

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 21895 of 2015

(Arising out of Order-in-Original No. 02/2015-Commr dated
31.03.2015 passed by the Commissioner of Customs, Mangalore.)

**M/s. Total Oil India Pvt. Ltd.,
LPG Division,**

138, Raheja Paramount,
Residency Road,
Bangalore – 560 025.

Appellant(s)

VERSUS

Commissioner of Customs,

New Customs House,
Mangalore.

Respondent(s)

With

Customs Appeal No. 21900 of 2015

(Arising out of Order-in-Original No. 02/2015-Commr dated
31.03.2015 passed by the Commissioner of Customs, Mangalore.)

**Mr. Sasi Chemmenkottil,
Vice President (Operations
and Logistics)**

**M/s. Total Oil India Pvt. Ltd.,
LPG Division,**

138, Raheja Paramount,
Residency Road,
Bangalore – 560 025.

Appellant(s)

VERSUS

Commissioner of Customs,

New Customs House,
Mangalore.

Respondent(s)

APPEARANCE:

Mr. Ravi Raghavan and Ms. Shradha Pandey, Advocates for the
Appellants

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 21371 - 21372 /2025

DATE OF HEARING: 28.02.2025

DATE OF DECISION: 26.08.2025

DR. D.M. MISRA

This is an appeal filed against Order-in-Appeal No.02/2015-Commr dated 31.03.2015 passed by the Commissioner of Customs, Mangalore.

2. Briefly stated the facts of the case are that the appellant engaged in the import of LPG had imported through New Mangalore Port (NMP, for short) and filed Bill of Entry No.4374429 dated 17.01.2014 for import of 6739.136 MTs of LPG through vessel 'SCOTER' declaring the CIF value as USD 1052.99 PMT; also they have filed Bill of Entry No.4400740 dated 20.01.2014 for import of 1672.313 MTs declaring CIF value as USD 1054.28 PMT through vessel 'TURK GAZ'; the date of entry of the vessels shown as 20.01.2014 and 24.01.2014 respectively. After unloading, the vessel "SCOTER" left the NMP, however, in case of the vessel 'TURK GAZ', the Department, on the basis of intelligence that the LPG had been loaded at Iran Port and declared to be of UAE origin by manipulating the documents of import, recorded statement of the Master of the vessel and after examination of the log book etc. found that the LPG cargo was loaded at Assaluyeh Port, Iran; however it was shown as Jebel Ali, Dubai. Consequently, the premises of the appellant was visited by the officers and the quantity of LPG lying in the shore tanks were seized and later released provisionally on execution of Bond and Bank Guarantee. After completion of investigation, a show-cause notice was issued to the appellant on 21.02.2014 and addendum dated 31.10.2014 alleging misdeclaration of the Country of Origin and under-valuation of the imported goods; proposed to enhance the

declared assessable value from Rs.55,65,60,764/- to Rs.64,98,12,188/- in case of both the vessels and differential duty of Rs.1,28,70,561/- was sought to be recovered from the appellant; seized the goods proposed to be confiscated under Section 111(m) and under Section 111(d) of the Customs Act, 1962; proposed penalty under Section 112(a) and 114AA of the Customs Act, 1962 on the appellants. On adjudication, the learned Commissioner passed following order:-

i) I reject the total declared assessable value of Rs.55,65,60,764/- (Rupees Fifty Five Crores Sixty Five Lakhs Sixty Thousand Seven Hundred and Sixty Four only) in respect of 1672.313 MT of LPG imported per vessel LPG/C TURK GAZ and 6739.136 MT of LPG imported per vessel LPG/C SCOTER in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [CVR) and redetermine the same at Rs. 59,08,50,204/- (Rupees Fifty Nine Crore Eight Lakh(s) Fifty Thousand Two Hundred Four Only) in total by adjustment of declared transaction value as provided under Rule 3(1) of CVR and Rule 10(2) ibid read with Section 14 of the Customs Act, 1962 for the reasons already discussed;

