FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 06/02/2017

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70132-70137/2017-CU[DB] dated 17/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

	Application	Appeal	Name and Address of Appellant
1		C/70332/2016	**Sanjivani Non Ferrous Trading Pvt Ltd** Khasra No-30/6/2,devil Roadm,p.o.-asawati PALWAL HARYANA 121102
2		C/70479/2016	**Sanjivani Non Ferrous Trading Pvt Ltd** Corporate Office, Ssr Corporate Park, 8th Floor, 13/6, Delhi-mathura Road, FARIDABAD HARYANA 121003
3		C/70480/2016	**Sanjivani Non Ferrous Trading Pvt Ltd** Corporate Office, Ssr Corporate Park, 8th Floor, 13/6, Delhi-mathura Road, FARIDABAD HARYANA 121003

4 C/70481/2016 **Sanjivani Non Ferrous Trading Pvt Ltd**
Corporate Office, Ssr Corporate Park, 8th Floor, 13/6, Delhi-mathura Road,
FARIDABAD
HARYANA
121003

5 C/70482/2016 **Sanjivani Non Ferrous Trading Pvt Ltd**
Corporate Office, Ssr Corporate Park, 8th Floor, 13/6, Delhi-mathura Road,
FARIDABAD
HARYANA
121003

6 C/70971/2016 **Sanjivani Non Ferrous Trading Pvt Ltd**
Corporate Office, Ssr Corporate Park, 8th Floor, 13/6, Delhi-mathura Road,
FARIDABAD
HARYANA
121003

Name and Address of Respondent

7 C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER CENTRAL EXCISEHOTEL FORMULE 1, WEGMANS BUSINESS PARK, KP-III, GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

8 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

9 C.C. & C.E. & S.T.-Noida
C-56/42...SECTOR 62,
NOIDA,
UTTAR PRADESH-201307

10 C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL FORMULE
1, WEGMANS BUSINESS PARK, KP-
III, GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

11 C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL
FORMULE 1, WEGMANS BUSINESS
PARK, KP-III, GREATER NOIDA
GOTAM BUDH NAGAR
U.P.-

12 C E & ST-Noida Ii
OFFICE OF THE COMMISSIONER
CENTRAL EXCISEHOTEL
FORMULE 1, WEGMANS
BUSINESS PARK, KP-III, GREATER
NOIDA
GOTAM BUDH NAGAR
U.P.-

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Other Appellants and Respondents as per Annexure

Copy To
13Advocate(s) / Consultant(s):

**BIPIN GARG & CO.
ADVOCATES(ALLD)
102, MAHALAXMI
ENCLAVE (ADJ. INCOME
TAX OFFICE), STANLEY
ROAD, CIVIL LINES,
ALLAHABAD (U.P.)-211001**

14 Bar Association, CESTAT, Allahabad

15 Director Publications, Customs, Excise. I.P. Estate, Delhi

16 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

17 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

18 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

19 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

20 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

21 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

22 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

23 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

24 C.D.R. 25 Office Copy 26 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. C/70479, 70480, 70481, 70482, 70332 & 70971/2016-CU[DB]

(Arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0311 to 0314 & 0310-15-16 & NOI-CUSTM-000-APP-0276 to 0280-16-17 respectively dated 12/02/2016 & 30/06/2006 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II, Noida)

M/s Sanjivani Non Ferrous Trading Pvt. Ltd. — **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Noida — **Respondent**

Appearance:

Shri Bipin Kumar Garg, Advocate, &
Ms. Stuti Saggi, Advocate. — for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR). — for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 17/01/2017

FINAL ORDER NO. 70132-70137/2017

Per: Anil G. Shakkarwar

The above stated these appeals are having same issue involved were the appellant is same and therefore they are taken together for decision. The Appeal Nos. C/70479/2016, is arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0311 to 0314-15-16 dated 12/02/2016, C/70480/2016, is arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0311 to 0314-15-16 dated 12/02/2016, C/70481/2016, is arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0311 to 0314-15-16 dated 12/02/2016, C/70482/2016, is arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0311 to 0314-15-16 dated 12/02/2016, C/70332/2016, is arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0310-15-16 dated 12/02/2016 & C/70971/2016, is arising out of Order-in-Appeal No. NOI-CUSTM-000-APP-0276 to 0280-16-17 dated 30/06/2016 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II, Noida.

2. The brief facts of Appeal No. C/70332/2016 are that during the period from 27/08/2013 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. 76020010. 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 28/01/2015. The Hon'ble High Court directed for passing the speaking order on the re-assessment of the assessable value through said order

dated 28/01/2015. 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 25/03/2015 wherein he rejected transaction value in respect 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 25/03/2015 appellant preferred appeal before Commissioner (Appeals). The said appeal was decided through Order-in-Appeal No. NOI-CUSTM-000-APP-0310-15-16 dated 12/02/2016 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II, Noida.

