Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

CUSTOMS Appeal No. 13989 of 2014- DB

(Arising out of OIA-AHM-CUSTM-000-APP-310-14-15 dated 08/10/2014 passed by the Commissioner of Customs (Appeals)-Ahmedabad)

RUDRA SENSOR **......Appellant**
3rd Floor, Karnavati Complex,
Opposite Baroda Expressway,
Above Indian Bank, C T M,
Ahmedabad, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS- Ahmedabad **......Respondent**
Custom House,
Near All India Radio, Navrangpura,
Ahmedabad, Gujarat

With

CUSTOMS Appeal No. 12082 of 2015- DB

(Arising out of OIA-AHD-CUSTM-000-APP-108-15-16 dated 24/08/2015 passed by the Commissioner of Customs(Appeals)-Ahmedabad)

RUDRA SENSOR **......Appellant**
3rd Floor, Karnavati Complex,
Opposite Baroda Expressway,
Above Indian Bank, C T M,
Ahmedabad, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS- Ahmedabad **......Respondent**
Custom House,
Near All India Radio, Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri R R Dave, Consultant for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10711-10712/2025

DATE OF HEARING: 13.05.2025
DATE OF DECISION: 10.09.2025

SATENDRA VIKRAM SINGH

M/s Rudra Sensor, Ahmedabad (Appellant in this case) are engaged in import of "Load Cells" falling under CTH 84239020 from China based supplier. The DRI officers investigated a case of undervaluation of imported goods against the appellant by conducting search at their premises on 21.03.2012, thereby recovering certain incriminatory documents and recording the statements of Shri Mahendra D Sakhrelia, Proprietor and Shri Viral Ashokbhai Gaikwad, Managing Director of the appellant. After completing investigation, they issued show cause notice dated 03.10.2012 proposing –(a) rejection of declared value of the imported goods and redetermining the same under Section 14(1) of the Customs Act, 1962 read with Rule 3 and 11 of the Customs Valuation Rules, 2007, (b) confiscation of the seized Load cells, (c) demand of differential Customs duty alongwith interest and (d) imposition of penalty. Initially, Proviso to Section 28(1) of the Customs Act, 1962 was invoked in the SCN dated 03.10.2012 but subsequently, vide corrigendum dated 15.04.2014, Section 28 (4) of the Customs Act, 1962 was invoked for demanding the differential duty. One more show cause notice dated 28.01.2013 was issued to the appellant in respect of previous imports of Load cells in 2009 and 2010 proposing- (a) rejection of declared assessable value and redetermination of value (b) confiscation of the goods (c) demand of differential Customs duty of Rs. 47,88,684/- under Proviso to Section 28(1) of the Customs Act, 1962 along with interest and (d) penalty under Section 114A and 112(a) of the Customs Act, 1962.

1.1 The first show cause notice was decided by the Additional Commissioner vide order dated 18.03.2014 wherein he rejected the declared value and redetermined the value of the imported goods confiscated the seized goods having revised value of Rs. 54,79,156/- under Section 111(d) and 111(m) of the Customs Act, 1962 and imposed RF of Rs. 13,50,000/- in lieu of confiscation, confirmed the differential duty of Rs. 6,04,813/- under Section

28(8) of the Customs Act, 1962 along with interest and imposed equal penalty of Rs. 6,04,813/- under Section 114A of the Customs Act, 1962.

1.2 The second show cause notice was decided by the adjudicating authority vide order dated 29.12.2014 wherein he rejected the declared value and redetermined the assessable value at Rs. 4,57,60,306/-, confirmed differential Customs duty of Rs. 47,88,684/- under Section 28(8) of the Customs Act, 1962 along with interest and imposed equal penalty upon the appellant under Section 114A of the Customs Act, 1962. The goods were though held liable to confiscation under Section 111(m) but no redemption fine was imposed as the goods were not physically present.

1.3 Aggrieved with the above orders, the appellant filed appeals before the Commissioner (Appeals) who vide impugned order dated 08.10.2014 and 24.08.2015 upheld the order of the lower authority and rejected both the appeals. He also upheld the decision of the Lower authority of not allowing cross-examination of the Panch witness, CHA & the DRI officers. Aggrieved with the above orders, the appellant filed appeal No. C/13989/2014 & C/12082/2015 before this Tribunal.

