

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

REGIONAL BENCH-COURT NO. 1

CUSTOMS Appeal No. 11163 of 2017- DB

(Arising out of OIA-AHD-CUSTOM-094-APP-16-17 dated 21/02/2017 passed by the Commissioner (Appeals), Customs -Ahmedabad)

Shree Somnath Fabrics Private Ltd

3036, Jash Textiles & Yarn Market,
Ring Road, Surat, Gujarat

.....Appellant

VERSUS

Commissioner of Customs -Ahmedabad

Custom House,
Near All India Radio, Navrangpura,
Ahmedabad, Gujarat

.....Respondent

APPEARANCE:

Shri S Suriyanarayanan, Advocate for the Appellant

Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 11371/2025

DATE OF HEARING: 30.07.2025

DATE OF DECISION: 28.11.2025

SATENDRA VIKRAM SINGH

M/s. Shree Somnath Fabrics Private Ltd., Surat (Appellant) purchased 99MT of LLDPE of Saudi Arabia origin from M/s Midas Polychem LLP, Ahmedabad on High Seas sales basis and filed Bill of Entry No. 9416040 dated 01.06.2015 for clearance of above goods by declaring transaction value @ USD 1340/MT. The Assessing officer doubted the transaction value on the basis of contemporaneous price/ NIDB data and also in terms of standing order No. 7493/1999 dated 03/12/1999 as amended vide standing order No. 7718/2002 dated 12.07.2002 issued by the Chief Commissioner of Customs, JNCH, Nhava Sheva. A query was raised by the officer in the system to the importer to justify the declared value vis-a-vis contemporaneous imports. As the importer could not justify value, the assessing officer rejected the transaction value in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and in terms of Rule 4 of the said rules as the PLATT rate quoted for South East Asia during the relevant period

was USD FOB 1410 PMT. The goods were provisionally assessed for want of test report which was received from CRCL, Vadodara on 01.09.2015 confirming that the cargo is composed of polyethylene having specific gravity less than 0.94. Therefore, the goods were finally assessed.

1.1 Vide letter dated 02.06.2015, appellant informed to have purchased the said goods on High Seas Sale basis from M/s Midas Polychem LLP and have declared the actual transaction price. Further, vide letter dated 15.12.2015, they submitted that:

(a) Rejection of invoice price is solely on account of imports by others/ at other ports at a higher value which is not tenable.

(b) if, the transaction value can be determined under Rule 3(1) of the CVR, 2007, then there is no question of determining the value under the sequential rules.

(c) The alleged contemporaneous imports are not comparable unless they satisfy the requirement of Rule 5 of CVR, 2007.

(d) As per decision in the case of Eicher Tractors Limited- 2000 (122) ELT 321 (SC), Customs authorities are bound to assess duty on transaction value.

1.2 After considering the submissions, the adjudicating authority passed order dated 31.12.2015 rejecting the declared value and ordering to reassess the goods as per PLATT rate quoted for South East Asia as CIF USD 1440.86 PMT under Section 17(5) of the Customs Act, 1962. Aggrieved by this order, the importer filed appeal before the Commissioner (Appeals) who vide impugned order dated 21.02.2017 upheld the decision of the lower authority and rejected the appeal. While doing so, he relied on the decision of CESTAT, Chennai in the case of M/s Plastvel Industries Vs CC, Trichy reported at 2011-TIOL-921-CESTAT-MAD. Aggrieved with this order, appellant filed present appeal before this Tribunal.

2. In their appeal, the appellant took the following grounds: -

a) The Appellate authority has not considered their submissions regarding non-furnishing of NIDB data, non-following the valuation rules and non-furnishing of contemporary import prices relied upon for loading the value.

