

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT NO.I
(E-Hearing)

Customs Appeal No.70411 of 2020

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-109-20-21 dated 27/05/2020 passed by Commissioner (Appeals) Central Goods & Services Tax, Noida)

M/s KSEG India International,

(502, Profit Centre,
Kalaghoda Circle, Sayaji Gunj, Vadodra)

VERSUS

.....Appellant

Commissioner of Customs, Noida

(Concor Complex, P.O. Container Depot, Greater Noida)

....Respondent

APPEARANCE:

Ms Reena Rawat, Advocate for the Appellant

Shri Santosh Kumar, Authorised Representative for the Respondent

**CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO.70691/2024

DATE OF HEARING : 18 July, 2024
DATE OF DECISION : 18 July, 2024

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. NOI/CUSTM-000-APP-109-20-21 dated 27.05.2020 of Commissioner (Appeal), Customs Noida. By the impugned order, Order-in-Original No.03/ADC/CUS/ICD-Loni/2019 dated 18.04.2019 of the Additional Commissioner Customs Noida holding as follows has been upheld:

ORDER

(a) I reject the declared value of the imported goods @ USD 700 PMT, total amounting to Rs.42,18,127.20 covered under Bills of Entry Nos. 2182684 dated 25.02.2019 &

2182640 dated 25.02.2019 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re- determine the transaction Value to USD 943.85 (CIF), totaling Rs.56,87,541.92 (Rs. Fifty Six Lakhs Eighty Seven Thousand Five Hundred Forty One and paise Ninety Two only) under Rule 9 of ibid Valuation Rules. Custom duty and other charges may be calculated on the re-determined value accordingly

(b) I order for confiscation of the impugned goods, valued as re-determined at 56,87,541.92 (Rs. Fifty Six Lakhs Eighty Seven Thousand Five Hundred Forty One and paise Ninety Two only) covered vide Bills of Entry Nos. 2182684 dated 25.02.2019 & 2182640 dated 25.02.2019, under the provisions of Sections 111(d) and 111(m) of the Customs Act, 1962. However, I give an option to the importer ie. M/s KSEG India International, 502 Profit Centre Kalaghoda Circle, Sayaji Gunj, Vadodra, to redeem the goods on payment of redemption fine amounting to Rs. 8,50,000/- (Rupees Eight Lakhs Fifty Thousand only), under the provisions of Section 125 of the Customs Act, 1962

(c) I also impose Penalty amounting to Rs. 3,00,000 (Rupees Three Lakhs only) upon M/s KSEG India International, 502 Profit Centre. Kalaghoda Circle Sayaji Gunj, Vadodra, under the provisions of Section 112(a) of the Customs Act, 1962.

The adjudged dues shall be paid henceforth

2.1 Appellant filed Bill of Entry No. 2182684 and 2182640 both dated 25.02.2019 declaring the goods as "Aluminium Taint /Tabor Scrap as per ISRI with 45% wastage" and filed the subject Bs/E under first check, for clearance of the goods imported by them.

2.2 On 100% examination of goods, Shed Officers vide examination report 05.03.2019 observed that "*prima facie goods appear to be Aluminum Waste /Taint /Tabor*) however

goods are accompanied/laced with some foreign material. Nature and composition of the same cannot be ascertained by naked eyes (all goods are uniform in nature for their contents viz. Aluminum Waste & Foreign material). Accordingly, representative samples drawn from the goods and forwarded to Group for ascertaining correct CTH value and also to check policy angle involved (if any)”

2.3 Goods were subjected to Spectro Gun Test by M/s Accurate Spectro Testing Agency, Delhi which stated that Aluminum portion of the goods to be 99.29% and 99.36%. The Waste Cloth was also sent to Textile Committee, Naraina Industrial Area for ascertaining nature, composition, presence of prohibited dyes and as to whether the textile Cloth waste is hazardous or not. The Textile Committee vide its report dated 19.03.2019 stated that the Textile Cloth waste is made up of 100% Polyester Non woven (basic fabric) having no hazardous substance

2.4 On the basis of above revenue opined that the goods were mis- declared and composed of pieces of 'Aluminum Sheets' and not 'Aluminum Taint Tabor' and Aluminum Sheets to be classified under CTH 7602 00 90 in the category of "Aluminum - Other Waste and scrap" which was found to be 55% of weight of total consignment.

2.5 For the Aluminum scrap, as no contemporaneous data was found the value of the same determined under Rule 9 i.e. Residual method - by taking minimum discount available as per DGOV Letter F No. Val/Tech/10/2018(A Scrap) dated 15.11.2018 on the LME price of Aluminum which comes to USD 991 PMT. Also price of Waste Cloth which was considered as 'synthetic rags' as per the contemporaneous import data for import of similar goods their value was taken as USD 353 PMT

2.6 Show Cause Notice dated 10.04.2019 was issued to the appellant asking them to show cause as to why:

- I. *the declared value @ USD 0.700 PMT of the imported goods covered under the Bill of Entry Nos.2182684*

dated 25.02.2019 & 2182640 dated 25.02.2019 should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods Rules, 2007 & re-determined as USD 1149.85 PMT under Rule 9 ibid.

- II. Customs duty on the re-determined assessable value covered under the Bill of Entry Nos.2182684 dated 25.02.2019 & 2182640 dated 25.02.2019 should not be demanded from them under Section 17(5) of the Customs Act, 1962*
- III. the goods covered under the referenced Bill of Entries should not be confiscated under Section 111(d) and 111(m) of the Customs Act, 1962 as discussed in the foregone paras above.*
- IV. penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on M/s KSEG India International, 502 Profit Centre, Kalaghoda Circle, Sayaji Gunj, Vadodra, as discussed in para above.*

2.7 The Show Cause Notice was adjudicated vide Order-in-Original referred in para 1 above.

2.8 Aggrieved appellant filed before the First Appellate authority which has been dismissed as per the impugned order.

2.9 Hence this appeal.

3.1 We have heard Ms Reena Rawat, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- there was no misdeclaration either in description of the goods or classification thereof. Goods described in the Bs/E as Aluminum Taint Tabor Scrap as per ISRI with 45% wastage. As mentioned in para 4 of the Order-in-Original,

the Learned Adjudicating Authority himself has found that the Aluminum portion of the goods qualify the grade of Taint Tabor as per ISRI. He has given a discount of 29.24% on LME price for Taint Tabor. The said Aluminum Taint Tabor scrap comprises 55% of the imported goods while non-woven 100% polyester comprises only 45% of the same. This non woven 100% polyester portion of the imported goods has been described in generic terms as 45% wastage. Therefore, there was no misdeclaration as to description of the goods.

