

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 61293 of 2019

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

M/s Garg Impex

105, H-3, Vardhman Plaza Tower,
Netaji Subhash Place, Pitampura,
New Delhi

.....Appellant

VERSUS

Commissioner of Customs-ICD New Delhi

Inland Container Depot, Patparganj,
New Delhi

.....Respondent

WITH

Customs Appeal No. 61294 of 2019

(M/s Garg Impex vs Commissioner of Customs)

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

Customs Appeal No. 61295 of 2019

(M/s Garg Impex vs Commissioner of Customs)

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

Customs Appeal No. 61296 of 2019

(M/s Garg Impex vs Commissioner of Customs)

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

Customs Appeal No. 61297 of 2019

(M/s Garg Impex vs Commissioner of Customs)

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

Customs Appeal No. 61300 of 2019**(M/s Garg Impex vs Commissioner of Customs)**

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/587-588/2019-20 dated 21.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

Customs Appeal No. 61301 of 2019**(M/s Garg Impex vs Commissioner of Customs)**

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/587-588/2019-20 dated 21.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

AND

Customs Appeal No. 61298 of 2019**(M/s Sedna Impex India Pvt Ltd vs Commissioner of Customs)**

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/612-613/2019-20 dated 28.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

Customs Appeal No. 61299 of 2019**(M/s Sedna Impex India Pvt Ltd vs Commissioner of Customs)**

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/PPG/612-613/2019-20 dated 28.08.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi]

APPEARANCE:

Shri R.K. Hasija and Shri Shivang Puri, Advocates for the Appellants

Shri Aniram Meena and Shri Harish Kapoor, Authorized Representatives for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60533-60541/2025

DATE OF HEARING: 30.04.2025

DATE OF DECISION: 19.05.2025

S. S. GARG :

These nine appeals are filed by the appellants, namely M/s Garg Impex and M/s Sedna Impex India Pvt Ltd, against the different

impugned orders passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi. Since the issue involved in all the appeals is identical, therefore, all nine appeals are taken up together for discussion and decision. The details of the appeals are given herein below:

S.No.	Appeal No.	Name of Party	Relevant Period	Impugned Order
1.	C/61293/2019	Garg Impex	April 2012 to January 2013	CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019
2.	C/61294/2019	Garg Impex	April 2012 to January 2013	CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019
3.	C/61295/2019	Garg Impex	April 2012 to January 2013	CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019
4.	C/61296/2019	Garg Impex	April 2012 to January 2013	CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019
5.	C/61297/2019	Garg Impex	April 2012 to January 2013	CC(A)/CUS/D-II/PPG/589-593/2019-20 dated 20.08.2019
6.	C/61300/2019	Garg Impex	June 2013 to October 2013	CC(A)/CUS/D-II/PPG/587-588/2019-20 dated 21.08.2019
7.	C/61301/2019	Garg Impex	June 2013 to October 2013	CC(A)/CUS/D-II/PPG/587-588/2019-20 dated 21.08.2019
8.	C/61298/2019	Sedna Impex India Pvt Ltd	October 2013	CC(A)/CUS/D-II/PPG/612-613/2019-20 dated 28.08.2019
9.	C/61299/2019	Sedna Impex India Pvt Ltd	October 2013	CC(A)/CUS/D-II/PPG/612-613/2019-20 dated 28.08.2019

2. Briefly stated facts of the case are that the appellants are engaged in business of import and trading in various types of goods including Polyester Knitted Fabric and have been importing the same from China. The appellants have imported multiple consignments of Polyester Knitted Fabric and filed multiple Bills of Entry for clearance of the said goods declaring the value as per the commercial invoice and submitted all the necessary documents required. On examination, the goods were found as per declarations, however, the Assessing Authority relying solely on the DRI alert vide F.No. 23/13/2011-DZU dated 09.05.2011 suggested that import price of Polyester Knitted Fabric should be USD 2.80 to 5.15 /KG, and hence the goods were proposed to be assessed provisionally at USD 2.80 to 2.85 /KG. The appellants were asked to deposit the duty on the enhanced value which was deposited by the appellants as the goods were required urgently and delayed clearance would have resulted in huge detention and demurrage charge. Thereafter, after following the due process, the Assessing Authority upheld the enhancement of value and denied the benefit of exemption Notification No. 30/2004-CE dated 09.07.2004 which exempted from the payment of CVD. Further, for certain Bills of Entry, the benefit of exemption Notification No. 072/2005 dated 22.07.2005 amended vide Notification No. 89/2006-Cus dated 01.09.2006 which allowed for lower rate of Customs Duty under Entry No. A193 of Part A if imported from certain nations and the benefit of exemption Notification No. 151-Cus dated 14.05.1982 which allowed discount of Inland Haulage Charges while calculation of assessable value, were

disallowed. Aggrieved by the said order, the appellants filed appeals before the Commissioner (Appeals) and the learned Commissioner (Appeals) rejected the appeals of the appellants holding that the declared value cannot be accepted as correct value in view of the DRI Alert; on the issue of benefit of CVD, the learned Commissioner (Appeals) held that since there was no mention of denial of CVD in the Order-in-Original, therefore it appeared that the appellants have not contested the same before the Adjudicating Authority. Hence, the present appeals.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law, and binding judicial precedents on the identical issue.