(ii) I order finalisation of the assessment in respect of the impugned bills of entry and confirm the demand of duty of an amount of Rs. 47,32,629/- (Rupees Forty Seven Lakh(s) Thirty Two Thousand Six Hundred Twenty Nine Only), being the Customs duty short levied/short paid in total, on account of redetermination of the total assessable value as at (i) above in respect of the subject goods referred above at Sl. No.(i) above and order that the same should be paid by them in terms of Section 18(2) of the Customs Act, 1962 on finalisation of provisional duty Bonds executed in this regard;

(iii) owing to finalisation of assessments as referred above at Sl. No.(ii) above, I demand the interest at applicable rate(s) on the Customs duty short levied/short paid amounting to Rs. 47,32,629/- (Rupees Forty Seven Lakh(s) Thirty Two Thousand Six Hundred Twenty Nine Only), in respect of the subject goods referred above at Sl. No.(i) and order recovery of the same from the importer under Section 18(3) of the Customs Act, 1962;

(iv) I hold that the subject imported goods, referred above at Sl. No.(i) and covered under impugned two Bills of Entry, with redetermined assessable value of Rs. 59,08,50,204/- (Rupees Fifty Nine Crore Eight Lakh(s) Fifty Thousand Two Hundred Four Only) in total is liable to confiscation / rendered liable to confiscation under Section 111(m) of the Customs Act, 1962 inasmuch as the said goods do not correspond in respect of value and other

material particulars i.e., country of origin with the respective Bills of Entry filed;

(v) I hold that the subject imported goods, referred above at Sl. No.(i) and covered under two impugned Bills of Entry with redetermined assessable value of Rs. 59,08,50,204/- (Rupees Fifty Nine Crore Eight Lakh(s) Fifty Thousand Two Hundred and Four only) read with RBI Circular No.31 (RBI/2010-11/235) dated 27.12.2010 read with the Foreign Exchange Management (Manner of Receipt and Payment) Regulations 2000;

(vi) I given an option to redeem 1672.313 MTs of LPG valued at 11,75,77,816/-, which was seized and provisionally released on execution of Bond and furnishing of bank guarantee, on payment of fine of Rs. 50,00,000/- (Rs. Fifty Lakhs only) in lieu of confiscation in terins of the provisions of Section 125 of the Customs Act, 1962;

(vii) I impose a penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) under Section 112(a) of the Customs Act, 1962 on M/s. Total Oil India Pvt Ltd., for their acts of omission and commission which led to short levy/short payment of duty amounting to Rs. 47,32,629/- (Rupees Forty Seven Lakh(s) Thirty Two Thousand Six Hundred Twenty Nine Only) in respect of the said goods referred above at Sl. No. (i) above;

(vii) I impose a penalty of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) under Section 114AA of the Customs Act, 1962 on M/s. Total Oil India Pvt Ltd., for furnishing fraudulent import/shipping documents, incorrect material particulars and false declarations filed in respect of the subject imported goods referred above at Sl. No. (I) above.

(ix) I hold that the vessels LPG/C TURK GAZ and LPG/C SCOTER are liable to confiscation / rendered liable to confiscation under Section 115(2) of the Customs Act, 1962 for having knowingly carried the subject goods as detailed at (i) above, which are liable to confiscation under Section, 111 (d) and Section 111(m) of the Customs Act, 1962 and for having abetted the parties concerned in the smuggling of the said goods into India from Iran;

(x) I given an option to redeem the vessel LPG/C Turk Gaz, for which port clearance was given on execution of Bond along with, bank guarantee, on payment of fine of Rs. 20,00,000/- (Rs. Twenty Lakhs only) in lieu of confiscation in terms of the provisions of Section 115 of the Customs Act, 1962;

(xi) I impose a penalty of Rs. 10,00,000/- (Rupees Ten lakhs only) on the master of the vessel LPG/C Turk Gaz under Section 112(b) for the acts of omission and commission by which the subject imported goods detailed in (I) above were rendered liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962;

(xii) I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on the master of the vessel LPG/C Scoter under Section 112(b) for the acts of omission and commission by which the subject imported goods detailed in (i) above were rendered liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962;

(xiii) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 114AA of the Customs Act, 1962, on the Master of the vessel LPG/C Turk Gaz for use of false and incorrect material in respect of the said imports made in his vessel.

