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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 13056 of 2018

(Arising out of Order-in-Original No. KDL-CUSTM-000-APP-024-025-18-19 dated 11.09.2018 passed by the Commissioner (Appeal) of Customs/ Central Excise/ Service Tax.)

Sunil P. Mohatta
M/s. P. S. M. Marketing
Plot No. 255, Sector 1 A,
Gandhidham, Kutch,
Gujarat ... **Appellant**

VERSUS

C.C.-Kandla
Custom House,
Near Balaji Temple,
Kandla ... **Respondent**

WITH

Customs Appeal No. 13061 of 2018

(Arising out of Order-in-Original No. KDL-CUSTM-000-APP-024-025-18-19 dated 11.09.2018 passed by the Commissioner (Appeal) of Customs/ Central Excise/ Service Tax.)

M/s. P. S. M. Marketing
Plot No. 255, Sector 1 A,
Gandhidham (k) ... **Appellant**

VERSUS

C.C.-Kandla
Custom House,
Kandla ... **Respondent**

APPEARANCE:
Shri Vikas Mehta, Advocates appeared for the appellant
Shri R Kumar,Authorised Representative appeared for the Respondent

CORAM:
HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON"BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER NO. 10533-10534/2026

DATE OF HEARING: 06.08.2026
DATE OF DECISION: 17.08.2026

MR. A.K. JYOTISHI :

Shri Sunil Parshotam Mohatta(hereinafter referred as appellant no.1) is in appeal against the order dated 11.09.2018, whereby, the Commissioner (appeal) has partly allowed the appeal and partly upheld the order-in –

original, wherein, inter alia, the original adjudicating authority has confirmed the demand of differential duty of Rs. 49,28,492/- as well as has imposed penalty on appellant No.1 (impugned order).

1.1 M/s PSM Marketing is also in appeal against the said impugned order (appellant no.2) had imported certain consignments of Cigarettes vide several bills of entries (B.E.S), wherein, they had declared the value for the purpose of payment of Customs duty. The department, based on certain intelligence, suspected that the appellant was engaged in under valuation and inter alia, it was also alleged that the apart from import of certain cigarettes vide bill of entry no. 7727157 dated 22.08.2012,they had also imported similar cigarettes on several occasions in the past, which were also stated to be grossly undervalued.

1.2 The basis for the said allegation was that in respect of four consignments, out of seven consignments, the Certificate of origin (Coo) was showing different value as compared to declared value in Bills of Entry (BESs), which the department felt was the correct value. It was also alleged that the shipping bills of the load port in respect of these seven consignments, which were obtained by department through the local representative of shipping lines revealed that the value declared in said document was US$ 18 per thousand sticks, which was as also mentioned in Certificates of Origin, as against the declared values of US$ 5 per thousand sticks in BESs.

1.3 The department also recorded certain statements in respect of the said consignments in support that the declared value was not correct and, therefore, same was liable to be rejected and instead the value as reflected in the Certificate of Origin documents, as also, in the export documents referred as shipping bills by the department should be the correct assessable value for the purpose of discharging custom duty.

1.4 The department, also alleged that contemporaneous import of identical goods effected around same time was at much higher value, whereas, subject imports were effected at a discount of around 72% from the value mentioned in the certificates of origin and load port shipping Bills.

1.5 It was also alleged that the appellant was given sufficient opportunity to provide the actual value, but they could not produce any cogent evidence in support of the declared value. They also relied on Rule 3 (1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962, in support that FOB values of US$ 18 per thousand sticks appeared to be fair and correct FOB Value of the impugned seven consignments. The penalty was also proposed, inter alia,on appellant no.1 for his involvement in undervaluation of all the seven consignments and also against appellant no.2.

2. The Learned Advocate for the appellant no. 1 & 2 has submitted that insofar as appellant Shri Sunil Parashotam Mohatta (appellant no. 1) is concerned, he has expired on 09.11.2024and in support thereof, he has produced the Death Certificate issued by the UNITED ARAB EMIRATES (UAE) Authorities. Therefore, he has prayed that the penalty imposed against Shri Sunil Parashotam Mohatta be set aside, as no further proceeding is warranted. We have taken note of this fact and, accordingly, appeal no. C/13056/2018 is liable to be disposed as abated to the extent it relates to appeal filed by the Shri Sunil Parashotam Mohatta. Therefore, the appeal filed by the appellant, Shri Sunil Parashotam Mohatta is disposed of, as abated.

