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

REGIONAL BENCH- COURT NO.1

Customs Appeal No. 11327 of 2017

(Arising out of no.KDL-COMMR-PVRR-127-2016-17 dated: 30/03/2017 passed by the Commissioner of Customs/ Central Excise/ Service Tax. Appeals.

M/s. Vikas Wood Works,
Sayyed Ka Gatta, Near Tonk Road,
Pulia, Tonk Road, Jaipu- 302018 **...Appellant**

VERSUS

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

WITH

Customs Appeal No. 11335 of 2017

(Arising out of no. KDL-COMMR-PVRR--127-2016-17 dated: 30/03/2017 passed by the Commissioner of Customs/ Central Excise/ Service Tax. Appeals.

Shri Rajendra Agarwal
No.33, NRI Colony, Mandakini,
GK-IV, New Delhi-110019 **...Appellant**

VERSUS

C.C.-Knadla
Custom House,
Near Balaji Temple
kandla- Kutch **...Respondent**

APPEARANCE:
Shri Hardik Modh, Advocate & Shri T. Chakrapani, Consultant appeared for the appellant
Shri Aakash Singh, 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.10599-10600/2026

DATE OF HEARING: 06.08.2026
DATE OF DECISION:31.08.2026

SOMESH ARORA

STATEMENT OF THE FACTS

M/s. Vikas Wood Works (hereinafter referred to as "the Appellant") is a proprietary concern and Shri Dinesh Surekha is its Proprietor. The Appellant is inter-alia engaged in trading of timber and mainly imports from African and Latin American regions. During the period November 2009 to November 2011 (herein after referred to as "the disputed period"), the Appellant imported timber in logs, rough square and sawn form from countries like Tanzania, Sudan, Ghana, Ivory Coast, etc. Timber in Logs and Rough Square falling under Chapter Heading No. 4403 of CTA was chargeable to Basic Customs Duty @ 5% ad valorem during the disputed period and timber in sawn form falling under Chapter Heading No. 4407 of the CTA attracted Basic Customs Duty @ 10% ad valorem. The Counter Vailing Duty (CVD) was Nil in respect of all types of timber.

1. The Appellant imported timber at the Ports of Kandla and Mundra from following suppliers during the disputed period.

I. M/s. Vinayak Impex, Dubai

II. M/s. Prime Timbers, Tanzania

III. M/s. Radha Krishna Company Ltd., Ghana

IV. M/s. Olam International Ltd, Singapore

V. M/s. Royal Global Export, Singapore

1.1 The Appellant imported timber in sawn form from Tanzania and log form/round square from other countries. Unit of measurement in timber is cubic meter (CBM) and the Appellant purchased the timber during the disputed period and paid purchase value in US Dollars. The Appellant also imported various qualities of timber viz. with "Silli" as regular quality timber and "Repla" and "Rejection Grade/cut off size" being timber of the lowest quality. Rates of timber are depending upon the length, thickness and width of the timber. There are other qualities such as "General Sillioutgrows (commercial) and Tukda which are in between Silli and Repla in quality wise timber.

1.2 In the normal course, the Appellant places orders for supply of timber with the suppliers over the phone. Most of the times, after negotiations over the phone, the suppliers send details of the material to be supplied with rates mutually agreed upon with the Appellant. The Appellant makes payment to the suppliers either through Letter of Credit (L.C), Documents against Payment (DP) or DA. Based on the intelligence that the Appellant had allegedly undervalued the timber being imported by them during the disputed period, the officers of DRI conducted searches at office premises of the Appellant and the office and residential premises of Shri Rajendra Agarwal at Delhi on 27.06.2011 and recovered certain alleged incriminating documents along with hard- disc and Laptops under different Panchnamas. Copies of Panchnamas are part of the Show Cause Notice and the same have been annexed with a copy of Show Cause Notice. Based on the documents recovered from the premises of Shri Rajendra Agarwal, the investigating authorities alleged that container wise details of packing list of timber in the name of various parties both printed and handwritten were mentioned in Record No.1 and handwritten details of rates at which the materials were to be invoiced, had been shown in the same records. The officers inspected Record No.2 that included similar details with a few places appearing to show certain amount in US$ against various quantities which appeared to be higher than those normally declared in the import documents.

3. The DRI officers made summary of the details based on mails retrieved from Shri Rajendra Agarwal and made various charges against the Appellant in respect of undervaluation of timber. It was alleged that invoices were raised on parties located in India under the letterhead of the suppliers and in some cases, the Appellant directly received invoices in name of importers from overseas suppliers. The Appellant suppressed actual value of the imported timber in the invoice raised on the parties at the time of import which was done in order to evade customs duty. It was alleged that actual rate of various timber imported from African countries was higher than the rates US$ 871 in respect of Tanzania timber whereas the declared rate to the customs at the time of import was much lower ranging between US$ 300 and 400. The hard disc recovered from the premises of the Appellant and from office-cum-residential premises of Shri Rajendra Agarwal were sent to cyber forensic Lab and based on the contents, it was alleged that the numbers of unsigned invoices of Vinayak Impex, FZE, Dubai and Prime Timbers, Tanzania were seen

in the hard disc. Similarly, a number of packing lists of timber imported from various countries were also seen. Based on the data retrieved from the hard disc recovered from office-cum-residential premises of Shri Rajendra Agarwal, it was alleged that:

I. Number of container wise packing lists was found with name of several importers including the Appellant to whom the same were destined. These packing lists were mostly of Tanzania and Sudan timber;

II. Number of statements account pertaining to various parties including that of the Appellant were found which contained details of actual rates at which the materials was allegedly supplied along with details of Letter of credit / Documents against payment and cash amount mentioned therein;

III. Unsigned invoices raised on the letterhead of M/s. Vinayak Impex FZE Dubai and Prime Timbers, Tanzania in the name of various importers including the Appellant;

IV. An account statement of the Appellant with file path "Live data/01/Account/vikas Wood Works" dated 23.07.2010; "Live data/01/Account/vikas Wood Works" dated 06.11.2010 and "Live data/01/Account/vikas Wood Works" dated 24.06.2011 were found and alleged that number of containers, quantity with rate per CBM, material quality and total value of such supply was shown in US$ on the left side of such statements;

V. Various made up files of documents/papers were found alleging incriminating information;

4. During the course of investigation, statement of Shri Dinesh Surekha was recorded on 13.12.2011 which was stated by the appellant to be under pressure and threat of arrest. Since his Statement was recorded under pressure and without his wish, the Appellant retracted his Statement vide

letters dated 13.08.2014 and 26.09.2014. The Appellant Specifically stated that documents shown during the course of recording statement were not recovered from the Possession of the Appellant and denied that the Appellant had any connection with any agents or traders on import of the goods in dispute. The Appellant further mentioned in the letter dated 26.09.2014 that even though similar goods were purchased from other parties at similar rates and similar terms and conditions, the investigating authority did not consider it and denied to take on record.

4.1 Statements of Shri Rajendra Agarwal were recorded on 04.01.2012 and 17.09.2013 whereby he deposed that the file name "Live data/01/Account/vikas Wood Works" was pertaining to the timber sold to the Appellant which were prepared by him with the help of his employee Shri Vinit Jain and exchanged with the Appellant who settled the accounts. He also deposed that on left side of the accounts, number of containers, quality of timber, quantity along with rate per CBM in USD and total amount in USD had been mentioned and on the right side, details of the amount received (official and non-official) had been mentioned. Statement of Shri Vinit Jain was recorded on 17.09.2013 whereby he stated that he made all the email correspondences of timber business with suppliers and buyers under instructions of Shri Rajendra Agarwal.

4.2 Based on the incriminating documents recovered from the premises of Shri Rajendra Agarwal and Shri Avinash Jindal and statements thereof, it was alleged that:

i. The documents of made up file recovered from Shri Rajendra Agarwal were cross checked with the import documents on the basis of container numbers quantities etc. and it was alleged that rate/value at which the imports were made found to be less than the same were shown in the import documents;

ii. Cash payments appeared to have been made by the Appellant to Shri Rajendra Agarwal based on the made up file recovered from the resident premises of Shri Rajendra Agarwal;

iii. In number of cases. there was suppression of quantities and in some cases, there was suppression of cubic meter Range from 2 to 3 CBM per container;

iv. Even though the prices declared by the Appellant for import of the timber were much less than the market value of timber of various qualities like

    i. 8" and up
    ii. General Silli
    iii. Tukda 1.5" and 2" and
    iv. Tukda 1" and 0.5"

v. An Excel file with 2 tables with file path "Live Data/Agarwal/Teal 19.01.2010 provide details of imported goods that contained details of official and unofficial amount and quantities of purchases made by the Appellant.

4.3 Based on the evidences recovered from the premises of Shri Rajendra Agarwal, it was alleged that actual rates at which the Appellant imported timber from various countries was much higher than the price at which the same were declared in the import documents.

4.4 The above investigation culminated into issuance of Show Cause Notice dated 05.11.2014 whereby it was alleged that the Appellant imported timber from various countries of Africa and such other countries at grossly undervalued rates and in some cases, even showing lesser quantities in the import documents in order to escape paying higher duties of customs. It was alleged based on various documents recovered from the residential premises of Shri Rajendra Agarwal and from hard disc and emails recovered from email ID of Rajendra Agarwal as well as statements and other documents found in the hard disc recovered from Shri Rajendra Agarwal that the timber imported by the Appellant was not on correct transaction value basis. It was alleged that in number of cases, the Appellant undervalued the imports to the extent of even beyond 50% of actual value.

5. The Appellant along with other Co-Appellants were issued Show Cause Notice whereby the Appellant was called upon to show cause to the Respondent as to why the declared value in the Bills of Entry at the time of import during the disputed period should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 for the imports that were made and the correct values found in view of the various documents/records should not be adopted as assessable valueas per Section 14(1) of the Customs Act read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as "the said Valuation Rules") for the imports that were made during the disputed period. The captioned Show Cause Notice further proposed to demand differential duties of Customs for the imports made during the disputed period and impose penalties under Section 112/114A of the Act. Differential amount of duty proposed to be demanded in the Show Cause Notice based on the following four parts:

A. The Show Cause Notice proposed enhancement of value of imported timber based on evidence which the investigating authority allegedly claimed to have found in respect of imports of timber at Kandla and Mundra;
B. The Show Cause Notice proposed enhancement of value of imported timber based on value of "identical goods" under Rule 4 of Valuation Rules, 2007 on the basis of evidences of contemporary imports, where the investigating authority did not find any direct evidence;

C. The Show Cause Notice proposed enhancement of value of imported timber based on value of "similar goods" under Rule 5 of Valuation Rules, 2007 on the basis of evidences of contemporary imports where the investigating authority did not find any direct evidence;

D. The Show Cause Notice proposed enhancement of value of imported timber by adopting recourse to Rule 9 of Valuation Rules, 2007 where the investigating authority did not find any evidences.

