CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.25028 of 2013

(Arising out of Order-in-Original No.15/2012 – Cus. dated 08.10.2012 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. Integral Traders
Vathakkal Line,
Edavanakkad, Ernakulam District,
Kochin-682 502.
Rept. By its Proprietor
Raoof Ali

Appellant(s)

VERSUS

Commissioner of Customs,
Custom House Willingdon
Island, Ernakulam,
Kerala-682 009.

Respondent(s)

APPEARANCE:

Ms. Rukmani Menon, Advocate for the Appellant
Shri Rajesh Shastry, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR.D.M.MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 20176 / 2025

DATE OF HEARING: 12.09.2024

DATE OF DECISION: 18.02.2025

PER: R. BHAGYA DEVI

This appeal is filed by the appellant M/s. Integral Traders (Proprietor Mr. Raoof Ali H) against Order-in-Original No. 15/2012 dated 08.10.2012 passed by the Commissioner of Customs, Cochin.

2. Brief facts of the case are that the appellant had imported betel nuts from Indonesia vide Bill of Entry No. 196600 dated 26.03.2007 for clearance of 89.02 MTs of 'betel nuts second quality and garbled' from Indonesia declaring unit price of USD 230 per Metric Ton (C&F) declaring the accessible value as Rs.9,29,537.90. The goods were ordered to be assessed on first check appraisement basis. Based on

intelligence gathered that betel nuts were imported from Indonesia by circumventing port restriction imposed by DGFT vide Notification No.49/2004-09, with the effect from 20.02.2007 and by heavily under invoicing, a detailed investigation was carried on by the Special Investigation and Intelligence Branch (SIIB) of the Cochin Custom House. The appellant had cleared 14 consignments from 24.11.2005 to 12.02.2007 and the 15th consignment was cleared provisionally pending investigation. The investigations revealed that 11 out of 15 consignments imported by the appellant, the description of the goods and the value was mis-declared, accordingly, show-cause notice-cum-demand notice under Section 124 read with Section 28(1) was issued rejecting the declared value and for redetermination of value, the goods were held to be liable for confiscation and accordingly, proposal for confiscation and penalty was invoked. The Commissioner in the impugned order takes note of the fact that the original show-cause notice dated 21.04.2011 was issued demanding duty on 29.09.2011 a corrigendum to the show-cause notice was issued. It was held that since duty was already demanded vide the original show-cause notice, the additional quantification of demand by issuing a corrigendum did not in any way make a difference since the demands were already alleged in the original show-cause notice.

2.1 On merits with regard to Bill of Entry No.196600 dated 26.03.2007, the Commissioner found that the copy of the fax message dated 26.03.2007 recovered from the premises of the appellant established the actual transaction value of the consignment as USD 89,900/-, accordingly the Bill of Entry which was assessed provisionally was finalized demanding the differential duty after redetermination of value as per the Customs Valuation Rules, 1988. The goods have also been confiscated and allowed to be redeemed on payment of Rs.20,00,000/- and penalty of Rs.10,00,000/- has been imposed under Section 112(a) of the Customs Act, 1962. With regard to the remaining 14 Bills of Entry imported during the period 24.11.2005 to 12.02.2007, it is observed that documentary evidences indicating undervaluation was available for 10 out of the 14 consignments. Relying upon fax messages dated 13.06.2006 from the supplier, based on the details of imports written in the diary and in the personal computer, the Commissioner observing that since the recovery of the said documents have not been disputed by the appellant and relying upon the same, the value has been redetermined in 10 consignments. With regard to remaining 4 consignments, the Commissioner held that since the goods were sourced from the same supplier and the value declared was same as in the previous 11 Bills of Entry where undervaluation and mis-declaration of description are evidenced, was sufficient enough to reject the declared value and hence, the same was rejected and value was redetermined demanding the differential duty. Accordingly, in all the 15 Bills of Entry, the declared value was rejected and value was redetermined based on the documents recovered from the premises of the appellant. Equivalent penalty was imposed under Section 114A and interest demanded under Section 28AB of the Customs Act, 1962. Aggrieved by this order, the appellant is in appeal before us.

3. The Learned Counsel on behalf of the appellant submitted as follows:

A. The main issue pertains to alleged under valuation of betel nuts imported from Indonesia from one M/s. C.V. Mulia Karya under 15 Bills of Entry. The Commissioner has upheld demand of Rs.34,04,034/-, interest thereon and imposed redemption fine of Rs.20/- lakhs with respect to Bill of Entry No.196600 dated 26.03.2007. With respect to the remaining 14 Bills of Entry, the Commissioner has confirmed demand of Rs.1,62,53,465/- with interest thereon and imposed equivalent penalty.

B. The investigation commenced with Bill of Entry No.196600 dated 26.03.2007, where the declared value per MT was 230 USD. (Total USD 2047460). Based on the investigation carried out and the documents recovered, the statements recorded etc. with respect to this Bill of Entry, fax dated 26.03.2007/30.03.2007 from the supplier CV Mulia Karya, the department alleged that the correct value for the goods imported under this Bill of Entry is 89900 USD. However, there was no indication in the fax message as to whom this amount was sent to and as to how the payment was made. This Bill of Entry was assessed provisionally as per the letter dated 01.06.2007 based on

NIDB value of USD 323.00 per MT and released on execution of Bank Guarantee and surety bond.