(xiv) I impose a penalty of Rs: 2,00,000/- (Rupees Two Lakhs only) under Section 114AA of the Customs Act, 1962, on the Master of the vessel LPG / C Scoter for use of false and incorrect material in respect of the said imports made in his vessel.

(xv) I impose a penalty of Rs. Rs. 10,00,000/-(Rupees Ten Lakhs only) on Shri Sasi Chemenkottil, Vice-President (Operations and Logistics), M/s. Total Oil India Pvt. Ltd., LPG Division, #138, Raheja Paramount, Residency Road, Bangalore-560025 under Section 112(a) for his acts of omission and commission by which the subject imported goods referred in Annexure to the SCN were rendered liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962.

(xvi) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on Shri Sasi Chemenkottil, Vice-President (Operations and Logistics), M/s. Total Oil India Pvt. Ltd., LPG Division, #138, Raheja Paramount, Residency Road, Bangalore-560025 under Section 114AA of the Customs Act, 1962 for use of false and incorrect material in respect of the said imports.

(xvii) I order for completion of the remaining formalities pertaining to the finalization of the provisional assessments in respect of the impugned bills of entry.

Hence the present appeals are filed by the above named Appellants, whereas the Master of Vessels have not filed Appeals against the said Order.

3. The summary of the submission made by the learned advocate for the appellant are as under:-

- a. The impugned order has rejected the declared value observing that the declared premium of USD 38 PMT as low when compared to the premium rates in respect of

contemporaneous import of LPG parcels during January 2014 in comparable quantities and supplied from Oman, which is nearer to India; It is held that Rule 12 provides that where the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence. In this regard, it is submitted that the existence of the reasons stated in Clause (iii) of Explanation 1 does not in itself warrant rejection of the declared value so long as the importer/ Appellant is able to establish that the declared value represents the transaction value. In support, he has referred the following case laws:-

- i. A.N. Impex v. CC - 2013 (287) E.L.T. 197 (Tri. - Kolkata)
- ii. Eicher Tractors Ltd. v. CC, Mumbai, 2000 (122) E.L.T. 321 (S.C.)
- iii. Exclusive Motors Pvt Ltd, Sanket Anand, Satya Prakash Bagla v. Commissioner of Customs ICD, Patparganj, New Delhi, 2024 (11) TMI 882 - CESTAT NEW DELHI.
- iv. Century Metal Recycling Vs. UOI - 2019 (367) ELT 3 (SC) CCE
- v. ST, Noida vs. Sanjivani Non-ferrous Trading Pvt. Ltd., 2019 (365) ELT 3 (SC).

- b. Further, as per Section 14, the value for the purposes of calculating customs duty payable shall be the transaction value i.e. price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation and where the buyer and seller of the goods are not related and price is the sole consideration for the sale. In the instant case, the Supplier has offered a premium of Cost Price(CP) plus USD 38 PMT. In terms of Clause 10 of the Agreements dated 02.01.2014, the price of LPG is agreed as CP plus 38 USD/MT including Ocean freight and Insurance for the Outturn quantity. Thus, the price of CP plus USD 38 PMT is a genuine transaction

value. Further, under Clause 28 of the Agreement, the Parties had agreed that the product deliverable shall not be of Iran origin or purchased from Iran. However, in view of the customs proceedings initiated on the ground that the goods are of Iranian origin, the Appellant has not remitted any amount towards import of the goods. Reliance is placed on the following judgments:-