- as per Rule 3(b) of General Rules for the Interpretation of First Schedule to Customs Tariff "Mixtures, composite goods consisting of different materials or made up of different components and goods put to in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." In the instant case, goods are composite goods consisting of Aluminum Taint Tabor Scrap 55% and Polyester fabric as 45%. Since Aluminum scrap Taint Tabor as per ISRI constitutes higher percentage (55%) then that of polyester fabric (45%). It gives the essential character of the imported goods and therefore proper classification of the same shall be as classified in the Bills of Entry under tariff item 7302 00 10 by applying the said Rule 3(b)
- As the goods were classifiable under Tariff item 76020010 they were freely importable and therefore are not restricted one and hence confiscation and imposition of redemption fine and penalty is wrong and illegal.
- the method of valuation adopted by the learned Lower Authority by valuing the Aluminum Scrap Taint Tabor (55%) and Polyester portion (45%) of the goods separately is patently wrong .

- the discount available to the Taint Tabor as per DGOV Ietter F No. Val/Tech/10/2018 (Al sca) dated 15.11.2018 on the LME price has been extended for determining the price of scrap. No other contemporaneous documentary evidence has been adduced as to the valuation of Taint Tabor. Hon'ble Supreme Court in the various judgments inter alia held that value cannot be calculated on the basis of DGOV Circular.
- valuation of non woven 100% polyester on the basis of synthetic rags is incorrect and patently illegal, various types of synthetic rags having various ingredients / constituent materials in varying percentages are available. Non-woven 100% polyester (a specific item) cannot be equated to synthetic rag (a very generic item). Further for arriving as to valuation of said polyester, reliance has been made upon the synthetic rags covered under Bill of Entry 2121575 dated 20.02.2019. The said B/E was not made available to the appeal for perusal / comments
- valuation of the goods under Rule 9 (Residual Method) without following the Valuation Rules is patently wrong. No finding is given as to how value under Rule 4 to 8 cannot be determined and the learned Respondent straight away valued the goods under Rule 9. Even valuation under Rule 9 was not followed inasmuch as neither reasonable means consistent with the principles and general provisions of these rules were adopted nor on the basis of data available in India. Moreover, Department has determined new method of valuation by taking Aluminum scrap Taint Tabor (55%) and polyester portion (45%) of the goods separately. Such method of valuation does not find mention in Customs Valuation (Determination of Value of imported Goods) Rules, 2007.
- Reliance placed on the following judgments:
 - Century Metal Recycling Pvt. Ltd. [2019 (367) E.L.T. 3 (S.C.)]

- Sanjivani Non-Ferrous Trading Pvt. Ltd.- [2019 (365) E.L.T. 3 (S.C.)]
- Guru Rajendra Metalloys India Pvt. Ltd. [2020 (374) E.L.T. 617 (Tri. Ahmd.)]
- Handtex [2008 (226) ELT 655(Tri)]
- Kirti Sales Corpn. [2008 (232) E.L.T. 151 (Tri.- Del.)]

3.3 Authorized representative reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records findings as follows:

5.1 I observe that imported goods were examined on first check basis and were found mis-declared as per Shed Officer's examination report. After that Goods were subjected to Spectro Gun Test and samples drawn were sent to Textile Committee, New Delhi for specific detailed report. After receiving the test report from Textile Committee, New Delhi, It was completely established that imported goods are: not Aluminium Scrap Taint Tabor as declared by the importer as they contained scrap of aluminium sheet having 100% Polyester Non- Woven (Basic Fabric) pasted on them. The identity/nomenclature of the goods was established by the adjudicating authority on the basis of Spectro Gun Test, test report of Textile Committee, New Delhi and Rule 3(b) of Tariff Classification General Rules of Interpretation (GIR) and came to conclusion that the said goods are to be classified as "Aluminium-Other waste & Scrap" under CTH 76020090 of ITC (HS), 2017 which is restricted and import of the same is in violation of the Policy condition. The importer knowingly and intentionally tried to import the impugned goods by mis-declaring the goods and mis-classifying them under CTH 76020010 in the Bills of Entry filed for clearances thereby violating the relevant provisions. Therefore, the

impugned goods were clearly liable to be confiscated in terms of Section 111(d) of the Act which reads as follows:

SECTION 111(d) "any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

*5.2 Since the goods imported did not fall in the category Taint /Tabor as per the ISRI, the value declared by the importer could not be true & correct transaction value for valuation purpose. Therefore, the value was rejected in terms of Rule 12 of the Customs Valuation Rules, 2007 as the adjudicating authority had sufficient reason to believe as the Goods were mis-declared to mis-classify in order to import restricted item. The applicability of valuation rules were checked sequentially and finally-Rule 9 of the Valuation Rules *ibid* was applied which reads as under;*

Rule 9. Residual method-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

Accordingly, the value of the goods were re-determined under Rule 9 of the Customs Valuation Determination of Value of the Imported Goods) Rules, 2007 based on the composition of materials in the impugned goods [i.e by taking 55% Aluminium waste & scrap and 45% (100% polyester non-woven fabric)]. Before determining the value of the impugned goods, the adjudicating authority had discussed that 100% polyester non-woven fabric fall under CTH 6310 in terms of subheading explanatory notes of HSN.

5.3 I further find that by knowingly mis-declaring the value of the impugned goods the importer have rendered the goods liable for confiscation in terms of Section 111(m) of the Act which reads as follows:

"any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub section (1) of section 4;"

It is established that from the acts of omission and commission by the appellant have rendered themselves liable for imposition of penalty under the provisions of Section 112 (a) the Customs Act, 1962.

4.3 Adjudicating authority has recorded findings as follows:

DISCUSSION AND FINDINGS:

9. I have carefully gone through the records of the case, evidences available on records, the written submissions of the importer & the plea put forth during the course of personal hearing on 18.04.2019

10. The following point emerges before me for discussion and warrant decision: -

a. Whether the goods imported are classifiable as "Aluminium Scrap Taint Tabor with 45% wastage" under CTH 76020010 or under the category of "Aluminium - Other waste & scrap" with CTH 76020090?

b. Whether the assessable value declared by the importer is low and not the true transaction value and is liable to be rejected and re-determined in terms of Rule 3 onwards sequentially of the Customs Valuation Rules, 2007?

c. Whether the goods covered under the referenced Bills of Entry should be confiscated under Section 111(d) and 111(m) of the Customs Act, 1962 ?

d. Whether penalty under Section 112(a) of the Customs Act, 1962 should be imposed. on M/s KSEG India International, 502 Profit Centre Kalaghoda Circle, Sayaji Gunj, Vadodra ?