6. Accordingly, the Appellant filed interim reply dated 08.,02.2017 to the Show Cause Notice dated 05.11.2014 whereby it was submitted that:

I. Statement of the Appellant was recorded on 13.11.2011 was under duress and pressure of arrest and therefore, the same should not be considered as evidence. The said statement was retracted vide letters dated 13.08.2014 and 26.09.2014 and stated that the Appellant was not in connection with any agents or traders on import of the goods in dispute. The Appellant provided reasons why the statement recorded on 13.08.2011 should not be considered as voluntary statement. Even after the letter dated 13.08.2014 and 26.09.2014, statement of the Appellant was not further recorded;

II. Emails alleged to be found were addressed to importers but no emails were found to be sent in response to the emails, which prove that the alleged emails do not pertaining to the Appellant and cannot lead to the conclusion that the Appellant was involved in any manner, with the alleged undervaluation of the imported timber;

III. The charges framed in the Show Cause Notice were based on purely on assumptions and presumptions basis that corroborating the same for concrete evidence;

IV. The entire case was booked based on emails alleged to be retrieved from email ID's of Shri Rajendra Agarwal and his statements;

V. The Show Cause Notice proposed to discard the value declared by the Appellant and proposed to enhance by invoking Rule 5 and 9 of the Customs Valuation Rules;

VI. Directorate of Revenue Intelligence officers initiated investigation against some other importers in connection with the alleged undervaluation to the goods imported by the Appellant. Since transaction value at which reliance was placed for enhancement of value in respect of disputed consignments is in process of adjudication, reliance placed by the DRI officers on value of other importers cannot be relied upon.

VII. There is no direct evidence in respect of proposal for enhancement of value based on contemporaneous import;

VIII. The Appellant never made any payment for imported goods to Shri Rajendra Agarwal;

IX. There are no evidences in the form chits/loose papers or recorded any payment made in cash and/or recovered any account cash amount etc. which could lead to the conclusion that the Appellant had indulged in undervaluation of the imported timber;

X. The Appellant placed reliance upon various documents to show that the price declared by them was correct and it was actual transaction value;

XI. The Appellant produced a statement showing the value at which the imported goods were sold in domestic market and demonstrated that the Appellant could hardly fetch margin approximately 5% to 7% on sale of imported goods in domestic market;

XII. The Appellant explained Bill of Entry-wise submissions in respect of allegedly incriminating emails/documents retrieved from email ID of Shri Rajendra Agarwal;

XIII. In majority cases, the Customs officers enhanced the value at the time of import and therefore, re-assessment cannot be done without having any evidence to show that the value declared by the Appellant was incorrect;

XIV. The Appellant placed reliance upon various decisions to show that burden is upon Revenue to discard value declared by the Appellant. The Appellant produced various positive evidences to show that the Appellant correctly declared value for import documents;

XV. The Appellant also produced export declaration along with Release Orders field by the suppliers in their countries;

XVI. The Appellant produced evidence of contemporaneous import to show that other importers imported the same material from the same suppliers on more or less the same price;

XVII. The Appellant sought cross examinations of Shri Rajendra Agarwal and Shri Vinit Jain to bringing correct facts on record;

7. The Respondent vide Order-in-Original No. KDL/COMMR/PVRR /127/2016-17 dated 30.03.2017 (hereinafter referred to as "the impugned order") confirmed the demand of differential duties of Rs.57,29,704/- on the goods imported at Kandla Port and Mundra Port under Section 28(4) of the

Customs Act, 1962 (hereinafter referred to as "the said Act") and imposed penalty equal amount of duty under Section 114A of the said Act. The Respondent imposed penalty of Rs. 12,00,000/- (Rupees twelve lac) under Section 112 (a) of the said Act. The Respondent rejected the assessable value declared in the Bills of Entry filed at the time of import of timber as detailed in annexure C-1, C-2, D-1, D-2 and D-3 under Rule 12 read with Rule 3(1) of the said Act. The Respondent re-determined the assessable value in terms of provisions of Section 14(1) of the said Act read with Rule 9 of the Customs Valuation (Determination of value of imported goods) Rules, 2007. The Respondent denied cross examination of Shri Rajendra Agarwal and Vinit Jain even though the Respondent relied upon their statements and the documents recovered from their possession. The Respondent confirmed the charges levelled in the Show Cause Notice based on oral statements and evidences recovered from third party. Even though statement of the Appellant recorded on 13.12.2011 was subsequently retracted before issuance of the Show Cause Notice, the Respondent relied upon the said statement for confirmation of the liability and charges against the Appellant.

7. Being aggrieved and dissatisfied with the Order-in-Original No. KDL/COMMR/PVRR/127/2016-17 dated 30.03.2017 passed by the Respondent the Appellant prefers the present appeal on the following grounds which may be taken without prejudice to each other:

Appellant have the taken following grounds

8. The Respondent erred in rejecting the transaction value declared by the Appellant under Rule 12 of the said valuation Rule read with Section 14 of the Act for the imports that were made by the Appellant during the disputed period and re-determined the value as per Section 14(1) of the Act read with Rule 9 of the Valuation Rules on the basis of various documents/records as detailed in Annexures to the Show Cause Notice for the purpose of calculation of the differential duties. The Respondent erred in holding that the goods in dispute

imported by the Appellant against various Bills of Entries during the disputed period were liable for confiscation under section 111(m) of the Act and imposed the penalty equal to duty under Section 114A of the Act. Since the impugned order is misconceived both on facts and in law, the same cannot be sustained in the eyes of law and therefore, the same is required to be quashed and set aside in the interest of justice.

9. The Respondent erred in holding that the Appellant had in connivance with their suppliers declared the assessable value of the timber on the lower side for the goods, with an intention to evade payment of customs duty. The Respondent confirmed the charges made in the Show Cause Notice on the basis of e-mails found to be retrieved from the premises of Shri Rajendra Kumar Agarwal and their statements along with the statements of Shri Dinesh Surekha, recorded during the course of investigation.

9.1 The Respondent erred in denying cross examination of Shri Rajendra Agarwal and Shri Vinit Jain on the premise that these persons were perpetrators of the offence committed in connivance with the Appellant and therefore, they had some vested interest to defraud the Government Revenue and cross examination of these persons is only to distort the facts. The Respondent ought to have appreciated that the entire case has been booked based on the oral statements of Shri Rajendra Agarwal and Shri Vinit Jain and documents and emails recovered from their possession. The investigating authority did not find any discriminating documents from the premise of the Appellant. Since the Respondent relied upon the oral statements and third party evidences to confirm the charges levelled in the Show Cause Notice, it was obligatory upon the Respondent to allow the Appellant to cross examine the above persons to ascertain correct facts of the case. Since the cross examination of Shri Rajendra Agarwal and Shri Vinit Jain has not been granted, their statements ought not to have been relied upon in terms of the following decisions:

i. Swadeshi Polytex Ltd. Vs. C.C.E. – 2000 (122) ELT 641 (SC)
ii. Basudev Garg Vs. C.C. 2013 (294) ELT 353 (Del.)

iii. J & K Cigarettes Ltd. Vs. C.C.E. – 2009 (242) ELT 189 (Del.)

iv. Arya Fibres PVt. Ltd. Vs. C.C.Ex. – 2014 (311) ELT 529 (T)

9.2 The Respondent erred in passing the impugned order without following due process of examination of witnesses as provided under Section 138B of the said Act. Section 138B casts responsibility upon the Adjudicating Authority to admit any statement as evidence only after examining the person who made the statement before the investigating authority. If the adjudicating authority has not examined a person whose statement was recorded during the course of investigation, such statement cannot be taken as evidence as held in the following decisions:

a) Arya Fibers Pvt. Ltd. Vs. C.C.Ex. - 2014 (311) ELT 529 (T)
b) Gupta Synthetics Ltd. Vs. C.C.Ex - 2014 (312) ELT 225 (Tri. Ahm.)
c) Flevel International Vs. C.C.Ex. – 2016 (332) ELT 416 (Del.)

9.3 The Respondent ought to have appreciated that the Hon'ble High Court in the case of Jindal Drugs Pvt. Ltd. Vs. Union of India reported in 2016 (340) ELT 67 (P&H) held that statement recorded before the Gazetted Officer during the course of investigation would take into consideration only after the said statement is admitted as evidence in accordance with the procedure prescribed under Section 9D (1) of the Central Excise Act. It is not open to any adjudicating authority to straightaway rely on the statement recorded during the course of investigation before the Gazetted Central Excise Officers unless and until he can legitimately invoke Section 9D (1). In the present case, the Respondent without invoking provisions of Section 138B of the Customs Act, relied upon the statement of Shri Rajendra Agarwal and Shri Vinit Jain and therefore, the same cannot be considered as evidence.

9.4 The Respondent ought not to have relied upon a statement of Shri Vinit Jain when he was not party to the proceeding nor the Show Cause Notice was issued to him. In absence of making Shri Vinit Jain as party to the proceeding, his statement ought not to have been relied upon.

9.5 Without prejudice to the aforesaid, it is submitted that statement of the Appellant was recorded on 13.12.2011 under pressure and threat of arrest. The Appellant retracted his statement vide letter dated 13.08.2014. In his letter, he categorically mentioned that documents shown to him during the course of investigations were not recovered from his possession and he was not cross questioned on the documents. In respect of recording further statement, he requested the officers to record his statement at Jaipur. The Appellant vide letter dated 26.09.2014 again retracted the statement and put the correct facts on the same. Since the statement of the Appellant has been retracted the same cannot be taken as evidence.

9.6 The Respondent erred in holding that since the Appellant was offered an opportunity to appear to depose fresh and he did not appear before the authority for recording his statement, retraction cannot be relied upon. The Respondent ought to have appreciated that the Appellant vide letter dated 13.08.2014 requested to the Respondent for recording his statement at Jaipur since he was not well. The Investigating Authority did not response to the letter dated 13.08.2014 and therefore, it cannot be said that since the Appellant did not appear, his retraction cannot be relied upon.

9.7 The Respondent failed to appreciate that the statements of the Appellant are vague as they are recorded under duress and under coercion and there are no cogent and tangible evidences to substantiate the allegations made by the Revenue that the Appellant declared the lower value of the imported goods for evasion of customs duty, except statements and e-mails referred to hereinabove. Almost all the e-mails referred to in the impugned order have been found from the e-mail ID's of Shri Rajendra Agarwal. Contents of Emails retrieved from the email ID of the Appellant are non-incriminating and no replies were ever sent by the Appellant in response to the emails sent by Shri Rajendra Agarwal. There are no incriminating documents found from the premises of the Appellant during the course of investigations. Emails retrieved from the email ID of the Appellant do not find any objectionable contents, leading to the conclusion that the Appellant was in any manner, involved in under valuation of the timber imported.

9.8 Without prejudice to the above, assuming for the sake of argument that the e-mails retrieved from email-ids of Shri Rajendra Agarwal were addressed to the Appellant and in turn, the Appellant was entering into correspondence with their suppliers which show undervaluation of the goods, then in that event, the Revenue ought to have recovered e-mails sent to Shri Rajendra Agarwal or other suppliers from the Appellant's side. In fact, all the e-mails that are found to be incriminating are incoming mails and no emails were found to be sent in response to the incoming emails, which proves that the e-mails referred do not pertain to the Appellant and could not lead to the conclusion that the Appellant were involved, in any manner, with the under valuation of the imported timber.