- i. Jupiter Dyechem v. CC, Import [2023 (5) TMI 670 - CESTAT MUMBAI]
 - ii. Hazel Mercantile Ltd. v. CC, Cochin, 2024 (387) E.L.T. 614 (Tri. - Bang.)
 - iii. M/s. Sai International vs. Commissioner of Customs (Prev.), New Delhi (2018 (7) TMI 34 - CESTAT NEW DELHI)
 - iv. Pushpanjali Silk Pvt. Ltd. v. CC - 2009 (238) E.L.T. 135 (Tri. - Chennai)
 - v. Finolex Industries Ltd. vs. CCE, Pune, 2004 (174) E.L.T. 341 (Tri.-Del.)
- c. The Appellant has neither mis-declared the country of origin nor manipulated the import documents, as they have not acted with intent to evade duty payment. The Appellant was of the bona fide belief that the imported goods are of UAE origin on the basis of the documents provided by the Supplier. The Appellant has throughout the term of the agreement acted in good faith and was under a genuine and bona fide belief that the terms of the agreement is adhered to by the Supplier in letter and spirit. Reliance in this regard is placed on the decision in the case of S.S. Impex v. CC, Kolkata, [2012 (286) E.L.T. 401 (Tri. - Kolkata)].
- d. It is an undisputed fact that the vessel 'Scoter' reached New Mangalore Port on 17.01.2014. The LPG was cleared into the shore tank of the Appellant on 21st/ 22nd January 2014. After discharge, the vessel sailed on 22.01.2014 without any objection from Customs. The evidence gathered by the department is in respect of the vessel

'Turk Gaz' only. The Department is using the evidence available in respect of vessel 'Turk Gaz' to impute liability on the Appellant in respect of vessel 'Scoter' also.

- e. It is submitted that the Department is trying to paint the Appellant with the same brush in respect of both the vessels without any evidence to substantiate the allegations regarding the vessel 'Scoter'. Therefore, the allegations and findings in the impugned order is based on assumptions and presumptions without any cogent basis, reasoning or evidence, hence liable to be set aside. Reliance in this regard is placed on the following decisions:
 - i. Commissioner of Central Excise, Vapi v. Hindustan Rubbers, 2011 (269) E.L.T. 376 (Tri.-Ahmd.)
 - ii. Shivam Steel Corporation v. CCE, BBSR-II, 2016 (339) E.L.T. 310 (Tri. - Kolkata) affirmed by the Hon'ble High Court in CCE, BBSR-II v. Shivam Steel Corporation, (2023) 2 Centax 259 (Ori.).
- f. The impugned Order has revalued the imported goods by re-determining the freight in terms of Rule 10 of CVR read with Rule 3(1) of CVR 2007 and Section 14(1) of the Customs Act, 1962. In terms of Section 14 of the Customs Act the value of the imported goods shall be the transaction value, being the price paid or payable when sold for export to India for delivery at the time and place of importation.
- g. Rule 10 of the CVR, 2007 provides that the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include the cost of transportation to the place of importation and the cost of insurance. Further where the cost of transportation and insurance is not included in the transaction value and is not ascertainable, the same shall be determined in terms of the Proviso to Rule 10(2) of the

CVR, 2007. The Appellant in this regard relied on the following decisions:

- i. Ispat Industries Ltd. v. Commissioner Of Customs, Mumbai, 2006 (202) E.L.T. 561 (S.C.)
- ii. Jet Airways (India) Ltd. v. Commissioner of Customs, 2021 (377) E.L.T. 83 (Tri. - LB)
- iii. Southern Petro Chemical Indus. Ltd. v. CC, Ahmedabad - 2008 (224) E.L.T. 537 (Tri. - LB). Affirmed by the Supreme Court in 2010 (254) E.L.T. A74 (S.C.)
- iv. United Telecoms Ltd. v. CC, Bangalore - 2009 (241) E.L.T. 380 (Tri. - Bang.)
- v. Sical Logistics Ltd. v. CCE, 2019 (369) E.L.T. 1104 (Tri. - Kolkata)
- vi. National Aviation Company of India v. CCE, 2018 (8) TMI 1300 - CESTAT BANGALORE.