11. Now, I take above points for discussion.

I observe that the importer had filed the BEs with the description "Aluminium Taint Tabor as per ISRI with 45 % wastage". The importer had further declared the goods to be "Aluminium Scrap (Taint Tabor) insulated with textile/ cloth waste". In view of the first check examination report, spectro gun test report, and the test report received from Textile Committee, New Delhi, I find that the goods in question contain Aluminium scrap with 100% Polyester Non Woven (Basic Fabric) pasted on them

As per ISRI standard, Taint Tabor grade shall consist of clean old alloy aluminum sheet of two or more alloys, free of foil, venetian blinds castings, hair wire, screen wire, food or beverage containers, radiator shells airplane sheet, bottle caps, plastic, dirt, and other non-metallic items. Oil and grease not to total more than, 1%. Up to 10% Tale permitted

Though the impugned goods contain scrap of Aluminium sheet but such pieces have 100% Polyester Non Woven (Basic Fabric) pasted on them. Accordingly, I find that the impugned goods do not qualify the grade "Taint Tabor" as defined in the ISRI. I also do not find any force in importer's contention, that the impugned goods fall in the category Taint Tabor as claimed by them in their written submission.

I further observe that Rule 3(b) of Tariff Classification General Rules of Interpretation (GIR) specifies as under:

"Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in

sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

Accordingly, in view of the spectro gun test reports, reports received from Textile Committee, Naraina Indl Area, New Delhi, ISRI standard of Taint Tabor and Tariff Classification. General Rules of Interpretation (GIR), the goods appropriately fall in the category of "Aluminium - Other waste & scrap" under CTH 76020090". Further, in terms of policy condition to CTH 76020090 of ITC(HS), 2017, the import of * Aluminium Other waste & scrap" is restricted, Therefore, the import of above goods is. in violation of the policy conditions. The importer knowingly and intentionally tried to import the impugned goods by mis-declaring the goods and mis-classifying them under CTH76020010 in the Bills of Entry filed for clearances thereby violating the relevant provisions. Therefore, the impugned goods are clearly liable to be confiscated in terms of Section 111(d) of the Act which reads as follows:-

SECTION 111(d) "any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

12. Now, I come another point for discussions. Keeping in view that the goods imported do not fall in the category Taint tabor as per the ISRI, the value declared by the importer cannot thus be true & correct transaction value for valuation purpose. Therefore, the value is liable to be rejected in terms of Rule 12 of the Customs Valuation Rules,2007, which reads as follows:

Rule 12. Rejection of declared value:-

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3,"

b. Sub-rule (1) of Rule 3 of the Valuation Rules reads as follows:-

(1) Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

As there is sufficient reasons to belief that the importer have tried to self-assess their BOE (impugned goods) by mis-declaring & mis-classifying the impugned goods therefore, the Sub-rule (4) of Rule 3 of Rules ibid comes into picture which reads as follows: -

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9,

c. Rule 4 of the Valuation Rules reads as follows: -

Rule 4 - Transaction value of identical goods. - (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction: value .of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1 962.

As there is no data available for the identical goods, Rule 4 is not applicable in the instant case. Therefore, Rule 5 of

the Valuation Rules ibid comes into picture which reads as under:

Rule 5 Transaction value of similar goods:-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962 (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods

d. As there is no data .available for the similar goods, Rule 5 is not applicable in the instant case. Therefore, Rule 6 of the Valuation Rules ibid comes into picture which reads as under

Rule 6. Determination of value where value cannot be determined under rules 3, 4 and 5,-

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8,

Rule 7. Deductive value,

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions :-

- (i) *either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;*
- (ii) *the usual costs of transport and insurance and associated costs incurred within India;*
- (iii) *the customs duties and other taxes payable in India by reason of importation or sale of the goods.*

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India. (b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (ii) of sub rule (1).

*The goods being Aluminium scrap with 100% polyester fabric pasted there is non-availability of data for the identical/ similar goods, therefore, Rule 7 is not applicable in the instant case. Therefore, Rule 8 of the Valuation Rules *ibid* comes into picture which reads as under:*

Rule 8. Computed value.

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;*
- (b) an amount, for profit and general expenses equal that usually to reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;*
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.*

As there is no data regarding the cost or value of materials or other processing employed in producing the imported goods, therefore, Rule 8 is not applicable in the instant case. Therefore, Rule 9 of the Valuation Rules ibid comes into picture which reads as under

Rule 9. Residual method. (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

In the instant case the value of the goods are being re-determined under Rule 9 of the Customs Valuation(Determination of Value of the Imported Goods) Rules, 2007 based on the composition of materials in the impugned goods [i.e. by taking 55 % Aluminium waste & scrap and 45% (100% polyester non woven fabric)].

But before determining the value of the impugned goods I find it relevant to discuss that 100%. polyester non woven fabric fall under CTH 6310 in terms of subheading explanatory notes of HSN wherein it has, inter-alia, been

specified that this heading covers the following textile products:

- (i) Rags of textile fabrics\ including knitted or crocheted fabrics, fe It or non wovens. Rags may consist of articles of furnishing or clothing or of other old textile articles so worn out, soiled or torn as to be . beyond cleaning or repair, or of small new cuttings.....*
- (ii)*

To fall in the heading, these product must be worn, dirty or torn, or in small pieces. The importer's contention that these are waste fabrics and the same are classifiable under CTH 5505 is not correct in as much as the CTH 5505 covers the waste (including noils, yarn waste and garneted stock) of man-made fibres however, the wastage in question is not waste of man-made fibres but 100% polyester non woven fabric as reported by the Textile Committee, New Delhi Thus, the said contention of the importer does not hold good. The wastage i.e. 100% polyester non woven fabric thus fall under CTH 6310 & is none other than synthetic rags

Accordingly I re-determine the value of the impugned goods based on the composition of materials in the impugned goods i.e. by taking 55 % Aluminium waste & scrap and 45% (100% polyester non woven fabric) as under;

