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

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 10420 of 2015-DB

(Arising out of OIA-KDL-CUSTM-000-APP-423-432-14-15 Dated 11.12.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad)

ASR Multimetals Pvt Ltd ....**Appellant**
Survey No 394/2, 398 To 400,
National Highway-8A, Near to Check Post
Village Chhadawada, Taluka - Bhachau,
Samkhiyali, Kutch, GUJARAT

VERSUS

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

WITH

(i) Customs Appeal No.10396 of 2015-DB (Morsons Enterprise)
(ii) Customs Appeal No.10407 of 2015-DB (Adinath Polyfills)
(iii) Customs Appeal No.10421 of 2015-DB (A Kumar & Brothers)
(iv) Customs Appeal No.10422 of 2015-DB (Atul Agarwal Director of M/s. ASR Multimaterls Pvt. Ltd.)
(v) Customs Appeal No.10423 of 2015-DB (Aggarwal Sons)
(vi) Customs Appeal No.10614 of 2015-DB (Akbani Traders)

APPEARANCE:
Shri P D Rachchh, Advocate and Shri Vikas Mehta, Consultant appeared for the Appellants
Shri Aakash Singh, Superintendent (AR) appeared for the Respondent

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

Final Order No. 10280-10286/2026

DATE OF HEARING: 27.01.2026
DATE OF DECISION: 16.04.2026

SATENDRA VIKRAM SINGH

1. On the basis of intelligence, DRI officers searched the factory premises of M/s. ASR Multimetals Pvt. Ltd. (Appellant) as well as the residential premises of their Director Shri Atul Agarwal to unearth evasion of customs duty by the appellant on import of Heavy Melting Steel (HMS) scrap as well as cast iron scrap, re- melting scrap etc. During investigation, they recorded the statements of Shri Prem Prakash Gupta, Vice-President (Commercial) and Shri Praksh Shivratan Lakhotia, Manager (Purchase) of M/s. Electrotherm (India) Ltd., statement of High Sea Sellers namely, Shri Hanif Akbani (Proprietor of

M/s. Akbani Traders, Rajkot), Statement of Shri Pratik Sunil Garg (Director of M/s. Raj kripal Lumbers Ltd, Gandhidham,) statement of Shri Mahendra Bhavanji Chande (Authorised Signatory of M/s. Ishita Overseas), statement of Shri Jitendra Jain (Partner of Shri Adinath Tradelinks, Gandhidham,) statement of Shri Manoj Satnam (Prop. of M/s. Trimurti Impex, Gandhidham) and the statement of Shri Atul Agarwal, Director of appellant company. On the basis of incriminating documents resumed from both the premises and the recorded statements, the department made a case of undervaluation of HMS Scrap imported directly as well as and re- meltable scrap purchased from the High Sea Sellers.

1.1 After Completing investigation, Revenue issued show cause notice dated 23.08.2012 to M/s. ASR Multimetals Pvt. Ltd. proposing confiscation of seized goods valued Rs.18,16,64,440/- under Section 111(m) and (d) of the Customs Act, 1962 and demanding the customs duty of Rs.40,66,835/- under Section 28(4) along with interest under Section 28AA and penalty under Section 114A and 112(a) of the Customs Act, 1962. The show cause notice also proposed penalty on Shri Atul Agarwal, Director of M/s. ASR Multimetals under Section 112(a) of the Customs Act, 1962 and penalty on M/s. A Kumar & Brothers, M/s. Adinath Tradelinks, M/s. Agarwal Sons, M/s. Akbani Traders, M/s. Ishita Overseas, M/s. Jhanvi Impex, M/s. Param Exim, M/s. Morsons Enterprise and M/s. Trimurti Impex under Section 112(b) of the Customs Act,1962.