2. Grounds taken in appeal No. C/13989/2014 and C/12082/2015: -

a) The lower authorities have violated the principles of natural justice as vital grounds put by them against allegations of undervaluation of imported Load cells has not been discussed in the order.
b) Declared value of the import goods has been rejected and redetermined without any cogent documentary evidence, and without considering the price data of identical import items cleared at the relevant period. Certificate of the overseas supplier to the effect that the imported items are semi-furnished Load cells, has been discarded on vague grounds and the goods have been taken as finished Load cells.

c) The manner of enhancement of value of imported items, is against the provisions of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007.

d) They quoted various case laws as mentioned below but the lower authorities did not consider their submission: -

(1) CC, ICD, TKD New Delhi V/s. Poly Glass Acrylic Mtg. Co. Ltd. 2014-TIOL-39 CESTAT-Del

(2) Uniworth Textiles Ltd. V/s. Commissioner of Central Excise, Raipur2013 (288) E.L.T. 161 (S.C)

(3) A.G. Incorporation V/s. Commissioner of Customs, Delhi 2013 (287) E.L.T. 357 (Tri. Delhi)

(4) Commissioner of Customs, Jamnagar V/s. Tata Chemicals Ltd.) 2012 (279) E.L.T. 78 (Tri. Ahmd.)

(5) Commissioner of Central Excise, Delhi-IV V/s. Nath International2012 (278) E.L.T. 463 (Tri. Del.)

(6) M/s. Kalsi Machinery Pvt. Ltd-2011(264) E.L.T. 318 (Tribunal-Delhi)

7) Commr. of Cus. (Preventive), Gujarat V/s. Reliance Petroleum Ltd. 2008 (227) E.L.T. 3 (S.C)

(8) Mihir Enterprises V/s. Commissioner of Customs (import), Mumbai 2008 (227) E.L.T. 75 (Tri.-Mumbai)

(9) Shri Shiv Shakti Corporation Ltd. V/s. Commissioner of Customs, Ahmedabad 2007 (213) E.L.T. 673 (Tri.-Ahmd.)

(10) Suyog Extrusions V/s. Commissioner of Customs (Import) Mumbai 2007 (213) E.L.T. 524 (Tri. Mumbai)

(11), Super Duper T.V. V/s Commissioner of Customs, Chennai 2007 (220) E.L.T. 506 (Tri. -Chennai)

(12) H.T. Company V/s. Commissioner of Cus., Hydrabad-2007 (208) E.L.T. 507 (Tri. Bang.)

(13) Commissioner of Customs, Chennai V/s. Metro Trading Co. 2006 (206) E.L.T. 625 (Tri. Chennai)

(14) Commissioner of Customs, Chennai V/s. Sahara Enterprises2006 (206) E.L.T. 548 (Tri. - Chennai)

(15) Bashayir V/s. Commissioner of Customs, Chennai 2006 (206) E.L.T. 541 (Tri-Chennai),

(16) Shimnit Machine Tools & Equipment V/s. Commr. Of Customs (Import), Sheva-2006 (204) E.L.T. 630 (Tri. Mumbai)

(17) Sony Impex V/s. Commissioner of Central Excise, Customs-2006 (202) E.L.T. 486 (Tri. Kolkata),

(18) Italia Ceramics Limited. V/s. Commissioner of Customs, Mumbai-2005 (191) E.L.T. 1024 (Tri. Mumbai),

(19) Shree Ganesh Agencies V/s. Commissioner of Customs, Chennai-2005 (189) E.L.T. 77 (Tri. - Chennai),

(20) Parag Sheth V/s. Commissioner of Customs, Ahmedabad 2005 (188) E.L.T. 391 (Tri. Mumbai),

(21) Commissioner of Customs (imports), Mumbai V/s. Lord Shiva Overseas-2005 (181) E.L.T. 213 (Tri. Mumbai),

(22) Nina Chaka Pvt. Ltd. V/s. Commissioner of Customs, New Delhi-2004 (163) E.L.T. 464 (Tri-Del.),

(23) Vintel Distributors Pvt. Ltd. V/s. Commissioner of Customs (SEA), Chennai-2002 (149) E.L.T. 145 (Tri.- Chennai),

(24) Mohan Meakin Ltd. V/s. Commissioner of Central Excise, Kochi-2000 (115) E.L.T. 3 (S.C.)