I find that though the goods in question fall in the category of "Aluminium-Other waste and scrap", the Aluminium portion of the said goods qualify the grade of Taint Tabor as per ISRI. Therefore, I reject the calculation of price for Aluminium portion in which the lowest discount equivalent to 10.23% has been extended to the goods. I, therefore, extend the discount available to the Taint Tabor as per DGOV letter F.No. Val/Tech/10/2018 (Al scrap) dated 15.11.2018, in the LME prices, since I find the discount of Taint Tabor is appropriately applicable to the Aluminium

portion of the goods imported. The discount in the LME prices for Taint Tabor in terms of the above said letter of the DGOV is 29.14%. Further, the LME price of Aluminium (B/L date 20.12.2018) was USD 1923 PMT, Hence the CIF Value of import of Aluminium portion (55%) comes to USD 785 PMT

Further, the price of synthetic rags as per the contemporaneous data for import of similar goods is USD 353 PMT. The price for 45% of the 100% polyester non woven fabric are taken as USD 158.85 PMT

In view of the above, I re-determine the total price of the Aluminium- other waste & scrap" imported as USD 943.85 PMT (USD 785 PMT + USD 158.85 PMT) equaling to Rs. 67957.20 PMT (1 USD=Rs.72). Accordingly, the total price of goods covered under the referenced BEs for 83.693 MT is re-determined to Rs. 56,87,541.92

13. I further find that by knowingly mis-declaring the value of the impugned goods the importer have rendered the goods liable for confiscation in terms of Section 111(m) of the Act which reads as follows: -

"any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub- section (1) of section 54;"

14. It is established that from the acts of omission and commission by the party (already discussed elaborately in the preceding paras) have rendered themselves liable for imposition of penalty under the provisions of Section 112 (a) the Customs Act, 1962. The provisions for imposition of penalty upon the offending persons is reproduced hereunder:-

SECTION 112. Penalty for improper importation of goods, etc.- Any person,-

a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or"

4.4 From the above and on perusal of Bill of Entries we find that appellant have declared the imported goods as **"ALUMINIUM TAIN T TABOR SCRAP AS PER ISRI WITH 45% WASTAGE"** and claimed the classification under the CTH 76020010. On examination and subsequent testing undisputed the metal portion was found to be **"ALUMINIUM TAIN T TABOR SCRAP"** with 45%, of the synthetic rags pasted on the same. Against the above classification claimed by the appellant revenue authorities found the said goods more appropriately classifiable under the CTH 76020090. The goods under ITC 7602010 are freely importable and those classifiable under 76020090 are restricted. It is interesting to note that adjudicating authority on the basis of the Spectro Gun Test report do not dispute that the aluminium in the consignment is Aluminium Scrap Taint, Tabor as per ISRI. He also records the value of the said scrap on the basis of the LME price for the Taint and Tabor Scrap, after allowing discount as per the DGOV Circular. He determines the value of 55% of the Consignment on this basis. He as declared by the appellant determines the value of 45% of the consignment on the basis, declared as wastage by the appellant on the basis of bill of entry which was in respect of synthetic rag. Thus we find that adjudicating authority do not dispute the declaration made by the appellant in respect of the description of the goods.

4.5 The mixed goods or the mixtures are to be classified as per Rule 3(b) of the General Rules of Interpretation. The said Rule 3 (b) has been reproduced in the order in original reproduced above. As per this rule the classification in case of the mixtures need to be determined by considering the goods as the one

which imparted them the essential character. In case of Naffar Chandra Jute Mills Ltd [1993 (66) E.L.T. 574 (Cal.)]

46. The Schedule which contains the rates of duties in respect of specified items has categorised these items sectionally. Within each section are chapters covering sub-categories of the section. Each section contains specific rules of interpretation in respect of entries in the section and relate to inter-sectional admixtures. The Rules relied upon by the petitioners are the Rules for the interpretation of the schedule itself. There are general rules of interpretation applicable to inter-sectional admixtures and like all general rules are to be resorted to when the sectional rule does not provide to the contrary. The item in question is an admixture of jute and plastic classifiable under Sections XI and VIII respectively. The specific rules of interpretation provided for those sections do not provide for inter-sectional admixtures. The general rules of interpretation will thus apply.

4.6 In case of Intex Technologies India Ltd. [(2023) 4 Centax 416 (Kar.)], Hon'ble Karnataka High Court observed as under:

"22. *Further, Rule 3(b) states that goods put up in sets for retail sale shall be classified as if they consist of the material or component which gives them their essential character. In the present case, the essential character of mobile set is the mobile phone and not the charger. Thus, the classification based on components mentioned above would apply and as per the essential character, the retail set containing of a mobile phone and a mobile charger shall be classifiable as 'mobile phones' under heading 8517.*

23. *In BSNL v. Union of India (2006) 3 SCC 1 = 2006 (2) S.T.R. 161 (S.C.), relied upon by the assessee, it has held that:*

"50. What are the "goods" in a sales transaction, therefore, remains primarily a matter of contract and intention. The seller and such purchaser would have to be ad idem as to

the subject-matter of sale or purchase. The court would have to arrive at the conclusion as to what the parties had intended when they entered into a particular transaction of sale, being the subject matter of sale or purchase. In arriving at a conclusion the court would have to approach the matter from the point of view of a reasonable person of average intelligence."

(Emphasis Supplied)

24. *The Assessee's have rightly canvassed the application of Dominant Intention Test. There can be no doubt that the main intention of a purchaser/seller while buying/selling a 'Mobile Set' is to buy/sell the mobile phone and not charger alone. Supply of charger, headset, and ejection pin are incidental to the sale. Therefore, the Dominant Intention Test would apply to the present case and hence, charger cannot be differently taxed."*

4.7 From the facts as available on record it is evident that the intention of the importer was to import "Aluminium Taint Tabor Scrap", and not the rags associated or that was pasted on them. There is nothing in the Section Notes or the Chapter Notes associated with the said goods which provide for determination of the classification of such goods. Thus by the application of Rule 3 (b) of the General Rules of Interpretation the classification needs to be determined on the basis of the essential character test and the goods have been rightly classified by the appellant under the heading 76020010. Even otherwise the heading 76020090 which is residuary heading would not be the correct classification, if the goods can be classified under a more specific entry. Even if we hold that the impugned goods were misclassified by the appellant then we note that adjudication order is in respect of Bill of Entries filed under First Check. The adjudicating authority has decided the classification by revising the assessment made by the appellant under Rule 17 (5) of the Customs Act, 1962. It is settled law

that a wrong classification claimed on the Bill of Entry, cannot be ground for holding appellant liable for misdeclaration.

