10176 of 2020 TENERON LIMITED

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-020-068-19-20 dated 30.07.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

[Arising out of Order-in-Original/Appeal No MUN-CUSTM-000-APP-216-223-19-20 dated 04.12.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD & Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-054-078-19-20 dated 04.12.2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

APPEARANCE :

Shri Prem Ranjan Kumar, Advocate for the Appellant
Shri G. Kirupanandan, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

DATE OF HEARING: 03.02.2022
DATE OF DECISION:**06.06.2022**

FINAL ORDER NO. A/10561-10647 / 2022

RAMESH NAIR :

These appeals are directed against orders-in-appeal passed by learned Commissioner (Appeals). The appellant had challenged the assessment of bills of entry before the Commissioner (Appeals). Accordingly, the appeals before the Commissioner (Appeals) were filed against the bills of entry whereas no speaking order was passed by the assessing authority.

2. The brief facts of the case are that the appellant filed bills of entry for clearances of material of aluminum scrap and declared the value as mentioned in invoices. The goods were examined and found as per declaration but assessing officer rejected the declared value and enhanced the same on the basis of guidelines issued under F. No. VAL/TECH/36/2016 (AL Scrap) dated 01.12.2016, issued by DGoV. The appellant explained to the assessing officer that their declared value are true transaction value being a negotiated price. The guidelines issued by DGoV with regard to caution while assessing scrap also states that the Customs Act and Valuation Rules are to be followed and guidelines are merely to be cautious while

assessing the goods. The assessing authority did not agree to accept the transaction value and therefore the appellant had no choice but to pay the duty as per the enhanced value and cleared the goods. Being aggrieved by the assessment of bills of entry the appeals were filed before the Commissioner (Appeals) who after calling explanation from the assessing officer rejected the transaction value upholding the enhanced value, on the ground that the appellant have accepted the enhanced value, they did not have *locus standi* to challenge the assessment. Being aggrieved by the orders-in-appeal, appellant filed present appeals before this Tribunal.

3. We have heard both the sides and perused the record. We find that the primary issue involved in the present case is that whether the letters submitted by the appellant should be treated as acceptance of the value enhanced by the department and; whether, after giving the letter of acceptance, the appellant has the right to file appeal challenging the assessment.

Firstly, the Adjudicating Authority has not passed the speaking order either on the acceptance letter of the appellant and the enhancement of value. It is also not clear whether the assessing authority has relied upon any contemporaneous import price data.

As regards the issue that, after acceptance by the assessee whether they have the right to challenge the assessment by filing appeal or not, the appellant have relied upon the following judgments:-

(a) Chaudhary International vs. CC, Bombay – 1999 (109) ELT 371 (Tri.)

(b) Dunlop India Ltd. & Madras Rubber Factory Ltd. vs. Union of India - 1983 (13) ELT 1566 (SC)

(c) Union of India vs. Madhumilan Syntax Ltd. - 2006 (195) ELT 141 (SC)

(d) CCE, Indore vs. Hingora Industries Ltd. - 2009 (237) ELT 318 (Tri.)

(e) CC, New Delhi vs. Ganesh Trading Company reported in 2013 (297) ELT 75 (Tri.);

(f) CC, Delhi vs. Maruti Fabrics - 2016 (343) ELT 963 (Tri.)

(g) Mohan Textiles Mills vs. CCE & ST, Ludhiana - 2018 (363) ELT 536 (Tri.)

(h) Kisco Casting Limited vs. CC, Ludhiana - 2018 (364) ELT 1084 (Tri.)

(i) Varsha Plastic Pvt. Ltd. vs. Union of India - 2009 (235) ELT 193 (SC)

(j) Life Style International Pvt. Limited vs. UOI – 2011 (271) ELT 190 (Bom.)

(k) Royal Oil Field Pvt. Ltd. vs. CC, Nehva Sheva - 2005 (180) ELT 395 (Tri)

(l) Jindal Strips Ltd. vs. Commissioner of Customs -2001(133)ELT 570) (Tri.)

(m) Drunkey Exports P Ltd. vs. CC - 2004 (165) ELT 417

(n) GKN Sinter Metals Ltd. vs. CC, Pune -in 2008 (232) ELT 692 (Tri. Mum.)

(o) CC, New Delhi vs. Prabhu Dayal Premchand - 2010 (253) ELT 353 (SC).

(p) S.K. Dhawan vs. Comm. of Customs (Import) Mumbai -2016 (344) ELT 436 (Tri. Mumbai)

(q) Stovec Industries Ltd. vs. CC, Nhava Sheva - 2005 (186) ELT 225 (Tri)

(r) CC, Mumbai vs. Bureau Varitas - 2005 (181) ELT 3 (SC)

(s) Eicher Tractor reported in 2000 (122) ELT 321 (SC).

(t) CC, New Delhi vs. Prabhu Dayal Prem Chand - 2010 (253) ELT 353 (SC)

(u) Pushpak Metal Corporation vs. CC,Kandla - 2014 (312) ELT 381 (Tri. Ahmd).

(v) Sunland Metal Recycling Industries vs. CC, Kandla Final Order No, A/11871-11874/2019

(w) Guru Rejendra Metalloys India Pvt. Ltd. vs. Commissioner of Customs - 2020 (374) ELT 617 (Tri. Ahmd.)

(x) Eicher Tractor vs. CC, Mumbai - 2000 (122) ELT 321 (SC),

(y) CC, Calcutta vs. South India Television (P) Ltd. - 2007 (214) ELT 3 (SC).

(z) Century Metal Recycling Pvt. Ltd. & Anr. vs. UOI – 2019 (367) ELT 3 (SC)

(za) CCE & ST Noida vs. Sanjeevani Non-Ferrous Trading (P) Ltd. - 2019 (365) ELT 3 (SC)

(zb) BBM Impex Pvt. Ltd. vs. Comm. of Customs (Prev.) Delhi - 2021 (376) ELT 743 (Tri. Del.)

4. The Revenue also relied upon the decision which was cited by the learned Commissioner (Appeals) in his order and they have also relied upon the decision of the CESTAT's Principal Bench in the case of Commissioner of Customs vs. M/s. Hanuman Prasad & Sons – Order No. 51584-51619/2020 dated 20 October 2020.

We find that on the issue that whether the assessee is entitled to challenge the assessment after giving acceptance letter of enhanced value, there are contrary judgments. The Adjudicating Authority had no occasion to consider all these judgments as he has not passed any speaking order. Moreover, there is no contemporaneous data provided to the appellant for enhancement of value which amounts to clear violation of principles of natural justice.

5. We are therefore of the view that the matter should be remitted back to the assessing officer who shall consider the representation to be given by the appellant on all the issues and thereafter, he shall pass a speaking order. Needless to say that he will consider all the judgments on all the issues raised by the appellant before this Tribunal. Accordingly, the appeals are allowed by way of remand to the assessing officer/ Adjudicating

Authority for passing a detailed speaking order within a period of two months from the date of this order.

(Pronounced in the open court on **06.06.2022***)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

KL