They relied on the following decisions: -

- M/s Neha Intercontinental (P) Ltd Vs. Commissioner reported at 2006 (202) ELT 530 (Tri- Mum.). This decision was upheld by Hon'ble Supreme Court who vide order dated 27.08.2007 dismissed the civil appeal filed against this order. The appellate Tribunal in its impugned order relying on its decision reported at 2005 (184) ELT 65 (Tribunal), held that invoice value is required to be accepted, if NIDB data does not establish that contemporaneous import was of similar goods as there is a vast difference in level of import.
- M/s Gupta Coal India Pvt Ltd Vs. Commissioner of Customs (Prev.), Mumbai- 2016 (343) ELT 706 (Tri.-Mumbai), wherein matter was remanded to the assessing officer for reassessment with directions to provide relevant material like NIDB data for contemporaneous/similar imports to the importers for his defence.
- Venture Impex Pvt Ltd Vs. CC (Import & General), New Delhi- 2016 (338) ELT 759 (Tri. - Del.), wherein it was held that enhancement of value actually on the basis of NIDB data without rejecting transaction value is not correct. No evidence on record to indicate that the value agreed between the importer and exporter does not reflect correct value. The transaction value to be regarded as correct assessable value.

2.1 In view of above submissions, the appellant prayed for quashing the impugned order issued in violation of the principles of natural justice and also to set aside final assessment of bill of entry No. 9416040 dated 01.06.2015.

3. During hearing, learned Advocate highlighted the grounds taken by the appellant and emphasized that they had purchased goods on high seas sales

basis and declared value of USD 1.340 per kg in the Bills of Entry which the department enhanced to USD 1.42139 per kg resulting in demand of differential customs duty of Rs. 1,41,061/-. They lodged protest against enhancement of assessable value of the goods vide their letters dated 02.06.2015, 22.06.2015 & 25.06.2015 but paid the differential duty to avoid demurrage & deterioration of goods.

3.1 Learned Counsel placed reliance on the decision of Hon'ble Supreme Court in the case of Century Metal Recycling Pvt Ltd and Another Vs. Union of India reported at 2019 (6) Supreme Court cases 655 to state that reliance can be placed on materials like Platt bulletins only when the adjudicating authority had conducted proper enquiry and ascertained that the details with reference to goods imported are identical or similar and certain reasons exist to justify detailed investigation. He pleaded that NIDB prices quoted in para 5 of the order dated 31.12.2015 do not contain quantity of imported goods and the commercial terms and therefore, are not comparable with the imports made by the appellant. Enhancing declared value of the goods merely on the basis of departmental instructions or Platt Bulletin prices without recording any reason is not sustainable. Assessing officer has to first discard the declared value and then, proceed according to Valuation Rules.

3.2 Relying on the decision in the case of CC Vs. Prabhu Dayal Premchand-(2010) 13 Supreme Court Cases 535, he submits that the prices based on bulletins cannot be the ground for enhancing transaction value in the absence of corroborative evidence of imports at or near that price. Similar ruling has been given by CESTAT in the case of CC Vs. Jamnadas Murlidhar Jaisingh-(2008) SCC Online CESTAT 3345. He also highlighted the relevant portion of the decision in the case of CC Ahmedabad Versus Vijay Industries-(2010) SCC Online CESTAT 1258, Prasad Enterprises Versus CC-(2012) SCC Online CESTAT 3951, CC Versus Anand Trade Link Private Limited-(2014) SCC Online CESTAT 2398, CC Versus Deejay Plastics Private Limited-(2001) SCC Online CESTAT

948 & CC Vs. Vazir Polymers Ltd- (2016) SCC Online CESTAT 5140. He prayed that the impugned order is not sustainable on legal ground and therefore, it may be set aside.

