CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20380 of 2015

(Arising out of Order-in-Appeal No.539/2014 dated 19.12.2014 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Gypsum Studio Designs
No.12, 2nd Floor, Chakravarthy Layout,
Palace Cross Road,
Bangalore – 560 020.

Appellant(s)

VERSUS

The Commissioner of Customs
C.R. Building,
Queens Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri Kiran S. Javali, Advocate for the Appellant.

Shri M. Sreekanth, Asst. Commissioner (AR) for the Respondent.

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

FINAL ORDER NO. 20211 / 2026

DATE OF HEARING: 24.10.2025

DATE OF DECISION: 26.02.2026

PER: R. BHAGYA DEVI

Briefly the facts are that the Appellant M/s. Gypsum Studio Designs is a proprietorship concern who filed Bill of Entry dated 09.02.2012 declaring the goods as gypsum boards and the quantity declared was 1057 pieces with value as USD 3065.30 CF. On verification of the container by the custom officers, it was found that it contained 646 pieces of gypsum boards and 137 rolls of fabric/cloth of various colours, materials, designs totally measuring 13,093 meters concealed at the rear end of the container. Accordingly, the said goods along with the relevant documents were seized on the reasonable belief that they are liable for confiscation under the Customs Act, 1962. Samples were also drawn from the 137 rolls of assorted fabrics for testing and after further verification, show-cause notice was issued for rejection of the declared value and for penalizing the appellant for mis-declaration of the imported goods. The Additional Commissioner in the Order-in-Original after a detailed verification and analysis held that the declared assessable value is to be rejected and redetermined the value at Rs.19,16,079/- in respect of 646 pieces of gypsum boards and confirmed duty amount of Rs.5,14,467/- on the same. The value on 137 rolls of fabrics was determined at Rs.11,52,706/- and duty to the extent of Rs.15,68,909/- was confirmed. The goods were also held to be liable for confiscation and redemption fine of Rs.9,00,000/- was imposed under Section 125 of the Customs Act, 1962 and penalty of Rs.20,00,000/- was also imposed under Section 112(a)(ii) of the Customs Act, 1962; in addition, a penalty of Rs.10,00,000/- was imposed under section 114AA on the appellant. Aggrieved by this order, the appellant filed an appeal before the Commission (Appeals) who rejected their appeal. Hence, this appeal before us.

2. The Learned Counsel submitted that the appellant was a *bona fide* importer who had no knowledge of the fabrics that was shipped along with the gypsum boards since they had placed order with the supplier only for 1057 pieces of gypsum boards. It is submitted that the staff by mistake had loaded the fabrics along with the gypsum boards and according to the supplier, the fabrics were about 48 bales of around 8000 meters and were 100% cotton shirting fabrics. The fabrics were tested by the Textile Committee and found to be linen fabrics falling under Chapter 55 of the Customs Tariff. The appellant had requested for remeasurement of the fabrics in view of the differences

arising consequent to the mahazar dated 10.02.2012 recording the quantity of fabrics as 13,093 meters whereas the mahazar dated 03.07.2012 recorded 15,000 meters and their request was declined. On filing the Writ Petition, the Hon'ble High Court of Karnataka directed Directorate of Revenue Intelligence (DRI) to remeasure the fabrics in the presence of the importer at the cost of the importer and then 3rd Mahazar was drawn and the quantity was found to be 13,195.80 meters. It is further submitted that the appellant is a *bona fide* importer and was not aware of the actual contents of the container and it filed the bill of entry based on the documents provided by the supplier and hence, there is no conscious mis-declaration on the part of the appellant. The appellant has also contested the valuation of the goods on the ground that it cannot be based on photocopies of export declarations filed by the overseas suppliers.

3. The learned Authorized Representative on behalf of the Revenue reiterating the findings of the authorities concerned submitted that it is an admitted fact that the goods were found to be other than what was declared and the quantity was also varying, therefore, it was a clear case of mis-declaration of the imported goods, quantity and value. Hence, the Commissioner has rightly rejected the value declared by the Appellant and redetermined the value as per the provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 2007. It is also stated that imposition of penalty is also justified in view of the fact that the quantity and value was mis-declared.

4. Heard both sides. The undisputed facts are the appellant had filed a Bill of Entry No.5960637 dated 09.02.2012 along with supplier's invoice, packing list and the bill of lading. As per the Bill of Entry, the supplier is M/s. Panache International Ltd. Wonder Plaza, China and the description of the goods is 1057 pieces of Gypsum Boards and the value is USD 3065.30 (Rs.1,53,878/-). It is also on record that on opening the consignment, it contained 646 pieces of Gypsum Boards as

against declared number of pieces as 1057 and the consignment also contained 137 rolls of fabric of various colors. Since the above facts are not in dispute, the Revenue has clearly established misdeclaration of goods in terms of quantity and value.

5. The appellant had filed a Writ Petition and the Hon'ble High Court of Karnataka in Writ Petition No.35831/2013 dated 23.09.2013 on observing that the quantity of fabrics in Mahazars dated 10.02.2012 and 03.07.2012 differed, accepting the request of the appellant for remeasurement of the fabrics, directed the Revenue to remeasure the fabrics in the presence of the petitioner. Accordingly, remeasurement of fabrics was undertaken and it was held that the consignment consisted of 646 pieces of Gypsum Boards (6x4 ft.) along with 13195.80 mts. x 57 inches width of linen fabric in 137 rolls. These fabrics were also tested and the test report from the Regional Laboratory, Textile Committee, Bangalore indicated that the fabric was 100% linen and also linen mixed with cotton in different proportions. Therefore, there is no dispute that the consignment consists of 646 pieces of Gypsum Boards and 13195.80 mts. of linen fabrics.

6. Since, there was a clear case of misdeclaration, the Revenue has rightly rejected the value declared by the appellant. With regard to redetermination of value the original authority has observed that the 'Trade Declaration' placed on record shows that the importer had declared the Gypsum Boards in kgs as against the declaration in the bill of entry in terms of numbers. It is also seen that the appellant had requested for provisional release of goods, since they were incurring heavy demurrages. Accordingly, the Revenue vide letter dated 18.02.2013 had allowed provisional release of goods demanding differential duty of Rs.14,55,361/-; out of the total demand of duty of Rs. 24,55,361/- since Rs.10,00,000/- was already paid

by the appellant. It is pertinent to note that the Hon'ble High Court vide order dated 23.09.2013 observed as follows:

> "21. The petitioner is ready to fulfill the conditions mentioned in the letter 18.02.2013. However, the grievance of the petitioner is, that the mahazars dated 10.02.2012 and 03.07.2012 show different quantity of fabrics. Therefore, the respondents may be directed to remeasure the fabrics at the cost of the petitioner. As the quantity of fabrics mentioned in the mahazars dated 10.02.2012 and 03.07.2012 differ, it is appropriate to direct the respondent No. 3 to remeasure the fabrics at the cost of the petitioner, at the time of delivering possession, in the presence of the petitioner, after the petitioner fulfills all the conditions mentioned in the letter dated 18.02.2013."

7. The letter dated 18.02.2013 is reproduced below which has been accepted by the appellant and had disputed only to the extent of quantity of the fabrics.

OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS
ICD, WHITEFIELD, BANGALORE – 560 066.
Tel: 080-28454417 FAX: 080-28450322

C.No. VIII/48/107/2012 Gr.1-3 ICD   Date 18.02.2013

To,
M/s Gypsum Studio Designs
No.730 B, 9th Cross, 5th Main Road
M.C. Road Layout, Vijayanagar,
Bangalore-560 040.   (By Speed Post)

Sir,

Sub;- Show Cause Notice DRI F.No.S/IV/06/2012 Dated 31.07.12 issued to M/s Gypsum Studio Designs, Bangalore.

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Please refer to your letter dated 11.02.2013 on the above subject regarding request for provisional release of goods.

2. The Additional Commissioner of Customs ICD has permitted provisional release of the goods subject to the following conditions:

(i) You have to execute a Bond equivalent to the value of the goods or the amount of duty involved whichever is higher. i.e value of the goods -Rs.30,68,785/-.

(ii) The differential duty involved to be secured completely, either by payment in cash or by suitable Bank guarantee. i.e Rs. 14,55,361(Differential duty-Rs.24,55,361/-(-)Rs.10,00,000/- paid vide challan dated 16.02.2012).

(iii) An amount equal to 30% of the differential duty should also be secured to cover the possible fine and penalties. i.e 30% of Rs.24,55,361/-- Rs.7,36,608/-.

Yours faithfully,

18/02/13
(DR. P.R. SACHIN)
ASSISTANT COMMISSIONER

8. In view of the above and also taking into consideration the fact that the appellant has not disputed the weight of the Gypsum Boards as given in the Trade Declaration, the value redetermined by the Revenue based on the supplier's declaration at the time of export is accepted since the appellant has not produced any other purchase order with regard to specific quantity or value of the Gypsum Boards. Similarly, with regard to fabrics, the Revenue has taken into an account the remeasured quantity as per the directions of the Hon'ble High Court and accordingly, has redetermined the value which has been accepted by the appellant and noted by the Hon'ble High Court of Karnataka, hence the same is upheld. Accordingly, the differential duty demanded on the enhanced value stands validated.

9. With regard to penalty, the fact remains that the goods have been mis-declared along with quantity and value and therefore, the goods are liable for confiscation and imposition of penalty. The appellant's claim that they had ordered for 1057 pieces of Gypsum Boards and by mistake fabric was sent cannot be accepted since as rightly pointed out by the Revenue, the Bill of Entry shows the name of supplier as M/s. Panache International Ltd. while the packing list and the invoice is from Wanhang International Trade Company. The Consulate General of India, Hong Kong vide letter dated 28.05.2012 in response to the Revenue's letter dated 08.05.2012 intimated that the declaration before the China Customs was 12000 kgs of Gypsum Boards and 22890 sq.mts. of polyester fabrics and the value declared is USD 49969.80, which is reproduced below:

Annexure - 6

भारत का प्रधान कोंसलावास
हाँग काँग
CONSULATE GENERAL OF INDIA
16-A&B, UNITED CENTRE, 95 QUEENSWAY
HONG KONG
Tel: (+852) 39709040
Fax: (+852) 25274916
E-Mail: eco@cgihk.gov.in

Sub: **Investigation into the imports effected by M/s Gypsum Studio Designs, Bangalore**

Kindly refer to your letter DRI F.No. S/IV/06/2012 dated 08.5.2012 on the above subject.

2. We had taken up the matter with China Customs. China Customs have provided a copy of the trade declaration filed before them in respect of the subject consignment. Comparison of the declarations filed before India Customs vis-à-vis China Customs clearly reveals gross mis-declaration of the consignment. In declaration before China Customs, goods were declared as 12000 kgs of Gypsum Boards and 22890 sq. mtrs. of Polyester Fabrics, whereas it was declared as "Gypsum Boards' only before India Customs. Total value declared for the said consignment is USD49969.80. Further, the value declared before China Customs is on FOB basis, therefore, suitable additions for freight and insurance may be made to arrive at the CIF value, in terms of the provisions of Customs Valuation (Determination of Value of Imported Goods), 2007.

3. A copy of the comparative chart along with the free English translation of the trade declaration received from China Customs, duly authenticated by the Consulate is enclosed herewith.

Seen- Anand Pothari 17-07-2012

(P.N. Pandey)
Consul

Dr. M. Subramanyam, Additional Director, DRI, Bengaluru
U.O.F. No. Hon/Cus/CH/14/2012, dated May 28, 2012

COMPARATIVE CHART OF DECLARATION BEFORE INDIAN CUSTOMS VIZ-A-VIZ CHINA CUSTOMS IN THE IMPORT OF GYPSUM BOARDS FROM NINGBO PORT OF P.R. CHINA

SL.	NAME OF THE EXPORTER	DECLARATION BEFORE INDIAN CUSTOMS						DECLARATION BEFORE CHINA CUSTOMS		
		BILL OF LADING NO. & DATE	INVOICE NO. & DATE	DESCRIPTION OF GOODS	QTY	PORT OF LOADING	CONTAINER NO.	DESCRIPTION OF GOODS	QTY	VALUE (USD)
1.	Wanhang International Trade Co. Limited	APLU065413541 dated 13.01.2012	ZH 2114 dated 09.01.2012	Gypsum Boards	1057	Ningbo	GLDU2168308	Gypsum Board Polyester Fabrics	12000 kgs 22890 sq. mtrs	31200.00 18769.80 Total: 49969.80

Seen- Anand Pothari 17-07-2012

Hence, there is clear misdeclaration of goods as well as quantity and value. Accordingly, confiscation of goods is upheld, however, taking into consideration the above facts, the impugned order is modified only to the extent of reduction of redemption fine to Rs.3,00,000/- (Rupees Three Lakhs Only) and penalty under Section 112(a)(ii) is reduced to Rs.2,00,000/- (Rupees Two Lakh Only) and all other penalties are set aside.

(Order pronounced in Open Court on 26.02.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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