4.1 He further submits that the impugned order has disregarded the declared transaction value in violation of Section 14 of the Customs Act, 1962, read with Rule 3 of Custom Valuation Rules, 2007 ("CVR, 2007"). He also submits that under Section 14(1) of the Customs Act, the value of imported goods for the purpose of assessment of duty must be the transaction value, i.e., the price actually paid or payable for the goods, at the time and place of importation, where the buyer and seller are not related, and the price is the sole consideration for the sale. He further submits that the statute makes it clear that the transaction value is the basis of

assessment, subject to the conditions prescribed in the Valuation Rules. He further submits that sub-rule (2) of Rule 3 of the CVR, 2007 provides that value of imported goods under sub-rule (1) shall be accepted subject to certain exceptions. No such exceptions have been pointed out in the assessments made by the Assessing Authority. He also submits that since none of the exceptions stipulated under sub-rule (2) of Rule 3 are alleged to have been present, therefore, valuation under the provisions of sub-rule (1) of Rule 3 is final and must be accepted. In support of this submission, he relies on the judgment of Hon'ble Apex Court in the case of **Commissioner of Customs (Port), Kolkata. M/s JJR Associates - 2023 (9) TMI 1398 (SC)** wherein the Hon'ble Apex Court has held that unless the transaction value could be established to the improper upon the finding that import invoices were either fabricated or fake or that any relationship exists between the importer and the exporter, the transaction value has to be accepted as correct value for assessment under Rule 3 of the CVR, 2007. Further, in this regard, he also relies the following decisions:

- **Commissioner of Customs, Mumbai vs. Mahalaxmi Gems - 2008 (231) ELT 198 (SC)**
- **Commissioner of Customs, Mumbai vs. J.D. Orgo Chem Ltd - 2008 (226) ELT 9 (SC)**
- **PNP Polytex Pvt Ltd vs. Commissioner of Customs, Nhava Sheva - 2015 (318) ELT 649 (Tri. Mumbai)**

4.2 The learned Counsel further submits that in the present cases, enhancement of value is solely based on the DRI alert dated 09.05.2011. He also submits that in the appellants' own case and in

the cases of several other importers where the bills of entry were assessed on the bases of DRI alert, this Tribunal has allowed the appeals filed by the importers-assesseees by holding that NIDB data and DRI alert cannot be the basis for the rejection of declared value.

In this regard, he relies on the following decisions:

- **M/s Sedna Impex India Pvt Ltd & Garg Impex vs. CC, Faridabad - 2016 (10) TMI 517 - CESTAT CHANDIGARH**
- **M/s Artex Textile Pvt Ltd & Aggarwal Overseas vs. CCE, Delhi-IV - 2017 (6) TMI 987 CESTAT CHANDIGARH**
- **Soir International vs. CC, Delhi - 2017 (3) TMI 283 CESTAT CHANDIGARH**
- **M/s Artex Textile Pvt Ltd vs. CCE, Delhi - 2017 (9) TMI 1210 CESTAT CHANDIGARH**
- **M/s Universal Traders vs. CCE, Chandigarh - 2018 (7) TMI 1802 CESTAT CHANDIGARH**
- **Saraswati Knitwears Pvt Ltd & Rajnish Tuli Director vs. CC, Amritsar - 2017 (12) TMI 729 CESTAT CHANDIGARH**

4.3 As regards denial of benefit of Notification No. 30/2004-CE dated 09.07.2004, the learned Counsel submits that the Commissioner (Appeals) has failed to appreciate that the impugned goods are entitled to exemption from CVD as 100% Polyester Knitted Fabric are exempt from central excise duty in terms of Notification No 30/2004-CE dated 09.07.2004 and therefore, CVD charged and collected in the Bill of Entry is without the authority in terms of the law as declared by the Hon'ble Supreme Court in the case of **SRF Ltd vs. Commissioner - 2015 (318) ELT 607 (SC)**. He further submits that in the appellant **M/s Sedna Impex's** own case, the