3. In respect of remaining appeals there was no formal Order-in-Original passed but the value was enhanced through the Bills of Entry and appellant preferred appeal for such enhancement of value for the purpose of assessment before Commissioner (Appeals). In Order-in Appeal No NOI CUSTM-000 APP-0311 to 0314-15-16 dated 12/02/2016 the Commissioner (Appeals) passed common order in respect of 4 appeals filed before him against 119 Bills of Entry filed during 23/05/2015 to 30/06/2015, 85 Bills of Entry filed during 01/07/2015 to 31/07/2015, 61 Bills of Entry filed during 25/07/2015 to 30/08/2015 & 70 Bills of Entry filed during 24/08/2015 to 28/09/2015, respectively involving enhanced Customs duty of Rs.1,73,77,573/-, 78,02,765/-, 25,59,112/- & Rs.25,56,432/-. The Commissioner (Appeals) has held that

appellant have filed appeal for challenging assessment in large number of Bills of Entry through a single appeal and therefore the said appeal is not maintainable. On the basis of such findings he has rejected all the appeals, stated above. In Appeal No. C70971/2016 through said Order-in-Appeal No. NOI-CUSTM-000-APP-0276 to 0280-15-16 dated 12/02/2016, Commissioner (Appeals) confirmed the re-assessment order through respective Bills of Entry and rejected the appeal filed by the appellant. Aggrieved by said Orders-in-Appeal the appellant is before this Tribunal.

4. The grounds of appeal are as follows:-

A) There are various varieties of 'Aluminium Waste & Scrap' such as "*Twitch, Tense, Taint, Tabor, Troma, Tally & Zorba, Tough etc.*" and the price of each variety of aluminium scrap depends on the negotiation between the buyer and the seller and that the price is fixed on the basis of the marked condition, demand and supply, content of aluminium and the expected recovery of aluminium from such scrap.

B) Section 14 of Customs Act provides for arriving at assessable value on the basis of transaction value which means that the price actually paid at the time and place of importation goods and where the buyer and seller of the goods are not related and price is the sole consideration for sale.

C) The proper Officer as provided under Section 17 of the Customs Act, 1962 has to examine the contract, insurance policy and other documents whereby the duty leviable on the imported goods may be ascertained. The proper officer accepted the documents filed by the appellant for ascertaining the value of the goods for the purpose of levy of duty thereon as correct.

D) The Order-in-Original dated 25/03/2005 did not decided the value as provided by said Section 14 of Customs Act, 1962 but as stated in the said order the said value was enhanced for assessment taking into consideration Valuation Alert No. 14/2005 dated 16/12/2005 issued by Directorate General of Valuation (CBEC) which do not have any authority under Section 14 of Customs Act, 1962 to decided value of a particular consignment.

5. The ld. Counsel for the appellants has submitted that in the Order-in-Original the ld. Original Authority has failed to establish as to how the enhancement of assessable value was in accordance with the provisions of said Section 14 of Customs Act, 1962 and that the value was enhanced for the purpose of assessment on the basis of considerations which have no authority of law and that the ld. Commissioner (Appeals) also did not interfere with the same and that the enhancement of the assessable value was in violations of the

provisions of law. He has relied on following final orders passed by this Tribunal.

1) Prayas Woollen Pvt. Ltd. *Versus* Commissioner of Customs (Import), Mumbai reported at 2016 (332) E.L.T. 376 (Tri. – Mumbai).

2) Venture Impex Pvt. Ltd. *Versus* Commissioner of Customs (Import & General), New Delhi reported at 2016 (338) E.L.T. 759 (Tri. – Delhi).

3) PNP Polytex Pvt. Ltd. *Versus* Commissioner of Customs, Nhava Sheva reported at 2015 (318) E.L.T. 649 (Tri. – Mumbai).

Further, he contended that as held in the case of Prayas Woollen Pvt. Ltd. goods viz. rags being a residual product, cannot be of standard quality and characteristics, quality, size, shape, colour etc. of rags varies from consignment to consignment and same is applicable to Aluminium Waste & Scrap where the quality of each lot of scrap is different and the quality and recovery potential of each consignment is different. He argued that unless the parameters of quality and parameters related to the recovery of Aluminium Waste & Scrap are compared with the consignment for which the data was collected by the DG Valuation value adopted for such consignments cannot be adopted for the goods imported. He has contended that it was held in the case of PNP Polytex Pvt. Ltd. that the value declared by the importer was required to be established to be the price which was not actually paid and that the buyers and sellers were related persons and the price was not a sole consideration then alone the transaction value can be rejected and that in the present case without establishing any such aspect the Original Authority has rejected the transaction value. He has further argued that the enhancement of assessable value in all the cases is not sustainable.

6. Heard the ld. D. R. who has supported the Orders-in-Appeal.

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 25/03/2015 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~~s~~ is not sole consideration or if the buyers and sellers are related persons then after establishing that the price~~s~~ 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.

8. In result, we set aside all the impugned Orders-in-Appeal and allow all the appeals. The appellant shall be entitled for consequential relief, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001