4.8 In case of Northern Plastics [1998 (101) E.L.T. 549 (S.C.)] Hon'ble Supreme Court held as follows:

"22. *As the goods imported by the appellant were being used and intended to be used as Cinematographic Film, the appellant had described them as Cinematographic Films covered by sub-heading 3702.20. No attempt was made by the customs authorities either before the Collector or before CEGAT to show that the goods imported by the appellant were ordinarily not used as Cinematographic Films or were not intended by the appellant for such a use. Moreover, looking to the Heading 3702 and its sub-heading, it does not appear that such goods were intended to be covered by sub-heading 3702.90. As regards the claim for exemption in payment of countervailing duty the appellant had stated that it was entitled to the benefit under Notification No. 50/88-C.E. The declaration made by the appellant has been found to be wrong by the Collector and CEGAT on the ground that there was a separate exemption notification in respect of jumbo rolls for Cinematographic Films. While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.*

23. *We, therefore, hold that the appellant had not misdeclared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have*

been found not applicable to the imported goods. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty."

4.9 On the issue of valuation we observe that the value of the imported goods have been enhanced based on the DGOV Circular and by determining the value of synthetics rags on the basis a Bill of Entry for synthetic rags, which was never made available to the appellant. The only reason stated in the order of the original authority for rejecting the transaction value declared by the appellant is that since he has determined that the impugned goods do not qualify as Taint and Tabor, the transaction value declared by the appellant treating the goods so cannot be true transaction value. It is settled principle that transaction value is sacro-scant and should be rejected after specifying the specific reasons. In case of Century Metal Recycling [2019 (367) ELT 3 (SC)] Hon'ble Supreme Court held as follows:

"14. *Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of*

identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

15. *The requirements of Rule 12, therefore, can be summarised as under :*

- (a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.*

- (b) *Proper officer must ask the importer of such goods further information which may include documents or evidence;*
- (c) *On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.*
- (d) *When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.*
- (e) *When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.*
- (f) *The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.*
- (g) *The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.*
- (h) *The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.*

16. *Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth or accuracy of the declared value in which event the*

proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.

17. *The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.*

18. *The expression 'proof beyond reasonable doubt' in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge 'beyond reasonable doubt'. In Ramakant Rai v. Madan Rai & Ors. - (2003) 12 SCC 395 referring to the expression 'reasonable doubt' in criminal law it was held as under :*

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any

favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

Proof beyond 'reasonable doubt' is certainly not the requirement under proviso to Section 14 of the Act and Rule 12 of the 2007 Rules, albeit the above quote draws a distinction between a simple doubt and a doubt which is reasonable. In the context of the proviso to Section 14 read with Rule 12 and clause (iii) of Explanation to the 2007 Rules, the doubt must be reasonable and based on 'certain reasons'. The proper officer must record 'certain reasons' specified in (a) to (f) or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable.

Reasonable doubt will exist if the doubt is reasonable and for 'certain reasons' and not fanciful and absurd. A doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere perception not founded on reasonable and 'certain' material. It should be based and predicated on grounds and material in the form of 'certain reasons' and not mere ipse dixit. Subjecting imports to detailed enquiry on mere suspicion because one is distrustful and unsure without reasonable and certain reasons would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of imported goods."

4.10 The manner in which the value has been enhanced do not find any support from the Customs valuation Rules, 2007. In case of **Guru Rajendra Metalloys Pvt Ltd. [2020-TIOL-923-CESTAT-AHM]**, Ahmedabad Bench observed as follows:

"4. We have heard both sides and perused the records. We find that the enhancement of the Customs Valuation is on the basis that the appellant have given consent letter wherein they have mentioned that they have gone through contemporaneous import data and agreed the enhancement of the value. We find that as per the submission made by Learned Consultant on behalf of the appellant, in one particular case, i.e. Bill of Entry no. 8487132 dated 16/10/2018 of Appeal No. C/12377/2019 of Guru Rajendra Metalloys Pvt Ltd.. It is for import of 21.50 MT of Taint/Tabor aluminium scrap. The appellant showed the invoice valued at USD 990 PMT. Assessing Officer has enhanced value to USD 1587/- PMT. This enhancement of the value as explained by the learned consultant in their additional submission filed on 16/03/2020 is as under.

The value of Taint/Tabor as per DGOV alert/circular comes to \$2035-(22% of \$2035)+ \$1587/- PMT.

4.1 This clearly shows that the enhanced value is exactly the value arrived at on the basis of LME price of prime metal

minus discount given in DGOV circular. This clearly shows that the enhancement of value is not on the basis of contemporaneous import data but it is based on DGOV circular irrespective of the mention made in the consent letter that the appellant have gone through the contemporaneous import data. Therefore, it is clear that contemporaneous import data was either available nor relied upon for enhancement of the value. Therefore, the enhancement of value is absolutely illegal and incorrect. We are of the clear view that merely based on DGOV circular also, value cannot be enhanced which is without authority of law.

4.2 In the identical case, in respect of the same product i.e. Aluminium scrap, the Hon'ble Supreme Court in the case of Sanjivani Non- Ferrous Trading Pvt. Ltd. (supra) passed the following judgment:

6. It was submitted that if the Original Authority/Assessing Officer had failed to examine the evidence that was available with the Department and had not undertaken the exercise regarding price being not the sole consideration, the Tribunal should have remanded the case back to the Assessing Officer for examining the material and undertaking that exercise. To put it otherwise, the entire thrust of the argument of Mr. Radhakrishna was that appeals could not have been allowed straightaway by accepting the transaction value given by the respondent/assessee and another opportunity should have been given to the Assessing Authority in this behalf.

7. This argument may seem to be attractive, but only when there is a cursory look at the aforesaid observations of the Tribunal that the Assessing Officer did not examine the evidence available with the Department which was necessitated for such a purpose. However, the observations of the Tribunal have to be understood in their entirety and in the context in which these are made. The Tribunal has

categorically mentioned that as per the provisions of Section 14 of the Customs Act and the principles laid down in the case law (which it referred to in the earlier part of the judgment) interpreting this provision, the assessable value has to be arrived at on the basis of the price which is actually paid. It is the basic principle enshrined in the aforesaid provision, i.e., Section 14, which can be culled out from the catena of judgments pronounced by this Court.