C. With regard to 14 Bills of Entry, it is submitted that the declared value was USD 230.00 per MT and was enhanced to 250 USD per MT. Inspite of the value having been enhanced initially at the time of clearance and none of these Bills of Entry were assessed provisionally, the department had proceeded once again to enhance the value based on various documents as indicated herein below:

Sl. No.	Bill of Entry & Date	Documents for enhancement
1	169696 24.11.2005	Details of account maintained by the Appellant in his personal computer, it has been alleged that an amount of Rs.5,57,000/- was paid to Dilena, Representative of Mulia Karya through Shahid and there is a remark that "finally got the money".
2	175491 16.03.2006	Doc No.5/38 indicates certain amounts paid to Dilena through Shahid and some transaction through bank.
3	176606/176607/12.4.06 177380/26.4.06 177653/03.5.06 178528/178567/18.5.06	Relied on documents diary entry, Doc. No.70 & 71 which just indicates a payment of 156599/- USD with respect to the containers covered under these Bills of Entry.
4.	179694/08.6.06	Fax message dated 13.06.2006 from Mulia Kuriya where there is an amount indicated 53.995 USD.
5	193183/25.1.07	Based on documents where the rate was calculated based on the CIF rate mentioned in the table between 0.935-1.297 USD per Kg.
6	173571/7.2.06 182003/17.7.06 186012/19.9.06 194171/12.2.07	No documents found, based on earlier imports from the same supplier. value enhanced

Further, it is submitted that in respect to Bill of Entry 169696 and 175491, where the allegation is that payments were made to Ms. Dilena through Mr. Shahid, neither Ms. Dilena or Mr. Shahid were examined by the authorities to confirm the payments as admitted by Mr. Mohammad Fayaz, Superintendent of Customs in his cross-examination dated 20.12.2011 wherein he stated that though Ms. Dilena was called to Customs House, she was never examined.

D. With respect to the above 14 Bills of Entry, there is no indication at all in the documents discovered by Customs as to whom the amounts were paid to and how and when they were paid. Mr. Raoof, Proprietor the Appellant had though initially in his statement dated 02.04.2007 and 03.04.2007 admitted for under valuation later it was retracted and later in his statement dated 12.4.2007, he admitted the contents of the earlier statement and hence the said retraction was not accepted by the department. It is stated that he was pressurized into accepting his earlier statements without questioning retraction, hence based on such admissions suppression cannot be alleged. Relied upon the following decisions:

- **Ashoka Wire Industries. Vs. Commissioner of Central Excise, Delhi-I 2018 (363) E.L.T. 254 (Tri.-Del.)**
- **Synergy Steels Ltd. Vs. Commissioner of Central Excise, Alwar. 2020 (372) E.L.T. 129 (Tri.-Del.)**
- **Commissioner V. Synergy Steel Ltd. 2020 (372) E.L.T. A26 (S.C.)**

E. Moreover Mr. Mohammad Fayaz, Superintendent of Customs in his statement dated 20.12.2011 confirmed that the contemporaneous price of similar goods imported at that time was 300-350 USD. The goods imported vide Bill of Entry No.196960 the department had taken the NIDB value of 323 per MT for provisional release chose to ignore the same and rely upon unsubstantiated documents to enhance the value and demand higher customs duty. Relied on the following decisions:

- **Commr. Of Cus. (Preventive), Amritsar Vs. Tanmay International. 20018 (363) E.L.T. 181 (Tri.-Chan.)**
- **Commissioner of Customs-I Vs. Aasu Exim Pvt. Ltd. 2018 (11) GSTL 226 (S.C.)**
- **Apurva Corporation Vs.Collector of Customs, Calcutta. 2000 (123) ELT 715 (Tribunal)**

F. With respect to the 4 Bills of Entry, there is no investigation carried out and merely because they were imported from the same supplier, the Commissioner has upheld under valuation and demanded higher duty based mainly on presumption. It is submitted that each Bill of Entry is a separate cause of action and without specific investigation or substantiating evidence, merely because the supplier is the same and goods are the same, there can be no presumption about the under valuation. Therefore, demand with respect to these 4 Bills of Entry is unsustainable.

G. It is submitted that with respect to the 14 Bills of Entry mentioned in Annexure -C1 and C2, demand is barred by limitation for the following reasons. In all these Bills of Entry, the declared price was 230 USD per Mt and the value assessed by the department was 250 USD per MT. Therefore, the department has finally assessed these Bills of Entry based on the value of contemporaneous imports. Therefore, the department was well aware of these transactions at the time of clearance under these Bills of Entry. The Commissioner has also observed that "5 Bills of Entry mentioned in Ann -C2 to Show Cause Notice, filed between 24.11.05 and 12.04.2006 and the demands both original Show Cause Notice and the corrigendum were issued after 5 years from the date of Bills of Entry". Therefore, the Commissioner has accepted that the Bills of Entry at Ann-C2 are barred by limitation. Similarly, Mr Mohammad Fayaz, Superintendent dated 20.12.2011 has admitted that Bills of Entry in Ann-C2 are beyond 5 years. However, thereafter the Commissioner has held that the department came to know the actual facts of mis-declaration and under valuation only in March 2007, when the investigation was launched, hence going by the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Mehta and Co, 2011 (64) ELT 481, held the relevant date for computation for extended period will be 'the date of knowledge' and therefore, Show Cause Notice dated 21.4.2011/corrigendum dated 29.9.2011 were within the period of 5 years from the date of knowledge. However, it is pointed out that in Section 28 of the Customs Act, date of knowledge is not one of the relevant dates prescribed for raising demand of duty which was also upheld by the Larger Bench of the CESTAT in the case of **Vazir Sultan Tobacco Co. Ltd. vs. Collector of C. Ex., Hyderabad: 1985 (21) ELT 757 (Tribunal).**