h. The term "fraudulent or manipulated documents" referred to in sub-clause (f) of clause (iii) to paragraph 1 of the Explanation to Rule 12 of the Customs Valuation Rules has not been defined in the Customs Act or the Customs Valuation Rules. Reference is made to the decision of ***Commr. of Customs (Preventive) vs. Aafloat Textiles (I) Pvt. Ltd. and Ors., 2009 (235) E.L.T. 587 S.C.,*** where the Hon'ble Supreme Court expounded on the notion of "fraud" and held that there needs to be an intention to deceive which is absent in the present case.

i. In terms of Clause 8 of the Agreement, the delivery is to be made by the Supplier's vessel on DAP (Delivery at Place) basis. As the impugned Agreements are DAP contracts, the invoice value includes the freight and insurance upto the New Mangalore Port, being the place of importation. Hence no further addition is required to be made to the assessable value in terms of Rule 10(2) of the CVR. The impugned Order revaluing the imported goods by re-determining the freight in terms of Rule 10 of CVR is liable to be set aside.

- j. The impugned Order has re-determined the freight in respect of the impugned imports from Assalluyeh, Iran to New Mangalore Port by adopting the actual freight of USD 79 PMT from Oman to New Mangalore Port and adding to it the freight amount of USD 23.89 PMT, being the freight for 454 nautical miles being the difference in the distance between Assalluyeh, Iran and Omani port. Thus, the actual freight along with insurance has been re-determined at USD 102.89 PMT. The impugned Order has re-determined the freight and insurance by not adopting first proviso to Rule 10(2) as proposed in the Show Cause Notice. Thus, the impugned Order has travelled beyond the Notice and is liable to be set aside on this ground alone. They relied on the following decisions:
- i. Hindustan Polymers Co. Ltd. v. CCE, Guntur, 1999 (106) ELT (SC)
 - ii. Commissioner of Customs v. Toyo Engineering India Ltd, 2006 (201) E.L.T. 513 (S.C.)
 - iii. ABB Limited v. CC, Bangalore, in CA. No. 26121/2013 Final Order No. 20580/2024 dated 19.07.2024.
- k. Alternatively, the Appellant has ascertained the freight rates based on independent and objective data available in the Clarksons Shipping Weekly Intelligence Report. Thus, the cost of transport of LPG from Jebel Ali to New Mangalore Port and from Assaluyeh to New Mangalore Port is ascertainable and shall be USD 44.55 and USD 47.89 respectively. The method of re-determination of premium as USD 79 PMT for a distance of 1450 nautical miles (=1904 and 454) is not ascertained on the basis of any objective or quantifiable data. In arriving at USD 79 PMT, the Department has adopted the premium in respect of alleged contemporaneous import of LPG from Oman. It is submitted that the import from Oman is not a contemporaneous import inasmuch as the country of origin of the imported goods is different.

- I. Further Rule 10(3) of the CVR provides that the additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data. In this regard reliance is placed on Shri T.N. Malhotra vs Pr. Commissioner of Customs, New Delhi [2024-VIL-677-CESTAT-DEL-CU]. Thus, the determination of premium as USD 102.89 PMT per the impugned Order is legally untenable as it is not based on any objective data and is liable to be set aside.
- m. The impugned Order holds that since it is established that the Appellant mis-declared the value and mis-declared the country of origin/ port of loading, the imported goods are liable to confiscation under Section 111(m) of the Customs Act, 1962. The Appellant has not mis-declared the country of origin of the imported goods. The Appellant was of the *bona fide* belief that goods are of non-Iranian origin as would be evident from various email correspondences sent by the Appellant insisting that the goods be of non-Iranian origin and the documents provided by the Supplier in support of the non-Iranian origin. They relied upon the following decisions:-
 - i. Allseas Marine Contractors S.A. v. CC - 2011 (272) E.L.T. 619 (Tri. - Bang.)
 - ii. Shahnaz Ayurveda's vs. Commissioner of Central Excise, Noida, 2004 (173) E.L.T. 337 (All.)
 - iii. Mohit Paper Mills Ltd. v. CCE - 2012 (285) E.L.T. 379 (Tri. - Del.).
- n. Section 111(d) provides for confiscation of the goods imported contrary to any prohibition imposed under the Customs Act or any other law for the time being in force. The allegation that the Appellant has violated the provisions of FEMA read with RBI Circular No. 31 (RBI/2010-11/235) dated 27.12.2010 read with the Foreign Exchange Management (Manner of Receipt and Payment) Regulations 2000 by not settling the transaction