1.2 The show cause notice was decided by the Additional Commissioner vide order dated 23.01.2014 wherein, he confirmed the duty demand of Rs.40,66,835/- on the appellant M/s. ASR Multimetals along with interest under Section 28AA and imposed equal penalty of Rs.40,66,835/- on them under Section 114A of the Customs Act, 1962. He also imposed following penalty on various co-noticees:-

Sr.No.	Name/ Party	Penalty (in Rs.)	Section
1.	Shri Atul Agarwal (Director of M/s. ASR Multimetals Pvt. Ltd.)	1,00,000/-	112(a)
2.	M/s. A. Kumar & Brothers	1,00,000/-	112(b)
3.	M/s. Adinath Tradelinks	1,00,000/-	112(b)
4.	M/s. Aggarwal sons	1,00,000/-	112(b)
5.	M/s. Akbani Traders	1,00,000/-	112(b)
6.	M/s. Ishita Overseas	1,00,000/-	112(b)
7.	M/s. Morsons Enterprise	1,00,000/-	112(b)
8.	M/s. Adinath Polyfills	1,00,000/-	112(b)
9.	M/s. Yogi Traders	1,00,000/-	112(b)
10.	M/s. Param Exim	1,00,000/-	112(b)
11.	M/s. K. M. Trade Link	1,00,000/-	112(b)
12.	M/s. Rajkripal Lumbers Ltd	1,00,000/-	112(b)
13.	M/s. Rama Impex	1,00,000/-	112(b)
14.	M/s. Shree Salasar Ferro Metal Pvt. Ltd.	1,00,000/-	112(b)
15.	M/s. Trimurti Impex	1,00,000/-	112(b)
16.	M/s. Jhanvi Impex	1,00,000/-	112(b)

1.3 Being aggrieved with the above order, parties mentioned at Sr.1 to 9 of the above table and M/s. ASR Multimetals Pvt. Ltd. filed appeals before the Commissioner (Appeals) who after considering their submissions, concluded vide impugned order dated 11.12.2014 that appeals filed by M/s. ASR Multimetals Pvt. Ltd., it's Director Shri Atul Agarwal, M/s. A. Kumar & Brothers, M/s. Adinath Tradelinks, M/s. Aggarwal Sons, M/s. Akbani Traders, M/s. Ishita Overseas, M/s. Morsons Enterprises and M/s. Adinath Polyfills have no merit and therefore, he upheld the said order in respect of above 9 appellants by rejecting their appeals. He however, set aside penalty imposed on M/s. Trimurti Impex on the ground that the proprietor of the said firm had expired and therefore, proceedings in the case abate. Aggrieved with the above order, all the 9 parties filed appeals before this Tribunal. The main appeal is of M/s. ASR Multimetals which involve duty demand, interest and penalty whereas, other appellants are aggrieved by imposition of penalty in connection with undervaluation of import by M/s. ASR. Therefore, appeal of M/s. ASR is being taken up for discussion which will cover facts and submissions of other appellants aggrieved by imposition of penalty.

2. In their appeal, M/s. ASR Multimetals took the following grounds:-

- The learned Commissioner (Appeals) has violated the principles of natural justice by upholding the order of the lower authority passed without furnishing copies of the relied upon documents (RUDs), without allowing cross examination of co-noticees/witnesses. The said order re-redetermines value of imported goods under Rule 3 and Rule 9 of the Customs (Determination of Value of Imported Goods) Rules, 2007 as against Rule 3 and Rule 5 invoked in the show cause notice. They rely on decision in the case of Thakurdas Sons Vs. Commissioner of Customs, Chennai reported at 2002 (144) ELT 139 (Tri-Chennai) and in the case of National Organic Chem. Industries Ltd. Versus Commr. of Cus., Mumbai reported at 2013 (295) E.L.T. 100 (Tri. - Mumbai), wherein, it was held that the Adjudicating Authority could not have confirmed duty demand on a ground different than mentioned in show cause notice.
- The SCN discusses irrelevant information and data and makes allegations contrary to the documentary evidences. Undervaluation is mainly alleged on the basis of few emails, High Sea Sales (HSS) agreements, debit notes, invoices etc. Except in few cases where also the duty amount is negligible, there is no undervaluation. In some B/Es, differential duty has been calculated by adding freight (wherever applicable), insurance @1.125%, HSS Commission of 2% and landing charges @1% in High Sea Sales (HSS) price which is not correct as High Sea Sales price includes all these elements.
- In case of direct imports (36 B/Es) value of goods is re-determined by adopting contemporaneous value during the relevant time under Rule 5 of the Customs Valuation Rules, 2007 which can be done only if done only if similar goods are imported at or about the same time, and same commercial level. The duty has been confirmed against them using uncomparable data.
- Documentary evidences are discussed for only 17 Bills of Entry and thus, there is no evidences in respect of remaining 67 Bills of entry. The