8. In Eisher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai-1, (2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.) = 2002-TIOL-06-SC-CUS , this Court held as under :

"6. Under the Act Customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation - in the course of international trade. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale ...". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the Rules framed in this behalf.

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9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular

transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

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12. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to Customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

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13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule

4 were not limited to the particular transaction then the other rules which refer to other transactions and data would become redundant.

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22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a misdescription of the goods imported as was the case in Padia Sales Corpn. [1993 Supp. (4) SCC 57] = 2002-TIOL-276-SC-CUS-LB It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1)."

9. To the same effect, are other judgments, reiterating the aforesaid principle, such as, Commissioner of Customs, Calcutta v. South India Television (P) Ltd., (2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.) = 2007-TIOL-126-SC-

CUS, Chaudhary Ship Breakers v. Commissioner of Customs, Ahmedabad, (2010) 10 SCC 576 = 2010 (259) E.L.T. 161 (S.C.) = 2010-TIOL-86-SC-CUS and Commissioner of Customs, Vishakhapatnam v. Aggarwal Industries Ltd., (2012) 1 SCC 186 = 2011 (272) E.L.T. 641 (S.C.) = 2011-TIOL-102-SC-CUS.

10. *The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.*

11. *In South India Television (P) Ltd., the Court explained as to how the value is derived from the price and under what circumstances the deemed value mentioned in Section*

14(1) can be departed with. Following discussion in the said judgment needs to be quoted hereunder :

"10. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent importer alleging misdeclaration regarding the price. There is no allegation of misdeclaration in the context of the description of the goods. In the present case, the allegation is of underinvoicing. The charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the bill of entry is the value referred to above and not merely the invoice price.

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12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does

not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the Courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid.

Therefore, the charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which

goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

12. The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act and the case law referred to by it (In paragraph 5, the Tribunal referred to its own judgments which follow the aforesaid principle laid down by this Court).

13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.

14. In Commissioner of Customs v. Prabhu Dayal Prem Chand, (2010) 13 SCC 535 = 2010 (253) E.L.T. 353 (S.C.) = 2010-TIOL-43-SC- CUS , this Court was confronted with almost same kind of fact situation. On the basis of the information received subsequently from the London Metal Exchange (for short, 'LME') to the effect that the price of the two metals, viz., brass scrap and copper scrap, in LME as on the date of import was more than the price declared by the respondent, demanded additional duty amounting to Rs. 90,248/- and Rs. 1,94,035 respectively, from the assessee on the said two Bills of Entry. This order was set aside by

the Tribunal and appeals there against by the Customs were dismissed by this Court. The Court noted, while accepting the plea of the assessee, that they were not confronted with any contemporaneous material relied upon by the Revenue for enhancing the price declared by them in the Bills of Entry. It also noted the following remarks of the Tribunal :

"In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy Commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. Therefore, assessment in this case has to be taken as having been made purely on the basis of LME bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allow the appeal."

Dismissing the appeals, this Court observed as follows :

"....It is manifest from the aforeextracted order of the Tribunal that no details of any contemporaneous imports or any other material indicating the price notified by LME had either been referred to by the adjudicating officer in the adjudication order or such material was placed before the Tribunal at the time of hearing of the appeal. The Learned Counsel for the Revenue has not been able to controvert the said observations by the Tribunal. In that view of the matter no fault can be found with the order passed by the Tribunal setting aside the additional demand created against the assessee."

15. We, thus, do not find any merit in these appeals and dismiss the same.

4.3 In the above case, the facts were narrated in the judgment of Allahabad High Court in the same case of Sanjivani Non Ferrous Trading Pvt. Ltd. 2017 (7) GSTL 82 (Tri-All.) = 2017-TIOL-3396-CESTAT-ALL which is reproduced below:

"2.The brief facts of Appeal No. C/70332/2016 are that during the period from 27-8-2013 to 29-12-2014 the appellant imported 843 consignments of 'Aluminium Waste & Scrap' such as "Twitch, Tense, Taint, Tabor, Troma, Tally & Zorba, etc." falling under Customs Tariff Item No. 7602 00 10. The appellant filed Bills of Entry for each consignment along with copy of purchase order and invoice. The appellant self-assess the goods in the said Bills of Entry on the basis of transaction value. The Assessing Officer rejected the self-assessment of duty made by the appellant and re-assessed the duty by increasing assessable value and levying Customs duty aggregating to Rs. 10,88,10,346/- more than duty self-assessed by the appellant put together in respect of 843 Bills of Entry. The appellant filed a writ petition before the Hon'ble High Court of Allahabad bearing Writ Tax No. 72 of 2015. The said writ petition was disposed of by the Hon'ble High Court by order dated 28-1-2015. The Hon'ble High Court directed for passing the speaking order on the re-assessment of the assessable value through said order dated 28-1-2015. In compliance of said order passed by the Hon'ble High Court of Allahabad, Deputy Commissioner of Customs passed Order-in-Original No. 01/DC/CUS/2015, dated 25-3-2015 wherein he rejected transaction value in respect of 843 Bills of Entry and enhanced assessable value for assessment of duty to the some extend to which value was enhanced originally. Aggrieved by the said Order-in-Original No. 01/DC/CUS/2015, dated 25-3-2015 appellant preferred appeal before Commissioner (Appeals). The said appeal was decided through Order-in-Appeal No. NOI-CUSTM-000-APP-0310-15-16, dated 12-2-2016 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II, Noida.

. . .

7. Having considered the rival contentions and on perusal of record, we find that the Original Authority was directed by the Hon'ble High Court to pass speaking order on the

enhancement of assessable value. We find that the Original Authority in its Order-in-Original dated 25-3-2015 has passed comments on the grounds of writ petition and did not properly examine the evidence available with the department required to be examined for enhancement of assessable value. Further, we find that as held in the case laws stated above and as provided by Section 14 of Customs Act, 1962, the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not sole consideration or if the buyers and sellers are related persons then after establishing that the price is not sole consideration the transaction value can be rejected and taking the other evidences into consideration the assessable value can be arrived at. Such exercise has not been done in these cases on hand. Therefore, we reject the enhancement of assessable value in respect of the Bills of Entry which are involved in all the appeals being decided and we restore the assessable value as declared by the appellant in said Bills of Entry."