H. With regard to 14 Bills of Entry, the values were enhanced at the time of clearance from 230 per MT to 250 USD per MT and the assessments were final, thus, the department had acknowledged the value declared and the alleged undervaluation. Therefore, the demand with respect to the 14 Bills of Entry are barred by limitation, as the allegation of suppression is not established. Only with respect to Bill of Entry No.196600, which was under provisional assessment, the demand, if sustainable on merits, is within limitation. Hence, penalties are also not justified. Relied upon the following decisions:

- **Ajanta Manufacturing Ltd. Vs. Commissioner of Customs, Kandla. (Para 5 and 6) 2016 (333) E.L.T. 463 (Tri. – Ahmd.)**
- **Sah Petroleums Ltd. Vs. Commr. Of Cus. (Import) JNCH, Nhava Sheva (Para 23) 2017 (358) E.L.T. 483 (Tri. – Mumbai)**

I. It is further submitted that originally in the show-cause notice, there was no claim for interest with respect to the 14 Bills of Entry and only in the corrigendum to the show-cause notice dated 29.09.2011 for the first-time, demand with interest was made for the 14 Bills of Entry. This was done much after the Appellant had submitted their reply to the show-cause notice.

4. The Learned Authorised representative on behalf of the Revenue submitted that the import of betel nuts were clearly in violation of Port Restriction as envisaged vide Notification No.49(RE-2006)2004-2009 dt.20.02.2007. The appellant had illegally imported the beetle nuts at Cochin Port, instead of Mangalore Port. Further Notification No.15(Re-2008)2004-2009 dated 4th June2008, removing the Port Restriction but bringing the Price Restriction i.e. Import Price shall not be less then Rs. 35 per KG (All Variety) and this Notification was valid till 13th August 2008 and later amended vide Notification No.10(IRE-2008)/2009-12 dated 14th August 2008, enhancing Minimum Import Price to Rs 75per Kg (All Variety). Therefore, *per se* all Shipment have to necessarily adhere to this Price restriction in compliance to DGFTs Notification.

4.1 It is also stated that in terms of Rule 10A of Customs Valuation Rules, (CVR) 1988 and Determination under Rule 4(1) of CVR 1988, upon doubting the price declared by the importer, the department can reject and apply contemporaneous value and also had to comply to the restrictions of the Notifications issued by the DGFT. It is submitted as against the price of Rs.35/- Per Kg and Rs.75/- per kg (All variety) the Price quoted by the appellant was USD 230 PMT with respect to

Bill of Entry No.196600 dated 26.03.2007 works out to Rs. Rs.9.92 Per Kg ((230/1000)*43.16 by taking prevailing rate@1USD= Rs.43.16). In respect of other Bills of entry, it is found that the prices quoted are much below the price fixed by DGFT.

4.2 It is further submitted that the Revenue has clearly established undervaluation based on the documents recovered during investigations. The argument advanced by the Appellant that since Ms. Delina's statement was neither recorded nor was cross-examined does not hold any water, as she was found to be acting as a Broker between the Actual Indonesian Supplier and Indian Importers, one of them being the Appellant.

2005; 2006 and 2007 the Price Quoted by the Appellant Importer

	BoE	Date	Unit Price(USD /MT)	Qty Imported (MT)-Gross as per ICEGATE	Qty Imported (MT)-NET	Unit Price Declared (USDper Kg.)	Unit Price Declared(INRper Kg.)	Price decalred(CF) in USD	Conversion rate@ 1USD=	Price Declared (INR)as per ICEGATE	Price Declared (INR)	Sale Procceds(USD) made AS PER Seized Doc.	Sale Procceds(INR) made AS PER Seized Doc	Dt. Of Pmt.	Dt. of OOC	D S
1*	169696	24-Nov-05	230.00	17.202	17.00	0.014	0.618	3910.00	45.7	196638	178687.00		557000	2-Dec-05	02-Dec-05	
							0.000									
2*	176606	12-Apr-06	230.00	17.959	17.55	0.013	0.591	4035.35	45.11	200926	182034.64			PHYSICAL	NA	
3*	176607	12-Apr-06	230.00	35.918	35.09	0.007	0.296	8070.70	45.11	401852	364069.28	46454.00		13-Apr-06	13-Apr-06	
							0.000									
4*	177380	26-Apr-06	230.00	17.959	17.55	0.013	0.591	4035.35	45.05	200926	181792.52			27-Apr-06	27-Apr-06	
5*	177653	3-May-06	230.00	35.309	34.50	0.007	0.299	7933.85	44.82	399442	355595.16	54050.00		12-May-06	12-May-06	
							0.000									
6*	178528	18-May-06	230.00	35.918	35.09	0.007	0.297	8070.00	45.28	406332	365409.60			19-May-06	19-May-06	
7*	178567	18-May-06	230.00	17.959	17.54	0.013	0.594	4035.00	45.28	203166	182704.80	56095.00		19-May-06	19-May-06	
							0.000									
8*	179694	8-Jun-06	230.00	53.02	51.80	0.004	0.204	11914.00	45.93	611071	547210.02	53995.00		12-Jun-06	14-Jun-06	
9*	173571	7-Feb-06	230.00	17.14			0.000		44.17	.				10-Feb-06	10-Feb-06	
10#	**182003**	**17-Jul-06**	230.00	35.65			0.000		46.66	414849				22-Jul-06	24-Jul-06	
11#	**186012**	**19-Sep-06**	230.00	54.46			0.000		46.02	636693				22-Sep-06	22-Sep-06	
12#	**194171**	**12-Feb-07**	230.00	35.47			0.000		44.01	393047				15-Feb-07	17-Feb-07	
13	196600	26-Mar-07	20474.60	91.22	89.02	0.23	9.927	20474.60	43.16	929538	883683.74	89900.00		11-Jun-07	11-Jun-07	
14	193183	25-Jan-07	230.00	53.81				12081.90	44.16		533536.70	52494.52		20-Mar-06	20.03.2006	
15	175491	16-Mar-06	230.00	32.74					44.32	379766				20-Mar-06	20-Mar-06	
	*Covered underSCN dtd. 21/04/2011															