statements of various High Sea Sellers have been relied which do not suggest receipt of any differential amount over and above the invoice price eg. Shri Pratik Sunil Garg, Director of M/s. Raj kripal Lumbers Ltd, has categorically stated to have not taken any cash over above the invoice value. Thus, Revenue has no evidence to prove undervaluation They rely on following decisions:-

a) Commissioner of Customs (Preventive) Vs. Puni Dhapa Lokeswara Rao reported in 2009 (248) E.L.T. 141 (Cal.),

b) Commissioner of Customs, Mumbai Vs. Foto Centre Trading Co. reported in 2008 (225) E.L.T. 193 (Bom.).

- Annexure B to the SCN though shows re-determined assessable value and the differential duty payable by the appellant but it nowhere explains how this has been worked. Thus, in absence of any documentary evidences re-determined assessable value and differential duty is not tenable. The reasons for rejecting declared transaction value as discussed in para 25.1 of the show cause notice are not sustainable as deposition made by the Director is not very clear, specific and voluntary.
- If value considered by the investigation is taken into consideration against certain Bills of entry, difference in assessable value and duty is very negligible as shown below:-

Annex-B No.	**BE No.**	**Appeal Para No.**	**High Sea Seller Name**	**Differential duty (in Rs.)**
17	124985	12.6.5	K.M. Tradelink	10,271/-
16	124429	12.6.6	Rama Impex	52,680/-
9	121510	12.6.7	Yogi Traders	3,047/-
15	124020	12.6.8	M/s. Ishita Overseas	1,080/-
48	241022	12.6.9	M/s. Adinath Tradelink	549/-
41	237692	12.6.10	Aggarwal Sons	6,357/-
38	234420	12.6.11	Aggarwal Sons	1,973/-

- Revenue cannot reopen a case where final assessment already made by the department. They rely on following decisions, where, it was held that enhancement of value without undertaking any exercise to reject the transaction value, is not sustainable.:-
    a) M.M. Exports Vs. Zonal Director, DGFT reported in 2001 (133) E.L.T. 558 (Cal.),
    b) Jai Bhagwati Impex Pvt. Ltd. Vs CCE., Goa - 2002 (145) E.L.T. 158 (Tri. - Mumbai),
    c) Eicher Tractors Ltd. Versus Commissioner of Customs, Mumbai - 2000 (122) E.L.T. 321 (S.C.),
    d) Oswal Fats & Oils Versus Commissioner of Customs, Amritsar- 2007 (220) E.L.T. 795 (Tri. – Del.),
    e) Devika Trading Pvt. Ltd. Versus Commissioner of Customs, Mumbai-2004 (167) E.L.T. 75 (Tri. - Mumbai)
- No evidence has been given to reject transaction value against direct imports. Even their director was not asked a single question about value of goods covered under above 36 Bills of entry. Therefore, re-determination of value and duty demand of Rs.16,03,196/- against these 36 B/Es is not sustainable and is liable to be set aside. They rely on following decisions: -
    a) Mark Auto Industries Ltd. Vs Commissioner of Customs, New Delhi- 2003 (162) E.L.T. 261 (Tri. - Del.)
    b) Torrent Power Co. Ltd. Vs Commr. of Cus., Ahmedabad-2008 (230) E.L.T. 113 (Tri. - Ahmd.)
    c) Indian Farmers Fertiliser Co-Op. Ltd. Vs C.C.E., C. & S.T., Bhubaneswar-I- 2010 (252) E.L.T. 523 (Tri. - Kolkata)
- As no differential duty is liable to be paid by them, neither any interest is recoverable nor any penalty is imposable on them.
- Relying on the decision of Hon’ble Bombay High Court in the case of Orkay Silk Mills Limited and anrs Vs. M.S. Bindra and Others reported in