4. Learned AR on other hand, arguing on behalf of the department justified enhancement of declared value by the lower authorities. He stated that standing order No. 7493/1999 dated 03/12/1999 as amended vide standing order No. 7718/2002 dated 12.07.2002 issued by the Chief Commissioner of Customs, JNCH Nhava Sheva gives detailed guidelines and directions for determination of valuation of plastic items in the light of international prices contained in foreign finance journals. The directions issued to the assessing authorities to apply PLATT rate (i.e. the price mentioned in reputed International finance journals PLATT WEEKLY REPORT). Following the standing order, the Assessing officer has proceeded to discard the declared value and applied FOB PLATT rate of LLDPE for South East Asia as on 06th May, 2015 in USD per Metric tons to load the value of the imported goods. He relied on the decision of Hon'ble Supreme Court in the case of Radhe Shyam Ratanlal Vs. Commr. of Cus. (Adjudication), Mumbai reported at 2009 (238) ELT 14 (SC), wherein it was held that transaction value claimed by assessee not supported by original contract/invoices- Document issued by exporter not contract but merely a certificate in favour of importer- Appellant- Contemporaneous documents like weekly bulletin of spices market and Public Ledger relied by Department indicate higher price- Exporter primarily dealing with sport goods and not cloves- Records of contemporaneous imports at higher prices produced- department correctly imposed proper assessment value.

4.2 He also highlighted the decision of this Tribunal in the case of Panchagni Energies Pvt Ltd Vs. Commissioner of Customs, Mundra- 2024 (387) ELT 334 (Tri.- Ahmd.) wherein it was held that the price of the goods declared by other parties making contemporaneous imports for same period may be taken for

enhancement of the value. He prayed that the order of the lower authority may be upheld by rejecting the appeal filed by the appellant.

5. We have heard the rival submissions. We find that the appeal has been filed on the following grounds:-

- Non furnishing of NIDB data
- Non-following of valuation Rules
- Non-furnishing of contemporary import prices relied upon for loading

Therefore, the issue to be decided in this case is whether Assessing officer is justified in enhancing declared value of the imported goods without providing contemporaneous data to the importer?

5.1 The appellant had purchased LLDPE on high Seas sales basis from M/s Midas Polychem LLP, Ahmedabad at US dollar 1.34 per kg with high seas sales commission of 2% and filed the bill of entry No. 9416040 dated 01.06.2015 accordingly. Relying on the standing order issued by the Chief Commissioner of Customs, JNCH, Nhava Sheva, the Assessing officer doubted the declared value. After giving opportunity to the importer to explain, he rejected the declared value and revised the value of the imported goods from USD 1.34 per kg to USD 1.42139 per kg on the basis of NIDB data & PLATT rate. The appellant lodged protest against enhancement of value but to avoid demurrage and quality deterioration, they paid the differential duty. We find that the Adjudicating Authority, at para 5 of his order has appended a table showing certain bills of entry, product name, importer's name, country of origin and unit price which pertain to May and June, 2015. In these bills of entry, rate per metric ton of LLDPE ranges from USD 1430 to USD 1485 for goods originating from UAE. The Adjudicating authority has considered the nearest bill of entry which is of 2nd June, 2015. We however, find that in the order portion, the said Authority has assessed the goods @ USD 1440.86 PMT as per PLATT rate quoted for South East Asia. Here also, he has taken the Platt rate as on 6th May, 2015 which according to referred standing order, should

have been one week prior to the date of LC which, in this case, is of 10th April, 2015. Therefore, the standing order has also not been correctly applied. We also observe that the order does not disclose the quality of goods and the commercial quantity imported in referred bills of entry to make them comparable goods for rejection of declared value and redetermination of the assessable value.

5.2 There are decisions as to when and on basis of which documents, the declared value can be rejected and goods can be reassessed. We find that the Assessing officer in this case had reasons to doubt the declared value and then proceed to decide the matter after following the principles of natural justice. We also, find that the contemporaneous import data has been shown in the order but copies of the relevant bills of entry showing quantity imported, supplier name, originating country, etc were not made available to the appellant to defend the declared value. We accordingly, deem it fit to remand the matter to the Assessing officer to disclose full details to the appellant for justifying the transaction value. If the importer fails to justify transaction value, then only the Assessing authority will proceed to reject the value and redetermine the assessable value by following the Customs Valuation Rules.

6. The appeal is disposed of in terms of above directions.

(Pronounced in the open court on 28.11.2025)

**(SOMESH ARORA)
MEMBER (JUDICIAL)**

**(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)**