4.4 As regard the issued that the appellant had given the consent letter, Hon'ble Supreme Court dealing with the same facts in the case of Century Metal Recycling Pvt. Ltd. (supra) passed the following order:

3. The appellant Company is stated to be engaged in the manufacture of aluminium alloys, for which they regularly import aluminium waste as a raw material for self-consumption. Imported scrap, it is accepted, falls under different code names as per specifications of the Institute of Recycling Industry. The grievance raised by the appellants is that the 2nd respondent i.e. the Principal Commissioner of Customs, Noida Customs Commissionerate and its Officers almost uniformly do not clear the consignments as per the declared transaction value in the bill of entry but insist that the appellants write a letter agreeing to pay Customs duty as per the valuation by the Customs authorities and compel them to forego their right to

provisional assessment under Section 18 of the Customs Act, 1962 ('the Act', for short). The appellants, coerced and intimidated, have no option but to give in and issue a letter of consent agreeing to assessment/valuation by the Customs authorities to avoid delay in clearance, levy of demurrage, ground rent and container detention charges, etc. It is also alleged that the respondents without observing and contrary to the mandate of Section 14 of the Act discard the declared transactional value and recompute the consignment value in view of the Valuation Alert dated 1st December, 2016 issued by the Central Board of Excise and Customs ('the Board', for short).

. . .

20. We would ex facie for the reasons recorded below reject the contention of the respondents predicated on the letter of appellants dated 6th March, 2017 that the appellants did not seek provisional assessment of the bill of entry and had accepted and paid duty on the valuation done by the Customs authorities. This letter exposits the predicament faced by the appellants as it states that the appellants were in urgent requirement and wanted clearance of the goods. Pertinently, the appellants had earlier written several letters, including communications dated 22nd December, 2016 and 4th March, 2017 requesting for clearance of the imported consignment of aluminium scrap on the declared transaction value pointing out therein that on account of delay in the clearance of the imported consignments, the appellants and its sister concern had been compelled to pay excess duty of over Rs. 25 crores from August 2013 onwards. It is unfortunate and has to be accepted that the respondent authorities had compelled and forced the appellant to furnish the letter dated 6th March, 2017 thereby waiving of its right to provisional assessment and accepting valuation in terms of Rules 4 to 10.

As per sub-rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.

21. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, albeit it has been read by us by implication in Rule 12. Being conscious that this mandate if applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case to case basis, depending upon the factual matrix and considerations like whether the importer has asked for 'certain reasons', whether the reasons were not communicated, whether 'certain reasons' can be deciphered from the assessment/valuation order, whether misdescription or false declaration was apparent, etc.

22. In Commissioner of Customs v. Prabhu Dayal Prem Chand, [2010 (13) SCC 535 = 2010 (253) E.L.T. 353 (S.C.)] = 2010-TIOL-43-SC-CUS this Court had rejected the plea that the Revenue was justified in redetermining the value of brass and copper scrap on the basis of information received from London Metal Exchange on the price of the said metals on the ground that the importer was not confronted with any contemporaneous material for

enhancing the transaction value. This Court affirmed the order of the Tribunal in Prabhu Dayal Prem Chand (supra) and held that the order-in-original had not indicated details of any contemporaneous import or other material in the form of corroborative material which had necessitated the enhancement in the transaction valuation.

23. We would now refer to the findings of the order-in-original in the present case which observes that the appellants had declared value of the aluminium scrap as Rs. 81.31 per kg, albeit the contemporaneous import data in the form of different bills of entry had indicated aluminium scrap values between Rs. 83.26 to Rs. 120.97 per kg. The said portion of the order refers to at least four bills of entries declaring assessable value of less than Rs. 85 per kg. Interestingly, the order in original also records that the imported goods being aluminium scrap was not a homogeneous commodity and therefore, cannot be evaluated on the basis of the samples or lab testing. Further, the order holds that it was very difficult to find any identical/similar goods imported in India having same chemical and physical composition and that the values of aluminium scrap identical/similar to the imported goods in nature and specification were not available. Without commenting on correctness of the said statements, we would observe that the aforesaid reasoning for rejection of the transactional value, would not meet the mandate of Section 14 and the Rules as elucidated in M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. (supra) wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry. We have also elaborated and explained the legal position with reference to Rule 12 of the 2007 Rules.

24. Therefore, in the facts and circumstances of the present case, it has to be held that the adjudication order in original is flawed and contrary to law for it does not give cogent and good reason in terms of Section 14(1) and Rule 12 for rejection of the transaction value as declared in the bill of entry. The order in original is not in accordance with Section 14 and Rules 3 and 12 as the mandate of these provisions has been ignored. The Assistant Collector has rejected the transaction value as declared in the bill of entry which, as noticed above, is clearly and fundamentally erroneous besides being contradictory. In the aforesaid circumstances, we do not think that the order in assessment dated 7th April, 2017 can be sustained and upheld. It is set aside and quashed.

25. Before closing, we would observe that the Valuation Alerts, as also stated by the respondents, are issued by the Director General of Valuation based on the monitoring of valuation trends of sensitive commodities with a view to take corrective measures. They provide guidance to the field formation in valuation matters. They help ensure uniform practice, smooth functioning and prevent evasion and short payment of duty. However, they should not be construed as interfering with the discretion of the assessment authority who is required to pass an Assessment Order in the given factual matrix. Declared valuation can be rejected based upon the evidence which qualifies and meets the criteria of 'certain reasons'. Besides the opinion formed must be reasonable. Reference to foreign journals for the price quoted in exchanges, etc. to find out the correct international price of concerned goods would be relevant but reliance can be placed on such material only when the adjudicating authority had conducted enquiries and ascertained details with reference to the goods imported which are identical or similar and 'certain reasons' exists and justifies detailed investigation. These reasons are to be recorded and if requested disclosed/communicated to the

importer. Valuation alerts could be relied upon for default valuation computation under the Rules. [See Varsha Plastic Pvt. Ltd. v. Union of India, (2009) 3 SCC 365 = 2009 (235) E.L.T. 193 (S.C.)] = 2009-TIOL-16-SC-CUS.

26. We would also like to clarify that we have not issued any general or omnibus direction that the transaction value declared in the bill of entries should invariably be accepted in all cases and/or that in all cases where imports of aluminium scrap are involved. The matter has to be examined on a case to case basis, the evidence before the authorities, the material placed on record and the enquiries conducted by the adjudicating authorities, etc.