1988 (33) E.L.T. 48 (Bom.), they submit that quasi-judicial authorities exercising powers under the Act should remember that not only justice should be done but it should be seen as being done. The Rules of natural justice are not empty formalities but must be observed to remove any feeling in the mind of the party adversely affected. They also rely on following decisions:-

a) Nitesh Kumar Kedia Vs Commissioner of Customs, Import & General reported in 2012 (284) E.L.T. 321 (Del.)

b) Asstt. Commr., Commercial Tax Department Vs Shukla & Brothers reported in 2010 (254) E.L.T. 6 (S.C.).

- In view of above, M/s. ASR Multimetals Pvt. Ltd. prayed for allowing their appeal and setting aside the order of demand of duty, interest and penalty.

2.1 In his appeal, Shri Atul Agarwal, Director of M/s. ASR Multimetals submitted that he is not liable to any penalty as the department's allegations are not supported by any credible and independent evidence. Para 11 of the impugned order shows that Ld. Commissioner (Appeals) has not even gone through the notice, RUD and the grounds of appeal. His statements were recorded on 10.10.2008 & 06.08.2011 wherein, certain admissions about cash payment to High Sea Sellers in addition to invoice value were unlawfully recorded by the investigating officers, and hence, these are not voluntary. No other credible evidence has been brought on record by the department and therefore, penalty imposed on him may be set aside.. He relies on the decision of Hon'ble Hight Court of Kolkata in the case of Puni Dhapa Lokeswara Rao (cited supra) and decision of Hon'ble Bombay High Court in the case of Foto Centre Trading Co. (cited supra).

2.2 M/s. Morsons Enterprise and other appellants where statements not recorded; submitted that the principles of natural justice have not been followed in this case as their specific plea for supply of documentary evidence to allege abetment charges has been brushed aside at the lower level. The lower authorities have erred and failed to consider the fact that no statement of appellant(s) was ever recorded during the course of inquiry and without that, penalty has been imposed on them under Section 112 (b) of the Customs Act, 1962 which is not sustainable. They requested for allowing their appeals and setting aside the penalty imposed on them.

2.3 M/s. Aggarwal & Sons and-other appellants where statements were recorded; submitted that the department has not produced any documentary evidence of their collusion with M/s. ASR Multimetals in evasion of customs duty and without, penalty has been imposed on them. The allegation that they have collected differential amount in cash over and above the invoice value is not correct as the cash so collected was converted in foreign currency for payment to overseas suppliers for goods purchased by him. In absence of any credible evidence, they pleaded that penalty under Section 112(b) cannot be imposed on him.

3. During arguments, learned Advocate Shri P. D. Rachchh explained with the help of examples that undervaluation of imported HMS and other re-meltable scrape as tabulated in Annexure B to the show cause ntoice is without any basis. He submits that the department has re-determined value by taking High Sea Sales (HSS) invoices price and then adding freight, insurance, HSS Commission of 2% and landing charges @ 1%. Where goods are imported directly, revenue has taken contemporaneous value for re-determining the value and differential duty liability without establishing similarity of goods. He submits that under valuation of goods and duty demand without any documentary evidence is not sustainable as held in several decisions of the Tribunal as well as other higher legal Forums. He mentions that neither duty demand nor any interest and penalty is sustainable against M/s. ASR Multimetals.