9.9 The Respondent ought to have appreciated that the entire case booked against the Appellant was based purely on assumptions and presumptions, without corroborating the same with any concrete evidence. In these facts and circumstances, the finding of the Respondent that the Appellant imported goods and declared a lower value and connived with foreign suppliers for avoiding payment of appropriate customs duty is contrary to the facts of the case and entirely misconceived. The Appellant places reliance upon the following decisions of the Hon'ble Tribunal to substantiate their submissions that charge of undervaluation ought not to have been made based on assumptions and presumptions:

- Vijay Leather Stores Vs. C.C. reported in 2007 (215) ELT 304 (T)
- Adani Exports Ltd. Vs. C.C. reported in 1999 (111) ELT 143) (T) maintained by the Hon'ble Supreme Court in 2004 (167) ELT 131 (SC);
- C.C. Vs. Blue Star International reported in 1996 (81) ELT 287 (T)

10. The Appellant submits that in respect of goods imported at Kandla and Mundra, the value declared by the Appellant was discarded and enhanced it by invoking Rule 9 of Customs (Determination of Value of Imported Goods)

Rules, 2007 by relying upon the customs documents and values declared by other importers at or about the same time. It is submitted that the value declared by the Appellant was the correct and genuine transaction value and the Appellant had never violated the provisions of the Customs Act and/or the Valuation Rules made therein. It is also submitted that if the value of goods has not been accepted as declared in the Bills of Entry, value of the imported goods ought to have been determined in terms of Section 14 of the said Act read with the provisions of the said Rules instead value has been enhanced, based on price agreed by Shri Rajendra Kumar Agarwal and related e-mails retrieved from their email IDs. Rule 3 of the said Rules provides that the value of the imported goods shall be the transaction value. Rule 3(1) defines transaction value to be the price actually paid or payable for the goods when sold for export to India. The transaction value for the imported goods is required to be accepted, unless the transaction in question falls under the exceptions carved out under Rule 3(3). It is submitted that in the present case, the transactions do not fall under any of the exceptions enumerated under Rule 3(3) of the said Rules and, therefore, the transaction value ought to have been accepted. The Respondent, after discarding the value declared by the Appellant, enhanced the value at the price agreed with by the Proprietor in his statements and statements of Shri Rajendra Kumar Agarwal. It is submitted that the Respondent ought to have appreciated that the import price varies from time to time and from person to person. It does not remain constant. The price variation is real and the variation is in a wide range, and a particular transaction can be rejected only if there is information that the transaction in question was not a commercial transaction or that the price charged was lower on account of reasons or circumstances which have been set out under Rule 4(2) of the Customs Valuation Rules. Simple replacement of transaction value with the highest price of comparable goods is not permitted by Section 14 or the said Rules. This is contrary to market reality which is that prices vary from seller to seller and from sale to sale. In the present case, there is no specific evidence on record which brings out that transaction value between the Appellant and the foreign supplier has been influenced by non-commercial consideration and that invoice price does not reflect or reveal the real transaction value. The legal position is clear that transaction value is to be accepted for valuation. In the case of Oswal Fats & Oil Vs. C.C. reported in 2007 (220) ELT 795 (T), the Hon'ble Tribunal held that fixed price for goods would not remain same for the imported goods when the price fluctuates in reality and the price in a particular transaction can be rejected only when there is information or evidence that transaction was not a commercial transaction as held in Para 9 of the decision. The relevant para is reproduced herein below for ready reference:

> *"9. It is clear from the data on record that import prices varied vastly (between 260 US $ and 130 US $) during the period in question. According to the data presented by the appellant, price varied between 200 US $ and 113, 260 US $ was an exception. It is clear that there existed no 'one fixed price' for Palm Acid Oil during the period and price fluctuation was the rule. In a case, where price variation is the rule and the variation is in a vide range, a particular transaction can be rejected only if there is evidence or information that the transaction in question was not a commercial transaction or that the price charged was lower on account of any of the reasons which have been taken note of in Rule 4(2) of Customs Valuation Rules. Simple replacement of transaction value with the highest import price of comparable goods is not permitted by Section 14 or Rules of Customs Valuation. That would be contrary to the market reality that prices varied from seller to seller and sale to sale. In the present case, there is no specific evidence on record which brings out that the transaction between the appellant importer and its foreign suppliers located in Malaysia and Indonesia had been influenced by any non-commercial considerations and that invoiced prices did not reflect or reveal the real transaction values. The legal position is clear that transaction value shall be accepted for valuation. In these facts and circumstances, we are of the opinion that transaction values were required to be accepted for assessments to Customs duty and the orders to the contrary are illegal. There is no basis for the finding of mis-declaration of value also. A purchase at a higher price by another importer does not render lower prices false."*

10.1 The Appellant submits that the value must be determined under Rule 3(1) because the conditions of Rule 3(1) are satisfied and none of the conditions/circumstances mentioned in Rule 3(3) are applicable. This is because the invoice value declared by the Appellant is:

i. The price at which goods are sold at the time and place of importation and there are number of such instances and evidences of contemporaneous imports available with the Revenue on record, including the latest clearances which have occurred after the investigation started in the Appellant's case. Each of the said products continue to be imported in the country at or around the same price as declared by the Appellant;

ii. The Appellant has not received any abnormal discounts/special discounts and/or reduction in price from the ordinary competitive price;

iii. the parties are not related to each other and none of the conditions of Rule 3(3) of the said Rules are applicable;

iv. Price is the sole consideration and there is no payment over and above the invoice price. The Appellant has not made any payments to any of our suppliers over and above the invoice values mentioned in the invoices raised by them.

When all the conditions of Rule 3(1) are satisfied, the value is to be accepted, being the transaction value. In support of the said proposition, the Appellant refers to the judgment of the Hon'ble Supreme Court in Eicher Tractors Limited V/s Commissioner - [2000 (122) ELT 322] and the following further cases:

i. Commissioner of C.Ex., Rajkot V/s Jai Bharat Steel Industry - [2005 (192) ELT 792]
ii. Commissioner of Customs V/s Bureau Veritas [2005 (181) ELT 3 (SC)]
iii. Bansal Industries V/s Commissioner of Customs, Chennai [2002 (147) ELT 967]
iv. Aryan Chemicals Order dated 19.02.2013 Passed by Commissioner of Customs (Appeals), Ahmedabad

11. The Respondent failed to appreciate that inasmuch as the value under Rule 3(1) is available and ascertainable, the question of resorting to the provisions of Rule 4 to Rule 9 of the said Rules does not apply at all. Rule 9 of the said Rules is also not applicable since the value declared in invoices are genuine, true and correct and the prices therein are well supported by the overwhelming evidence of contemporaneous imports of such or like goods which have been allowed clearance not only at the same price or comparable price, but in fact, at prices lower than the prices declared by the Appellant.

11.1 The Respondent ought to have appreciated that the value was to be determined based on the transaction value, which defined in Rule 3 to mean the price actually paid or payable for the goods when sold for export to India. This is also the underlying principle that Section 14 of said Act which provides that the value shall be the price at which the goods are sold for delivery at the time and place of importation in course of event either buyer and seller have no interest in the business of each other and the price is the sole consideration.

11.2 The Respondent erred in not considering the fact that despite the fact that statements of the Proprietor were recorded by the Revenue, there is no reference therein to any excess payments made to any of suppliers, the mode of such payments, the manner in which it was made, the person through whom the payments were sent etc. There is no evidence or material available to trace the route through which the unaccounted money, if any, is said to have been delivered to our suppliers. In the complete absence of any evidence or material on the above front, it cannot at all be held that the Appellant undervalued the goods imported by them.

12. The Appellant submits, that in terms of the said Rules, once the transaction value of the goods has been discarded, the determination of value was required to be done by sequentially following Rules 4 to 9 of the said Rules. Rule 4 of the said Rule mandates that the value of the imported goods shall be the transaction value of identical goods sold for export to India and

imported at are about the same time as the goods being valued. In this connection, it is submitted that the various types of timber of the same country of origin as imported by the Appellant was regularly imported into the country by many other importers across India. Each of the said quality of timber was imported in each of the years for which demand has been raised on the Appellant by various other importers across the country. The Revenue has not challenged the valuation of other imports at all. The Respondent erred in considering data submitted by the Appellant through a copy of Compact Disc (CD) received from M/s. Info Drive. It provides the information about each of the quality of timber was being regularly imported into the country at or about the same prices at which the Appellant imported the same. It is therefore, submitted that the re-determination of the value is unlawful and unauthorized, whereas the above data fully supports the value declared by the Appellant, and therefore, the question of rejecting the transaction value ought not to have been arisen at all.

12.1 It is further submitted that other importers situated across India imported the same quality of timber in each of the years for which demand has been raised upon the Appellant by declaring more or less the same price at which the Appellant imported the goods. The Other importers imported the goods from the same suppliers from whom the Appellant imported the goods. The Revenue has not challenged the valuation of other imports at all nor initiated investigation against such importers. Since the Department accepted the value of the imported goods imported by the other importer, the Respondent ought to have accepted the price declared by the Appellant. A copy of the statement along with copies of the Bills of Entry filed by other importers for importation of identical goods from the same suppliers had already been enclosed with reply to the Show Cause Notice, but not considered.

12.1 It is submitted that suppliers of the imported goods also supplied identical goods in India to other importers. The Suppliers filed Export

Declaration along with Release Orders in their own country for clearance of goods in India. They cleared the same quality of timber in each of the years for which demand has been raised upon the Appellant by declaring more or less the same price at which the Appellant imported the goods. The Revenue has not challenged the valuation of other imports at all nor initiated investigation against importers. Since the Department accepted the value of the imported goods imported by the other importer, the Respondent ought to have accepted the price declared by the Appellant. Copies of Export Declaration Form along with release orders have already been enclosed with reply to the Show Cause Notice.

13. The Respondent ought to have considered copious evidence in the form of contemporaneous imports that were produced, the Revenue has not led any such evidence to substantiate the undervaluation of the imported goods, except for relying upon statements of the Proprietor, Shri Rajendra Kumar Agarwal, Shri Vineet Kumar Jha, and e-mails retrieved from Shri Rajendra Kumar Agarwal. In terms of settled law as held by the Hon'ble Supreme Court in Eicher Tractors (Supra) and Varsha Plastics Pvt. Ltd. (Supra), it is only when evidence i.e. contemporaneous imports is led that declared value can be rejected. In the facts of the present case, the declared value is sought to be rejected on the basis of evidence, which is clearly inadmissible, as has already been submitted hereinabove.

14. In case of Commissioner of Customs, Calcutta V/s South India Television (P) Ltd. reported in 2007 (214) E.L.T. 3 (S.C.), the Hon'ble Supreme Court inter alia held that the onus to prove undervaluation was on the Revenue by evidence or information about comparable imports and if the charge was not supported by such evidence/information, the benefit of doubt was to go to the importer. Further, it was held thatthe burden was on the Revenue to prove that the invoice price was incorrect.