in a currency outside the ACU mechanism is factually incorrect. As the Appellant had not released any payment, the allegation of violation of RBI Circular No. 31 dated 27.12.2010 is premature and hence the proposal to confiscate the goods under Section 111(d) is not sustainable. Even otherwise, a restriction on the mode of remittance is not a prohibition on import of the goods and therefore Section 111(d) is not attracted in the instant case.

- o. It is submitted that the impugned order has imposed penalty under Section 112 and penalty under Section 114AA of the Customs Act on the Appellant. Penalty under Section 112 is imposable when the imported goods are liable for confiscation. As stated above, the imported goods are not liable for confiscation under Section 111(m) or Section 111(d) of the Customs Act and therefore penalty under Section 112 is also not imposable. The Appellant was of the *bona fide* belief that the imported goods are of the description, value and origin as contained in the documents provided by the Supplier. Accordingly, the Appellant has made declaration in the Bill of Entry. Thus, the Appellant has not intentionally or knowingly made any false or wrong declaration and hence the proposal to impose penalty under Section 114AA is not sustainable. Reliance is also placed on the decision of the Hon'ble Tribunal in CCE v. Jaiswal Neco Industries Ltd. [2017 (345) E.L.T. 647 (Tri. – Del.)].
- p. The Appellant further submits that personal penalty cannot be imposed on the Appellant in the absence of any evidence of pecuniary benefit to the Appellant. Reliance is placed on the case of Commissioner of Customs, Mumbai v. M. Vasi [2003 151 ELT (312)] held that for imposing penalty for abetment, knowledge of the proposed offence and also the benefit to be derived from the abetment has

to be demonstrated. No interest is recoverable on the amount of differential duty as the demand of duty is wholly unsustainable as submitted above supra. Hence, when the duty does not survive, the demand of interest being an accessory will also not survive. In this regard, reliance is placed on *Pratibha Processors v. UOI* [1996 (88) E.L.T 12 (SC)].

4. *Per contra*, learned AR for the Revenue has reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The issues involved in the present case for determination are whether: (i) the declared transaction value is liable to be rejected; (ii) the premium amount which comprised of elements of freight and insurance etc. have been correctly determined as per Rule 10(2) of the Customs Valuation Rules, 2007; and (iii) direction for confiscation of the goods seized and imposition of penalties on the appellant company and the Vice President Mr. Sasi Chemenkottil under various provisions of the Customs Act, 1962 are justified.

7. It is brought to the notice of the Bench that the Master of vessels on whom penalties have been imposed under various provisions of the Customs Act and direction for confiscation of the vessels not approached this Tribunal by filing appeal against the said order.

8. The appellant has though not contested the evidences retrieved from the Master of vessel relating to origin of the port of loading as Assalluyeh, Iran but argued that the Appellants were not aware of the said facts. The Appellant has challenged

the enhancement of assessable value, confiscation of the goods and imposition of penalties.

9. It is their contention that the learned Commissioner has rejected the declared premium of USD 38 PMT, which mainly comprises of freight and insurance, in comparison to the higher premium paid with respect to other imports made during the said period. The details of imports are as below:-

Sl .N o	BOE No. & Date	Shipper	Quantity imported (MT)	Cost (Saudi Aramco CP)	Premium (includes freight & insurance)	CIF (4) + (5)	Vessel
1.	4233182/ 31.12.2013	SHV	2500.136	\$1169.50	\$71.00	\$1240.50	EUPEN
2.	4309097/ 09.01.2014	OTIL	3874.001	\$1016.30	\$81.00	\$1097.30	GAS ESCO
3.	4336966/ 13.01.2014	OTIL	3844.344	\$1015.75	\$79.00	\$1094.75	GAS HUSKY
4.	4374429/ 17.01.2014	RPTCL	6739.136	\$1014.99	\$38.00	\$1052.99	SCOTER
5.	4400740/ 20.01.2014	RPTCL	1672.313	\$1016.28	\$38.00	\$1054.28	TURKGAZ
6.	4446518/ 24.01.2014	OTIL	3873.340	\$1016.00	\$79.00	\$1095.0	GAS HUSKY