Based on the above Table and below Table showcasing the price adopted by the Appellant based on Invoice Declared Price of USD 230 PMT, the price is found to be heavily undervalued when compared to the value restrictions imposed by the DGFT during the relevant period.

Sl No.	BoE	Date	Unit Price(USD /MT)- Ref.Para	Qty Imported (MT)-NET	Conversion rate@ 1USD=Rs.	Price Declared (INR)as per ICEGATE	Price Rs.per Kg
1*	169696	24-Nov-05	230.00		45.7	196638	10.51
2*	176606	12-Apr-06	230.00		45.11	200926	10.38
3*	176607	12-Apr-06	230.00		45.11	401852	10.38
4*	177380	26-Apr-06	230.00		45.05	200926	10.36
5*	177653	3-May-06	230.00		44.82	399442	10.31
6*	178528	18-May-06	230.00		45.28	406332	10.41
7*	178567	18-May-06	230.00		45.28	203166	10.41
8*	179694	8-Jun-06	230.00		45.93	611071	10.56
9*	173571	7-Feb-06	230.00		44.17	192948	10.16
10#	**182003**	**17-Jul-06**	230.00		46.66	414849	10.73
11#	**186012**	**19-Sep-06**	230.00		46.02	636693	10.58
12#	**194171**	**12-Feb-07**	230.00		44.01	393047	10.12
13	196600	26-Mar-07	230.00	89.02	43.16	929538	9.93
14	193183	25-Jan-07	230.00		44.16	599563	10.16
15	175491	16-Mar-06	230.00		44.32	379766	10.19
	*Covered underSCN dtd. 21/04/2011						
	#Covered under Addendum to SCN dtd 29/09/2011						

4.3. The Revenue further submits that the as per Import Data of Betel Nuts for the Year 2006-07 available with DGICS (Director General of Commercial Statistics and Intelligence, Kolkata, the import price of Beetle Nuts (Whole) comes to Rs.15.5Per Kg and that of Split Beetle Nuts comes to Rs. Rs.13/- per Kg. Taking this rate into consideration, it is found to be almost 33% undervalued. Moreover, the Appellant himself admits that the bank transactions were only for the declared value and the balance amounts based on instructions of Ms. Dilena, (Business Partner Dubai) whom Appellant be-friended during 2005 who had asked to arrange for payment of Rs.5,57,000/-, (Expenditure Entry No. 3/38-Question No. 8-Pg. 69) through Mr. Shahid at Dubai) in lieu of "Exports made by her, the payments were sent to Ms. Dilena through Shahid". Moreover the Appellant himself admits that he had made 14 clearance of betel nuts, including clearance of 89.02MT,quoting Price of USD 230 PMT, declaring betel nut Second Quality Un-Garbled, but actually consist of ASSORTED Quality & Types. Appellant's pleading that such Cross Price Adoption based on NIDDB Data/Actual Shipment Settlement Amount is found to be specious argument shorn of legally drawn inference, as observed by the Hon'ble CESTAT, while disposing Appellant's stay application, discussed above.

4.4 Relying on other incriminating documents Seized and statements given by various individuals, it is submitted that undervaluation is clearly proved. It is admitted fact that based on discreet intelligence, the present case was booked against the Appellant after interception of Bill of entry 196600 dated 25th January 2007 and based on the statements recorded under Section 108 of Customs Act, 1962. Investigation with respect to previous 14 imports were launched where it was found that even those imports were grossly undervalued quoting the Unit Price at USD 230 PMT. Therefore, applying the ratio of the decision in the case of **COMMISSIONER OF C. EX., VISAKHAPATNAM Versus MEHTA & CO.: 2011 (264) E.L.T. 481 (S.C.),** wherein the relevant date for computation of extended period for show-cause notice is date of knowledge and in the instant case, the due date to issue show-cause needs to be reckoned from the date of cause of action i.e. Mahazar dated 30.03.2007. Relied on the decision in the case of **Shiv Shakti Enterprises vs Collector Of Customs: 1991(52) ELT439(TRI-DEL).**

5. Heard both sides. At the outset let us look into the preliminary objection raised by the Revenue on the Port Restriction as per the DGFT Notification. The Commissioner in the impugned order has observed as follows *"All the five containers in the said bill of lading were loaded on board the vessel envy MSC Carole VOY Y 709A only on 02. 03. 2007. Thus, the noticee had manipulated the date of loading in the bill of lading to import the consignment in violation of the DGFT Notification No. 49 (RE -2006) 2004-2009 dated 20.02.2007 restricting the import of betel nuts only through Mangalore Port with effect from 20.02.2007. However, I find that this violation is not taken as a charge in the show-cause notice as the Hon'ble High Court of Kerala has set aside the said DGFT Notification."* In view of the above, the preliminary objection raised by the Revenue is rejected.