(25) Eicher Tractors Ltd., V/s. Commissioner of Customs, Mumbai-2000(122). E.L.T. 321 (S.C)

(26) Collector of Customs, Bombay V/s. Telco. 1999 (106) E.L.T. 241 (Tribunal)

(27) Collector of Customs, Bombay V/s. New Electronics Industries Ltd. 1998 (98) E.L.T. 690 (Tribunal)

(28) Collector of Customs, Bombay V/s. East Punjab Traders 1997 (89) E.L.T. 11 (S.C.)

e) Undervaluation of goods has been alleged against the appellant without substantiating charges and also as to how the differential amount has been paid to the overseas supplier.

f) The value has been redetermined by taking insurance value to be 110% of the actual value. This thumb rule may not be applicable in their case as overseas supplier has insured the goods as per law prevailing in his country.

g) Proforma invoice No. 2011C1221M dated 21.12.2011, showing value of the goods as 104085 USD is unsigned and therefore, the same cannot be relied upon. They have valid invoice(s) issued by the supplier showing value of the goods as 60005 USD only.

h) Intent to evade payment of Customs duty has been alleged on the ground that import documents show the items as "Load cells" but the bills of entry show the description of item as "semifinished". This allegation is not correct in view of the certificate given by the overseas supplier.

i) Their request to cross-examine crucial witnesses has been denied. Once cross-examination is denied, such statements cannot be relied upon against them for confirmation of the allegations.

j) The seized goods have been confiscated with option to redeem the same on payment of redemption fine of Rs. 13.50Lakhs under Section 125 of the Customs Act, 1962. They strongly opposed redemption fine in appeal filed before the Commissioner (Appeals) but these have not been discussed.

k) In respect of previous imports, the assessed goods were given out of charge by the proper officers after verification of the documents and examination of the goods. As these assessments were not challenged by the department, redetermination of value of imported goods after a period of one year is not sustainable and so, the show cause notice dated 28.01.2013 is barred by limitation in law on the ground of limitation.

l) Comparative price of Load cells as available in NIDB data base has not been considered by the lower authorities who also failed to justify as to how the value indicated in the insurance policy can be a base for finding the assessable value. When Section 14 of the Customs Act, 1962 read with Customs valuation Rules, 2007 provides for redetermination of value then how can the value mentioned in the insurance policy be taken for assessing the goods.

m) The demand has been confirmed on the basis of admittal statements of the Proprietor and Managing Director of the appellant which are not voluntary.

3. During hearing, learned Advocate for the appellant highlighted the grounds taken in their appeal memo. He supported his say by relying on various judgments including those cited supra. He mentioned that the appellant had neither suppressed any fact nor is there any wilful mis-statement before the proper officers of customs. Hence, the show cause notice issued by the department is hit by limitation. Corrigendum to the show cause notice dated 28.01.2013 was issued on 15.04.2014 i.e. after adjudication process has begun which as per CBIC circular No. 732/48/2003-Cx dated 05.08.2003, is not permissible. Also, corrigendum to a SCN cannot enlarge the scope of the main show cause notice. He cited the decision in the case of Kaveri Iron & Steel (India) Ltd Vs. Commissioner of Central Excise, Hyderabad- 2013 (289) ELT 502 and M/s Steel Authority of India Vs. Commissioner of Customs, Vishakhapatnam- 2007 (210) ELT 150 [further upheld by the Hon'ble Supreme Court, vide reported at 2008(225) ELT

A130(SC)] and the decision of the Tribunal in the case STL Exports Ltd Vs. Commissioner of Customs, Indore- 2004 (168) ELT 272.