14.1 It is again submitted that in respect of approximately 28 Bills of Entry out of the 44 Bills of Entry impugned in order, the value declared by the

Appellant was initially rejected by the Revenue and enhanced the same by comparing with value of the contemporaneous imports after inspecting contents of the containers physically and examining the goods. Since the above referred Bills of Entry were already re-assessed, the Respondent ought to have appreciated that the said Bills of same ought not to have been again re- opened for enhancement of value. The Appellant craves leave to refer to and rely upon the details of Bills of Entry which were re-assessed by the Customs Revenue when produced.

15. The Respondent erred in placing reliance upon the decision of Jain Shudh Vanaspati Ltd reported in 1996 (86) ELT 460. The said decision is not applicable in the present case in view of the facts involved in the matter. In the above decision, a clearance order under Section 47 was obtained by fraudulent means and therefore, the Hon'ble Court held that such act cannot debar the issuance of a show-cause notice for confiscation of goods under Section 124. In the present case, the assessing officer reassessed the goods and enhanced value. It is not the case that the Appellant concealed any information at the time of re-assessment of the goods.

15.1 The Respondent ought to have appreciated that the Customs Department physically inspected the contents of the containers of the imported goods in respect of and examined the goods. After having completed the process of examination, the Revenue allowed the Appellant to clear the goods for home consumption without any objections. The Revenue never disputed about value and description of goods at the relevant time. Copies of some of Examination Ordershave already been annexed with reply to the Show Cause Notice.

16. The Appellant submits that they have been importing the identical goods by declaring more or less the same price at which the Appellant imported the consignments before the Investigating Authority initiated investigation. Had the Appellant indulged in mal-practice as held in the impugned order, the Appellant would have stopped importing the consignment of the imported

goods after investigation and declared higher price. This shows that the value declared by the Appellant in the disputed period is true and correct value.

17. The Respondent failed to appreciate that in respect of bills of entry where no incriminating emails/documents recovered from the premises of Shri Rajendra Kumar Agarwal, the investigating authority ought not to have relied upon value of contemporaneous imports of timber and proposed enhancement value of the goods after invoking Rule 5 of Customs (Determination of Value of Imported goods) Rules 2007.

17.1 The Respondent ought to have appreciated that the Show Cause Notice referred to Annexures C-2 and D-2 showing value of cotemporaneous imports of the importers mentioned therein and enhanced value of the imported goods. In respect of the contemporaneous imports, the Respondent placed reliance upon the imports made by the following importers for enhancement of the values:

i. Shyam Timber Pvt Ltd;
ii. Jai Jalaram Saw Mill;
iii. Beena Sales Corporation;
iv. Shree Radhe Impex (SRI);

17.2 The Respondent ought to have appreciated that the Directorate of Revenue Intelligence initiated investigations against the above referred importers mentioned in connection with undervaluation of the goods imported by them. In some of the cases, the Show Cause Notices have already been issued to them for enhancement of the value and same in some cases decided by Tribunal against the revenue.

17.3 The Respondent failed to appreciate that the Investigating Authority had not found any documents to substantiate their case for undervaluation of the imported goods. There is not even an iota of evidence on record to show that the Appellant transferred the differential value of the imported goods to the suppliers of the goods or their agents. There is no direct evidence in respect of enhancement of value made by the Investigating Authority based on contemporaneous imports. It is settled law that the burden is upon the Department to show that value declared is not true and correct value. The burden has to be discharged with cogent and tangible evidence. In the absence of any evidence, merely enhancement of value based on assumptions and presumptions cannot be sustained.

17.4 The Respondent ought to have appreciated that the Appellant made payments through Letter of Credit and/or payment against Documents. The Appellant never made payments for the imported goods to Shri Rajendra Agarwal on behalf of the suppliers. Therefore, the finding for discarding the value declared by the Appellant and enhancing the value after invoking Rules 9 of the Valuation Rules, 2007 is erroneous and baseless.

17.5 The Respondent ought to have appreciated that that the price at which the Appellant sold the good in the domestic market is a comparable price with the value of imported goods in dispute. Cost for storage of the imported goods and other charges after importation of the goods are worked out which is approximately 3% to 6% of the landing cost of the imported goods. It is pertinent to mention herein that on sales of the Appellant, they made a profit of approx. 2% to 5.36% of landing cost, depending upon various market exigencies. The Appellant submits that from the local sales price of our products, as borne out by the sales to their buyers, if the Appellant deducts all the expenses incurred post importation including sale profit, they should arrive at the CIF value declared by the Appellant at the time of the import of the goods in dispute. A copy of Working Sheet showing the value at which the said goods were sold to local buyers and the CIF value declared in Bills of Entry has already enclosed with the Reply which proves that there is no undervaluation of imported goods in dispute.

17.6 The Respondent erred in not considering fact that even though the Appellant led the above positive evidences to support the declared value for the goods in question, there was no evidence forthcoming in the form of chits/private records and/or records of any payments made in cash and/or recovery of any unaccounted cash amounts etc., which could lead to the conclusion that the Appellant indulged in undervaluation of the timber imported by them. The evidences led by the Appellant clearly demonstrates that the values mentioned in the Bills of Entry reflect the correct value. The goods imported by them were sold in the domestic market after adding the normal profit margin. Despite the fact that the Revenue had in its knowledge, the sales price of the timber in the domestic market, the Revenue did not extend the investigation to buyers of the imported goods to ascertain the correct position.

17.7 The Respondent ought to have appreciated that the investigating authority did not investigate the case from the point of view of domestic sales price at which identical goods were sold in the domestic market during the disputed period. The investigating authority did not find any incriminating documents nor was there any finding about under valuation of the goods based on any such documents. The Price at which the goods in dispute were imported is comparable with the domestic price at which other importers sold the goods. Had the Appellant indulged in undervaluation, the Appellant could not have sold the product in the domestic market at a lower price or at which other importers sold identical goods. It is submitted that the Appellant received the payment from their domestic customers through cheques only, against the sales invoices raised by them, which can easily be verified.

17.8 The Respondent discarded the above submission on premise that since the Appellant suppressed value of the imported goods, the Appellant suppressed actual value of sale of goods in local market in order to avoid other Central and Sales Tax without any basis. The Respondent ought to have appreciated that the Investigating Authority did not find any discriminating documents during the course of investigation from the possession of the Appellant. Even there is no iota of evidence to show that the Appellant suppressed value of sale of goods in local market. It is a well settled legal proposition that where documentary evidences are available, the same being primary form of evidence shall be preferred over oral testimony as held by the Hon'ble Tribunal in the case of Philip Fernandes -vs- C.C reported in 2002 (146) ELT 180 (T). Insofar as the documents support our stand, the oral depositions of various individuals cannot be relied upon to support the Revenue's case.

18. The Appellant submits that it is settled law as held by the Hon'ble Supreme Court in the case of C.C -vs- Initiating Explosives (1) Ltd reported in 2008 (224) ELT 343 that the burden to prove undervaluation lies squarely on the Revenue. It is for the Revenue to bring forth credible and cogent evidence to prove its case of undervaluation. In the instant case, as already stated hereinabove, the documentary evidence available on the Revenues record, insofar as imports of the Appellant are concerned, support the declarations made by them before the authorities and, therefore, the value declared ought to have been accepted as reflecting transaction value under Section 14 of the said Act read with Rule 3 of the said Rules. The Hon'ble Tribunal in the case of Truwoods Pvt. Ltd. V/s Commissioner of Cus., Vishakhapatnam reported at 2006 (204) ELT 288 has inter alia held that where there is evidence of contemporaneous imports, the transaction value cannot be determined on any other basis. On the other hand, there is complete absence of evidence of the contemporaneous evidence at higher price and, therefore, the transaction value needs to be accepted.

19. The Respondent discarded the submission made by the Appellant that the Appellant took insurance policy for voyage from foreign loading port to the destination port based on the actual price on the premise that the insurance cover note cannot be a basis to demonstrate the correctness of value of invoices. The Respondent failed to appreciate that the Appellant imported the goods in dispute directly from foreign suppliers after having due negotiations and declared the true and correct value thereof for the purposes of discharging the Customs duty liability. The values declared by them were in consonance with prices declared by other importers of the same/identical goods. The

Appellant took insurance policy for voyage from foreign loading port to the destination port based on the actual price. A prudent businessman would never take a risk to insure the value of imported goods at a lesser value. Assuming whilst denying that the Appellant had indulged in undervaluing the imported goods, the Appellant would have taken insurance for the full value of the goods, irrespective of the value declared before the Customs Authorities.

19.1 The Respondent erred in not considering the fact that there is complete lack of evidence from the Department in the form of any private records/chits to show that any extra payments were at all made to the foreign suppliers over and above the declared invoice value, which would substantiate the charge of under-valuation.

19.2 The Respondent ought to have appreciated that Appellant imported 25 consignments out of total 44 consignments of timber from Tanzania during the disputed period by declaring value in range of US$270 to US$450. Value chain description and analysis report made by Forestry and Bee keeping Division of Ministry of Natural Resources and Tourism of United Republic Tanzania shows that the sale price of timber in the same country was approximately of US$ 130 PMT as against enhanced value of US$ 600 to US$ 800. It is not practically possible to enhance the value more than 5 times and therefore, the finding of the Respondent for enhancement of value is legally incorrect and arbitrary.

19.3 The Respondent ought to have appreciated that the entire case been made based on statements of Shri Rajendra Agarwal, Shri Vinit Jha, Employee of Shri Rajendra Agarwal and Printouts of Packing Lists and account statements retrieved from hard disk recovered from the premises of Rajendra Agarwal that were sent to various importers including the Appellant through email. Such incriminating documents show higher price at which the imported goods were sold to various importers. It is submitted that the Appellant is not concerned with such printouts of packing list and account statements. Such documents were never sent to the Appellant through email or any other mode. During the course of investigation at the premises of the Appellant and Shri Rajendra Agarwal, the Investigating Authority did not find any single documents from Email Ids. Had Shri Rajendra Agarwal forwarded such emails to the Appellant, the Investigating Authority would have found some incriminating documents from email Ids of the Appellant.

20. The Appellant submits that the statements of Shri Rajendra Agarwal, and Shri Vineet Kumah Jha, without corroborating the same with tangible & cogent evidences cannot form the basis for undervaluation in respect of the values declared by us for clearance of the goods in dispute imported under Bills of Entry. It is a settled legal position that mere statements cannot form the basis for alleging mis-declaration of value as held in Akshay Exports -vs- Commissioner reported in 2003 (156) ELT 268 and Galaxy Funworld Pvt. Ltd. -vs- Commissioner reported in 2006 (206) ELT 890. It is submitted that the Appellant inter alia imported the goods from M/s. Prime Timbers and M/s. Janki Exports (T) Ltd during the dispute period. Even M/s. Vinayak Impex from whom the Appellant imported the goods, originally purchased the imported goods from M/s. Prime Timbers. Ministry of Natural Resources and Tourism offered for removal and transportation of the forest produce viz. teak wood grown in various forest in the United Republic of Tanzania in the year of 2009. Both the above suppliers bid for the above project and the same were approved vide License dated 16.09.2009. Both the above suppliers were allowed to cut various sizes of stand trees and sale. The price accepted by the United Republic of Tanzania for the above project was approximately of US$ 95 to US$120 per CBM. After cutting stand trees, the owner of trees normally transports such cut trees to his saw mill where the owner undertakes the activity of sawing. During course of process of sawing, there would be wastage of timber around 35% to 40% of total logs/timber cut by the owner from forest which are sold/exported as "rejection grade". The owner normally gets yield approximately 55% to 60% of total cut timber which is in saleable position in

different sizes as "silly". Since the above suppliers were allowed to cut stand trees at US $ 95 to US $ 120 per CBM, the average cost of yield material would come to approximately US$ 160 to US $ 200 per CBM (enhancing value by 60% of US$95 to US$120). Total processing cost normally incurred for cutting and sawing would be approximately of US$ 50 per CBM. If the Appellant considered all above expenses including tax while ascertaining sale value of timber per CBM including freight charges incurred in exported country and ocean freight charges for transportation of goods in India, that would be of US$300 per CBM. Even though the Appellant anticipated the profit of supplier on higher side, that would be around 10% of total cost of production. Hence, the landed cost of the good quality of imported goods in India would not go beyond US$ 330 per CBM. The Appellant imported the same materials at US $ 350 to US $ 400 which comes within the parameter of sale value of the suppliers as computed herein above. The Respondent accepted the proposal made by the Investigating Authority for enhancement of value of the imported goods at US $ 650 to US $ 800 which is not practically possible. The above calculation shows that the value declared by the Appellant is within parameter of the value of imported goods declared by them. Copies of tender documents approved by the United Republic of Tanzania have already been enclosed with reply to the Show Cause Notice.

SUBMISSIONS IN RESPECT OF IMPORT MADE AT MUNDRA PORT AND VALUED ENHANCED BASED ON EVIDENCES.

21. The Respondent did not consider the detailed submissions made by the Appellant in respect of evidences relied upon by the Investigating Authority against each Bill of Entry referred to in Annexure C-1, C-2, D-1 and D-2. Since impugned order passed by the Respondent without considering the submissions made herein below, the same is considered as violation of natural justice and therefore, the impugned order is required to be quashed and set aside in interest of justice.

Bill of Entry No. 3798567 dated 15.06.2011

22. The document recovered from hard disc recovered from premises of Shri Rajendra Agarwal and it was held that that the Appellant paid US$ 47,321 against declared value for import of 5 containers shown in the above referred Bill of Entry. The investigating authority referred to the following documents:

- "live data/01/5 containers/packing list-Vikas Wood work";
- "live data/01/-BC 191",
- emails sent by Shri Avinash Jindal to Design and Creation
- "live data/01-BA89" for enhancement of value of imported goods.

23. The Appellant did not get opportunity to put his contentions on the above documents as none of the above documents were shown to Shri Dinesh Sureka during recording his statement on 13.12.2011;

i. Details of container shown in all the above documents were imported under Bill of Entry No. 3798567 dated 15.06.2011. Details of quantity shown in the Bill of Entry and corresponding Bill of Lading for the 5 containers is of 67.841 CBM as against total quantity of 75.841 CBM shown in the above documents. Since the quantity shown between Bill of Entry and the above referred 5 documents does not tally, the finding for enhancement of value merely the documents recovered from the premises of Shri Rajendra Agarwal is erroneous and contrary to the facts;

ii. Amount of 47321 shown in Annexure B.2.2 does not mention nature of currency whether the same is in India Rupees or US Dollar or any other currency;

iii. It is not the case of the Revenue that the said amount was given to any person on behalf of exporter of the goods;

iv. It is well settled law that documents recovered from Shri Rajendra Agarwal ought not to have been relied upon unless the same corroborated with independent evidences recovered from the premise of the Appellant;

v. Shri Dinesh Sureka retracted his statement later on and informed to the Investigating Authority that they paid value of the imported goods as shown in the import documents and did not pay any amount over and above amount shown in import documents. Even though the letters dated 13.08.2014 was addressed to the Investigating Authority, the investigating authority chose not to examine contents of the letter;

vi. The email dated 21.03.2011 was exchanged between Shri Ajay Jindal and Shri Agarwal (Design and Creation). It appears from the e-mail shown in Annexure B.2.3 that it was sent only details of packing list of 5 containers. The Appellant was not a party to the above mail. It does not come out from any records that the Appellant accepted the price as shown in email dated 21.03.2011. The Appellant filed Bill of Entry for the above goods on 15.06.2011 i.e. after 3 months from the date of email. As the Appellant was not a party and unaware of the contents of the email, the impugned is erroneous and contrary to the facts;

vii. The Show Cause Notice referred to Annexure B.2.4 and B.2.5 wherein the account (Avinash-Jee) was shown along with the email exchanged between Shri Ajay Jindal and Shri Agarwal (Design and Creation). Account attached with this email is of 01.04.2011 wherein the Bill of Entry was filed on 15.07.2011 and the payment against this document was made. Merely the amount 47,321 shown in name of Shri Sureka does not mean that it is pertaining to the present Bill of Entry for which the Appellant was liable to pay that amount;

viii. It is stated that the Appellant purchased similar goods from other suppliers who supplied the goods more or less the same price at which the Appellant declared the import documents. The investigating authority did not carry on any investigation with respect to those imports and accepted the price declared by the Appellant. Copies of Bill of Entries and other imports made by the Appellant from other importers have already been annexed with reply to the Show Cause Notice.

Bill of Entry No. 4011018 dated 07.07.2011.

24. The Respondent without considering the submissions made in the reply, confirmed the charges levelled in the Show Cause Notice. The Investigating authority originally alleged based on documents viz. File Path "live data/01/Accounts-Vikas Wood Works (24-06-2011)" recovered from hard disc and Page No. 36 of file number 2, recovered from premises of Shri Rajendra Agarwal that details contained in above documents tallied with details shown on reverse of Page No. 57 of record No.2 recovered from Shri Rajendra Agarwal's premises. The Appellant submitted upon perusal of the details mentioned in the Bill of Entry along with details mentioned in the documents recovered from the premises of Shri Rajendra Agarwal that:

i. The Appellant imported 3 containers of Teak Log origin of Tanzania from M/s. Vinayak Impex, F.Z.E;

ii. The quantity shown in CBM and number and pieces shown in the invoice does not tally with the quantity shown in the Annexure B.2.6;

iii. The above referred documents were recovered from the premises of Shri Rajendra Agarwal whereas such type of documents were not recovered from the premises of the Appellant during the course of search;

iv. The Appellant paid invoice value to the suppliers as declared therein. Merely hand write page recovered from premises of

Shri Rajendra Agarwal being third party, the same cannot be relied for enhancement of value of the goods in absence of corroborative evidence to establish the fact that the declared value was not price at which the Appellant paid the duty;

v. The Appellant came to know about handwritten documents mentioned in Annexure B.2.7 when the Show Cause Notice was received. Annexure B.2.7 was not shown to the Appellant during the course of recording his statement. Merely name of the Appellant was shown on top of the Annexure B.2.7, it does not mean that the Appellant did the business with Shri Rajendra Agarwal at the price at which it was shown therein;

vi. Details mentioned in Annexure B.2.6 and B.2. 7 cannot co-relate in any manner. It appears from the document that since name of the Appellant is reflected in Annexures, statement of Shri Rajendra Agarwal was recorded to implicate the Appellant;

vii. Documents mentioned at Annexure B.2.6 were shown to the Appellant. During recording statement of the Appellant on 13.12.2011, it was specifically stated in paragraph 10differential duty, if any, after comparing the rates. Thereafter, the Appellant addressed a letter dated 13.08.2014 to the Department and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different suppliers at similar value. The Department accepted the said price and did not question even though the Appellant declared the said facts before the Investigating Authority during the course of investigation. By the said letter, the Appellant retracted the statement that proves that the Appellant declared correct value in import documents.

<u>Bill of Entry No. 4058131 dated 13.07.2011</u>

25. The Respondent erred in enhancing value of Teak logs imported under 7 containers based on discriminating documents mentioned at Annexure B.2.8, B.2.9 and B.2.10 recovered from the premises of Shri Rajendra Agarwal. The Appellant submits that:

ix. There is no independent evidence, except a statement of Shri Rajendra Agarwal wherein he stated that the price shown at Annexure B.2.10 reflects purchase price of teak logs imported by him under the above 7 containers. It is submitted that there is no whisper in the document based on which it concludes that whether Shri Rajendra Agarwal purchased the said quantity @ USD 631 mentioned therein. Similarly, the price @ 701 has been shown in Annexure B.2.8 for the same quantity. Different prices have been mentioned in different document that shows that it does not correct value at which the goods were imported. It appears that Shri Rajendra Agarwal used to keep records for different prices for quotations or some other reasons. There is no any evidence on record to show that the Appellant paid either USD 631 or USD 701;

x. The Appellant in his statement dated 13.12.2011 specifically stated in Paragraph 10 that he would verify records and pay the differential duty, if any, after comparing the rates when he was shown documents that they would verify records and pay mentioned at Annexure B.2.6. Thereafter, the Appellant addressed a letter dated 13.08.2014 and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different suppliers at similar value. The Investigation Authority accepted the said price and did not question even though the Appellant declared the said facts during the course of investigation. By the said letter, the Appellant retracted the statement that proves that the Appellant declared correct value in import documents.

<u>Bill of Entry No. 4492835 dated 29.08.2011</u>

25.1 The Respondent erred in enhancing value of Teak logs imported under 6 containers based on the documents mentioned at Annexure B.2.11, B.2.12, B.2.13 and B.2.14 recovered from premises of Shri Rajendra Agarwal. The Appellant submits that:

i. There is no independent evidence, except a statement of Shri Rajendra Agarwal wherein he stated that the price shown at Annexure B.2.10 reflects purchase price of teak logs imported by him under the above 6 containers. It is submitted that there is no whisper in the document based on which it concludes that whether Shri Rajendra Agarwal purchased the said quantity @ USD 711 mentioned therein. Similarly, the price @711 was shown in Annexure B.2.12 for the same quantity. Different prices have been mentioned in different document that shows that it does not correct value at which the goods were imported. It appears that Shri Rajendra Agarwal used to keep records for different prices for quotations or some other reasons. There is no any evidence on record to show that the Appellant paid either USD 711;

ii. The Appellant in his statement dated 13.12.2011 specifically stated in Paragraph 10 that he would verify records and pay the differential duty, if any, after comparing the rates when he was shown documents mentioned at Annexure B.2.6. Thereafter, the Appellant addressed a letter dated 13.08.2014 and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different suppliers at similar value. The Investigation Authority accepted the said price and did not question even though the Appellant declared the said facts during the course of investigation. By the said letter, the Appellant retracted the statement that proves that the Appellant declared correct value in import documents;

<u>Bill of Entry No. 4503591 dated 30.08.2011 and Bill of Entry No.4637439 dated 14.09.2011</u>

26. The Show Cause Notice was alleged based on page Nos. 604 and 605 of copies of emails sent by Shri Avinash Jindal at Annexure B.2.15 and as per File Path "live data/01/AK5 X 20 Imran Agarwal 256" from hard disc recovered from premises of Shri Rajendra Agarwal that containers mentioned therein, were originally purchased goods by Shri Rajendra Agarwal through Shri Avinash Jindal and the same were sold to the Appellant by adding value @ US 30 per CBM as per statement of Shri Rajendra Agarwal. The Appellant submit that:

I. None of the documents were shown to the Appellant during the course of investigation. The Appellant denied that he paid proposed enhanced rate. Merely Shri Rajendra Agarwal in his statement stated that he added USD 30 per CBM to come to correct value, the same ought not to have been accepted in absence of any independent evidences;

II. There was no any evidence to show that the Appellant paid over and above of invoice value;

III. The Respondent ought to have appreciated that documents shown at page 604 and 605 did not prove that Shri Rajendra Agarwal purchased the said containers from Shri Avinash Jindal;

IV. Even though Shri Rajendra Agarwal in his statement stated that he added USD 30 per CBM to purchase rate, then actual value ought to have been USD 631 in place of USD 641.

SUBMISSIONS IN RESPECT OF IMPORTS MADE AT KANDLA PORT AND PROPOSED ENHANCEMENT OF VALUE BASED ON EVIDENCE (Annexure-C-1)Bill of Entry No. 349619 dated 07.06.2010.

27. The Investigating Authority relied upon copies of emails received from possession of Shri Avinash Jindal during the course of search on 27.06.2011 and alleged that the Appellant imported a container from Janki Exports at a value USD 825 and not at USD 350 as declared by the Noticee. It was further

relied upon statement sent by Shri Ajay Jindal, to Shri Sunil Gupta. The alleged statement contained details of various containers imported by various importers. Out of them, container mentioned at Serial No. 34 is pertaining to the Appellant. The Appellant states that:

a. The quantity shown in the statement is not correct as the Appellant imported 22.588 CBM as against 21.965 CBM mentioned in the statement;
b. The Appellant never dealt with Shri Avinash Jindal or Shri Sunil Gupta between whom the statement through email was exchanged;
c. During the course of investigation, DRI Officer did not find any incriminating documents from possession of the Appellant;
d. During course of investigation, documents retrieved from possession of Shri Avinash Jindal were not shown to Shri Dinesh Sureka;

Bill of Entry No. 1849 dated 06.09.2010

28. The Respondent erred in relying upon the document viz. File Path "live data/01/Accounts/Vikas Wood Works" dated 23.07.2010" (Annexure B.1.2) recovered from the hard disc of Shri Rajendra Agarwal that contained details of quality and quantity shown in above path matched with details mentioned in file path "Live data/01/Summary of Vikas Wood Works" (Annexure B-1.3) and held in Para 3.6.4.2 that details mentioned in the above private records recovered from the premises of Shri Rajendra Agarwal are correct. The Appellant submits that:

a. The quantity shown in the above Bill of Entry filed by the Appellant does not tally with the quantity shown in the documents mentioned in Annexure-B.1.4;

b. There is no corroborative evidence recovered by the department during the course of investigation from possession of the Appellant showing that the Appellant paid over and above declared value;

c. There is no evidence to show that the Appellant mis-declared quantity of the imported goods. Merely documents recovered from possession of Shri Rajendra Agarwal, does not prove that the Appellant mis-declared the value and quantity of goods.

<u>Bill of Entry No. 2887 dated 17.09.2010</u>

28.1 The Respondent erred in relying upon the document viz. file path "live data/01/Accounts/Vikas Wood works" dated 23.07.2010 (Annexure B.1.2) recovered from the hard disc of Shri Rajendra Agarwal that contained details of quality and quantity shown in file path "20-06-2010(20x20) Packing List (Narendra Patel)-summary of Vikas Wood Works" and held undervaluation of imported goods by declaring lower value. The Respondent ought to have appreciated that that:

a. The quantity shown in the above Bill of Entry filed by the Appellant does not tally with the quantity shown in the documents mentioned in Annexure-B.1.2;

b. There is no corroborative evidence recovered by the department during the course of investigation from the possession of the Appellant that the Appellant paid over and above declared value;

c. There is no evidence to show that the Appellant mis-declared quantity of the imported goods. Merely documents recovered from the possession of Shri Rajendra Agarwal, does not prove that the Appellant mis-declared the value and quantity of goods.

d. The quantity numbers in second document does not match with the numbers mentioned in the import documents.

e. In respect of Annexure A.4 and A.5, it is submitted that the same was not shown to the Appellant. It is further submitted that hand-written shown over the annexures are not written by the

Appellant. The Respondent did not consider the fact that the Appellant retracted their statement.

Bill of Entry No. 3103 dated 21.09.2010

29. The Show Cause Notice originally referred to Annexure mentioned at B.1.6 recovered from Hard Disc of Shri Rajendra Agarwal and matched the said documents with the details mentioned at Annexure B.1.7 and alleged that right side of the statement showing at Annexure B.1.6 was payment as per documents whereas on left side of the statement, it shows actual amount paid for 4 containers imported by the Appellant. The Respondent ought to have appreciated that:

a. The Appellant paid value of imported goods as shown in the import documents. The Appellant did not pay any amount over and above invoice value;

b. While recording statement of Shri Dinesh Sureka, the Appellant specifically mentioned that he would verify records and pay differential duty, if any, after comparing the rates when he was shown the above documents. Thereafter the Appellant addressed a letter dated 13.08.2014 and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different supplier on similar value. The investigating authority accepted the said price and did not question even though the Appellant declared the said facts during the investigation. By the said letter, the Appellant retracted the statement that proves that there is no undervaluation of the alleged import.

c. The Appellant was shown the documents mentioned at Annexure B.1.6, but he was not shown the document mentioned at Annexure-B.1.7;

d. Out of 4 containers, 3 containers were originally imported at the price of US$ 350 which was enhanced by the Customs Department at US$ 375. The said assessment was not further challenged by the Department. In these facts, action of the investigating authority to enhance value from US$ 375 to US$ 541 without any corroborative evidence is erroneous and contrary to the provisions of law.

Bill of Entry No. 2220985 dated 30.09.2010

30. The Investigating Authority recovered from Hard Disc of Shri Rajendra Agarwal and matched the said documents with details mentioned at Annexure B.1.9 and alleged that right side of the statement showing at Annexure B.1.8 is payment as per documents whereas the left side of the statement shows actual amount paid for 4 containers of the Appellant. The Respondent ought to have appreciated the following submission made in the reply:

a. The Appellant paid value of the imported goods as shown in the import documents. The Appellant did not pay any amount over and above invoice value;

b. While recording statement of the Appellant, he specifically mentioned that he would verify the records and pay differential duty, if any, after comparing the rates when he was shown the above documents. Thereafter the Appellant addressed a letter dated 13.08.2014 and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different supplier on similar value. The investigating authority accepted the said price and did not question even though the Appellant declared the said facts during the investigation. By the said letter the Appellant retracted the statement that proves that there is no undervaluation of the import;

c. The Appellant was shown the documents mentioned at Annexure B.1.8, but he was not shown the document mentioned at Annexure-B.1.9;

Bill of Entry No. 23075523 dated 04.11.2010

31. The Respondent erred in referring to Annexure mentioned at B.1.10 recovered from Hard Disc of Shri Rajendra Agarwal and matched the said documents with details mentioned at Annexure B.1.11 and held that right side of the statement showing at Annexure B.1.10 was payment as per documents whereas the left side of the statement shows actual amount paid for 4 containers by the Appellant. The Respondent ought to have considered the following submissions:

a. The Appellant paid value of the imported goods as shown in the import documents. The Appellant did not pay any amount over and above invoice value;

b. While recording statement of Shri Dinesh Sureka, the Appellant specifically mentioned that he would verify the records and pay differential duty, if any, after comparing the rates when he was shown the above documents. Thereafter the Appellant addressed a letter dated 13.08.2014 and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different supplier on similar value. The investigating authority accepted the said price and did not question even though the Appellant declared the said facts during the investigation. By the said letter the Appellant retracted the statement that proves that there is no undervaluation of the import;

c. The Appellant was shown the documents mentioned at Annexure B.1.10, but he was not shown the document mentioned at Annexure- B.1.11;

Bill of Entry No. 2307310 dated 4.11.2010

32. The Investigating Authority referred to Annexure mentioned at B.1.12 recovered from Hard Disc of Shri Rajendra Agarwal and matched the said documents with details mentioned at Annexure B.1.13 and alleged that right side of the statement showing at Annexure B.1.12 was payment as per documents whereas the left side of the statement shows actual amount paid for 4 containers by the Appellant. The Appellant states that:

a. The Appellant paid value of the imported goods as shown in the import documents. The Appellant did not pay any amount over and above invoice value;

b. While recording statement of the Appellant, the Appellant specifically mentioned that he would verify the records and pay differential duty, if any, after comparing the rates when he was shown the above documents. Thereafter the Appellant addressed a letter dated 13.08.2014 and clarified that no evasion was made from their side. It was further clarified vide letter dated 26.09.2014 that the Appellant purchased identical goods from different supplier on similar value. The investigating authority accepted the said price and did not question even though the Appellant declared the said facts during the investigation. By the said letter the Appellant retracted the statement that proves that there is no undervaluation of the alleged import;

c. The Appellant was shown the documents mentioned at Annexure B.1.12, but he was not shown the document mentioned at Annexure-B.1.13;

33. The Respondent ought to have appreciated that even though the investigating authority referred to the Statement dated 04.01.2012 of Shri Rajendra Agarwal and Statement dated 17.09.2013 of Shri Vinit Jha and held

that Printouts of Packing Lists and account statements retrieved from hard disk recovered from the premises of Rajendra Agarwal were sent to various importers including the Appellant through email. Such documents show higher price at which the imported goods were sold to various importers. The Respondent failed to appreciate that the Appellant was not concerned with such printouts of packing list and account statements. Such documents were never sent to the Appellant through email. During the course of investigation at the premises of the Appellant and Shri Rajendra Agarwal, the Investigating Authority did not find any single documents from Email Ids. Had Shri Rajendra Agarwal forwarded such emails to the Appellant, the Investigating Authority would have found some incriminating documents from email Ids of the Appellant.

33.1 The Respondent ought to have appreciated the above referred submissions. Without considering the above referred detailed submissions, the Respondent passed the impugned order based on incriminating documents recovered from the premises of Shri Rajendra Agarwal and oral statements recorded during course of investigations.

Statement of the Appellant ought not to have been relied since the same was recorded under duress and pressure. During recording the statement, the Appellant was shown the invoices and forced to sign over it. Despite the fact that he denied the contentions raised by the investigating authority, the investigating authority declined to accept the submissions and recorded what the investigating authority wished to record; It is well settled principles of law that statement of Co-Appellant cannot be relied upon to corroborate third party evidence and as such a statement of Shri Rajendra Agarwal cannot be relied upon;

33.2 None of the above mentioned emails were replied to by the Appellant. There is no even a shred of evidence that the value and quantity of goods mentioned in the invoices are final and relied upon and that did not change subsequent sending of the invoice;

33.3 Without prejudice to the aforesaid, it is submitted that the Customs Department originally re-assessed the goods and enhanced the value of imported goods at the time of assessment of the imported goods. The Respondent ought not to have again enhanced the value of the imported goods without challenging the assessed Bill of Entry;

34. The Respondent erred in holding that the Appellant mis-declared value of imported goods on the premise that rates for Silli / General Silli material varies on the basis of width of the timber which comes in 3" to 7" and the quantity of the timber can be worked out on the bases of number of pieces in the container. It is submitted that timber per se has their own characteristics of quality, weight and size and it differs from log to log. Therefore, the finding of the Respondent that a rate on an average US$ 50 is increased between two types of materials in the General Silli, is on assumptions and presumptions basis without any evidences.