5.1 The primary objection raised by the appellant is that the demand is beyond five years if the date of corrigendum to the show-cause notice is taken into consideration. This has been clearly rebutted by the Commissioner by observing that *"I find on* *examination that no additional demand of duty has been made by way of corrigendum dated 29.09.2017 since in the present case the corrigendum does not seek to increase the amount of duty under demand, the case laws cited by the notice are not applicable. The differential duty and interest in respect of nine consignments and differential duty in respect of five consignments were demanded in the original show-cause notice itself. Hence, I find no merit in the noticee's allegations that the basic structure and character of the original show-cause notice has undergone substantial change with the issue of corrigendum and that the date of corrigendum has to be taken for the purpose of calculation of time limit, which would make the demand with regard to 12 bills of entry time barred. In fact, the demand of differential duty along with interest in respect of the 7 bills of entry stated to be time barred by issue of corrigendum was made in the original Show cause notice and no additional demand of duty was made with respect to the said bills of entry in the corrigendum".* The show-cause notice dated 21.04.2011, the original para 26(f) read as follows:

> *'(f) on re-determination of the value in respect of bills of entry nos. 169696/ 24.11.05, 175491/16.03.06, 176606 177380/26.04.06, 177653/03.05.06, 178528 & 176607/12.04.06, & 178567/18.05.06, 179694/08.06.06, 193183/25.01.07, 173571/07.02.06, 182003/17.07.06, 186012/19.09.06 and 194171/12.02.07, i) an amount of Rs. 1,31,35,885/- as worked out as mentioned in Annexure C-1 should not be demanded and recovered from the said M/s. Integral Traders in terms of proviso to Section 28(1) of the Customs Act, 1962 along with interest as applicable under Section 28AB ibid. ii) An amount of Rs.31,17,580/- as shown in Annexure C-2 should not be paid by M/s. Integral Traders'.*

The Corrigendum reproduced below has amended only the above para 26(f) wherein the duties have been clubbed and there is no material change as seen from para 26(f) in the original show-cause notice and amended para (f) issued in the corrigendum. Therefore, the original show-cause notice is valid for all the 15 bills of entry and the objection raised by the appellant is rejected.

5.2 Now coming to the merits of the case, we find that the demand is based on undervaluation of the betel nuts imported by the appellant. The demand on one Bill of Entry No.196600 dated 26.03.2007 which was a live Bill of Entry at that point of time, it was assessed provisionally and later on based on documents recovered from the premises of the importer, the same was finalized by enhancing the value and demanding differential duty. The betel nuts imported by the above Bill of Entry was declared as 'betel nut second quality ungarbled' but on examination, it was found that it consisted of various varieties of betel nuts and the value declared was for only one variety of betel nut which was applied to all the varieties of betel nuts. This clearly proves misdeclaration of the description of the products followed by misdeclaration of value also. Hence, rejection of transaction value by the authorities is upheld.

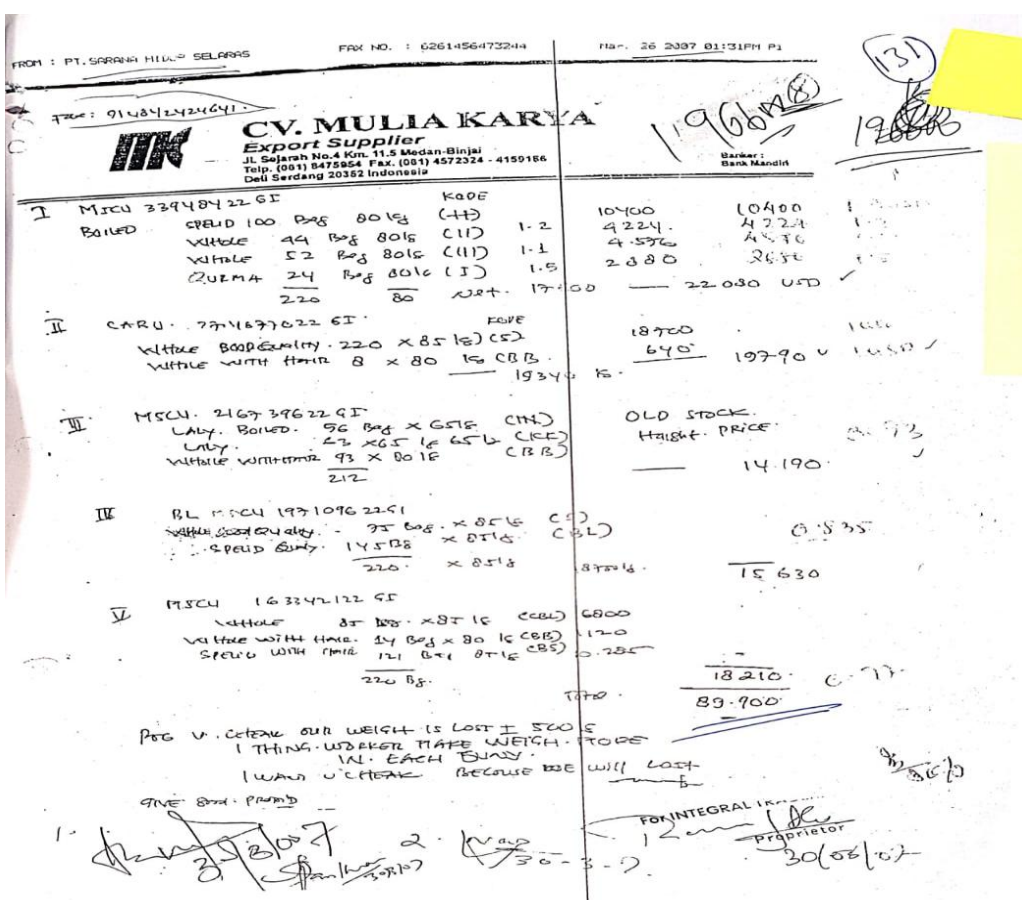
5.3 The Bill of Entry 196600 dated 26.03.2007 was filed for clearance of 89.02 MT (5X 20= 1100 bags) of betel nuts declared as 'betel nut second quality ungarbled' and the Invoice No.03/MK/CI/II/2007 dated 28.02.2007 of M/s. C.V.Mulia Karya, Indonesia was showing a unit price of USD 230 per metric ton (C&F) and total value of USD 2047460 (C&F). Detailed examination of the consignment revealed that the consignment comprised of different varieties namely whole, whole with hair, split, split with hair, boiled etc.; and the bags contained distinctive marks for identification. Samples were drawn from bags having different marks and shown to the appellant and this was admitted in his statement dated 12.04.2007. On searching the premises of the appellant, a fax message dated 26.03.2007 was found which was in the letterhead of the supplier wherein the container details, the description of the goods, weight per bag, and number of bags of different types in each container, identification marks on the bag, item-wise/container-wise value and total value were clearly mentioned. This was admitted by the appellant in his statement. This fax message declared the transaction value of the consignment as USD 89,900. The only objection of the appellant in this case is that there is no evidence that the payments were made to the supplier and the allegation that payments were made to Ms. Dilena through Mr. Shahid has not been proved. It is also alleged that though Ms. Dilena was available, no questions were asked about the payment. The packing list filed in the above Bill of Entry contain the following details:

Description of goods (5x20' betel nut 2nd quality ungarbled)

Sl. No.	Container No.	No. of Bags	Net Weight
1.	CARU 2746770/MSC 3977645	228	19340 Kgs
2.	MSCU 1633421/MSC 3977656	220	18205 Kgs
3.	MSCU 1971096/MSC 3977657	220	18700 Kgs
4.	MSCU 2167396/MSC 3977641	212	15175 Kgs
5.	MSCU 3339484/MSC 3977650	220	17600 Kgs
	Total		89.02 mts

5.4 In the Mahazar dated 04.04.2007, it is stated that MSCU 1971096 container was opened in the presence of the appellant which contained gunny bags and it was found that these bags were marked as 'S' and others 'BL'. Similarly, in container 2167396, the gunny bags were marked of 'KK' and 'BB' similar exercise was carried on with all other containers and found to have such markings. In the Mahazar dated 05.04.2007, it was stated that 'BL' contained split betel nuts 'CBL' and 'BB' contained whole betel nuts and samples drawn from these gunny bags showed different varieties of betel nuts of various quantities which tallied with the packing list filed by the appellant with regard to quantities and the fax message reproduced below. These facts that were part of the Mahazar, not disputed by the appellant. Since there is a clear misdeclaration of the products, the transaction value has to be necessarily rejected.

5.5 The copy of fax dated 13.06.2006 is reproduced below:


FROM : PT.SARANA HIDUP SELARAS FAX NO. : 6261456473244 Mar. 26 2007 01:31PM P1

CV. MULIA KARYA
Export Supplier
JL Sejarah No.4 Km. 11.5 Medan-Binjai
Telp. (061) 8475954 Fax. (061) 4572324 - 4159156
Deli Serdang 20352 Indonesia
Banker : Bank Mandiri

I MSCU 3394842 2GI KODE
BOILED SPLID 100 Bag 80 kg (H) 1.2 10400
WHOLE 49 Bag 80kg (II) 1.1 4224
WHOLE 52 Bag 80kg (III) 1.5 4.576
QURMA 24 Bag 80kg (I) 2380
220 80 Net. 17400 — 22 030 USD

II CARU. 2746770 22 GI KODE
WHOLE GOOD QUALITY. 220 x 85 kg (S) 18700
WHOLE WITH HAIR 8 x 80 kg CBB. 640
19340 kg. 19790

III MSCU. 2167396 22 GI
LALY. BOILED. 56 Bag x 65 kg (HH) OLD STOCK.
LALY. 63 x 65 kg 65 kg (KK) Haight. PRICE
WHOLE WITH HAIR 93 x 80 kg (BB)
212 14.190

IV BL MSCU 1971096 22 GI
WHOLE GOOD QUALITY. 75 Bag. x 85 kg (S)
SPLID QUALITY. 145 Bag x 85 kg (BL)
220. x 85 kg 18700 kg. 15 630

V MSCU 1633421 22 GI
WHOLE 85 Bag. x 85 kg (CBL) 6800
WHOLE WITH HAIR. 14 Bag x 80 kg (CBB) 1120
SPLID WITH HAIR 121 Bag 85 kg (CBS)
220 Bg. 18 210
TOTAL. 89.700

PLS U. CHEAK OUR WEIGHT IS LOST ± 500 kg
I THING. WORKER MAKE WEIGH. TORE
IN. EACH BUNDY.
I WANT U CHEAK BECOUSE WE WILL LOST
GIVE GOOD. PROMD

