

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

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70566 of 2020

(Arising out of Order in Appeal - NOI-CUSTM-000-APP-221-20-21, dated - 17/06/2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Amit Industries Pvt. Ltd.

.....Appellant

(7d, Big Jo's Tower, Netaji Subhash Place,
Pritampura, New Delhi)

VERSUS

**Commissioner, CGST & Central Excise,
Noida**

....Respondent

4th Floor, C-56/42, Renu Tower,
Sector-62, Noida-201301

APPEARANCE:

Shri Atul Gupta, Advocate for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.-70204/2025

DATE OF HEARING : 19.02.2025
DATE OF DECISION : 24.04.2025

P. ANJANI KUMAR:

The appellants, M/s Amit Industries Pvt Ltd, preferred this appeal against the Order-in-Appeal dated 17.06.2020, passed by Commissioner of Customs (Appeals), Ghaziabad, wherein goods imported by the appellants were confiscated and an option to redeem the same on payment of a fine of Rs 1,50,000/-, under Section 125 of the Customs Act, 1962 and imposed a penalty of Rs 50,000 under Section 112 *ibid*.

2. Briefly stated the facts of the case are that the Appellant, filed a Bill of Entry No. 6210159 dated 23.07.2014 at ICD Loni, Ghaziabad for clearance of goods declared as 'Silicon Steel Scrap', imported from M/s Rohan Group LLC, USA vide invoice no. 3383A dated 02.06.2014, which were self-assessed classifying the same under Customs Tariff Heading (CTH) 7204 49 00; Department, on examination of the goods, proposed to enhance the value of the goods from 400 USD per metric ton to 500 USD per metric ton based on the alleged contemporary imports of the identical goods allegedly taken from Directorate of Valuation Website; the customs duty was already paid by the Appellant; Revenue also alleged that the imported goods prima facie did not appear to be scrap of silicon steel; An independent Chartered Engineer appointed by Department, certified that the imported goods were obtained from the old and used rejected/damaged transformers and cannot be reused directly in the present situation and therefore, the imported goods are Silicon Steel Scrap; even the shed officer on re-examination of the goods found that the goods are of varied length and some of the sheets were found to be curved, zig-zagged or even generally de-shaped, rusted and sides of the sheets were also found to be crushed and cramped; the Appellant sought permission for mutilation of scrap, which was rejected.

2.1. A show cause notice dated 21.01.2015, was issued, seeking to reclassify the goods under CTH 7225 19 00; to reject the value declared; confiscate the goods under Section 111(d) and 111(m) of the Customs Act, 1962 and to impose penalty

under Section 112 of the Act; Original authority vide Order-in-Original dated 30.04.2015 confirmed the proposals, reclassifying the goods under CTH 7225 19 00 and re-determining the value @ 650 USD per metric ton; First Appellate Authority, vide the Order-in-Appeal dated 31.12.2015, set aside the original order holding that the impugned order was vague, perverse and non-speaking and allowing the appeal by way of remand. The adjudicating authority again passed an order-in-original, dated 15.02.2019, again confirming the proposals of the show cause notice. The appellant again filed an appeal before the First appellate authority, who passed impugned appellate order dated 17.06.2020.

3. Shri Atul Gupta, Learned Counsel for the Appellant, submits that the appellant has correctly classified the goods under CTH 7204 49 00; it has not been disputed that the goods imported are used and burnt scrap from the transformers; the Appellant further offered for mutilation of the same before clearance; there was no reason for the department to reclassify the goods and enhance the value; neither the show cause notice nor order, allege that the appellants suppressed or willfully mis-stated etc. He takes us through the relevant entries CTH 7204, Note 8(a) of Section XV of the Tariff Act and HSN Explanatory Notes to heading 7204 and submits that HSN Explanatory Notes state that the heading excludes articles which with or without repair or renovation, can be re-used for their former purposes or can be adapted for other uses; it also excludes articles which can be refashioned into other goods without first being recovered as

metal. However, in the present case, the imported goods were being used for melting purposes only; Tribunal has emphasized the need to establish the re-usability condition in relation to Silicon Steel Strips taken from old and used transformers as well; Tribunal, Kolkata in *Ansun Systems Consulting* 2015,(2) TMI 299 and *M/s. Jai Mata Stamping Works & M/s. J.C. Bose & Sons* 2015 (2) TMI 464 held that usability as such/after processing is an important criterion to arrive at the conclusion whether the goods are Scrap.

4. Learned Counsel submits that it was held by the Courts and Tribunal that if the goods are used for melting purposes, they are to be treated as scrap under CTH 7204; silicon steel strips dismantled from transformers are scrap and not defective goods; expert opinion given by the CE regarding the classification issue is admissible evidence and even assuming, without admitting, that the classification under CTH 7204 is correct, it will not automatically follow that they will be classifiable under CTH 7225 as Silicon Steel Strips. He relies on the following cases:

- *Naveen Impex Ghaziabad* 2018 (1) TMI 1468 - CESTAT ALLAHABAD
- *Sujana Steel Ltd, Hyderabad* 2000 (115) ELT 539 (Tri.)
- *Patiala Castings (P) Ltd* 2003 (156) ELT 458 (P & H)
- *Sunshine Artifacts, 2012* (280) ELT 156 (Tri. Bom.)
- *M/s. Ansun System Consulting (P) Ltd* 2005 (179) ELT 511 (Tri. -Del.)

- *Kishore Kr. Agarwal 2010 (252) ELT 138 (Tri. Kol.)*
- *SPS Metal Cast & Oils Ltd 2004 (163) ELT 265 (Tri. Kol)*
- *Shree Ram Urban Infrastructures Ltd 2009 (246) ELT 718*
- *Malu Electrodes Pvt Ltd 2018 (364) ELT 1023 (Tri.-Mum)*
- *Hinduja Foundries Ltd 2013 (288) ELT 571 (Tri — Chennai)*
- *LML Ltd 1997 (94) ELT 273 (SC)*
- *Bhushan Steels and Strips Ltd 2010 (257) ELT 5 (SC)*

5. Learned Counsel submits that the Department did not adduce any concrete evidence to show that the goods are classified under CTH 7225; the onus of establishing that goods are classifiable under a particular tariff entry other than the one claimed by the assessee lies upon the Revenue as held in *Hindustan Feredo Limited 1997 (89) ELT 16 (SC)* and *Garware Nylons Ltd., 1996 (87) ELT 12 (SC)*; once the department has failed to discharge the burden of proof, the allegation of misclassification cannot sustain as held in the following decisions wherein, it has been held that the burden of proof to levy tax is on the revenue:

- *Railway Equipment and Engineering Works, 2015 (325) ELT 184 (Tri. - Del.);*
- *Foto Centre Trading Co., 2008 (225) ELT 193 (Born.);*
- *Khalsa Charan Singh and Sons, 2010 (255) ELT 379 (P&H);*
- *HPL Chemicals 2006 (197) ELT 324 (SC).*

6. Learned Counsel submits that the impugned order has rejected the classification adopted by the Appellant on the ground that Section Note 8(a) states that the goods must 'definitely not be usable'; the Chartered Engineer's report categorically states that the goods cannot be used as cores of transformers; therefore, this specific use of goods, for the same purposes which they were used earlier, is completely ruled out; the Impugned order has also not disputed report Chartered Engineer's report with regard to re-use of the goods as cores; the findings of the Appellate authority regarding the possibility of reuse after processing, repair and re-use is not based on any evidence, statement, report or data; it is completely silent on the possible re-use of the goods and what processes can be undertaken to make the goods re-usable; Appellate Authority is not a metallurgical expert to give a finding of this nature; the findings are based on assumptions and presumptions without any cogent basis, reasoning or evidence. It was held in *Shri Balkrishnan, 1987 (29) ELT 65, A.G. International 2013 (295) ELT 113 (Tri-Del) and Hindustan Rubbers, 2011 (269) ELT 376 (Tri-Ahd.)* that mere suspicion, however strong, is not a substitute for proof.

7. Learned Counsel submits further that the value of the impugned goods cannot be rejected under rule 12 of the valuation rules and arbitrarily valued at 650\$ PMT; sole basis for rejection of the declared value of the disputed goods is the alleged mis-declaration of the goods; however, as per above

submissions, the appellant correctly classified the impugned goods, the very basis for rejection of declared value of the goods is not present. He submits that the transaction value in the present case is not liable to be rejected as it is in consonance with the contract; each transaction has to be assessed independently; Section 14 of the Customs Act clearly states that value should be the price actually paid or payable; the price actually paid has been declared, and therefore, rejection of the same, and re-determination is completely unwarranted and bad in law; Rule 3(2) of the Valuation Rules indicates that the Department is bound to accept the transaction value at all times except when the circumstances mentioned in the proviso to Rule 3(2) exist as held in M/s Sanjivani Non-Ferrous Trading Pvt. Ltd., 2018 (12) TMI 738 (SC) and Eicher Tractors Ltd. 2000 (122) ELT 321 (SC); the onus is on the Department to prove that goods have been undervalued as held in Prodelin India (P) Ltd., 2006 (202) ELT 13 (SC). He submits that though the appellants have furnished bills of entry, invoice and details of past imports, the Appellate Authority has discarded the aforesaid value without any basis and upheld the order of Adjudicating Authority which has enhanced the assessable value of the goods imported by the Appellant; Rule 12 states that there must be reasonable basis to doubt the correctness of the declared value; mere suspicion on the part of the proper officer, without any reasonable basis, is not enough; mere existence of the circumstances (including abnormal discounts) mentioned in Explanation 1(iii) of Rule 12 cannot ipso facto lead to the rejection of the transaction value by the proper officer.; transaction value for the assessment is the

rule, in absence of direct contrary evidence to establish overvaluation/ undervaluation of imports; the appellate authority's rejection of the declared value and re-determination at 650\$ PMT is blatantly illegal. He relies on the following cases:

- *Aggarwal Industries Ltd., 2011 (272) ELT 641 (SC)*
- *Bayer India Ltd 2006 (198) ELT 240 (Tri. Mum.)*
- *Eicher Tractors Ltd 2000 (122) ELT 321 (SC)*
- *Bureau Veritas, 2005 (181) ELT 3 (SC)*
- *Pushpanjali Silk 2009 (238) ELT 135, (Tri-Chennai)*
- *Sai Sales Corporation, 2012 (278) ELT 197 (Tri. Del)*
- *Chandra Shekhar R. Shukla 2019 (370) E.L.T. 1449 (Tri-Mumbai)*

8. Learned Counsel submits in addition that BIS certificate is not required as the goods are not covered under quality control and/or the board instruction ; as per the Board Instruction read with the Quality Control Order, 2012, the Amendment Order, and General Note 2A of Indian Trade Clarification based on Harmonized System of Coding (hereinafter referred to as "ITC (HS)"), 2012 Schedule 1 to the Import Policy and the HSN Explanatory Notes the import of second-hand/defective/old and used CRGO Sheets, Strips and Coil in any shape and size is prohibited without the Bureau of Indian Standards (BIS) Licence; the Impugned Order classifies the goods as CTI 7225 19 00 which are evidently not covered by the Board Instruction read with the Quality Control Order and the Amendment Order as it solely applies to CTH 7225 1100 or CTH 7226 1100; therefore, all conclusions based on the applicability of the Board Instruction read with the Quality Control Orders must be set aside; in view

of the Ministry of Steel letter F. No. 1(8)/2012-TVV dated 20.02.2014, goods are in the nature of Scrap and not second-hand/defective/old and used CRGO Sheets and therefore not covered by the Board Instruction; no BIS Certification is required for the goods. He relies specifically on M/s. Ansun System Consulting (P) Ltd. (supra); Kishore Kr Agarwal (supra) and SPS Metal Cast & Oil Ltd. (supra) wherein, it was held that the materials obtained from dismantled transformers cannot be treated as defective CRGO sheets; consequently, the import restrictions as per Quality Control Order and the Amendment Order would not apply to the impugned goods. Learned counsel submits that as per Para 2.17 of the [FTP 2009-14](#), authorisation is needed if the goods imported are in the nature of "Second Hand Goods other than Capital Goods" and not in case of scrap generated out of used goods.

9. Learned counsel submits that the provisions of Section 111(d) are not attracted in this case as there has been no violation of the Customs Act, Tariff Act, FTP, ITC(HS) or any other law in force; It is thus, Section 111(m) is also not attracted as the imported goods do correspond in value or any other particular with the bill of entry filed under the Act; the goods imported are indeed scrap and their value declared in the bill of entry is the 'transaction value'; all the information available with the Appellant was fully disclosed at the time of importation; department has arbitrarily changed the value and classification without any evidence; therefore, goods cannot be confiscated under Section 111(m) as the Appellate Authority has

directed; Section 111(m) cannot be invoked as there has been no mis-declaration in terms of the value or material particulars. He relies on Lotus Beauty Care Products Pvt Ltd 2020-TIOL-1664-CESTAT-MUM and Kirti Sales Corporation 2008 (232) ELT 151 (Tri. -Del.); as the goods are not liable for confiscation, redemption fine under Section 125 of the Customs Act is not imposable.

10. Learned counsel submits, moreover that as no duty is payable as the Appellant has correctly classified the goods under CTH 7204 of the Tariff Act, no penalty is imposable on the Appellant; penalty cannot be imposed on the Appellant in the absence of *mens rea* on part of the Appellant; no penalty is imposable on the Appellant when the issue involved is classification of goods and penalty is not imposable when the issue is one of interpretation of law; however, as submitted earlier, no mens rea was present on the Appellant's part, which is necessary for imposition of the penalty, and thus the penalty cannot be imposed under Section 112(b). He relies on the following.

- *H.M.M. Limited 1995 (76) ELT 497 (SC)*
- *Balakrishna Industries, 2006 (201) ELT 325 (SC).*
- *Hindustan Steel Ltd 1978 (2) ELT (J159)*
- *Akbar Badruddin Jiwani 1990 (47) ELT 161*
- *Harbhajan Kaur 1991 (56) ELT 273 (Tri-Del)*
- *Owens Corning Enterprises (I) P Ltd 2011 (270) ELT 547 (Tri- Mumbai)*
- *Bahar Agrochem & Feeds Pvt Ltd 2012 (277) ELT 382 (Tri-Mum)*

- *Goodyear (India) 2003 (157) ELT 560*
- *Vadilal Industries Ltd 2007 (213) ELT 157 (Tri. - Ahmd.).*

11. Shri Santosh Kumar, learned Authorized Representative for the Department reiterates the findings of the impugned order.

12. Heard both sides and perused the records of the case. We find that the brief issue involved in the impugned case is to see whether:

(i) the silicon steel scraps imported by the appellants is classifiable under CTH 72044900 as declared by the appellants are under CTH 72251900 as arrived at by the impugned order and as to whether the appellants require import authorization from DGFT in terms of Para 2.17.

(ii) the Revenue was correct in re-determining the value of impugned goods from 400\$ PMT to 650\$ PMT.

(iii) the impugned goods are rendered liable for confiscation and the appellant are rendered liable for penalty.

13. We find that the appellants imported steel scraps (silicon) and filed a bill of entry at a declared classification under CTH 72044900 and value of 400 \$ PMT; on first examination, Revenue proposed classification under CTH 72251900 and value at 500 \$ PMT. A Chartered Engineer was appointed to ascertain the condition and classification of goods. The Chartered Engineer vide Certificate, dated 15.09.2014, while indicating that the price could be 500\$ PMT, commented on the condition of the cargo as follows:

- Once the transformers outlive their specified life w.r.t their working conditions, their cores made up of silicon steel strips

become weak to produce the desired results of power transmission or when they got damaged due to fire mishaps.

- Hence such silicon steel strips obtained from the old & used rejected / damaged transformers cannot be reused directly in present condition. Such kind of cores are then dismantled and are supplied as a scrap in the secondary market.
- Keeping in view of the international market practices and on the basis of the above findings. I am of the concerned opinion that the said Silicon Steel Strips are originated from the Old & Used: Damaged Transformers.
- In view of the above-mentioned classifications of Scrap as per the a) ISRI Scrap Specifications 2014 and b) IS: 2549 (1994), subsequent to the dimensional observations and test results. I am of the opinion that the said consignment may fall under the purview of Silicon Steel Scrap.

12. A show cause notice dated 21.01.2015 was issued to the appellants seeking to revise the classification under 72251900 as old and used silicon strips and holding that the import of the same is not permitted in terms of DGFT Policy 2009-14 and CBEC Instructions vide F.No.450/71/2014-Cus-IV dated 09.07.2014 and seeking to confiscate the impugned goods. Though, it was proposed to re-determine the value in terms of Customs Valuation Rules, in the operative portion of the show cause notice, the value at which it was proposed to re-determine was not mentioned; the first appellate authority vide OIO dated 30.04.2015, in the first round of litigation, confirmed the proposals in the show cause notice and fixed the value at 650\$ PMT. Importer's request for mutilation of the goods was also declined. Commissioner (Appeals) vide order dated 31.12.2015 remanded back to the original authority holding that the order was not a speaking order was cryptic and defective. In the second round of appeal OIO dated 15.02.2019 was issued again

confirming the proposals of the show cause notice; the impugned order dated 17.06.2020 upholds the OIO dated 15.02.2019.

13. As regards the question of classification, we find that the report of the Chartered Engineer appointed by the Department itself is categorical in holding that the impugned goods are not scrap in view of the Para 8A of Section XV of the Customs Tariff Act, 1975 which states that metal waste and scrap from manufacture or mechanical working of metals and metal goods definitely not usable as such because of breakage, cutting up, wear and other reasons. The original authority finds that there is variation between the Chartered Engineer certificate and the re-examination report by customs officers; Chapter Head 72.04 excludes articles which can be used for their former purposes or can be adopted for other uses with or without repair or renovation. We find that it would be beneficial to have a look at the relevant statutory position on classification of impugned goods.

13.1. Entries related to CTH 7204 as per CTA,1975, are follows.

Tariff Item		Description of goods	Unit	Rate of duty
7204		Ferrous waste and scrap; re-melting scrap ingots of iron or steel		
7204 10 00	-	Waste and scrap of cast iron	Kg	10%
	-	Waste and scrap of alloy steel		
7204 21	--	Of stainless steel		
7204 21 10	---	Empty or discharged cartridges of all bores and sizes	Kg	10%
7204 21 90	----	Other	Kg	10%
7204 29	--	Other		10%
7204 29 10	---	Empty or discharged cartridges of all bores and sizes	Kg	10%
7204 29 20	---	Of high speed steel	Kg	10%
7204 29 90	---	Other	Kg	10%
7204 30	-	Waste and scrap of tinned iron or steel	Kg	10%
	-	Other waste and scrap		
7204 41 00	--	Turnings, shavings, chips, milling waste, saw dust, fillings, trimmings and stampings, whether or not in bundles.	Kg	10%
7204 49 00	--	Other	kg	10%
7204 50 00	-	Remelting scrap ingots	kg	10%

13.2. Note 8(a) of Section XV of the Tariff Act, the meaning of waste and scrap is as under:

"Metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons."

13.3. HSN Explanatory Notes to heading 7204 provides as follows:

"The heading covers waste and scrap of iron or steel, as defined in Note 8 (a) to Section XV."

Such waste and scrap of iron or steel is of a miscellaneous nature and generally takes the form of:

(1) Waste and scrap from the manufacture or mechanical working of iron or steel (e.g., crop ends, filings and turnings).

(2) Articles of iron or steel, definitively not usable as such because of breakage, cutting-up, wear or other reasons; iron or steel waste and scrap is usually prepared by means of the following processes, in order to adapt it to the dimensions and qualities required by the users:

(a) Shearing or flame-cutting of heavy and long pieces.

(b) Compression into bales, particularly in the case of light scrap, using for example a hydraulic press.

(c) Fragmentation (shredding) of motor vehicle bodies and other tight scrap, followed by separation (which may be magnetic) with a view to obtaining a high-density product that is fairly clean.

(d) Crushing and agglomeration into briquettes of iron and steel filings and turnings.

(e) Breaking up of old iron articles.

Waste and scrap is generally used for the recovery of metal by remelting or for the manufacture of chemicals."

14. It is seen that the HSN Explanatory Notes indicate that the heading 72.04 excludes articles which with or without repair or renovation, can be re-used for their former purposes or can be adapted for other uses; it also excludes articles which can be refashioned into other goods without first being recovered as metal. In the impugned case, the imported goods were intended to be used for melting purposes only as is evident from the request of the appellant for mutilation before release. It has been held in *Naveen Impex v. Commissioner of Customs, Ghaziabad*, 2018 (1) TMI 1468 - CESTAT Allahabad that

5. We have gone through the impugned orders as also the examination report. Admittedly the examination report has found the said goods to be defective iron plates of square or rectangular size with

cut edges and of various thickness and lengths. In such a scenario the goods cannot be held to be prime or defective iron sheets and in the light of such variations in the sizes of the goods along with the fact that their edges were cut and worn out and the fact that they were in not serviceable for the purpose of sheets, it has to be held that the same are metal waste and scrap, which are admittedly not usable as such because of breakage, cutting up, wear-tear or other reasons. In such a scenario, we are of the view that the goods can be used only by remelting the same and as such has to be held as being waste and scrap. We find no misdeclaration in the goods. As such the impugned orders lack merits and are set aside and appeal is allowed with consequential relief.

15. Further, Punjab and Haryana High Court in the case of Patiala Castings (P) Ltd. v. Union of India, 2003 (156) ELT 458 (P & H), held that

22. A perusal of the above provision shows that metal goods which cannot be used "as such because of breakage, cutting-up, wear or other reasons" fall within 'waste and scrap'. In the present case, the goods were not usable pipes as they had been used earlier. These were rusted, pitted and perforated and had even been repaired. Surely, a person who has to import pipes for being used in an industry shall not buy rusted or perforated pieces.

.....

26. The matter can be looked at from another angle. It is possible that something may appear to be 'scrap' to one but different to another person. It can happen that a stitched piece of cloth may appear as a garment to one and a rag to the other. Even in the case of pipes etc, the exporter may have sold the material as scrap as the pipes had been used for a long time. These had got rusted. Some of these had even been repaired. Thus, the exporter may have thought that these were scrap. On receipt, the respondents took the view that these could be used as pipes by the industry. In order to meet such a situation, periodic instructions have been issued by the Government of India and its officers. On the record of this case, two letters embodying relevant instructions have been produced. First of these were issued by the Central Board of Excise and Customs vide letter dated June 16, 1995. In these instructions, it was inter-alia observed that "whenever serviceable goods are noticed, they are ordered to be mutilated to such an extent to

become steel scrap and benefit of end use notification is extended and the consignments are assessed as steel scrap." A copy of the letter embodying these instructions is on record as Annexure P. 15. The matter was again clarified by standing order dated May 12, 2000. In this letter, it was observed as under: "It has been reported by Commissioner Customs, Amritsar that M/s. Datt Multi Metals Private Limited and M/s. Patiala Castings Pvt Ltd. filled Bills of Entry at CFS (PSWC) Ludhiana for clearance of containers of heavy melting scrap. However, on physical examination of the goods, old and used steel pipes of varying lengths from 10 to 18" (approximately having diameter 6" to 12" and thickness of about were found instead of melting scrap. It is understood that such pipes have varied applications in the processing industry viz. High-pressure application, chemical industry, Textile industry machine tools, manufacturing etc. and the goods under import can be used as such. Whereas the goods imported appear to be new material for re-melting purposes, in their industrial furnace, as a raw material for manufacturing of MS ingots and large portion of such consignments are still in serviceable condition. The Board has earlier examined the issue of clearance of Steel scrap which also contained serviceable material and issued instructions that if serviceable goods are noticed, they should be mutilated to such an extent to become steel scrap for availing the benefit of end use notification and the consignments are assessed as steel scrap as held in the (case) of Sujana Steels Limited v. Commissioner."

27. A perusal of the above would show that the authority was dealing with the case of the petitioner and M/s. Datt Multi Metals Private Limited. It was clarified that the goods should be mutilated to such an extent that these become steel scrap so as to enable the party to avail the benefit of the "end use notification and the consignments are assessed as steel scrap...."

28. On a consideration of these instructions issued vide letter dated June 16, 1995, it is clear that whenever the authority entertains any doubt regarding the goods, it has the option to get them mutilated so that the importer is not put to any harassment and the Revenue does not suffer any loss. Thus, even if the authority had suspected any irregularity, it could have immediately got the goods mutilated and ordered the release thereof.

16. We find that though the classification of the goods shall not depend on the end use, it will be in the fitness of things to view the claim of the importer in the facts and circumstances of each case. In the instant case, the fact that the Chartered Engineer

has reported that the such kind of goods cannot be are not re-used directly in the present condition for original purposes and are used as scrap cannot be ignored. Also, the request of the appellant for mutilation gives credence to the claim. Moreover, the impugned goods fulfill the condition of Note 8(a) of Section XV of the Tariff Act, that metal waste and scrap from the manufacture or mechanical working of metals, and metal goods definitely not usable as such because of breakage, cutting-up, wear or other reasons, in view of the Chartered Engineer Certificate. We find that the Tribunal in the case of Ansun Systems Consulting 2015, (2) TMI 299 and M/s. Jai Mata Stamping Works & M/s. J.C. Bose & Sons v. Commissioner of Customs (Port), Kolkata, 2015 (2) TMI 464 held that usability as such/after processing is an important criterion to arrive at the conclusion whether the goods are Scrap.

17. The adjudicating authority concludes that the decision of Tribunal in Ansun Systems Consulting that silicon steel strips dismantled from transformers are scrap and not defective goods, is misplaced. We find that such a conclusion is without any basis. CE report categorically states that the goods cannot be used as cores of transformers. Therefore, this specific use of goods, for the same purposes which they were used earlier, is completely ruled out. The Appellate Authority has also not disputed this aspect of the CE report with regard to re-use of the goods as cores. Re-examination Report by shed officer indicates that the goods are of varied length and some of the sheets were found to be curved or even generally, de-shaped and rusted. We find that

such steel (used to make the core of transformers) cannot be re-used in a transformer core or for any other purpose. We also find force in the argument of the appellant that expert opinion given by the CE regarding the classification issue is admissible evidence. It is also on record that an identical consignment imported by the Appellant was successfully cleared vide Bill of Entry No. 6162092 dated 18.07.2014 were sold for melting purposes only. Though, the principle of estoppel is not applicable in taxation matters, department cannot take a different stand in respect of the same appellant under identical set of facts.

18. We find that Appellate authority's apprehension regarding the possibility of reuse after processing, repair and re-use is unfounded. It is completely silent on the possible re-use of the goods and what processes can be undertaken to make the goods re-usable. Further, we find that the Appellate Authority is not a metallurgical expert to give a finding of this nature, when the Chartered Engineer and the Shed Officer have given categorical report on the condition of the impugned goods. In view of this, we find that the impugned goods are rightly classifiable as "other waste and scrap" falling under CTH 7204 49 00. In any case, the classification determined in the Impugned Order is incorrect as the goods have a width of 0.20 mm to 0.30 mm, i.e. less than 600 mm and mostly grain oriented, taking them out of the ambit of CTH 7225 19 00. Thus, we find that the Impugned Order is liable to be set aside, both the rejection of classification under CTH 7204 49 00 and classifying the same CTH 7225 19 00 are without any basis, reason and evidence.

19. We now turn our attention to the re-determination of value as done by the impugned order. In view of the finding as above, that there was no misdeclaration of classification, no grounds arise for redetermination of the value. The appellants submit that the value of the impugned goods cannot be rejected under rule 12 of the valuation rules and arbitrarily valued at USD 650 per MT; transaction value is not liable to be rejected as it is in consonance with the contract; essential element in valuation is that each transaction has to be assessed independently. We find that the transaction value, under Section 14 of the Customs Act, 1962, is the price actually paid or payable. As per Rule 3(2) of the Valuation Rules, transaction value cannot be rejected except when the circumstances mentioned in the proviso to Rule 3(2) exist. It is not proved that the exceptions exist in this case. We find therefore, that declared transaction value cannot be rejected as held in M/s Sanjivani Non-Ferrous Trading Pvt. Ltd., 2018 (12) TMI 738 (SC) and Eicher Tractors Ltd. 2000 (122) ELT 321 (SC).

20. We further find, as submitted by the appellants, that as per Rule 12 there must be reasonable basis to doubt the correctness of the declared value; mere suspicion on the part of the proper officer, without any reasonable basis, is not enough; it has been held in several cases that because of the presence of some factors like abnormal discounts, mentioned in Explanation 1(iii) of Rule 12, cannot be a reason itself to reject the transaction value. We find that in the absence of evidence like related party transaction, flow back of differential amount to the foreign

exporter etc., to establish undervaluation of imports, transaction value has to be accepted as a rule. We find that Hon'ble Apex Court in the case of Aggarwal Industries Ltd.(supra), held as follows.

11. On a plain reading of Sections 14(1) and 14(1A), it is clear that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in Section 14(1) of the Act. Section 14(1) is a deeming provision as it talks of deemed value of such goods. The determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1) of the Act. Conjointly read, both Section 14(1) of the Act and Rule 4 of CVR, 1988 provide that in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of CVR 1988, the price paid or payable by the importer to the vendor, in the ordinary course of international trade and commerce, shall be taken to be the transaction value. In other words, save and except for the circumstances mentioned in proviso to Sub-rule (2) of Rule 4, the invoice price is to form the basis for determination of the transaction value. Nevertheless, if on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the correct price, it would be justified in rejecting the invoice price and determine the transaction value in accordance with the procedure laid down in CVR, 1988. It needs little emphasis that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports, which obviously would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation, Rule 10A of CVR, 1988 contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that 'reason to doubt' does not mean 'reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject it as evidence of the value of imported goods. The doubt held by the

officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. We may hasten to add that although strict rules of evidence do not apply to adjudication proceedings under the Act, yet the Adjudicating Authority has to examine the probative value of the documents on which reliance is sought to be placed by the revenue. It is well settled that the onus to prove undervaluation is on the revenue but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct.

12. In *Eicher Tractors Ltd. (supra)*, relied upon by the Tribunal, this Court had held that the principle for valuation of imported goods is found in Section 14(1) of the Act which provides for the determination of the assessable value on the basis of the international sale price. Under the said Act, customs duty is chargeable on goods. According to Section 14(1), 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 it has to be decided 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 and importation in the course of international trade. The word "ordinarily" implies the exclusion of special circumstances. This position is clarified by the last sentence in Section 14(1) which describes an "ordinary" sale as one where the seller or the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances stand fulfilled, the price of imported goods shall be decided under Section 14(1A) read with the Rules framed thereunder. The said Rules are CVR, 1988. It was further held that in cases where the circumstances mentioned in Rules 4(2)(c) to (h) are not applicable, the Department is bound to assess the duty under transaction value. Therefore, unless the price actually paid for a particular transaction falls within the exceptions mentioned in Rules 4(2)(c) to (h), the Department is bound to assess the duty on the transaction value. It was further held that Rule 4 is directly relatable to Section 14(1) of the Act. Section

14(1) read with Rule 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14 (1). Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in Rule 4(2). [Also See: Rabindra Chandra Paul v. Commissioner of Customs (Preventive), Shillong, (2007) 3 SCC 93 = 2007 (209, E.L.T. 329 (S.C.)]

21. Further, we find that the adjudicating authority has conveniently ignored the findings in the Chartered Engineer's report but places reliance on the same to reject the valuation of the goods especially in the absence. We find that the CE did not substantiate as to how he arrived at the value. Moreover, Chartered Engineer being an expert in relation to machinery etc, cannot be expected to have competence to indicate the value of scrap. Conditions required under Rule 12 to reject the transaction value not existing, the value indicated in his report has no relevance. We find that there is force in the appellants submission that enhancing the value of the imported goods solely on the basis of the CE report is not one of the methods provided in Valuation Rules, 2007. We find that the original authority as well as first appellate authority have arbitrarily determined the value at 650 USD per metric ton (C&F) without showing any basis to arrive at the valuation.

22. On the issue of applicability of BIS certificate for the impugned goods, as per CBEC instructions read with the Quality Control Order, 2012, we find that it applies to CTH 7225 1100 or CTT 7226 1100 and not to the impugned goods falling under CTH 7204 49 00. We are of the opinion that for the same reasons,

Para 2.17 of the FTP 2009-14 is also not applicable to the impugned goods which are in the nature of Scrap and not second-hand Goods. As we held that there is no mis-declaration of either the classification or the value of the goods, the question of imposing fines and penalties does not arise and therefore, we find it not necessary to discuss the appellants submissions in this regard.

23. In view of the above, we find that the impugned orders are not sustainable and are liable to be set aside. We do so. We allow the appeal with consequential relief, if any, as per Law.

(Pronounced in open court on 24.04.2025)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)