34.1 The Respondent erred in holding that the Appellant undervalued the imported goods based on the evidences in form of documents recovered and retrieved from seized hard disc. The Respondent ought to have considered various documents and submissions placed on record to show that the Appellant did not mis-declare value and quantity of imported goods.

34.2 The Respondent erred in rejecting the declared value and enhanced the value based on direct evidences recovered from third party premises during the course of investigation. In respect of each made up files recovered from premises of Shri Rajendra Agarwal, the Appellant put his submission in details to demonstrate that why those direct evidences were not applicable for enhancement of value of imported goods. The Respondent, without considering the submissions made by the Appellant enhanced value of imported goods against made up files. Since the impugned order is contrary to the own evidences, the same cannot be sustained. Even otherwise documents recovered from the premises of third parties, cannot be relied upon unless the investigating authority found some incriminating documents from the premises of the Appellant. In the present case, investigating authority did not find any incriminating document from the premises or hard disc of the Appellant during the course of investigation.

34.3 Without prejudice to the aforesaid, it is submitted that the Respondent ought to have appreciated that the Appellant imported timber in dispute from well recognized companies. There is no direct evidence that the Appellant had connivance with them. In absence of having any evidence about mis-declaration of value and quantity of goods, action of the Respondent without verifying anecdote of the suppliers, confirming demand of duty is illegal, erroneous and contrary to the facts.

34.4. The Respondent ought to have appreciated that the Appellant imported timber after the disputed period more or less the same price at which the Appellant imported in disputed period. If there was mis-declaration in value of the imported goods, price of the imported goods would not remain same after disputed period. It shows that finding of the Respondent confirming demand of duty based on statements and incriminating documents found from third parties is erroneous and without any basis. The Appellant craves leave to refer to the requisite documents showing details of goods imported after disputed period at the time of hearing.

34.5 The Respondent on one hand held that reliance placed for enhancement of value in respect of consignments imported by other importers were only for purpose of cross-reference but the value has been enhanced based on the evidence unearthed during the course of investigation. On the other hand, the Respondent placed reliance upon the said evidences unearthed from the other importers for enhancement of the value of the imported goods shown in Annexure C.2 and D.2. The Respondent ought not to have enhanced value of the imported goods shown in Annexure C.2 and D.2 based on incriminating documents related to other importers as their matters have been sub-judice. The Respondent ought to have accepted the price declared in the imported documents as the Respondent did not find any directly or indirectly evidences in the imported goods.

34.6 Without prejudice to the aforesaid, it is submitted that if the Respondent inclined to reject the value of goods imported mentioned in Annexure C.2 and D.2, the Respondent ought to have taken value of contemporaneous import. In absence of following the due process and enhanced the value based on third party evidences, the impugned order is erroneous and contrary to the Law.

34.7 The Respondent erred in placing reliance upon Notification No. 17/2002-Cus (NT) dated 07.03.2002 and Notification No. 44/2011-Cus(NT) dated 06.07.2011 for considering DRI officers have been designated as proper officer. The Respondent ought to have appreciated that in the case of Mangli Impex Ltd. Vs. Union of India 2016 (335) ELT 605, it is held that Section 28 (11) of the Customs Act inserted in the year 2011 stipulated that all persons appointed as Customs officers under Section 4(1) of the Customs Act prior to 06.04.2011 shall be deemed to have and always had power of assessment under Section 17 and shall be deemed to have been and always had been proper officers, was unconstitutional in as much as there was no proper assigning or functions of assessment in favour of such officers. DRI officers did not have power to issue Show Cause Notice for the period prior to 08.04.2011. As in the present case, the DRI officer issued the notice for the period prior to April 2011, the Show Cause Notice to the extent is void ab initio. The Respondent erred in referring to the decision passed by the Hon'ble Tribunal in the case of MRPL Vs. C.C. 2011 (313) ELT 353 (T) in view of the decision passed by the Hon'ble Delhi High Court in the case of Mangli Impex Ltd. Vs. Union of India - 2016 (335) ELT 605.

34.8 The Respondent erred in invoking larger period of limitation for demanding duty under Section 28(4) of the Act (Erstwhile 1st proviso to Section 28(1) of the said Act). In the light of what has been submitted hereinabove, there was no mis-declaration and/or suppression of facts and/or fraud played by the Appellant with an intention to evade payment of correct duty leviable on the said products. Moreover, when the Revenue itself has been accepting the values declared by the Appellant, as stated hereinabove, there is no question of any under-valuation at all, much less can the Revenue mis-declaration and/or suppression of facts to invoke the larger period of limitation. The Appellant declared the correct assessable values in respect of the said products in the Bills of Entry filed for clearance of the same.

34.9 The Respondent erred in holding that the imported goods were liable for confiscation under Section 111(m) and 111(1) of the Act. The Appellant correctly declared values and quantities in the Bills of Entry in terms of Section 14 of the said Act read with Rule 3 of the said Rules. Hence, the finding of mis-declaration of value cannot be sustained and accordingly the provisions of Sections 111(m) and 111(1) of the said Act ought not to have been invoked for confiscation of the goods.

35. The Appellant submits that the provisions of Sections 111(m) and 111(1) of the said Act ought not to have been invoked for the reason that there was no mis-declaration of value or quantity in respect of the said products and therefore, penalty under Section 112 ought not to have been imposed upon the Appellant.

36. Without prejudice to the aforesaid and in any event, it is submitted that there was no contumacious conduct and/or deliberate defiance of law on our part with an intention to evade payment of duty and/or to defraud the ex-chequer of its legitimate dues and, therefore, penalty ought not to have been imposed under Section 112(a) and/or Section 114A.

37. The Respondent erred in imposing penalty u/s 114A of the said Act. In view of the submissions made by the Appellant as above, the liability of Customs Duty ought not to have been demanded. In the absence of liability of Customs Duty, penalties cannot be imposed. In the case of. CC.Ex. Vs HMM Ltd reported in 1995 (76) ELT 497 (SC), it was inter alia held by the Hon'ble

Supreme Court that where the demand is unsustainable, the imposition of penalty cannot sustain. It has also been similarly held by the Hon'ble Supreme Court in the case of C.C.Ex. Aurangabad Vs Balakrishna Industries (2006 (201) ELT 325 (SC) and by the Hon'ble Tribunal in the case of Hyva India Pvt Ltd Vs C.C.Ex reportd in 2008 (226) ELT 264 and Godrej Soaps Vs C.C.Ex reported in 2004 (174) ELT 25 (Tri- LB).

38. Without prejudice to the aforesaid, it is submitted the Respondent has not provided any option in the impugned order for extending benefit of reduction of penalty to 25% on payment of the entire amount of duty along with interest and penalty @25% of duty amount within 30 days from receipt of the impugned order. Since the impugned order is silent on the aspect, penalty imposed under Section 114A is required to be quashed and set aside. The impugned order passed by the Respondent is even otherwise bad, erroneous, without authority of law and therefore, it deserves to be set aside.

39. The Appellant deposited total amount of Rs.4,30,000/- through TR-6 on 05.07.2017.

39.1 The Appellant declares that he has not filed any appeal, writ petition or suit against the impugned order, before any court or any other authority or any other bench of the Hon'ble Tribunal. The Appellant reserves the right to add to, alter, amend or substitute any of the submissions made hereinabove, as and when required.

39.2 He also points out to the following evidence and specially following findings to justify the impugned order.

Main evidence relied on

- Hard-disk data showing container-wise packing lists, account statements, and unsigned invoices.
- Statements of Shri Dinesh Sureka, proprietor of M/s Vikas Woodworks and Shri Rajendra theAgarwal, supplier of the goods admitting that:

- actual rates were higher than those declared to Customs,
- part payments were made in cash / through local transfer channels,
- invoices were sometimes prepared in India,
- the declared quantities and values were lower than the real transaction details.

40. The adjudicating authority therefore, held that the declared assessable value was not the true transaction value and therefore could be rejected under Rule 12 read with Rule 31 of the Customs Valuation Rules, 2007 and Section 14 of the Customs Act, 1962. It was found that the importer had deliberately undervalued timber, especially from Tanzania and Sudan, and also mis-declared quantity in certain consignments. The authority accepted the department's re-determination of value using:

1. contemporaneous import data,
2. private records recovered from hard disks,
3. quality/quantity matching from packing lists and account statements.

40.1 Further, the authority concluded that the case was proved beyond doubt through documentary evidence and corroborative statements, and that the conduct justified invocation of the extended period for duty recovery.

40.2 The advocate in rejoinder also relied on the following judgments.

1. Beena Sales Corporation Versus Commissioner of Customs, Kandla, 2019 (3) TMI 982- CESTAT Ahmedabad [SLP Dismissed by Hon'ble Supreme Court as reported in 2019 (12) TMI 1681- SC order]
2. Radha Swami Timber & Ors. Versus Commissioner of Customs, Kandla, 2024 (5) TMI 1065- CESTAT AHMEDABAD
3. Jay Jalaram Saw Mill & Ors. Versus Commissioner of Customs-Mundra 2026 (1) TMI 1297- CESTAT Ahmedabad.

FINDINGS

41. In the instant appeal, the appellant, M/s. Vikash wood works, is a proprietary concern of Shri Dinesh Surekha, imported timber in logs, during the period from November 2009 to November 2011 at Kandla and Mundra ports. The Department has alleged undervaluation and mis-declaration of the quantity of imported timber to evade customs duty. The adjudicating authority held that the declared assessable value was not true transaction value and, therefore, rejected the same under Rule 12 and 13 of the Customs Valuation Rule, 2007, read with section 14 of the Customs Act, 1962. The evidence was derived from Hard-disk of Rajendra Agrawal, who was indentor and also one of the appellants in this case. Having gone through the respective arguments along with case of both sides, as well as the finding recorded by the Principle Commissioner in his order dated 04.04.2017. It is seen that the Learned Commissioner has primarily relied upon the data retrieved from the Hard-disk of noticee no. 2, i.e. Rajendra Agrawal indentor, which was for the importer. However, for the purposes of importation done by the appellant as M/s Vikas Woodworks, there were third party evidence as the same Hard-disk was not recovered from the computer of Appellant no.1, i.e. Vikas Wood works not had anything to do with export such third-party evidences per se cannot be considered as reliable evidence as far as importer is concerned. The learned commissioner also relied upon certain invoices which he considered to be relating to timber and, therefore to the contemporaneous imports. The learned commissioner has considered them to be documentary evidence, though the same was not recovered from the possession of importers quality of brand of 'silli'. The learned Commissioner considered 986 pieces of Swant timber to be not in accordance with contemporaneous import price and, therefore, upheld the undervaluation with other consequences.