Principal Bench of the Tribunal vide **Final Order No. 50356-50372/2023 in Customs Appeal No. 52166 of 2016**, held that prior to 17.07.2015, the only condition in Notification No. 30/2004-CE was that no CENVAT credit should have been availed on the inputs used in manufacture of the goods. It is obvious that the CENVAT credit will not be available at all if the goods are manufactured outside India and therefore, it is impossible to have availed CENVAT credit on the goods manufactured outside India. Therefore, it is fair to assume that no CENVAT credit was availed on the inputs used in the manufacture of imported goods and consequently, the condition that no CENVAT credit should have been availed is fulfilled with respect to imported goods. In this regard, he also relies on the following decisions:

- **Sedna Impex India Pvt Ltd vs. CC, Mundra - 2023 (3) TMI 1080 CESTAT AHMEDABAD**
- **M/s Artex Textile Pvt Ltd vs. CC, Mundra - 2023 (9) TMI 1268 CESTAT AHMEDABAD**
- **M/s Artex Textile Pvt Ltd vs. CC, New Delhi - 2016 (11) TMI 1456 CESTAT NEW DELHI**
- **Commissioner vs. Ashima Dyecot Ltd - 2011 (267) ELT 122 (Tri. Mumbai)**

4.4 He further submits that the Commissioner (Appeals) has wrongly observed that the appellants have not contested the denial of benefit of exemption notification before the adjudicating authority and therefore, there was no reason to interfere with the respective Assessment Orders. In order to counter this finding, the learned Counsel submits that it is a settled position of law that even if the claim of benefit under a particular notification is not made at the

initial stage, the assessee cannot be estopped from claiming such benefit at a later stage. For this submission, he relies on the decision of this Tribunal in the case of **M/s Artex Textile Private Limited vs. Commissioner of Central Excise & Customs, Faridabad - 2017 (9) TMI 1011 CESTAT CHANDIGARH**, wherein this Tribunal, after following the decision of Hon'ble Supreme Court in the case of *Share Medical Care vs. UOI - 2007 (209) ELT 321 (SC)*, has held that such an objection raised by the Revenue is not sustainable and that benefit of Notification No. 30/2004-CE dated 09.07.2004 would be available to the appellant therein. He further submits that the same view was taken by this Tribunal in the appellant **M/s Garg Impex's** own case vide **Final Order No. 61505-61536/2017 dated 08.08.2017**.

4.5 He further submits that for some Bills of Entry, the appellants were entitled to the benefit of Notification No. 072/2005 dated 22.07.2005 as amended vide Notification No. 89/2006-Cus dated 01.09.2006 which allows lower rate of custom duty under Entry No. A193 of Part A if imported from certain nations. The appellants were allowed benefit of above notification vide **Order-in-Appeal No. CC(A)/CUS/D-II/ICD PPG & OTHER ICDs/1517-1519/2017 dated 28.12.2017**.

4.6 He further submits that the Commissioner (Appeals) has failed to acknowledge that the appellants were also entitled to the benefit of Notification No. 151-Cus dated 14.05.1982 in respect of certain Bills of Entry. Notification No. 151-Cus Dated 14.05.1982 allows

discount of Inland Haulage Charges incurred on goods from Sea Port to Inland Port of destination. The importers-assesseees were allowed benefit of above notification vide **Order-in-Appeal No. CC(A)/CUS/D-II/ICD/325-332/2016 dated 28.03.2016** in the matter of **Soir International**.

5. On the other hand, the learned Authorized Representative for the department reiterates the findings of the impugned orders.

6. We have considered the submissions made by both the parties and perused the material on record as well as the decisions relied upon by the appellants cited above. We note that there are mainly two issues involved in the present case:-

Issue (i): whether the value of impugned goods can be enhanced on the basis of DRI alert or not?

Issue (ii): whether the appellants are entitled for benefit of exemption from payment of CVD in terms of Notification No. 30/2004-CE dated 09.07.2004 or not?

7. As the **issue (i)**, regarding enhancement of transaction value on the DRI alert, is concerned, we find that this issue has been considered by various benches of the Tribunal and it has been consistently held that the declared value cannot be enhanced simply on the basis of DRI alert which was sought to be done in the present cases. In this connection, we may refer to decision of the Tribunal in the case of **M/s Artex Textile Private Limited** reported as **2017**

(9) TMI 1210 CESTAT CHANDIGARH, wherein the Tribunal has considered this issue and has observed in para 4 & 5 as under:

"4. We find that the said issue came in the appellant's own case for the earlier period vide Final Order No. A/61302-61322/2017 dated 10.07.2017 wherein this Tribunal observed as under:

2. We find that in respect of earlier imports, the issue stands decided by the Tribunal in the same appellant's case vide the earlier order being Final Order No.61168-61181/2017 dated 19/06/2017. In fact, it is seen that in the present impugned order reliance stands placed on her earlier Order-in-Appeal No. 77-86/Cus/Apl/DLH-IV/2012 dated 02/08/2012 The said order of the Commissioner (Appeals) which stands referred by her in the present impugned order was the subject matter of earlier appeal filed by the same appellants before this Tribunal and the same was set aside by this Tribunal vide Final Order dated 19.06.2017.