FOR INTEGRAL ...
Proprietor
30/03/07

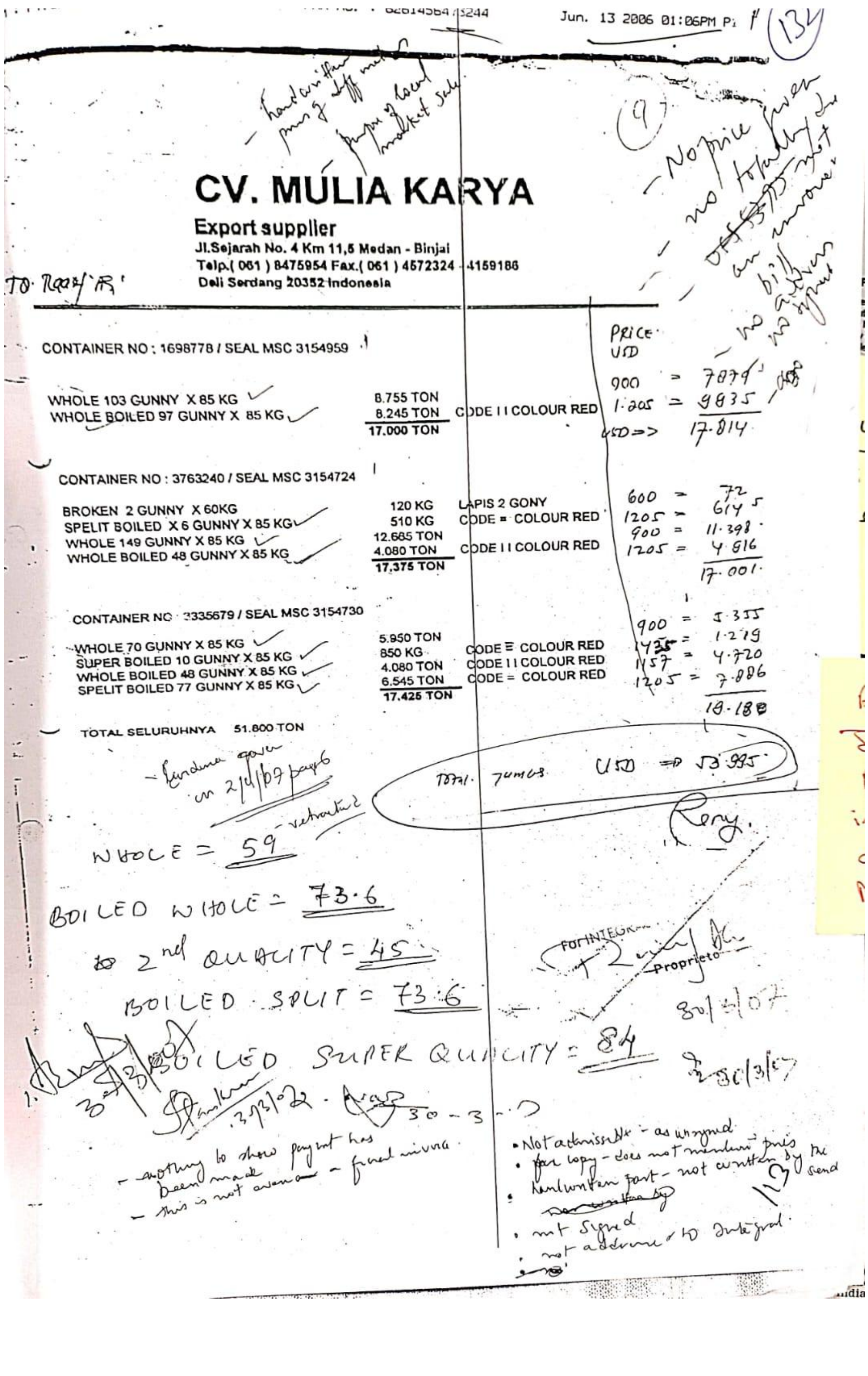
When compared the fax copy with the packing list, it is seen that the container numbers and number of bags in each container tallies. While the packing list mentioned only one variety of betel nut but the fax clearly shows different varieties of betel nut, which is also confirmed by the examination report and admitted by the appellant. The total price for all these varieties of betel nuts quoted as per this fax message price is USD 89,900 and this fax is on the letter head of the supplier. In view of the above, the entries in the fax message cannot be ignored. The appellant in his statement dated 26.03.2007 and 12.04.2007 admitted to the 5 containers that had different varieties of betel nuts and to the value as per the fax message. Though the statements were retracted at a later date, the retraction was withdrawn. The appellant has also provisionally cleared the above betel nuts on execution of bond and bank guarantee vide release order dated 11.06.2007. During the relevant period as rightly pointed out by the Revenue, the DGFT had also issued a Notification regarding the value of the betel nuts at Rs.35/75 per Kg which clearly establishes that the appellant had undervalued the value of the betel nuts. The appellant vide statement dated 02.04.2007 submitted that 'the invoice price is routed through the bank channels and the differential amount is made by his business partners in Dubai to the supplier'. Based on the above documents recovered from the premises of the appellant which is also substantiated by his statements, the value has been rightly redetermined by the Commissioner and hence, the differential duty is upheld.

6. With regard to 10 Bills of Entry which were cleared between 24.11.2005 to 12.02.2007, the documentary evidences indicating undervaluation were available as per the table below:

Sl. No.	**Bill of Entry & Date**	**Documents for enhancement**
1	169696 24.11.2005	Details of account maintained by the Appellant in his personal computer, it has been alleged that an amount of Rs.5,57,000/- was paid to Dilena, Representative of Mulia Karya through Shahid and there is a remark that "finally got the money".
2	175491 16.03.2006	Doc No.5/38 indicates certain amounts paid to Dilena through Shahid and some transaction through bank.