10. We find that the Commissioner after recording the fact on the basis of evidences that the place of origin has been mis-declared, proceeded to reject the transaction value under Rule 12 of the CVR 2007. The said Rule 12 reads as follows:-

RULE 12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or ac-curacy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by

such importer and provide reasonable opportunity of being heard, before taking a final decision under sub-rule (I).

Explanation. - (I) For the removal of doubts, it is hereby declared that :-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
 - (c) the sale involves special discounts limited to exclusive agents;
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
 - (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;
 - (f) the fraudulent or manipulated documents.

11. We find that the rejection of the transaction value by the learned Commissioner is justified, when the country of Origin is mis-declared. The said approach of the learned Commissioner is in Order in view of the principle of law laid down by the Hon'ble Supreme Court in the case of Century Metal Recycling case(supra). Their Lordships held as under:-

12. Rules 3 and 12 of the 2007 Rules i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were enacted and enforced with effect from 10th October, 2007

replacing and superseding the 1988 Rules. Rule 3(1) of the 2007 Rules states that value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the 2007 Rules which Rule, as observed above, deals with the costs and services which are to be added to the price actually paid or payable for the imported goods for determining the transaction value. Sub-rule (1) to Rule 3 is however subject to Rule 12 and therefore give primacy to Rule 12 which we shall subsequently elaborate and explain. Sub-rule (2) to Rule 3 states that value of the imported goods under sub-rule (1) shall be accepted i.e. accepted by the Customs authorities. The proviso then vide different clauses sets out the pre-conditions for accepting value of the imported goods. Rule 11 provides for declaration to be given by the importer or his agent certifying that they had disclosed full and accurate details of the value of the imported goods and any other statement, information and document including invoice of the manufacturer or producer of the goods where the goods are imported from or through a person other than the manufacturer of goods, as considered necessary by the proper officer for valuation of the imported goods. Sub-rule (2) states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after an enquiry in consultation with the importers.

13. Sub-rule (3) to Rule 3 deals with cases when the buyer and seller are related. We would not dilate on the said sub-rule for this is not required for the purpose of the present decision. As per sub-rule (4), where the value cannot be determined under sub-rule (1) to Rule 3, the transaction is to be valued by step wise applying Rules 4 to 9. Rule 4 deals with transaction value based on identical goods. Rule 5 deals with transaction value based on similar goods. Rule 6 deals with the determination of value where the transactional value cannot be determined under Rules 3, 4 and 5. Rules 7 and 8 deal with deductive value and computed value respectively. Rule 9 prescribes the residual method for computing the transaction value. What is important to note is that Rules 4 to 9 are subject to the provisions of Rule 3 thereby giving primacy to Rule 3 which in turn gives primacy to Rule 12 of the 2007 Rules.

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

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

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

12. As far as the cost price of LPG is concerned, there has not been much variation in all the imports made during the month, hence the Commissioner has not doubted the said cost price; however, he has rejected the premium USD 38 which according to the appellant mostly includes freight, insurance and other charges for importing the LPG from the overseas port to NMP. In the show-cause notice, it is alleged that since the Country of Origin has been mis-declared, and the actual cost of transportation cannot be determined, it was proposed to add 20% of the FOB value as per Rule 10(2) of the Customs Valuation Rules, 2007. The relevant Rule 10(2) reads as follows:-

RULE 10. Cost and services. -

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, value of the

imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include-

- (a) the cost of transport of the imported goods to the place of importation;
 - (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
 - (c) the cost of insurance:
- Provided that-

- (i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;
- (ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);
- (iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii):

Provided also that in case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport referred to in clause (a).

Explanation. - The cost of transport of the imported goods referred to in clause (a) includes the ship demur-rage charges on chartered vessels, lighterage or barge charges.