2.1 In so far as appellant no. 2 is concerned, he has relied on the following case laws in support that, in the absence of any cogent reasons and existence of contemporaneous price, the declared transaction value cannot be brushed aside, as well as reliance cannot be placed on various export documents of the country from which the export has taken place. He further submitted that the entire case is based on only two documents namely, unauthenticated document akin to shipping bills stated to be filed at the port of export, which were collected by the department from the shipping agent in India, and also the certificate of origin (COO) in respect of four BEs out of seven consignments showing higher value. He has argued that no verification was carried out by the customs authorities at the port of export in Indonesia about the authenticity of the look-alike shipping bills documents produced by the shipping agent or the certificate of origin(COO) and thus it has no evidentiary value. The appellant had filed bills of entry on the basis of documents received from (M/s. Prime)and that had no connection whatsoever with the certificate of origin. Further, there is no evidence that they had any link with M/s. Pt. Djarum, Indonesia. He has also emphasized the fact that despite repeated references to contemporary imports at higher prices in Show Cause Notice and impugned order no such details have been brought on record by the department and that there is no other evidence indicating payment of any amount over and above the invoice price based to either Hong Kong supplier or Indonesian company on which they had paid customs duty at the time of import.

3. Per contra, the Learned AR for the Department has, apart from reiterating the findings of the Commissioner (Appeals) in the impugned order, inter alia, submitted that in this case there are documents which clearly indicate the actual price of the consignments and that the appellant had not produced any evidence to the contrary. He has also relied on the judgment of Supreme Court in the case of Surjeet Singh Chhabra versus Union of India 1997 89 ELT 649 (SC), in support that the statements given by the persons responsible for running the affairs of the appellant are admissible in evidence, even when there is a retraction, as Customs Officers

are not Police Officers. Similarly, in the case of Jagdish Shanker Trivedi versus Commissioner of Customs Kanpur 2006 (194) E.L.T. 290 (Tribunal), it was held that such retraction would not lead to violation of principles of natural justice, and mere denial of cross-examination of co-notices/accused does not result in violation of principles of natural justice and the same cannot be insisted upon as a matter of right.

4. We have heard both sides and perused the record.

5. Before we proceed to decide the issue on merit, we would like to recapture some of the admitted positions in this appeal. It is an admitted position that there is a valid contract between the appellant and M/s Prime, Hong Kong in which the agreed upon price has been mentioned as USD 5 per 1000 sticks. It is also not in dispute that the said value has been declared by the appellant at the time of import. There is no issue of misclassification. The appellants have not sought any preferential treatment or exemption benefit in terms of any notification warranting production of country-of-origin certificate. There is no evidence or allegation of any payment over and above the value declared and treated as transaction value by the appellant to either M/s Prime Tobacco Trading Ltd. Hongkong or M/s. Pt Djarum Indonesia. There is no other contemporaneous price in respect of this particular brand imported around the same time in same commercial quantity and under similar circumstances showing any value closer to the proposed value of US$ 18. The fact that appellant reserved the right to cross examine and order passed on this issue by the Adjudicating Authority is also apparent from record.

5.1 In the given factual matrix, we now proceed to evaluate and analyse the arguments made by both the sides. While the department feels, as articulated by the Adjudicating Authority, that the two documents are sufficient to indicate that the actual value was different from the value declared by the appellant, whereas, the appellant says that those two documents are not having any evidentiary value inasmuch as the origin and authenticity of these two documents itself is unsubstantiated. They have relied on the judgement of S.C Visakhapatnam Vs. Truwoods Pvt. Ltd. 2016 (331) E.L.T. 15 (S.C.).

5.2 We find that while the country-of-origin certificate was apparently available in the file submitted by appellant itself, however, it was neither specifically produced by the appellant nor any claim for exception was made based on said certificate of origin (COO) and same was not part of any declaration by the party nor obtained officially by the department from the authorities issuing such origin certificate, and hence reliance placed on the said document, per se, is not tenable and proper. Insofar as the other document is concerned, which is apparently the shipping bill in respect of consignment, we again find that this was obtained from a third party and its authenticity or the circumstances of issuance have not been established by the department. Therefore, while in their statement appellants have admitted and seen the existence of these two documents, the department merely, based on the said statement, cannot consider these two documents as reflecting true and correct position for the purpose of adopting the value in lieu of the declared transaction value in the given factual matrix of the case and ratio laid down by Hon'ble Supreme Court in the case laws cited by the appellant statements under Section 108 are relevant and admissible, however, it needs to be corroborated by other admissible and urgent evidence.

5.3 We find that this is a case where, while there is an understanding and a contract between the M/s Prime Tobacco Trading Ltd. Hongkong and M/s. Pt Djarum Indonesia to supply certain consignment of cigarettes to M/s RSM in India, there is no evidence that either this consignment was to be supplied at that price to RSM, or that RSM was supposed to pay the said price to M/s. Pt Djarum, Indonesia. It is not the case that any excess payment has been made to M/s Prime Tobacco Trading Ltd., Hongkong for onward passing to M/s. Pt Djarum Indonesia from where the goods have come as per the instruction of selling party i.e. M/s. prime.

5.4 We also note that department has not been able to establish convincingly the bonafide of documents they have heavily relied upon as they have been obtained through third party. In so far as the country of origin certificate is concerned, the same forms part of the document supplied by the M/s Prime Tobacco Trading Ltd., Hong Kong in terms of the contract and apparently it was to only to establish that the Cigarettes where of Indonesian origin and not for the purpose of either clearing or for obtaining any benefit of exemption under relevant notification for import from ASEAN Country.

5.5 We have also perused some of the judgments relied upon by the learned Advocate in support of their case. Firstly, we find that heavy reliance has been placed by the department for rejecting the transaction value and adopting the value indicated in the so called exports documents and therefore, this aspect need to be analysed. In the case of Uttam Mohanlal Jain Vs Commissioner of Customs Nhava Sheva 2000 (124) E.L.T. 661 (Tribunal), the Tribunal dealt with this issue. The relevant paragraph is cited below;

> *"The export declaration produced before us is a barely legible photocopy. legible and tally correspond with the details of the imports made by the appellant. The details of the consignment importer's name, the ship carrying the cargo are The declaration was annexed to the notice issued by the Department which has the document. There are no signatures of any Customs or other Government not specified the manner of its acquisition or the person from whom it acquired shown to come within the purview of Section 139 (1) of the Act. The reasoning of officers on it. For such a document to be accepted as evidence it will have to be the Tribunal in East Punjab Traders v. CCE which was*

confirmed by the Supreme Court that photocopy of a document which was not authenticated would not be admissible evidence would apply to this document. The presence in it of details corresponding to details of the import made would not constitute required authentication. Such details would be available to a large number of persons who could therefore fabricate such documents. In Mehta Impex v. CCE, 1990 (45) ELT. 249 cited by the Departmental representative the Tribunal had accepted as genuine invoices issued by a German supplier to an importer at Singapore which were sent by the German Customs to the Indian Customs. The appellant did not question the genuineness of these documents. The facts and contentions are obviously very different in the present case."

5.6 It was, inter alia, held that photocopy of document, which was not authenticated would not be an admissible evidence. This judgment of the Tribunal was furtheraffirmed by the Hon'ble Supreme Court as reported at **2001 (130) E.L.T. A26 (S.C.)**

5.7 In the case of Commissioner of Customs Visakhapatnam Vs. Truwoods Pvt Ltd., 2016 (331) E.L.T. 15 (S.C.), the Hon'ble Supreme Court again, in circumstances where the department had produced certain documents purported to have been issued by Customs Authority in support of their case,upheld the order of the Tribunal which had, interalia, held that the documents procured did not bear any signature and were photocopies which were not even attested, and accordingly the assessable value could not be enhanced on the basis of such documents. Para 3 and 4 are cited below:-

"3. According to the Revenue, the respondent had not disclosed the correct price and it was a case of under-invoice. Four show cause notices were issued alleging under-invoicing and demanding differential duty, etc. Four adjudication orders-in-original were passed confirming the demand of differential duty.

4. It would be pertinent to observe that in support of its case, the Revenue had produced certain documents purported to have been issued by Italian customs authorities as per which the price of these very goods was shown higher by the manufacturer of these goods through whom the goods were purchased by M/s. Pargan Singapore for sale to the assessee. The assessee had challenged the admissibility of these documents in evidence on the ground that they are not authenticated. This argument has been accepted by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT). CESTAT has found that the documents procured by the Revenue do not bear any signatures and are photocopies which are not even attested and accordingly, the assessable value could not be *enhanced on the basis of such documents. In arriving this conclusion, while doubting the genuineness of those documents, the CESTAT has kept in mand the provisions of Section 139 of the Customs Act and has relied upon various judgments of the Tribunal on this issue."*

5.8 We have also gone through the judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs Calcutta Vs. South India Television (Pvt. Ltd.) 2007 (214) E.L.T. 3 (S.C.), wherein, similar issue was involved. The key issue for determination was whether the value of the consignments in question can be enhanced based on the export declaration under Rule 8 of the Customs Valuation Rules made by the foreign supplier. The Tribunal, while deciding the issue, held that Xerox copies or export declaration, even though procured from Hong Kong Customs, would not make such genuine declarations and accordingly held that the export declaration made by the Hong Kong supplier cannot be made the basis from increasing the value in good in India. Paragraph 3 is cited below;

> *"3. The above arguments of the importer were rejected. The show cause notice and the demand levied was confirmed. Aggrieved by the aforesaid decision, the matter was carried in appeal to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The Tribunal allowed the appeal by holding that xerox copies of the export declarations, even though procured from Hong Kong customs will not make such declarations genuine declarations. According to the Tribunal, the origin of the goods was from China/Tiwan, therefore, there was a possibility of the export declaration price being on the higher side (over invoiced). This was in view of the fact that in some of the above countries, the goods are subsidized by the concerned Governments. Huge subsidies are given based on the export declaration price. Similarly, incentives are also given in that regard. This possibility has not been rejected by the adjudicating authority. Even according to the adjudicating authority, the Hong Kong supplier might have inflated the price in order to earn export incentives and if that be the case then according to the Tribunal, the export declaration made by the Hong Kong supplier cannot be made the basis for increasing the value of the goods in India. Further, according to the Tribunal, in the present case, the importer has relied upon instances of import of identical goods at identical rates by other importers from the same supplier (namely, M/s. Pearl Industrial Company, Hong Kong) during the aforesaid period. The Department had accepted those rates. This evidence led by the importer herein has not been rebutted. It had not been discussed by the adjudicating authority. In the*

circumstances, the Tribunal allowed the appeal filed by the importer. Hence, this civil appeal has been filed by the Department."

5.9 In the instant case, documents relied by the department have not even been obtained by Indian customs from any other custom authorities. The Hon'ble Supreme Court also, inter alia, observed that before rejecting invoice price, the department has to give cogent reasons for such rejection and department has to find out whether there are any imports of any identical goods or similar goods at a higher price around the same time. The Hon'ble Supreme Court concluded that there being no evidence form the side of the department showing contemporaneous imports at a higher price, proposed enhanced of the value cannot sustain. The relevant paragraph of the judgment at para 6 & 7 are cited below;

"6. We do not find any is the function civil appeal for the following reasons. Value is derived from the value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act. 1962 is the sole repository of law is conceptual meaning governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That respondent-importer alleging mis-declaration regarding the price. There is no allegation of must be done based on Section 14 itself. In the present case, the Department has charged the mis-declaration in the context of the description of the goods. In the present case, the evidence of prices of contemporaneous imports of like goods. It is for the Department to prove allegation is of under-invoicing. The charge of under-invoicing has to be supported by that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value 15 provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to defined in relation to any goods to mean the value determined in accordance with the above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14 (JA), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed accordance with the relevant rules and subject to the provisions of Section 14(1). It is made price as referred to in Section 14(1). Therefore, determination of such price has to be in transaction value under Rule 4 must be the price paid or payable on such goods at the time clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the provision. It talks of deemed value. The value is deemed to be the price at which such goods and place of importation in the course of international trade. Section 14 is the deeming are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buver have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, of

importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the what has to be seen by the Department is the value or cost of the imported goods at the time invoice price is not sacrosanct. However, before rejecting the invoice price the Department has the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical to give cogent reasons for such rejection. This is because the invoice price forms the basis of goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods Pendered by the importer is noved if the comparable imports, the benefit of doubt must go to the importer. If the Department wants to charge of under-valuation cannot be supported either by evidence or information about allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

7. *Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s. Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations*

to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19-9-1996. In the present case, the importer has alleged that the original declarations were with the Department. That certain portions of the originals were not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Department to produce the original declaration in the Court. No reply has been filed to the said L.A. till date. In the circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22-7-1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export e by the foreign supplier in order to obtain incentives from his government. For the restated reasons, we find no infirmity in the impugned judgment of the Tribunal."

5.10 Therefore, having regard to the facts of the case, as also submission of Ld. Advocate for the appellant and the Ld. AR, we find that in this case the department has not been able to produce cogent and substantive evidence in support of wrong declaration of transaction value so as to reject the same. The department has also not brought on record as to why the value proposed for enhancement has been made at US$18 per thousand sticks, except for reliance on certain export documents, which do not have any evidentiary value. In the given factual matrix, no contemporaneous price has been adduced to doubt the declared transaction value. Therefore, we find that department has not been able to sustain their case of under valuation against the appellant no.2 and therefore, the findings in the impugned order cannot be upheld and is liable to be set aside. In the result, the appeal filed by the appellant M/s. PSM Marketing, is allowed with consequential relief, if any, as per law. Appeal of Shri Sunil Parshotam Mohatta (appellant no. 1) is also disposed of, as abated.

(Order pronounced in the open court on 17.08.2026)

(MR. SOMESH ARORA)
MEMBER (JUDICIAL)

(MR. A.K. JYOTISHI)
MEMBER (TECHNICAL)

Sahil