3.1 As regards, other appellants including Shri Atul Agrawal, Director of M/s. ASR Multimetals and other High Sea Sellers on whom penalty has been imposed under Section 112(a) and 112 (b), respectively, he pleads that they had genuinely sold HMS scrap under proper invoice which formed basis of value declared in the Bill of entry. He however admitted differential duty demand against some Bills of entry (as mentioned in their appeal book) where by oversight, lower value has been declared. He also pleads that none of the appellants including Shri Atul Agarwal, Director of M/s. ASR Multimetals are liable to any penalty on the charges of abetment in evasion of customs duty by M/s. ASR Multimetals.

3.2 Learned Counsel Shri Vikas Mehta appearing for M/s. Morsons Enterprise, M/s. Adinath Polyfills and M/s. Akbani Traders on whom penalty of Rs.1,00,000/- each has been imposed under Section 112(b) of the Customs Act, 1962 argues that M/s. Morsons and M/s. Adinath Polyfills were not interrogated during investigation and penalty has been imposed without any evidence. The impugned order also, does not mention or refer to any evidence gathered from M/s. Morsons and M/s. Adinath Polyfills and therefore, entire proceedings against them have been concluded on assumptions and presumptions without any concrete and cogent evidence. Regarding penalty on M/s. Akbani Traders, he submits that proprietor of M/s. Akbani Traders has categorically stated in his statement dated 11.03.2011 that they have not collected any cash over and above the invoice price from M/s. ASR. Shri Atul Agarwal, Director of M/s. ASR had also agreed with this statement but still, penalty has been imposed on M/s. Akbani Traders for abetment in under valuation of goods. On above grounds, he pleads to allow appeals of above three appellants and set aside the penalties imposed on them.

4. Countering the arguments, learned AR mentioned that M/s. ASR Multimetals had undervalued HMS scrap imported vide 84 Bills of entry (65 of Kandla and 19 of Mundra Port) filed during the period from January, 2008. He

submits that the department had proved it's case by way of High Sea Sales invoices showing higher rate than what was declared in the Bills of entry and on that ground, he justifies confirmation of demand alongwith interest and penalty on M/s. ASR Multimetals and penalty their Director as well as other High Sea Sellers. During arguments, he was asked to justify rejection of declared value and it's re-determination with reference to specific documentary evidence. He stated that M/s. ASR in Bill of entry No.226609 dated 24.01.2008 have declared value of scrap @190.595 US Dollar per MT, whereas corresponding High Sea Sales (HSS) invoice dated 24.01.2008 issued by M/s. Akbani Traders shows rate as 262.27 US Dollars per MT establishing under valuation of goods. Same is the case with B/E No.229733 dated 19.02.2008 and B/E No.229986 dated 21.02.2008 where, High Sea Sales invoice issued by M/s. Akbani Traders for sale of HMS scrap show higher rate. He also submits that in their appeal, the appellant had admitted undervaluation of imported scrap purchased on High Sea Sales basis from M/s. Ishita Overseas, M/s. Rama Impex, M/s. K M Tradelinks, M/s. Yogi Traders, M/s. Adinath Tradelinks and M/s. Aggarwal Sons. As mentioned in para 5.1 of the impugned order, the appellant has admitted under valuation in Bills of entry and therefore, the department is justified in demanding the differential duty from them. He also justifies imposition of penalty on M/s. ASR Mutimetals, their Director Shri Atul Agarwal and other High Sea Sellers who are co-appellant in this case.

5. We have heard both the sides. We find that Annexure-B to the show cause notice give details of 84 Bills of entry for purchase of HMS scrap out of which 36 B/Es are for direct import and 48 pertain to goods bought on High Sea Sale basis. The chart gives details such as B/E number & date High Sea Seller's name, quantity, unit price declared in the Bill of entry, declared assessable value, actual rate as per evidences available, insurance amount, freight (wherever applicable), High Sea Sales Commission and landing

Charges @1% and thereafter, re-determined assessable value and differential duty liability.