41.1 We find that the statement dated 13.11.201, the proprietor in this case, was reiterated on 13.08.2014 and 26.09.2014, as having contained facts on the basis of various documents which could not be recovered from appellant no.1 and about which he could not have any knowledge. Though the retractions were quite belated, the statements should have clearly established as to how the appellant would have knowledge, inter alia, of the records recovered from Shri Rajendra Agrawal. Cross-examination was also not allowed despite the samebeing sought.The statements havenot been subjected to the examination by adjudicating authority as per case law as it stands now. The case law cited by the appellant relating to examination and the cross-examination or non-reliance upon a statements is found relevant by us, and decision of Swadeshi Polytax Ltd. V.s E.C.E. 2000 (122)E.L.T 641 (Supreme Court) and J&K Cigarettes Ltd. Vs. CCE 2009 (242) E.L.T. 189 as well as Flvel International Vs. CCE reported in 2016 (332) E.L.T 416, relied upon, become particularly important, as the documents were not recovered from the possession of the appellant but from the third party who was independent. Same were never corroborated to any recovery of documents from the premises of the appellant. Therefore, the source of knowledge and the capacity to comment about such related documents from the indentor could not be clearly brought on record. Even when certain E-mails retrieved from the E-mail box of appellant no. 1 were found to be non- incriminating, there was no E-mail responded to Shri Rajendra Agrawal by appellant no.1. The E-mail relating to undervaluation was neither found in the E-mail box of the appellant nor found to have been sent by the Mr. Rajendra Agrawal. The value could not have been enhanced by the department based on price quoted Shri Rajendra Agrawal with the suppliers, unless the transaction value even by the appellants were found tainted by establishing to be falling within the ambit of Rule 3(3) of the Customs (Determination Value of Importer Goods) Rules, 2007. The determination has also not elaborated as to why the condition of Rule 3(1) was ignorable and the transaction value acceptable, and why proceeding to Rule 4 to 9 sequentially, could not be done. It is also seen there have been imports at prices lower than the one declared by the appellant. Therefore, data received for E-mail drawn from the hard disk of Shri

Rajendra Agrawal cannot be said to be conclusive evidence. There is nothing to show that the payment over and above invoice price was sent through banking and other channels by the present appellant (which is also a relevant piece of evidence, eve if not concluding) to corroborate the departmental case. It was also found that the appellant had indicated that the various other imports done by the importers within India and bills of entry, as part of reply, were also enclosed by the appellant indicating the existence of similar as even lower value imports of such goods by other importers. The same has not been properly dealt with by the adjudicating authority. It is also held that in the Commissioner of Custom of Calcutta Vs. South India Tv Pvt. Ltd, reported in 2007 within (2014) E.L.T 3 (SC) delivered by the Hon'ble Supreme Court following the settled law, declared that the onus of proving under valuation was on the Revenue by evidence or information about comparable goods. Therefore, the rejection of value despite the appellant bringing contemporaneous imports at various others ports of comparable goods, not having been dealt with by the adjudicating authority is fatal to the departmental case. We therefore, find that the under valuation is not proved by the department with cogent evidence.

41.2 We also find this bench of Ahmedabad Tribunal in the case of M/s. Beena sales corporation Vs. Customs Kandlavide order No. A/10376/2019, delivered February,2026 in relation to same Shri Rajendra Agrawal and in relation to certain other parties, enacting from same investigation has already given relief to the appellant parties in respect of similar evidences received from the E-mail of the computer of Shri Rajendra Agrawal, which also formed part of the same proceedings, and has duly appreciated such evidence. Para 14 to 18 which are relevant for the purposes, are reproduce below;

> *"14. In the present case the Appellants imported goods on correct transactional values and the allegation of undervaluation are not supported by any cogent evidence. Further the goods by other importers are also 14. In the present case the Appellant has imported goods on correct transactional value and the allegation on same price. Hence in view of above judgments we find that the declared value cannot be doubted. We also find from the data submitted by the Appellant that the contemporaneous imports of such or like goods were allowed to be cleared only at the same price or*

comparable price, but in fact at price lower than those declared by the Appellant. There is no reference of any excess payment made to any of the suppliers, the mode of such payment, manner of payment or person through whom such payments were made. In absence of same, it cannot be held that the Appellant has under-valued the imported goods. Even though the other importers were importing same quality, quantity of goods at the same prices, no question has been raised against such importers. We have gone through the copy of statement along with copies of bills of entry filed by other importers for importation of identical goods from the same suppliers and such imports are not doubted. We find that the case of the Appellant is squarely covered by the Tribunal's order in case of Vijay Leather Stores 2007 (215) ELT 304 (TRI) as the same and similar goods were also imported on same price and the allegation of undervaluation thus would not sustain. The records of contemporaneous imports and the data have not been considered by the adjudicating authority and in such cases, we find that there is no case of demand against the Appellant.

15. *From the quantity of imports, we find that more than 60% of the imports were of rejected quality Timber. Also, we find that out of 161 bills of entry involved in this case, the value of 83 bills of entry declared by the Appellant was initially rejected by the Revenue and were enhanced in comparison with the Contemporaneous imports after physical inspection and examination of the goods. In such case, there is no reason to doubt the declared value as the goods were permitted to be cleared after physical examination. The Appellant has made payments through letters of credit and there is no evidence of having made payments to Shri Rajendra Agarwal or Shri Avinash Jindal on behalf of the suppliers. In such case, the value cannot be discarded. The Appellant has also annexed the prices of imported goods in the domestic market and we do not find any major difference between the declared price and the sales price in local market. There is no evidence acquired from the Appellant such as private records or records of any payment made in cash or recovery of any unaccounted cash which can be supported the cases that the Appellant has indulged in under-valuation. From the difference between the declared value and the price at which the goods were sold in the domestic market, there appears to be a normal profit margin. The Revenue has not investigated even a single buyer, who has purchased such imported goods from the Appellant, to ascertain the correct position. The Appellant has taken insurance policy for the goods for the transit for foreign loading port to India and the price shown in such insurance document is the declared price. It is coupled with the fact that the Forestry & Beekeeping Division of Ministry of Natural Resources & Tourism of Tanzania has shown the sale price of Timber as $ 130 PMT as against the enhanced value of $ 600 to $ 800. It is not disputed that the Appellant had imported the rejected grade/short length/off size/off cut size timber, which is more than 33% of the quantity of the imported timber. In such case, there was no reason to enhance the value of rejected timber as per good quality timber.*

16. The goods at the time of importation were physically examined by Customs authorities and were found as per the declared description. Thus, in absence of any contrary evidence, the value of rejected grade timber cannot be enhanced on the basis of good quality timber. Our views are based upon Tribunal decision in case of Commissioner of Customs, Chennai vs. Adani Exports 1999 (111) E.LT. 143 (Tribunal), wherein the Tribunal held that:

> *"11. We find that the department has not been able to lead any evidence to show that the Invoice under which these goods have been imported, i.e. this transaction, is a fraudulent one inasmuch as that there was some fraud in the value declared and that this was not therefore the fair value. There is no evidence to show that there was a conspiracy between the importer and the foreign seller to over-value the said goods for other considerations. Therefore, the transaction value declared in the Invoice Bill of Entry for these imports cannot be rejected by the Department merely on the grounds of fraud. It is*

needless to say that the onus to so prove rests on the department and not on the importer.

12. The department has applied the values of imports by the Water Base Ltd. from Pingtai as well as Zuelling for Vitamin pre-mixes to show that there are contemporaneous imports of comparable goods at much lesser prices, normally at U.S. Dollars 8,200/- per M.T. It is not in dispute that by its very nature Vitamin Mixes imported at different times from different sources are having different composition. Therefore, prices at which identical goods have been imported may not be available. It is also not disputed that in view of this what the department seeks to do is to apply the price of comparable or similar goods as per the Customs Valuation Rules. However, the dispute arises on the sole ground that the chemical composition of such comparable goods relied upon by the department as contemporaneous imports was so widely different from the chemical composition of the goods imported in these cases by the appellants that it would not be correct to hold the two sets of goods as comparable. We find that Id. Advocate has in detail submitted the chemical composition as per the Analysis Certificate on record which have not been disputed. Comparison of these show that whereas any cost of imports relied upon by the department the concentration of major Vitamins was many times lower in the goods imported from both Pingtai as well as Zuelling when compared to the concentration of similar Vitamins in the products imported by these appellants. We have seen these Analysis Certificates on record and we find that the difference between the two is very wide and certainly not marginal. We find that the major value element of such Vitamin Mixes is derived from the active ingredients in such ingredients namely the major Vitamins and not the fillers and other impurities. Therefore, we find that when there is such a wide difference in the concentration of such active ingredients in the products imported vis-a-vis the contemporaneous imports relied upon by the department, therefore we cannot subscribe to the view that the two sets of products are even comparable products.

13. With respect to the contemporaneous import relied upon by the importer namely that by M/s. Victoria Marines, the department has brushed it aside saying that it. was a clever set-up by associates of the importers to pave the way for the bigger quantity of imports subsequently at much higher prices. Even if the department harbours such suspicions, there is nothing on record to show that detailed investigations were resorted to by the department to uncover these suspicions through sufficient evidences. It is one thing to say that M/s. Victoria Marines were associates of the present appellants and another thing to show by evidence that not only were they associates of the present appellants but also that they were party to a conspiracy with the present appellants leading to the said import of the alleged pilot consignment. There is not an iota of evidence on record led by the department to support their allegations in this regard. Therefore, we cannot but conclude that the said contemporaneous imports relied upon by the appellants are good evidence under Section 14 of the Customs Act."

17. The burden to prove under-valuation lies upon the Revenue by bringing credible and cogent evidence, whereas the submissions made by the Appellant clearly shows that in the present case, except third party documents and statements, no evidence has been brought by the Revenue on record. The statements of Shri Avinash Jindal and Shri Rajendra Agarwal and their employee corroborated which was corroborated with their own record is not a tangible and cogent evidence and cannot form the basis of under-valuation in respect of value declared by the Appellant.

18. Thus in view of our above findings and additionally adopting the reasoning of the judgments, we hold that the demand etc. and penalties imposed against Appellant are not sustainable. Since on the basis of above *evidences, we have given one findings in favour of appellants, other pleas which are advanced with evidence by the appellants have not been considered by us. We, therefore, set aside the impugned order and allow the appeal with consequential reliefs.*

42. The decision emanating as a part of the same investigation by this Bench deserves to be followed by us, as well. We take note of statements relied upon by the lower authorities were by-product of the above discarded evidence recovered at the end of Shri. Rajendra Agarwal

43. For all the above reasons, even this case cannot be sustained.

43.1 Appeals are allowable as departmental evidence falls short of bringing conclusively. Appeals are allowed both of M/s. Vikas Wood Works as well as Shri. Rajendra Agarwal.

44. Appeals allowed.

(Order pronounced in the open court on 31.08.2026)

(MR. SOMESH ARORA)
MEMBER (JUDICIAL)

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

Sahil