3. In view of the above, we find no merit in the impugned order passed by the Commissioner (Appeals). By following the earlier decision of this Tribunal in the same appellant's case, set aside the impugned orders and allow all the appeals with consequential relief to the appellants.

5. In view of the earlier decision of this Tribunal in appellant's own case the value of imported goods cannot be enhanced on the basis of DRI alert Therefore, we set aside the impugned orders on this ground also."

7.1 Further, we also find that in the appellants' own case reported as **M/s Sedna Impex India Pvt Ltd & Garg Impex - 2016 (10) TMI 517 CESTAT CHANDIGARH**, the Tribunal has held that declared value cannot be enhanced on the basis of DRI alert. Relevant finding is reproduced herein below:

"8. We find that the initially there was DRI alert that the overseas suppliers are undervaluing the value of the goods in question, the same cannot be the reason for enhancement of the value without rejecting the transaction value. The Customs

Valuation Rules deals with situation how to enhance the value of the imported goods. DRI have not concerned with the said Valuation Rules, therefore, the declared value cannot be enhanced on the basis of DRI alert."

7.2 Subsequently, in the case **Soir International** (supra) reported as **2017 (3) TMI 283 CESTAT CHANDIGARH**, the Tribunal has followed the above ratio.

8. As the **issue (ii)**, regarding benefit of exemption from payment of CVD in terms of Notification No. 30/2004-CE dated 09.07.2004, is concerned, we find that this issue has also been considered by the Tribunal in number of cases as relied upon by the appellants cited supra. In this connection, we may again refer to decision of the Tribunal in the case of **M/s Artex Textile Private Limited** reported as **2017 (9) TMI 1011 CESTAT CHANDIGARH** wherein the Tribunal has observed as under:

"2. The said issue has been considered by the Tribunal in the appellant's own case and vide Final Order No. C/A/55993-56023/2016-CU[DB] dated 17.11.2016, it was observed as under:

5. After hearing both the sides, we find that the Hon'ble Supreme Court of India in a recent decision in the case of SRF Ltd. vs. CC, Chennai reported as 2015 (318) ELT 607 (S.C.) has considered identically worded Notification No. 6/2002-CE dated 01/03/2002 which has the identical clause of the manufacturer having not availed the cenvat credit. Its stand held by the Hon'ble Supreme Court that CESTAT denied the exemption from CVD only on the ground that condition of non-avilment of cenvat credit was not fulfilled in as much as cenvat credit was not admissible to the Importer and the question of fulfilling of the said condition does not arise. By taking note of the precedent decisions of the Hon'ble Supreme Court, the Hon'ble Apex Court

set aside the impugned orders of the Tribunal and held that the Importers were entitled to exemption from payment of CVD in terms of Notification No. 6/2002-CE. In as much as the dispute in the present appeal is in respect of the identical conditions, as contained in the subsequent Notification No. 30/2004-CE, the ratio of law as declared by the Hon'ble Supreme Court is fully applicable to the facts of the present case. Accordingly, we set aside the impugned orders and allow all the appeals with consequential relief to the appellant."

3.

4. At this stage, we also note that Commissioner (Appeals) has made observations that the assessee has not claimed the benefit of the notification at the time of filing Bills of Entry. The Hon'ble Supreme Court in the case of *Share Medical Care vs. UOI - 2007 (209) ELT 321 (S.C.)*, has observed that even if the claim of benefit under a particular notification is not made at the initial stage, the assessee cannot be estopped from claiming such benefit at a later stage. As such, we note that even the said objection raised by the Revenue is also not sustainable."

8.1 Subsequently, the above ratio has been followed by the Tribunal in the case **M/s Artex Textile Private Limited** reported as **2017 (9) TMI 1210 CESTAT CHANDIGARH**, wherein the Tribunal has again considered this issue and held in favour of the importer-assessee.

9. As regards the appellants' entitlement to benefit of Notification No. 072/2005 dated 22.07.2005, we find that the appellants were allowed the benefit of said notification by the Commissioner (Appeals) vide **Order-in-Appeal No. CC(A)/CUS/D-II/ICD PPG & OTHER ICDs/1517-1519/2017 dated 28.12.2017** and similarly, with

regard the benefit of Notification No. 151-Cus dated 14.05.1982, we find that Commissioner (Appeals) allowed the benefit of said notification vide **Order-in-Appeal No. CC(A)/CUS/D-II/ICD/325-332/2016 dated 28.03.2016.**

10. In view of our discussion above and by following the ratios of the decisions cited supra, we are of the considered opinion that the impugned orders are not sustainable in law; accordingly, we set aside the same and allow all the appeals of the appellants.

(Order pronounced in the open court on 19.05.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)