5.1 We find that the department has not adduced any evidence of contemporaneous import of similar or identical goods in respect of 36 Bills of entry where they had directly imported HMS scrap and other re-meltable scrap and duty has simply been demanded by taking same value as determined for scrap purchased on High Sea Sales basis. During hearing, learned AR was repeatedly asked to explain reasons of rejection of declared value of goods directly imported by M/s. ASR and re-determination of the same. He however could not explain any basis nor could he produce any documentary evidence to support higher value taken by the department for confirming the differential duty. It has been held in a catena of decisions that declared value cannot be rejected without reasonable belief that the value has been suppressed and only after such rejection, value can be re-determined in accordance with Customs Valuation Rules. Relying on following decisions where it has been held that the declared value cannot be rejected in absence of any documentary evidence, we set aside value re-determined by the department and consequently, set aside the differential duty demand in respect of these 36 Bills of entry where appellant has directly imported HMS scrap.

a) Century Metal Recycling Pvt. Ltd. Vs. Union of India reported in 2019 (367) E.L.T. 3 (S.C.):-

   - *"Rejection of transaction value not sustainable without following mandate of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 - In terms of this provision, assessing officer after conducting preliminary enquiry, ought to have intimated in writing grounds for doubting truth or accuracy of declared value - Formation of opinion regarding reasonable doubt on correctness of value is mandatory before rejecting transaction value and cannot be circumvented under any circumstances - It is only after this that transaction value can be rejected and value re-determined."*

   - *"Valuation (Customs) - Transaction Value - Re-determination transaction value after rejection - Once transaction value has been rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 it is required to be determined sequentially in accordance with Rules 4 to 9 ibid - Section 14 of Customs Act, 1962."*

b) S. Muthusamy Vs. Addl. Director General (Adj.), D.R.I., Mumbai reported in 2020 (372) E.L.T. 849 (Tri. - Mumbai):-

- *"Value is susceptible to many interpretations and definitions. For the purpose of levy of duties of customs, certain rules of engagement, universally acknowledged, are enacted in the statute and the governing Rules. Mere application of the Rules for enhancement of value does not carry with it the stigma of misdeclaration. To do so would be to place a premium on, and accord a finality to, the value arrived at for the limited objective of levy without in any way impinging upon the contractual obligation between buyer and seller operating in a commercial marketplace. Therefore, it will be essential for an adjudicating authority to establish that the difference between the assessed value and the declared value arises from circumstances in which there has been an attempt to conceal the real transaction in money."*

c) Haripriya Traders Vs. Commissioner of Customs, Cochin reported in (2023) 5 Centax 209 (Tri.-Bang):-

> *"Valuation (Customs) - Contemporaneous import price of similar goods - As per definition of term 'similar goods' under Rule 2(f) of Customs (Determination of Value of Imported Goods) Rules, 2007, goods being compared must have like characteristics and like component material, which enable them to perform same functions and to be commercially interchangeable with goods being valued having regard to quality and reputation - This ipso facto makes quality assessment compulsory to ascertain comparable and interchangeable nature of goods under comparison - Rules 4, 5 and 12 of Customs (Determination of Value of Imported Goods) Rules, 2007."*

5.2 Section 14 of Customs Act, 1962 deals with valuation of goods, Subsection (1) of which states that, *"for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or…………, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf."* Further, the first proviso to this sub Section states that, *"such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf."*

In respect of remaining Bills of entry, we find that the appellant has purchased HMS scrap from High Sea Sellers. CBEC vide Circular No.32/2004- Cus dated 11.05.2004 had issued guidelines for determination of assessable value of goods sold on High Sea Sales basis. The provisions of the circular are reproduced as under:-

> *"Representations have been received on the Ministry to clarify the manner of determining the value of imported goods imported on high-sea-sales basis. As per the existing practice in Mumbai Custom House, the "high-seas-sales-charges" are added to the declared CIF value in terms of Public Notice No. 145/2002, dated 3-12-2002.*

Such "high-seas-sales-charges" are taken to be 2% of the CIF value as a general practice. In case the actual high-sea-sale contract price is more than "the CIF value plus 2%", then the "actual contract price" paid by the last buyer is being taken as the value for the purpose of assessment. In some of the custom houses, however, audit has raised objection stating that if, in a particular transaction, there were about three/four high-sea-sales, then high-sea-sales service charges @ 2% has to be added to the CIF value, for each such transaction.

2. The matter has been examined taking into account the Advisory Opinion 14.1 of the GATT. Valuation Code, which stipulates that if the importer can demonstrate that the immediate sale under consideration took place with a view to export the goods to the country of importation, then such transaction would constitute an international transfer of goods. The later transaction which led to the import would be the relevant transaction for assessment and Rule 4 of Customs Valuation Rules, 1988 would apply. Hon'ble Supreme Court, in the case of M/s. Hyderabad Industries Limited [2000 (115) E.L.T. 593 (S.C)] have also upheld that the service charges/high-seas-sales-commission ('actuals) are includable in the CIF value of imported goods. Therefore, it is clarified that the actual high-seas-sale-contract price paid by the last buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules, 1988 and inclusion of commission on notional basis may not be appropriate. However, the responsibility to prove that the high-seas-sales-transaction constituted an international transfer of goods lies with the importer. The importer would be required to furnish the entire chain of documents, such as Original Invoice, high-seas-sales-contract, details of service charges/commission paid etc., to establish a link between the first international transfer of goods to the last transaction. In case of doubt regarding the truth or accuracy of the declared value, the Department may reject the declared transaction value and follow the sequential methods of valuation under Customs Valuation Rules, 1988."

5.3 It is stated by revenue that in para 5.1 of the impugned order as well as in their appeal, learned Advocate appearing for M/s. ASR Multimetals has admitted undervaluation through an oversight, in respect of 7 Bills of entry bearing No.124985, 124429, 121510, 124020, 241022, 237692 and 234420 where unit price was wrongly declared resulting in short payment of customs duty of Rs.10,271/-, Rs.52,680/-, Rs.3,047/-, Rs.1,080/-, Rs.549/-, Rs.635/- and Rs.1,973/- respectively. On the issue of determination of value of HMS scrap purchased by the appellant M/s. ASR Multimetals on High Sea Sales basis, we are of the view that it should be determined in accordance with the above guidelines issued by CBIC. During arguments, it came out that documentary evidence in the form of High Sea Sales invoices, invoice issued by overseas exporter, agreement for High Sea Sales etc. is available in respect of only some of the Bills of entry. We however, are of the view that for correct determination of assessable value and duty liability, in respect of remaining Bills of entry, documentary evidence is required to be verified by Adjudicating

Authority. We therefore, remand this portion of demand to the Adjudicating Authority to decide the matter a fresh by seeing/ verifying relevant documents as mentioned in para 2 of the CBIC Circular No.32/2004-Cus. dated 11.05.2004 relating to purchase of scrap on High Sea Sales basis by M/s. ASR Multimetals. For this, we also direct the appellant M/s. ASR Multimetals to produce relevant documents within 6 weeks from the date of order, before the Adjudicating Authority who, after receipt of such documents, shall afford personal hearing to the appellant(s) and then proceed to decide the matter within a further period of 12 weeks. The penalty on M/s. ASR Multimetals as well as on other co-appellants shall also be re-determined a fresh keeping in view their role in undervaluation of imported scrap.

6. With these directions, appeals are disposed of in above terms.

(Pronounced in the open court on 16.04.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Bharvi