4. Learned AR appearing for the department reiterated the findings of the lower authority. He mentioned that the Commissioner (Appeals) has considered the appellant's submissions and also the admittal statements of the Proprietor of the firm and then arrived at his finding about undervaluation of imported goods. After considering all the facts, the Appellate authority has rightly justified denial of cross-examination of the witnesses by the adjudicating authority. He prayed for upholding the appellate orders and rejecting the appeals of the party.

5. We have heard the rival submissions. We find that the following issues emerge in this case: -

(a) Whether Corrigendum to the show cause notice can be issued after intimation of the adjudication proceedings have begun?

(b) Whether assessment of goods can be reopened once it is finalised and goods given out of charge?

(c) Whether allegations of undervaluation of imported goods in this case are sustainable?

5.1 Regarding (a), learned Advocate has argued that as per CBIC Circular No. 732/48/2003-Cx dated 05.08.2003, corrigendum to a show cause notice can be issued within one month of the issue of original SCN and that, it should not enhance the scope of the main show cause notice. In any case, it should not be issued once adjudication proceedings have been initiated. Having gone through this circular, we find that this circular deals with in delay in issue of Adjudication order/Appellate order after personal hearing and as such, is silent on the point raised by the learned Advocate. We find that this issue was dealt with by the Tribunal in the case of Atuodesk India Pvt Ltd Vs. Commissioner of Service Tax, Delhi reported at 2019 (20) GSTL 581 (Tri. -Del.) wherein in para 10, it has been observed that "*Next, we turn to the demand of about Rs. 31 lakhs which stand confirmed against the appellant. Initially, we deal with the technical argument advanced by the appellant. After issue of the original show cause notice dated 24-10-2011, the department has issued corrigendum thereto after receipt of the reply of the original show cause notice. This addendum dated 17-8-2012 has spelt out the details of the amount of service tax demanded on four different services. But we note that after the issue of such corrigendum, an opportunity stands extended to the appellant to file their further reply. One more personal hearing was also been extended on 11-9-2012 in which the appellant was given full opportunity to rebut the charges. In view of the above, we are of the view that the principles of natural justice stand fully complied with and the technical objections raised by the appellant are rejected.*" Similarly, in the case of M/s. Polymer Papers Ltd Vs. Commissioner of Central Excise, Meerut-I, reported at 2019 (369) ELT 1369 (Tri.-All) where corrigendum to the show cause notice dated 05.10.2005 was issued on 23.01.2007 proposing increase in the demand. In this case, it was held that for the purpose of extended period of limitation, the date of corrigendum is to be taken for calculating the extended period of limitation and not the date of original show cause notice. We also find that the CBIC has issued Notification No. 40/2019-Cus(NT) dated 18.06.2019 dealing with manner and circumstances under which the supplementary notice may be issued clearly elaborating various situations and to what extent supplementary notices can be issued. We find that in this case, corrigendum was issued on 15.04.2014 which amended charging Section from proviso to Section 28(1) to Section 28(4) of the Customs Act, 1962. We find that the relevant provisions were quoted & elaborated in the body of the SCN. Hence, this addendum did not bring any major change. We also find that the appellant were given opportunity of personal hearing on 27.11.2014 before passing of the order in the case. The appellant had ample opportunity to contest the contents of the amended show cause notice and therefore, we hold that there is no violation of the principles of natural justice. We accordingly, dismiss this ground of the appellant for setting aside the demand. In any case, unless corrigendum only seeks to correct the provisions which Noticee has to answer and does not bring about substantive changes in the basis of duty liability, then same can be issued in reasonable time, if not to detriment of assessee.

5.2 Regarding issue (b), learned Advocate has contended that past imports undertaken by them in 2009-10 where goods were examined, bills of entry were assessed and thereafter the goods were given out of charge. The department has now reopened these assessments by way of issue of show cause notice dated 28.01.2013 challenging the value declared by them in the respective bills of entry. His contention is that the assessment once finalised and not challenged by the department, cannot be reopened. We in this case find that the issue of undervaluation of imported goods was investigated by the department by way of searching the premises of the importer. During such search, the officers recovered several incriminating documents and also recorded the statements of the Proprietor as well as Managing Partner of the company. The proprietor of the company in fact had admitted undervaluation of imported goods and also accepted redetermination of value on the basis of insurance policy. It is on this basis, the department reopened assessment of the goods imported previously by the appellant. We find that the bills of entry are being self-assessed by the importer and if there is no objection to it, these are accepted as such and the goods are given out of charge. The evidences brought on record by the department gave a reasonable belief to the proper officer to reject the declared value and then redetermine the same as per Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007. Thus, we find that the argument taken by the learned Advocate for reopening of the assessment in respect of previously imported goods is not tenable and accordingly, it is rejected. We also find from the records that the appellant suppressed the value of the imported goods in the bills of entry filed with the department which has led to short payment of Customs duty. We therefore find that extended period of limitation has correctly been invoked in this case to demand duty for the larger period.

5.3 Regarding (c), We find that the department has alleged undervaluation of imported goods on the basis of documents recovered from the premises of the importer in the form of insurance certificates showing higher value, proforma invoices and the admittal statements of the Proprietor of the Appellant firm and its Managing Partner. We find that Shri Mahendra D Sakhrelia in his statement dated 21.03.2012, 20.09.2012 & 31.12.2012 has clearly admitted to have undervalued the goods imported from M/s Dongguan South China Sea Electronics Co. Ltd, China. To justify lower value declared in the B/Es, he managed invoices of low value from the supplier. The value shown in the invoices is stated to be sent by him through Banking Channels and the differential amount, through other than banking channels. He also, admits that there was no undervaluation of goods imported from other supplier M/s Huazhun Weighing Technology Co. Ltd prior to January 2009. The proprietor has explained the contents of the insurance policy and produced duly signed Annexure showing actual value of the imported goods. The show cause notice dated 03.10.2012 & 28.01.2013 in para 3.1, give a detailed chart showing name of the insurance company, insurance certificate number and date, insured value, actual value in US dollars on the basis of insurance certificate, corresponding bills of lading number, corresponding bills of entry number and date and declared FOB value. In the show cause notices, value of imported goods has been determined on the basis of value shown in the insurance policy and taking this value to be 110% of the actual value, Revenue by reverse calculation, has determined the assessable value of the goods and calculated the differential duty. Learned Advocate has assailed these calculations saying that they had imported semifinished goods and accordingly declared value in the bills of entry which was in tune with the identical goods imported at other ports. To prove their point, they relied on the certificate issued by the overseas supplier. We find that this argument of the importer has been discussed by the lower authorities and rightly rejected. The tests like temperature compensation and zero span done on imported Load cells as stated by Sri Viral Gayakwad, Managing Partner of the Appellant before the repacking the load cells for sale in the open market in the name of M/s Rudra Sensor does not make them semifinished as these tests in any case would be required before marketing the products to their customers.

5.4 The case laws cited by the appellant, no doubt deal with situations where valuation has been arrived at on the basis of proforma invoices/ E-mails of other importers or on the basis of insurance policy but in none of these cases there are corroborative statements of the proprietor of the firm admitting undervaluation of the goods, managing invoices of lower value and paying the differential amount to the overseas supplier through other than banking channels. The proprietor in this case has not retracted his statements and therefore, these are admissible evidence. Various case laws relied upon by the appellant not dealing with facts similar to the present case, are hence not applicable. We also find that the appellant had requested the adjudicating authority as well as the appellate authority for cross-examination of certain panch witnesses and DRI officers which has been rejected by the lower authorities. We also find that the value of imported goods in this case has been arrived at on the basis of residuary method without going sequentially in to Customs Valuation Rules, 2007. We therefore, deem it fit to remit the matter to the Adjudicating Authority for considering the request of the appellant for allowing cross-examination of the panch witnesses and give his findings along with reasons. The value of the imported goods determined on the basis of residuary method is also rejected and the Adjudicating

Authority is directed to redetermine the value on the basis of Customs Valuation Rules, 2007 going in a sequential manner.

5.5 With these directions, we set aside the impugned orders dated 18.03.2014 and 29.12.2014 and remand the matter to the Adjudicating authority for deciding the matter afresh. The appellant is also given liberty to submit documents in his defence before the learned Adjudicating Authority.

6. The Appeals are allowed in above terms.

(Pronounced in the open court on 10.09.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha