CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70413 of 2020

(Arising out of Order-In-Appeal No.NOI-CUSTM-000-APP-1536-TO-1549-19-20, dated 09.03.2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida)

M/s Shiv Tading Company **.....Appellant**
(Khasra No. 902/290, Gali No. 04, Shalimar Village, Industrial Area, NEW DELHI 110088)

VERSUS

Commissioner, Customs, Noida **....Respondent**
(Noida)

WITH

(I) Customs Appeal No.70532 of 2021 (M/s Shiv Tading Company);

(II) Customs Appeal No.70533 of 2021 (M/s Shiv Tading Company);

(III) Customs Appeal No.70534 of 2021 (M/s Shiv Tading Company);

(IV) Customs Appeal No. 70535 of 2021 (M/s Shiv Tading Company);

(V) Customs Appeal No. 70536 of 2021 (M/s Shiv Tading Company);

(VI) Customs Appeal No. 70537 of 2021 (M/s Shiv Tading Company);

(VII) Customs Appeal No. 70538 of 2021 (M/s Shiv Tading Company);

(VIII) Customs Appeal No. 70539 of 2021 (M/s Shiv Tading Company);

(IX) Customs Appeal No. 70540 of 2021 (M/s Shiv Tading Company);

(X) Customs Appeal No. 70541 of 2021 (M/s Shiv Tading Company);

(XI) Customs Appeal No. 70542 of 2021 (M/s Shiv Tading Company);

(XII) Customs Appeal No. 70543 of 2021 (M/s Shiv Tading Company); &

(XIII) Customs Appeal No. 70544 of 2021 (M/s Shiv Tading Company);

APPEARANCE:
Absent on call for the Appellant
Shri Santosh Kumar Authorized Representative for the Respondent

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

FINAL ORDER NO.-70827-70840/2025

DATE OF HEARING : 15.10.2025
DATE OF DECISION : 15.10.2025

SANJIV SRIVASTAVA:

The present appeals have been filed by the Appellant assailing the impugned order mentioned in the table below:-

Sr.No.	Appeal No.	Bill of Entry No. Dated	Impugned Order No.
1.	C/70413/2020	4241823 dated 26.07.2019	NOI-CUSTM-000-APP-1536-TO-1549-19-20, dated 09.03.2020 passed by Commissioner (Appeals) CGST & Central Excise, Noida
2.	C/70532/2021	4138411 dated 19.07.2019	
3.	C/70533/2021	3782739 dated 24.06.2019	
4.	C/70534/2021	3370457 dated 24.05.2019	
5.	C/70535/2021	3894689 dated 02.07.2019	
6.	C/70536/2021	4241667 dated 26.07.2019	
7.	C/70537/2021	3370684 dated 24.05.2019	
8.	C/70538/2021	4137880 dated 19.07.2019	
9.	C/70539/2021	4142193 dated 19.07.2019	
10	C/70540/2021	4142198 dated	

		19.07.2019	
11.	**C/70541/2021**	**4241984 dated 26.07.2019**	
12.	**C/70542/2021**	**4241889 dated 26.07.2019**	
13.	**C/70543/2021**	**3370191 dated 24.05.2019**	
14.	**C/70544/2021**	**4242162 dated 26.07.2019**	

2.0 By the impugned order Commissioner (Appeals) has dismissed all the fourteen appeals filed by the Appellant. Aggrieved Appellant has filed the present appeals.

3.0 Counsel for the Appellant is absent on call. We have heard Shri Santosh Kumar, learned Authorized Representative appearing for the Revenue and have gone through the case records.

4.1 We note that when the matter was called none appeared on behalf of the Appellant nor is there any adjournment request. It is also observed that the appeals have been listed for hearing on 29.04.2024, 12.08.2024, 05.11.2024 and today i.e. 15.10.2025 and on all the occasions Counsel for the Appellant was absent on call.

4.2 Hon'ble Supreme Court in the case of M/s Ishwar lal Mali Rathod [(2021) 12 SCC 612] condemned the practice of adjournments sought mechanically allowed by the Courts/Tribunal's. They have categorical condemned the practice wherein adjournments were allowed in routine and mechanical manner. In the present case we observe that the matter was adjourned on at least three occasions for the reason that Appellant/ Appellant Counsel did not caused appearance in the matter. Though Section 129 D (1A), specifically provides that no adjournment beyond three times could be granted by the tribunal.

4.3 In view of the above, we do not find any justification for adjourning the matter beyond three times which is the maximum number statutorily provided.

4.4 We note that in the case of Balaji Steel Re-Rolling Mills V/s Commissioner of Central Excise & Customs reported at 2014 (310) E.L.T. 2009 (S.C.) the Hon'ble Supreme Court held as under:-

> *"Section 35C(1) of the Act which deals with the powers of the Tribunal reads as under :-*
>
> ***"35C. Orders of Appellate Tribunal.*** *- (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary."*
>
> ***10.*** *Rule 20 of the Rules which gives a power to the Tribunal to dismiss the appeal for default in case the appellant does not appear when the appeal is called on for hearing reads as under :-*
>
> ***"RULE 20. Action on appeal for appellant's default.*** *- Where on the day fixed for the hearing of the appeal or on any other day to which such hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may, in its discretion, either dismiss the appeal for default or hear and decide it on merits :*
>
> *Provided that where an appeal has been dismissed for default and the appellant appears afterwards and satisfies the Tribunal that there was sufficient cause for his non-appearance when the appeal was called on for hearing, the*

Tribunal shall make an order setting aside the dismissal and restore the appeal."

11. *From a perusal of the aforesaid provisions, we find that the Act enjoins upon the Tribunal to pass order on the appeal confirming, modifying or annulling the decision or order appealed against or may remand the matter. It does not give any power to the Tribunal to dismiss the appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken up for hearing.*

12. *A similar question came up for consideration before this Court in The Commissioner of Income-Tax, Madras v. S. Chenniappa Mudaliar, Madurai - 1969 (1) SCC 591 wherein this Court considered the provisions of Section 33 of the Income-tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 which gave power to the Tribunal to dismiss the appeal for want of prosecution. For ready reference, Section 33(4) of the Income Tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 are reproduced below :-*

Section 33(4) of the Income Tax Act, 1922

*"**33(4).** The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."*

Rule 24 of the Appellate Tribunal Rules, 1946

*"**24.** Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may dismiss the appeal for default or may hear it ex parte."*

Considering the aforesaid provisions, this Court held as under :-

"7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in Hukumchand Mills Ltd. v. CIT, the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for default without making any order thereon in accordance with Section 33(4). The position becomes quite simple when it is remembered that the assessee or the CIT, if aggrieved by the orders of the Appellate Tribunal, can have resort only to the provisions of Section 66. So far as the questions of fact are concerned the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under Section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only

be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1953 by S.R. Das, J. (as he then was) in CIT, v. Mtt. Ar. S. Ar. Arunachalam Chettiar that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect quite appositely referred to the observations of Venkatarama Aiyar, J. in CIT v. Scindia Steam Navigation Co. Ltd. indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned judge had put the matter in the form of interrogation :

"How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether the decision of the Court should be sought."

Thus looking at the substantive provisions of the Act there is no escape from the conclusion that under Section 33(4) the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance."

13. *Applying the principles laid down in the aforesaid case to the facts of the present case, as the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing. The High Court also erred in law in upholding the order of the Tribunal."*

4.5 Therefore, we take up all the appeals for consideration on merits on the basis of records.

4.6 By the impugned order Commissioner (Appeals) has held as under:-

> *5.1 1 have carefully gone through the above assessment orders and contents of appeals, oral as well as written submission of the appellant. I find that there are enhancements in valuation of import goods which, as per the appellant, have been done without any basis. Also, as he argues, no speaking order was issued for such enhancements of value of the imported goods for which they also made request in writing. On the other hand, in para-wise comments, the department has contended that re-assessment has been done under section 17(4) of Customs Act, 1962 with the written consent of the appellant, hence the proper officer was under no obligation to pass the speaking order under section 17(5) of the Customs Act, 1962.*
>
> *5.2 On close examination, I find that the acceptance letters were submitted by the appellant on the subject of "Enhancement of value of goods covered under Bill of Entry No..... as reply to queries raised by the assessing officers through EDI System in respect of value enhancement of import goods wherein the appellant visibly explicitly accepted that -*
>
> *(a) he had gone through the details narrated by the assessing officers including the grounds of rejection of declared value;*
>
> *(b) he had gone through the details contemporaneous of similar/identical goods and accepted that declared value was significantly lower;*