3	176606/176607/12.4.06 177380/26.4.06 177653/03.5.06 178528/178567/18.5.06	Relied on documents diary entry, Doc. No.70 & 71 which just indicates a payment of 156599/- USD with respect to the containers covered under these Bills of Entry.
4.	179694/08.6.06	Fax message dated 13.06.2006 from Mulia Kuriya where there is an amount indicated 53.995 USD.
5	193183/25.1.07	Based on documents where the rate was calculated based on the CIF rate mentioned in the table between 0.935- 1.297 USD per Kg.

The copy of fax dated 13.06.2006 is reproduced below:


Jun. 13 2006 01:06PM

CV. MULIA KARYA

Export supplier
Jl.Sejarah No. 4 Km 11,5 Medan - Binjai
Telp.(061) 8475954 Fax.(061) 4572324 - 4159186
Deli Serdang 20352 Indonesia

CONTAINER NO : 1698778 / SEAL MSC 3154959

WHOLE 103 GUNNY X 85 KG	8.755 TON		900 = 7879
WHOLE BOILED 97 GUNNY X 85 KG	8.245 TON	CODE I I COLOUR RED	1.205 = 9835
	17.000 TON		USD => 17.814

CONTAINER NO : 3763240 / SEAL MSC 3154724

BROKEN 2 GUNNY X 60KG	120 KG	LAPIS 2 GONY	600 = 72
SPELIT BOILED X 6 GUNNY X 85 KG	510 KG	CODE = COLOUR RED	1205 = 614
WHOLE 149 GUNNY X 85 KG	12.665 TON		900 = 11.398
WHOLE BOILED 48 GUNNY X 85 KG	4.080 TON	CODE I I COLOUR RED	1205 = 4.916
	17,375 TON		17.001

CONTAINER NO 3335679 / SEAL MSC 3154730

WHOLE 70 GUNNY X 85 KG	5.950 TON		900 = 5.355
SUPER BOILED 10 GUNNY X 85 KG	850 KG	CODE ≡ COLOUR RED	1435 = 1.219
WHOLE BOILED 48 GUNNY X 85 KG	4.080 TON	CODE I I COLOUR RED	1157 = 4.720
SPELIT BOILED 77 GUNNY X 85 KG	6.545 TON	CODE = COLOUR RED	1205 = 7.886
	17.425 TON		19.180

TOTAL SELURUHNYA 51.800 TON

TOTAL USD => 53.995

WHOLE = 59

BOILED WHOLE = 73.6

2nd QUALITY = 45

BOILED SPLIT = 73.6

BOILED SUPER QUALITY = 84

- Not admissible - as unsigned
- fax copy - does not mention
- handwritten part
- not signed

6.1 On examining these documents, we find that with regard to Bill of Entry No.169696 dated 24.11.2005 and Bill of Entry No.175491 dated 16.03.2006, the declared value was enhanced based on the documents recovered from the computer of the appellant. Similarly for Bill of Entry No. 176606 and 176607 dated 12.04.2006, 17738 dated 26.04.2006, 177653 dated 03.05.2006, 178528 and 178567 dated 18.05.2006, the Commissioner has relied upon the entries made in the diary recovered from the appellant's premises to enhance the value and relies on fax message dated 13.06.2006 recovered from the appellant's premises to compare the container number, seal number, description of the products, weight, number of bags etc. Admittedly, the contents of the said fax message were for different varieties and the total value of the goods was for these varieties of betel nuts. The Commissioner also observes that the appellant had made payment of the declared invoice value through the banking channels and the differential amount between the actual value and declared value was sent through his business partners. However, the fact remains that the goods mentioned in the above Bills of Entry were declared as 'betel nuts second quality ungarbled' and the Revenue after examination of the goods enhanced the value from 230 per MT to 250 per MT and assessed to duty and cleared the same on payment of duty, thus finally assessing the bills of entry. The copies of the Bills of Entry placed on record shows the description of the products as 'betel nut second quality ungarbled' and was assessed to duty at 250 USD per MT. Hence, the question of reopening these cases based on the fax messages and diary entries where the values are declared for different varieties cannot be applied to those Bills of Entry, since the Revenue has accepted the declaration of the products by the appellant, assessed the same and cleared finally after enhancement of the value based on the contemporaneous prices prevalent at that point of time.

7. With regard to remaining 4 Bills of Entry 173571/7.2.06 182003/17.7.06, 186012/19.9.06 and 194171/12.2.07, the Commissioner clearly held that no documentary evidences were available but since the goods were imported from the same supplier and the declared value was 230 USD/MT as per the other bills of entry,

even though no documents were recovered based on the evidences with regard to the earlier 11 Bills of Entry, the transaction value is rejected and the value of the consignments are redetermined. As we have observed above since the Bills of Entry were finally assessed after examination of the goods, the question of reopening of the same without any valid documents cannot be sustained. Hence, with respect to Four (4) Bills of Entry, the declared value is accepted.

8. Summing up, the Bill of Entry No. 196600 dated 26.03.2007, the rejection of transaction value is upheld and the redetermination of value at USD 89,900 under Rule 4 of the Customs Valuation Rules, 1998 is sustained, accordingly, the differential duty of Rs.34,04,034/- along with interest as applicable is upheld. Since, the goods were mis-declared followed by misdeclaration of value, confiscation is also upheld; however the fine in lieu of confiscation is reduced to Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) and penalty to Rs.1,50,000/-(Rupees One Lakh Fifty Thousand Only) under Section 112(a) of the Customs Act, 1962. The demands regarding all other bills of entry stand set aside.

Appeal is allowed partially.

(Order pronounced in Open Court on 18.02.2025.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

rv