27. With the aforesaid clarification, we allow the present appeal and quash and set aside the order of Assessment dated 7th April, 2017 by issuing a writ of certiorari. In the facts of the case, there shall be no order as to costs."

4.5 In view of the above judgments it is clear that when the enhancement was not based on any contemporaneous import, in the present case, particularly, when the invoice price of the appellant was not disputed on the basis of any evidence of wrong declaration of the value, the enhancement in the present case is illegal and incorrect.

4.6 In the case of Prabhu Dayal Prem Chand (supra), the value was enhanced on the basis of LME price and assessee was not confronted with any contemporaneous material. The Hon'ble Supreme Court held that Tribunal order manifesting the detail of any contemporaneous imports or any material undertaking price notified by LME neither referred to by Adjudicating Officer nor such material was placed before Tribunal. Revenue has not been able to controvert the said Tribunal's observations. The Hon'ble Supreme Court found no fault in Tribunal's order in setting aside the additional demand.

4.7 In the judgment of *South India Television (P) Ltd. (supra)*, The Hon'ble Supreme Court regarding enhancement of the value gave the following observation:

"6.However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the

invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

4.8 As regard the entire reliance of the Revenue that the appellant has given a consent letter, we find that this Tribunal in the case of Andrew Telecommunications Pvt. Ltd. (supra) categorically held as under:

5. The assessing authority places reliance on the price of the base metal published in bulletin of the London Metal Exchange and the consent of the importer to adopt that as the base for re-determination. However, it cannot be lost sight of that the clearance was ordered to be held up on the basis of raw material prices in the said bulletin when the goods under import were manufactured products. The rationale for the comparatively low prices was claimed to lie in the supply contracts to which importers had drawn the attention of the assessing officer who, however, chose to disregard these. We find that the resort to prices of base metal to reject the declared price of manufactured goods, particularly, in the light of an explanation offered and not disputed is not in accordance with Section 14 of Customs Act, 1962. Consent at gun-point is no consent and consent of any sort cannot condone deviation from the law.

4.9 This issue was also decided by a principal bench of this Tribunal at Delhi in the case of Ankit Electronics wherein the following order was passed:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We propose to dispose of the stay petition as also appeal by a common order as a short issue is involved.

2. As per facts on record, the respondents filed thirteen Bills of Entry on various dates for the clearance of Ferrite magnet & Ferrite magnet rings declaring the value based upon the invoices raised by the supplier. The assessing authority did not agree with the declared value and enhanced the same. The Bill of Entry was accordingly assessed.

3. The said assessment was challenged by the respondents before Commissioner (Appeals), who observed that inasmuch as the assessing authority has not passed a speaking order giving reasons for rejection of the declared price, he set aside the assessment order and directed the assessing authority to pass speaking order within a period of 15 days.

4. Being aggrieved with the said order, Revenue has challenged the same on the ground that value was enhanced as per instructions of C.B.E. & C. vide Circular No. 91/2003-Cus., dated 14-10-2003 which are as follows :

"at the request of the importer, the proper officer is required to intimate in writing, the grounds for doubting the truth the accuracy of the declared value and provide a reasonable opportunity of being heard, before taking a final decision. However, it may not be necessary to issue speaking orders in all such cases where enhancement of value has been resorted to with the consent of the importers"

Accordingly the Revenue has contended that inasmuch as the appellants cleared the goods on enhanced value, they were precluded from contesting the same.

5. We however, do not agree with the above contention of the Revenue. The said circular itself makes it clear that proper officer is required to intimate in writing the grounds for enhancing the value and a reasonable opportunity is required to be given to the importer before the final decision is taken. It is only in those cases where both the sides agree to resort to enhancement of value. That no orders are required to be passed. Merely because the importer has cleared the goods at enhanced value to save the demurrage charges or otherwise, by itself, does not mean that the importer is consenting to enhance the value. It is right of the importer to contest the enhancement and fact of clearance of goods, cannot preclude the importer from exercising the right of appeal. As such, we find no merit in the Revenue's appeal.

6. Inasmuch as the Commissioner (Appeals) has remanded the matter to the original adjudicating authority for deciding the assessable value of the imported goods, by following the principles of natural justice, we upheld the impugned order and direct the original adjudicating authority to do the needful.

7. Stay petition as also appeal gets disposed of in the above manner.

4.10 We find that both the lower authorities, they have not accepted that the prices are based on DGOV circular. However, the calculations shown by the Learned consultant, it is clear that the enhancement of the value is not on the basis of contemporaneous imports data but clearly on the basis of DGOV circular. This Tribunal dealing with identical case in the case of Bharathi Rubber Lining & Allied Services P. Ltd. clearly held that DGOV circular cannot override the provisions of Valuation Rules. Invoice price is not sacrosanct

but before rejecting the invoice price the department has to give cogent reasons for such rejection. Assessing Authority has to examine each and every case on merit for deciding its validity. He could not form the view to reject all transaction only on the basis of same general criteria based on DGOV circular. It was, however, held that if contemporaneous import were not noticed, Rules 5 and 6 of Customs Valuation Rules 1988 could not be applied, the question of rejecting the transaction valued under the Rule 10(A) does not arise at all.

4.11 In the case of Modern Manufacturers (supra) this Tribunal dealing with identical issue held that enhancement of value of imported goods based on NIDB data and circular issued by DGOV without rejecting declared value under Rule 12 of Customs Valuation Rules 2007. Redetermination of value based on NIDB data and DGOV circular is not sustainable. In the present case, no exercise of rejecting the declared value under Rule 12 and process of applying valuation rules sequentially were followed. Therefore, the value declared by the appellant has to be accepted."

4.11 In view of the above decision of the Ahmedabad Bench we do not find any merits in the manner in which the value of the impugned goods imported vide the above two bill of entries have been enhanced.

4.12 In case of Sirthai Superware India Ltd. [2020 (371) E.L.T. 324 (Tri. – Mumbai)] Mumbai Bench held as follows:

4.8 *Sections 111(m) and 111(o) of the Customs Act, 1962 which have been invoked by the Commissioner for holding that the goods are liable for confiscation read as follows :-*

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

4.9 *From plain reading of the said clauses of Section 111, we do not find that these sub-clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two clauses. Hence the order holding goods liable for confiscation and imposition of penalty under Section 112(a) cannot be sustained.*

4.13 Thus we do not find any merits in the impugned order.

5.1 Appeal is allowed.

(Operative part of the order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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