(c) he fully agreed that declared value was liable for rejection and value for assessment was liable to be re-determined and duty payable was liable to be enhanced;

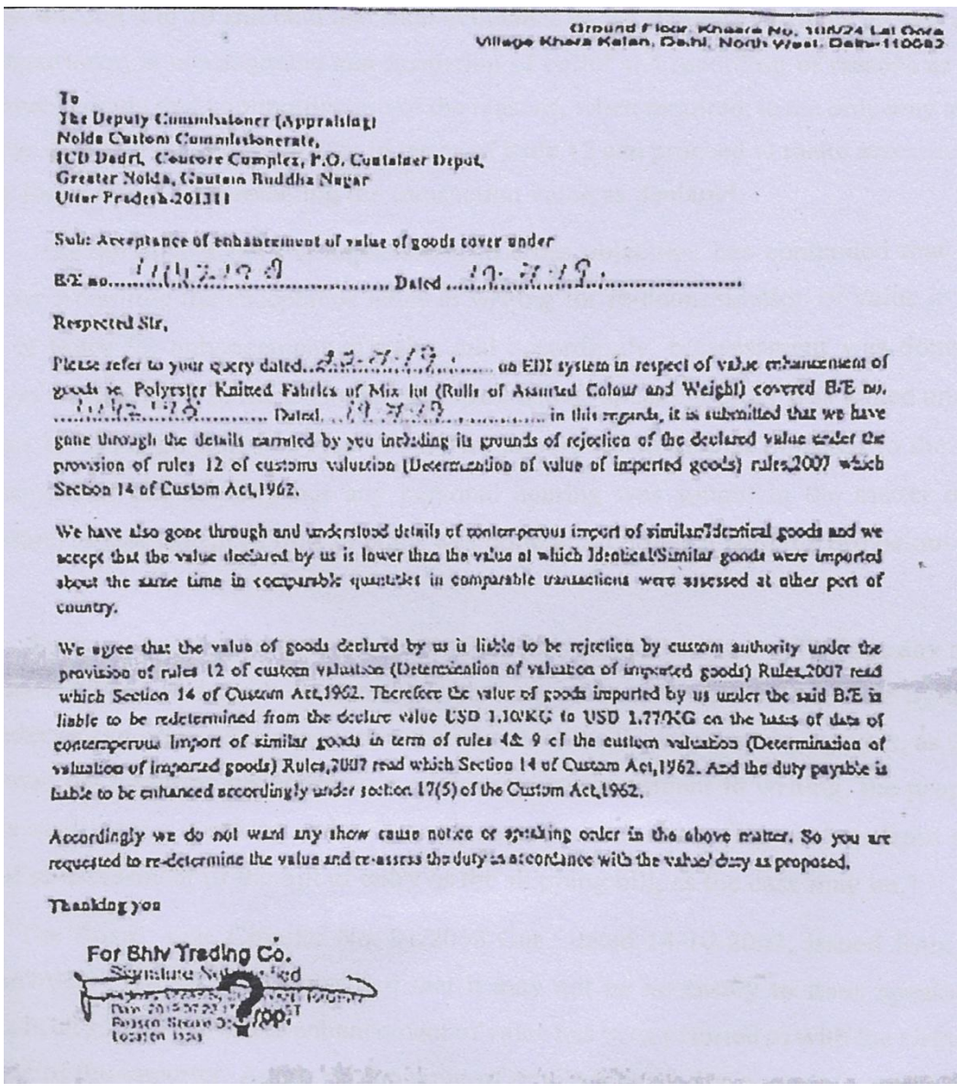
(d) he was in agreement with the proposed enhancement of value/duty;

(e) he did not want any show cause notice or speaking order;

(f) he requested the assessing authority to re-determine the value and reassess the duty in accordance with the value/duty as proposed;

Later on, at the time of filing present appeal, the appellant has pleaded that, to avoid the losses of demurrage and detention, he paid the Customs Duty on enhanced price under protest and no speaking orders were issued in those assessments.

5.3 For ready reference, copy of one such acceptance letter is reproduced below:-



Ground Floor, Khasra No. 108/24 Lal Gora
Village Khera Kalan, Delhi, North West, Delhi-110082

To
The Deputy Commissioner (Appraising)
Noida Custom Commissionerate,
ICD Dadri, Customs Complex, P.O. Container Depot,
Greater Noida, Gautam Buddha Nagar
Uttar Pradesh-201311

Sub: Acceptance of enhancement of value of goods cover under

B/E no. 1112119 Dated 19.7.19

Respected Sir,

Please refer to your query dated 22.7.19 on EDI system in respect of value enhancement of goods ie. Polyester Knitted Fabrics of Mix lot (Rolls of Assorted Colour and Weight) covered B/E no. 1112119 Dated 19.7.19 in this regards, it is submitted that we have gone through the details carried by you including its grounds of rejection of the declared value under the provision of rules 12 of customs valuation (Determination of value of imported goods) rules,2007 which Section 14 of Custom Act,1962.

We have also gone through and understood details of contemporous import of similar/identical goods and we accept that the value declared by us is lower than the value at which Identical/Similar goods were imported about the same time in comparable quantities in comparable transactions were assessed at other port of country.

We agree that the value of goods declared by us is liable to be rejection by custom authority under the provision of rules 12 of custom valuation (Determination of valuation of imported goods) Rules,2007 read which Section 14 of Custom Act,1962. Therefore the value of goods imported by us under the said B/E is liable to be redetermined from the declare value USD 1.10/KG to USD 1.77/KG on the basis of data of contemporous import of similar goods in term of rules 4& 9 of the custom valuation (Determination of valuation of imported goods) Rules,2007 read which Section 14 of Custom Act,1962. And the duty payable is liable to be enhanced accordingly under section 17(5) of the Custom Act,1962.

Accordingly we do not want any show cause notice or speaking order in the above matter. So you are requested to re-determine the value and re-assess the duty in accordance with the value/ duty as proposed.

Thanking you

For Bhiv Trading Co.
Signature Not Verified

5.4 The identical issue of submission of consent/acceptance letter by the importer and non-issuance of speaking order by the assessing officer for enhancement of value was discussed by the Hon'ble Supreme Court in the case of M/s Century Metal Recycling Pvt. Ltd. vs. UOI [2019 (367) E.L.T. 3 (S.C.)] wherein Hon'ble Apex Court has observed that the authorities had compelled and forced the importer to furnish the acceptance letter thereby waiving of its right to provisional assessment and accepting valuation in terms of Rules 4 to 10 and held that such avoidance of the statutory mandate on part of the department is unacceptable and 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.

5.5 On the other hand the department, in cross objection, has contended that the importer submitted the acceptance letter in writing for re-determination of value in ro Bills of Entry for enhancement of value and accordingly, reassessment was done in terms of section 17(4) of the Customs Act, 1962 and no speaking order was issued under section 17(5) of the Customs Act, 1962. The importer also neither objected to the re-assessment of bill of entry nor any personal hearing was sought in the matter and therefore, re-assessment of bills of entry was done in accordance with the provisions of law.

5.6 Section 17(5) of the Customs Act 1962 clearly prescribes that "Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

5.7 The Board, vide Circular No. 91/2003-Cus., dated 14-10-2003, issued from F. No. 467/09/2001-Cus. V also clarified that it may not be necessary to issue speaking orders in all such cases where enhancement of value has been resorted to with the written consent of the importer, Again, on the point of requirement to issue speaking order on re-assessment of value of import goods, the Board, vide Instruction No. 7/2018-Cus., dated 05-04-2018 issued from F. No. 450/24/2018-Cus. IV, clarified that in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking, order on

the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

3.8 In the present case, there was no objection or complaint raised by the appellant supported by evidence that the department had anyway compelled and forced him to furnish such letters of acceptance. I find that those letters were submitted by the appellant after receiving queries from the department through EDI System confirming his acceptance of the said re-assessment in writing owing to his own exigency for clearing the import goods.

5.9 In Para 26 of the judgment pronounced in the case of M/s Century Metal Recycling Pvt. Ltd. vs. UOI [2019 (367) E.L.T. 3 (S.C.)], the Hon'ble Supreme Court emphatically clarified that they 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 and the matter has to be examined on a case to case basis. I find the facts and circumstances of the instant cases are clearly different owing to the fact that the appellant has submitted his unreserved/absolute acceptance towards the re-assessment of import goods having clear information about the proposed valuation, grounds of rejection of declared value, details of contemporaneous/similar/identical goods and price thereof, on the basis of which the re-assessment was proposed. Accordingly, I find that the ratio of the Hon'ble Apex Court's judgment in the case of M/s Century Metal Recycling Pvt. Ltd. vs. UOI [2019 (367) E.L.T. (S.C.)] supra is not at all applicable here owing to his voluntary/unconditional/unreserved acceptance for re-assessment of imported goods. Therefore, I find that the re-assessment of appellants import consignments were done by the assessing officers only after disclosing all the

ingredients of re-assessment to the appellant, i.e., proposed valuation, grounds of rejection of declared value, description, details and prices of contemporaneous/similar/identical goods thereof on the basis of which the reassessment was proposed and the assessment authority duly followed the procedure as defined in Section 17(5) of the Customs Act 1962 read with CBEC circular/instruction dated 14/10/2003 and 05/04/2018 wherein natural justice was duly extended to the appellant and no further speaking order is required in terms of the exception carved out in sub-section 17(5) of the Act that the authority is not obliged to pass speaking order if the importer confirms his acceptance of the said reassessment in writing. Therefore, the assessable value determined by the competent authority on reassessment of imported goods was legal and binding on the appellant.

6. In view of the above discussions and findings, all the above fourteen appeals filed by the appellant, M/s Shiv Trading Co., Ground Floor Khashra No. 106/24, Lal Dogra Village, Khera Kalan, New Delhi-110082 are rejected."

4.7 We find that the similar issue has been decided by the Hon'ble Allahabad High Court which is the jurisdictional High Court in the case of S. S. Overseas V/s Union of India reported at 2022 (382) E.L.T. 26 (All.). The Hon'ble High Court has held as under:-

"6. *Section 17 of the Customs Act, 1962 (hereinafter referred to as the 'Act, 1962') provides for assessment of duty. Under sub-section (1) of Section 17, an importer entering any imported goods under Section 46 of the Act, 1962 or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods. Sub-section (2) of Section 17 provides for verification of entries and self-assessment of goods referred to in sub-section (1)*

by the proper officer. Sub-section (4) of Section 17 provides for re-assessment of duty by the proper officer where the self-assessment is not done correctly. Sub-section (5) provides that the proper officer shall pass a speaking order on the reassessment in matters other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing.

7. *From the facts as stated in afore quoted Paragraph 2 and its sub-paragraphs of the counter affidavit, and the own documents of the petitioner filed as Annexure-1 to the counter affidavit, leave no manner of doubt that the petitioner himself has confirmed in writing his acceptance of reassessment. Therefore, there exists no occasion to pass a speaking order on the reassessment.*

8. *For the reasons aforestated, we do not find any merit in these petitions. Consequently, all the writ petitions are dismissed."*

4.8 In case of Century Metal Recycling Pvt. Ltd. [(2024) 23 Centax 30 (Tri.-Del)] Delhi bench has observed as follows:

"58. It is, therefore, not possible to accept the submission made by the learned counsel for the respondent that the importers were coerced into giving their consent/acceptance.

59. Learned counsel for the respondents also contended that the value that has been arrived at is on the basis of LME price of prime metal minus the discount given in the Director General Valuation Circular and, therefore, it can said that the enhancement value is not on the basis of contemporaneous import data but on the basis of LME price.

60. This contention of learned counsel for the respondents cannot also be accepted. In the letters written by the importers, they clearly stated that the contemporaneous

data was shown to them and they readily accepted the value proposed by the department. Once having accepted the value proposed by the Assessing Officer, it is not open to the importers to now contend that the value should be determined by a method contemplated under the 2007 Valuation Rules. Reliance placed by the learned counsel for the respondents on the decision of the Tribunal in Guru Rajendra Metalloys is, therefore, mis-placed. The Tribunal was not dealing with a case where the importers had submitted consent/acceptance letters.

61. The contention of the learned counsel for the respondents that since the importers were not furnished with data relating to enhancement of the value, principles of natural justice had been violated has to be rejected for the reason that in the letters submitted by the importers it has been stated that they had "gone through and understood the details of contemporaneous imports of similar/identical goods, as informed by the customs department and we accept that the value declared by us is lower than the value at which identical/similar goods have been imported at or about the same time in comparable quantities and in comparable commercial transaction were assessed at other ports of the country".

62. Learned counsel appearing for the respondents also placed reliance upon certain decisions passed by the Tribunal to contend that the transaction value has to be first rejected and thereafter the assessing officer can re-assess with reasons and in accordance with the provisions of the 2007 Valuation Rules.

63. The decisions of the Tribunal in Agarwal Foundries (P) Ltd. v. Commissioner of Customs 2020 (371) E.L.T. 859 (Tri.-Hyd) , Topsia Estates Pvt. Ltd. v. Commr. of Cus. (Import-Seaport), Chennai 2015 (330) E.L.T. 799 (Tri. - Mad) and Commissioner of Customs, New Delhi v. Nath International 2013 (289) E.L.T. 305 (Tri.-Del) on which reliance has been placed by the learned counsel for the

respondents merely hold that the department cannot reject the declared value and assess the goods as per the NIDB data.

64. Learned counsel for the respondents also submitted that merely because the enhancement value was arrived at on the basis of letters submitted by the importers would not mean that the statutory right of appeal available to the importers under section 128 of the Customs Act can be denied.

65. It is true that the right of appeal cannot be curtailed and the importers can certainly file appeals, but the issue that arises for consideration is whether after having themselves rejected the value mentioned in the Bills of Entry and after having also mentioned that the re-determined value under rule 9 of the 2007 Valuation Rules was acceptable to them, can the importers raise this issue in the appeals. It is difficult to accept the contention of learned counsel for respondent that despite having accepted the enhanced value in very categorical terms in the letters, the importers can still challenge the enhancement of the value and contend that it has not been properly determined under the 2007 Valuation Rules.

66. It is well settled that what is admitted is not required to be proved by the department. This issue has been settled by the Supreme Court in Systems & Components and the relevant portion of the judgment of the Supreme Court is reproduced below:

"5. The Appeal filed by the Department has been disposed of by the Tribunal by holding that the Department has not proved that these parts were specifically designed for manufacture of Water Chilling Plant in question. The Tribunal has noted the Technical details supplied by the Respondents and the letter of the Respondents dated 30th November, 1993 giving details of how these parts are used in the Chilling Plant. The Tribunal has still strangely held that this by itself is not sufficient to show that they are

specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning. Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved." (emphasis supplied)

67. This apart, in view of the judgments of the Supreme Court in ONGC Mangalore Petrochemicals, New India Assurance and Bishundeo Narain, the importers cannot be permitted to challenge the enhancement of the value by the Assessing Officer.

68. Learned counsel for the respondents contended that all the 57 appeals should be dismissed for the reason that the amount involved in each of the appeals is below the threshold limit for filing appeals in terms of the Central Board of Indirect Taxes and Customs Instructions dated 17.08.2011, as amended on 30.12.2016.

69. This issue was considered at length by the Tribunal and by an order dated 21.03.2024 it was rejected and it was ordered that the appeals would be heard on merits."

Similar view was taken by the Delhi Bench in following cases:

- Hanuman Prasad & Sons [2024 (17) CENTAX 473 (T-Del)]
- Singla Sales Corporation [(2024) 22 Centax 316 (Tri.-Del)]

4.9 It has been brought to our knowledge that Hon'ble Delhi High Court has in the case of Hanuman Prasad & Sons [Order dated 27.11.2024 in CUSAA No. 27 of 2022] taken a contrary view. However in view of the decision of jurisdictional High Court on the subject we do not find any merits in placing reliance on the this decision of Hon'ble Delhi High Court. In case of Kashmir Conductors [1997 (96) ELT 257 (T-LB)] a five member bench of tribunal expressed following opinion:

"10. The question as to how the Tribunal should proceed in the face of conflicting decisions of High Courts has been considered in M/s. Atma Steels P. Ltd. and others v. Collector of Central Excise, Chandigarh reported in l984 (17) E.L.T. 331 wherein the Larger Bench consisting of five Members held that, in view of its All India jurisdiction and peculiar features, the Tribunal cannot be held bound to the view of any one of the High Courts, but has the judicial freedom, to consider the conflicting views, reflected by different High Courts, and adopt the one considered more appropriate to the facts of a given case before the Tribunal. The Tribunal also indicated that this should be so, irrespective of the fact whether one particular assessee was within the jurisdiction of a specified High Court or the original adjudicating authority was located there. The judgment of the Apex Court in the case of M/s. East India Commercial Co. Ltd. v. Collector of Customs, Calcutta reported in 1983 (13) E.L.T. 1342 (S.C.) was brought to the notice of the Larger Bench, but, was not adverted to sufficiently in the course of discussion. In the East India Commercial Co. case, one of the questions for consideration was whether the interpretation given by the Calcutta High Court to Section 167 of the Sea Customs Act, 1878 would be binding on authorities functioning within the jurisdiction of the High Court and the Supreme Court held that "it is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. .....We, therefore, hold that the law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence.....". This decision has been followed by the Bombay High Court in CIT v. Godavaridevi Saraf reported in 1978 (2) E.L.T. (J 624).

10.1 In the case of U.P. Laminations v. Collector of Central Excise, Kanpur reported in 1988 (35) E.L.T. 398

(T), the Tribunal has followed the Supreme Court judgment in the case of East India Commercial Co. case and set aside the show cause notice issued against the appellants therein as it was in direct violation of the law laid down by the Allahabad High Court within whose jurisdiction both the manufacturer and the Collector of Central Excise were situated.

10.2 In a recent decision of the Tribunal in the case of Madura Coats v. CCE, Bangalore reported in 1996 (82) E.L.T. 512, it has been held that the decision of a particular High Court should certainly be followed by all authorities within the territorial jurisdiction of that High Court and that the authorities in another State are not bound to follow the views taken by a particular High Court in the absence of a decision by the jurisdictional High Court with regard to constitutionality of a provisions. The Tribunal has held that since the adjudication of vires of a provision of a statute or Notification is outside the jurisdiction of the Tribunal and the jurisdictional High Court i.e., the High Court having jurisdiction over the authority and the assessee, has not struck down the provision or Notification as ultra vires, the Tribunal has to follow the same and the assessee is entitled to take the stand that he is entitled to the benefit of the particular provision or Notification since the jurisdictional High Court has not struck it down, even though some other High Court may have done so. In case the conflict of decisions among High Courts does not relate to vires of any provision or Notification, it has been held that the Tribunal has to proceed in accordance with the decision in Atma Steels P. Ltd. in the light of the decision of Supreme Court in the East India Commercial Company case i.e. where the jurisdictional High Court has taken a particular view on interpretation or proposition of law, that view has to be followed in cases within such jurisdiction. If the jurisdictional High Court has not expressed any view in

regard to the subject matter and there is conflict of views among other High Courts, then the Tribunal will be free to formulate its own view in the light of Atma Steels P. Ltd. case; however, there is a decision of only one High Court in regard to disputed interpretation or proposition of law, the Tribunal is bound to follow that order since it is not at liberty to disregard the solitary High Court decision."

Following this decision, in case of Phil Corporation Ltd [2002 (144) E.L.T. 585 (Tri. – Mumbai)] following was observed:

"16. An additional factor in following the Bombay High Court judgment is the requirement of jurisdictional discipline. In the Larger Bench Judgment reported in 1997 (96) E.L.T. 257 (CCE, Chandigarh v. Kashmir Conductors) it has been held that the decision of the particular High Court is binding on the authorities placed in their jurisdiction."

Another Larger Bench of Tribunal in case of J.K. Tyre & Industries Ltd. [2016 (340) E.L.T. 193 (Tri. - LB)] observed as follows:

"20. The decision of the Larger Bench in Kashmir Conductors (supra) has been referred to and approved by the Hon'ble Supreme Court in Collector of Central Excise v. Rallis India Ltd. - 2002 (142) E.L.T. 19 (S.C.). The decision of the Hon'ble Karnataka High Court in Bill Forge Pvt. Ltd. being the decision of the jurisdictional High Court and in the context of the fact that the entire cause of action, the transactions in issue, the territory within which the appellant-assessee conducts its business and has its registered office and whereat proceedings were initiated and culminated, constitutes the operative law, for the parties to this appeal. Though the Hon'ble High Courts of Madras, Bombay and Chhattisgarh are seen to have taken a contrary view, have distinguished and were not persuaded to accept the ratio expounded by the Hon'ble

Karnataka High Court, this would not result in eclipse of the precedential vitality of the jurisdictional High Court's ruling, since while a High Court is at liberty to distinguish a persuasive decision of another High Court, the same would not amount to an overruling of the said decision nor operates to operate eclipse the precedential value of the other High Court's ratio insofar as it applies as an exposition of law within the territorial limits of that High Court."

4.10 In view of the above as we find that the issue is squarely covered by the decision of jurisdictional High Court, we do not find any merits in these appeals filed by the Appellant.

5.1 Appeals are dismissed for non prosecution and on merits also.

(Operative part of the order is pronounced in open court)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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