13. In their argument, the learned advocate for the appellant has submitted that the methodology adopted by the Commissioner in computing the premium i.e. freight and insurance amount is contrary to the provisions of Rule 10(2) of the CVR, 2007. He has submitted that the learned Commissioner, after rejecting the department's proposal in the Notice to add 20% of the Cost as freight charges, calculated the

freight amount by adding pro-rata transportation cost taking note of the premium as USD 79 PMT of imports from other importers during the month, where the port of loading was Oman and computed the premium on pro-rata basis on the difference in distance between Assaluyeh(i.e.454 nautical miles), port to Omani Port as 23.89 PMT and arrived at USD 102 PMT as the premium amount. The learned advocate has further submitted that the said method of computation of freight and insurance cannot be sustained as it is not supported by any verifiable data and based on assumption and presumption and not in accordance with Rule 10(2) of CVR,2007. He has submitted that on the basis of Clarksons Shipping Weekly Intelligence Report on LPG prices for the relevant period, the appellant had calculated the freight amount between Assaluyeh, Iran and NMP as USD 47.89 PMT and submitted the same in their reply and during the course of hearing before the Ld. Commissioner. It is their contention the same was ignored by the Commissioner and also the circular issued by the Board No. 04/2006-Cus dated 12.01.2006 on the subject.

14. We find that the Commissioner has redetermined the premium by adding USD 23.89 PMT to USD 79 PMT considering that the difference in the distance between Assaluyeh, Iran and Omani Port as 454 Nautical Miles and for the said distance the amount would be USD 23.89 PMT. The said method of computation of premium amount, in our view, is incorrect and cannot be sustained since not computed on the basis of objective and verifiable data. The provisions of Rule 10(2) are very clear that in absence of ascertainable freight amount, 20% of FOB value is to be added as freight, whereas the learned Commissioner proceeded in calculating the freight and insurance amount by adopting a method which is not supported by Rule 10(2) of CVR 2007 as no objective or verifiable data is applied nor keeping in view the Circular No. 04/2006-Cus dated

12.01.2006. Also, we find that the data furnished by the appellant in their reply based on Clarksons Shipping Weekly Intelligence Report seems to be based on objective and quantifiable data. Therefore, we are of the view the said data can be adopted in ascertaining the freight and insurance element for the purpose of calculation of premium amount. Since the learned Commissioner has not verified the said data, it is necessary that the matter be remanded to the adjudicating authority for verifying the data as submitted by the appellant in their reply before the Commissioner and ascertain the premium amount which mainly comprise of freight and insurance from the port of loading at Assaluyeh, Iran to NMP.

15. On the issue of confiscation and penalty, the learned Commissioner has observed that the appellant had mis-declared the country of origin; also, the appellant, after filing Bill of Entry when the investigation started, did not file any revised Bill of Entry indicating the actual origin of the imported goods when the same came to their knowledge and consequently held that the goods are liable for confiscation. We find merit in the observation of the learned Commissioner. It is established from the evidence adduced by the department that the country of origin has been mis-declared and thus the goods are liable for confiscation. On the same reasoning and grounds, the imposition of penalty under Section 112(a) of the Customs Act, 1962 on the appellant company is also justified. However, once penalty under Section 112(a) of the Customs Act is imposed on the appellant company, in the circumstances of the case, further penalty under Section 114AA of the Customs Act, 1962 is unwarranted on the Appellant company. On the issue of imposition of penalty on Mr. Sasi Chemmenkottil, Vice President, we do not find enough evidence indicating his direct involvement in the mis-declaration of the Country of Origin, hence imposition

of personal penalty on him cannot be sustained and accordingly set aside; the Appeal filed by him is allowed.

16. In the result, the impugned order is modified and matter is remanded to the adjudicating authority for the purpose of redetermination of the assessable value in the light of the above observation and thereafter quantify the differential duty, confiscation and penalty amount on the Appellant Company.

17. Appeals are disposed off as above.

(Order pronounced in Open Court on 26.08.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja....