CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60328 of 2019

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD/PPG/3539-3540/2018-19 dated 18.02.2019 passed by the Commissioner of Customs, (Appeals), New Customs House, IGI Airport, New Delhi]

BE Office Automation Products Pvt Ltd **......Appellant**
10-A, Gangyal Industial Area, Phase-3,
Jammu, J&K 180010

VERSUS

Commissioner of Customs, ICD New Delhi **......Respondent**
Inland Container Depot,
Patparganj, New Delhi

WITH

Customs Appeal No. 60330 of 2019

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-II/ICD/PPG/3539-3540/2018-19 dated 18.02.2019 passed by the Commissioner of Customs, (Appeals), New Customs House, IGI Airport, New Delhi]

BE Office Automation Products Pvt Ltd **......Appellant**
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VERSUS

Commissioner of Customs, ICD New Delhi **......Respondent**
Inland Container Depot,
Patparganj, New Delhi

APPEARANCE:

Mr. B.L. Yadav, Consultant for the Appellant

Mr. Anurag Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60250-60251/2026

DATE OF HEARING: 20.11.2025
DATE OF DECISION: 17.03.2026

S. S. GARG :

These two appeals are directed against a common impugned Order-in-Appeal No. CC(A)/CUS/D-II/ICD/PPG/3539-3540/2018-19 dated 18.02.2019 passed by the Commissioner of Customs, (Appeals), New Delhi. Since the issue involved in both the appeals is same and identical in nature, therefore, both the appeals are taken up together for discussion and decision.

2. Briefly stated facts of the case are that the Appellant filed a Bill of Entry No. 5252757 dated 17.02.2018 for clearance of goods declared as 'Reconditioned Mainframes for copier incorporating optical system'. Another Bill of Entry No. 5795688 dated 30.03.2018 was filed for clearance of goods declared as 'Old and Used Digital Multi-Function Devices (MFDs) with Standard Accessories & Attachment, Xerox WC 5845 & 5855'. These imported items were classified by the Appellant-Importer under Customs Tariff Heading 84433100. The department entertained the view that the Appellant has mis-declared the value of the impugned goods; therefore, the impugned goods were examined by the Chartered Engineer who found that the impugned goods were old and used part of MFD and determined the value which is higher than declared value. Further, the department has reason to doubt the truth of declared value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods)

Rules, 2007 (in short 'CVR 2007') and the said doubt was based on the expert's opinion of empaneled chartered engineer, who physically examined the goods and provided a detailed valuation which was considered by the department and the value of the impugned goods was enhanced. The Adjudicating Authority enhanced the value and allowed the redemption only for re-export. The penalty under Section 112(a) of the Customs Act, 1962 was also imposed on the ground that the Appellant has knowingly engaged in the act of omission & commission (mis-declaration of value and description) that rendered the goods for confiscation. Aggrieved by the order of the Adjudicating Authority, the Appellant filed appeals before the Commissioner (Appeals) and the learned Commissioner (Appeals) partially allowed the appeals of the Appellant by upholding the demand of duty and confiscation of the impugned goods under Sections 111(d) & 111(m) of the Customs Act, 1962; however, reduced the redemption fine and penalty. Hence, the present appeals.

3. Heard both sides and perused the material on records.

4. The learned Consultant for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts & the law.

4.1 He further submits that the enhancement of value is based only on the report of Chartered Engineer who has not conducted any market survey regarding the valuation of second-hand goods. He further submits that the department has not followed the sequential application of the CVR and has merely relied upon the report of the Chartered Engineer.

4.2 He further submits that the issue involved in the present case is no more *res integra* as the Tribunal in the Appellant's own case titled as ***BE Office Automation Products Pvt Ltd vs. CC, Ludhiana and vice versa – 2020 (371) ELT 592 (Tri. Chan.)***, by relying upon the judgment of Hon'ble Apex Court in the case of ***CC vs. Atul Automation Pvt Ltd – 2019 (365) ELT 465 (SC)***, has set aside the enhancement of the value and reduced the redemption fine and penalty.

5. On the other hand, the learned Authorized Representative for the department justifies the impugned order and submits that the Revenue has reason to doubt that the declared value is significantly lower than the value determined by the independent technical expert who is an empaneled chartered engineer and who has physically examined the goods and provided a detailed valuation.

5.1 The learned Authorized Representative further submits that there was a significant mis-declaration of the description itself logically and reasonably cast immediate suspicion on the declared value. He also submits that in case of second-hand, re-conditioned capital goods with no open market, the declared transaction value is inherently suspect, and the burden shifts to the importer to prove its accuracy which the Appellant failed to do so satisfactorily.

5.2 The learned Authorized Representative further submits that the decision of the Tribunal in Appellant's own case (cited supra), is distinguishable on facts because in that case, the Tribunal observed that *"the impugned order itself finds flaws in the Chartered Engineer Certificate as the Chartered Engineer failed to obtain current market value of the said goods."*; whereas, in the present case, there is no such admission or finding of flaw in Chartered Engineer's methodology.

5.3 The learned Authorized Representative further submits that the judgment of the Hon'ble Apex Court in the case of CC vs. Atul Automation Pvt Ltd (cited supra), wherein it has been held that "*redemption fine should be around 10% of the value and penalty around 5%*", is not applicable in the present case because the reliance on that case for a standard quantum of fine or penalty is misplaced as the said judgment lays down a principle, not a fixed formula.

6. We have considered the submissions made by both the parties and perused the material on record. We find that in the present case, the Appellant has imported MFDs which were declared as the parts of copier, and were examined by the Chartered Engineer who found that these goods were old and used parts of MFDs and determined the value which is higher than declared value. We also find that the enhanced value was determined without following the rules as prescribed in CVR, 2007. Further, we find that the Adjudicating Authority confiscated the goods and allowed the clearance on

payment of fine & penalty. We further note that on appeal, the learned Commissioner (Appeals) rejected the declared value and upheld the enhancement of value and confiscation of goods, but reduced the redemption fine and penalty.

7. Further, we find that the identical issue was considered by the Tribunal in ***Appellant's own case*** (cited supra) for previous consignment, wherein the Tribunal, by following the judgment of Hon'ble Apex Court in the case of ***CC vs. Atul Automation Pvt Ltd*** (supra), has set aside the enhancement of the value based on Chartered Engineer Certificate and also reduced the redemption fine and penalty. Relevant findings of the Tribunal in Appellant's own case are reproduced herein below:

> **"6.** We have considered the rival submissions. We find that Hon'ble Apex Court in the case of *Atul Automation Pvt. Limited* (supra) has approved the decision of the Tribunal passed vide Order No. 21592-21594/2017, dated 8 August, 2017. The Tribunal's order specifically covers all the issues raised and disputed in the present appeal. The said decision reads as follows :-
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>> *"7. We have heard both sides extensively and perused the appeal records. We note that the dispute in the present case relates to the eligibility of the importer to clear the goods for home consumption as a trader. They are not contesting the confiscability of the imported items and penal consequences thereof. It is admitted that the import is in violation of Import Policy applicable during the material time. The goods are used items and require an import licence for importation. The point which is strongly pleaded before us is that they have not violated the Hazardous Waste Rules, 2016 and they are entitled for redemption of the goods as absolute confiscation or option to re-export only, is not legally sustainable. Penalties under Section 114AA are also contested. We also note that enhanced valuation of used items now imported, is also not contested.*

8. On the first point regarding importation being in violation of Import Policy, the same being an admitted fact, does not require further elaboration. On the second point regarding violation of provisions of Hazardous Waste Rules, 2016, we have carefully examined the submissions of the appellants. First of all, we note that the original authority held against the appellants substantially on the ground that the product is waste. In this connection, we have perused the definition "waste". Rule 3(1), (38) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 defines waste as under :-

"waste" means materials that are not products or by-products, for which the generator has no further use for the purposes of production, transformation or consumption.

9. We note that the products under import are MFDs having use as digital multifunctional devices as intended. It is not clear as to how when the product imported in the form of whole machine and having certified functional life of 5/7 years, the same can be considered as waste. Even if the items imported require certain reconditioning, repair, it will not make the product as waste. We have perused the certificates issued by the authorised Chartered Engineers, M/s. Best Mulyankan Consultants Ltd. and M/s. ELBI Consultancy (India) Pvt. Ltd., Chennai with reference to present impugned consignments. A perusal of these certificates will clearly show that the imported items cannot be considered as waste. It is specifically mentioned that the items imported are in full form and fit for use for printing A3 size papers and they are capable of being put to productive use and the machines were not in a damaged condition to such an extent which will compromise their functionaility. The residual life of these machines has been certified. In the face of these technical opinions and facts as recorded, we find that the imported items cannot be considered as waste.

10. Examining the conditionalities as mentioned in Hazardous Waste Rules, 2016, we note the Schedule VIII [entry 4(j)] stipulates 5 documents to be produced by the importer. The first one is regarding country of origin which in the present case, the importer produced the certificate from Canadian authorities. We find force in the objection raised by the Revenue regarding the non-applicability of such certificate to the present consignments. The consignments have originated from China/Korea/Japan as admitted by the importer and were initially being supplied by Canadian authorities cannot be correlated and now with the Bills of Lading are from various ports of USA etc. As such, the country of origin certificate to be issued by competent authority of *that country is not satisfactorily produced in the present consignments. To that extent, there is a violation of the said rules.*

11. The next condition is regarding certificate issued by inspection agency approved by DGFT regarding functionaility and residual life of the goods. We note that the original authority held against the appellants regarding violations of these provisions. The present consignments which are imported for which Bills of Entry were filed in October to November 2016 are governed by the 2016 Rules which superseded the 2008 Rules. The Learned Counsel for the appellant drew our attention to the decision of Technical Review Committee under the 2016 Rules. The decision of the meeting held on 18th and 19th October 2016 recorded that the Extended Producer's Responsibility (EPR) authorisation requirement under 2016 Rules are to be produced on application to the Pollution Control Board and a time line is prescribed for the same. After considering these time lines, the Committee decided that the implementation of EPR can start from 1-5-2017 and advised the Customs authorities to permit clearance of the imported goods without EPR authorisation till 30-4-2017.

12. Regarding Schedule III Part D of the Hazardous Waste Rules, 2016, we note that the said part deal with list of other waste for import and export without permission of Ministry of Environment. Entry No. B1110 deals with electrical and electronic assemblies destined for direct reuse and not for recycling or disposal. The condition for import of used MFDs was mentioned therein. The said condition was later amended vide Notification dated 6-7-2016. The effect of amendment is that the trader also can import the said MFDs which are not domestically manufactured.

13. Regarding production of EPR authorisation under 2011 Rules, we note that the appellant has produced an authorisation dated 21-4-2017 issued by the Central Pollution Control Board. Another condition is the MFDs shall be for printing A3 size or above. As per the technical certificate issued by the Chartered Engineer, same stands fulfilled. In any case, there is no dispute on this fact in the impugned proceedings. The final condition is regarding acknowledgement copy of the annual return to be filed with State Pollution Control Board. We note that the appellant has to file the annual return at the end of the year and the same will be effected after the importation of goods.

14. Regarding applicability of Rule 13 of 2016 Rules, we note that the same deals with hazardous and other waste. In terms of definition of 'waste' in the rules, we *find that used machines with residual life of 5 or 7 years cannot, per se, be considered as 'waste'.*

15. In view of the above detailed analysis, we find that the importation of the impugned goods is in violation of Import Policy of the relevant time and also of some of the conditions of Hazardous Waste Rules, 2016. The violation of Hazardous Waste Rules is with reference to country of origin certificate. Other conditions mentioned therein have substantially been fulfilled as discussed above.

16. With the above background, we examine now the proceedings on penal action against the importer. Admittedly, the goods are restricted and there are violations of Policy. The question is whether such violations will result in refusal to release the goods on redemption in terms of Section 125 of Customs Act, 1962. We note that the importer himself have imported a large number of consignments through Calcutta Port and also other ports including Cochin, and these were in fact adjudicated and allowed for clearance on payment of appropriate redemption fines and penalties. We note that even through the Cochin Port such consignments have been allowed for clearances including for the present appellants. No substantial change in the law subsequently has been discussed in the impugned order to change the earlier decision. We also note that the Hon'ble Madras High Court in City Office Equipments [2016 (336) E.L.T. 19 (Mad.)] examined the scope of such infringement and their implication for the application of Section 125. The High Court observed that even if the goods are liable for confiscation, the same can be released on payment of redemption. The High Court was examining the provisions of FTDR Act read with Section 125(1) of Customs Act, 1962. The Hon'ble Punjab & Haryana High Court in Horizon Ferro Alloys Pvt. Ltd. v. UOI [2016 (340) E.L.T. 27 (P&H)] examined the scope of Section 125 and observed as below :-

"5… … ….Section 125 of the Act leaves option to the officer to grant the benefit or not so far as goods whose import is 'prohibited' but no such option is available in respect of goods which can be imported, but because of the method of importation adopted, become liable for confiscation. Hon'ble Madras High Court in T. Elavarasan [2011 (266) E.L.T. 167 (Mad.)], was pleased to rely on the said judgment of Hon'ble Andhra Pradesh High Court and held that an option has to be given to the petitioner to pay the applicable customs duty and the redemption fine and to get the gold jewellery released, as per Section 125 of the Customs Act, 1962. In the context of Section 125 if the word "prohibited" is construed as to apply in respect of every violation of any regulation or restriction or statutory procedural requirement, the word

'shall' in said Section would be rendered redundant and meaningless. If the definition of 'prohibited goods' is applied in the context of Section 125, it would result in absurdity rendering the word 'shall' redundant and otiose, because there cannot be any situation where the goods would be liable to confiscation under Sections 111 and 113 as the case may be without there being any violation of the provisions under the Customs Act, 1962 or under any other law or rules, regulations made thereunder. Therefore, in the context of statutory provisions of Section 125, so as to give a meaningful application to both words 'may' and 'shall' used in the said Section, the definition of 'prohibited goods' is inapplicable by application of settled principles of statutory interpretation. The Tribunal was therefore correct in observing that under Section 125 of the Customs Act, unless the importation or exportation of goods is expressly "prohibited" the adjudicating authority would be obliged to offer to the owner the goods an option to pay fine in lieu of confiscation."

The High Court was dealing with cigarettes and R22 gases which were imported in concealment. Observing that these two items were not expressly prohibited for importation, Court ordered for redemption of the same. In the present case, we are dealing with a restricted item which was imported by the appellants for further usage of the said used machines. Admittedly, these items are not expressly prohibited for importation. The Tribunal observed in Yakub Ibrahim Yusuf v. CC, Mumbai [2011 (263) E.L.T. 685 (Tri.-Mum.)] that redemption of goods on fine has to be allowed in terms of Section 125 if the goods were not expressly prohibited for import. The Tribunal was dealing with import of gold in violation of the provisions of Policy.

17. In view of the above discussions and analysis, we find that while confiscation of the imported items cannot be faulted with, we note that the appellants are entitled for release of the goods on payment of appropriate redemption fine. The original authority allowed the redemption of goods, though only for re-export, on payment of fine of Rs. l crore in respect of M/s. Atul Automation P. Ltd., and on payment of Rs. 30 lakhs in case of M/s. Parag Domestic Appliances Ltd.

18. The total assessable values for the consignments imported by M/s. Atul Automation Ltd. and M/s. Parag Domestic Appliances are about Rs. 5.2 crores and Rs. l.37 crores respectively. These are enhanced values as per impugned order. The Learned Counsel for appellants pleaded that the redemption fines of 20%/22% are harsh. Considering the detention/demurrage charges for one year, as the goods were lying in Port, and also based *on past practice in such cases, he pleaded for reduction of fines.*

19.1. We note that Hon'ble Kerala High Court in Office Devices [2009 (240) E.L.T. 336 (Ker.)] and in Navpad Enterprises [2012 (278) E.L.T. 172 (Ker.)] held that the discretion vested under Section 125 of Customs Act should be exercised in an objective manner. In the present case, no detailed reasoning has been recorded in the impugned order for fines which are apparently on the higher side when compared to consistent practice of imposing 10% of value as fine. We also have to bear in mind the detention charges to be incurred on goods. The guiding principle for fixing the quantum of redemption fine when the goods were allowed to be cleared for home consumption is generally that the importer should not gain out of imported goods which were in violation of the applicable law. Keeping that principle in mind, the margin of profit likely to be earned by the appellant through such act which is in contravention of law is sought to be diminished or removed. Having noted the above principle and also keeping in mind the enhanced value of the impugned goods, we find that a redemption fine of Rs. 52 lakhs (Rupees fifty-two lakhs only) and Rs. 14 lakhs (Rupees fourteen lakhs only) for consignments imported by M/s. Atul Automation Pvt. Ltd. and M/s. Parag Domestic Appliances, respectively can be imposed. On payment of such fine, the impugned goods are to be considered for duty assessment and clearances.

19.2. Here we also note that at least 3 of the consignments are yet to be examined by DGFT approved Chartered Engineer. We make it clear that the findings in this order shall apply to these consignments also, only when they are of similar nature and are on the same footing as claimed by the appellants with other examined cargo. In case, the contrary is established on such examination by the approved Chartered Engineer, such consignments shall be dealt with separately by the Customs authorities.

20. The next point is imposition of penalty under Section 114AA on both the importers as well as Director of one of the importer. We note that while there is no contest regarding the imposition of penalty under Section 112(a) except for prayer to reduce the same, the imposition of penalty under Section 114AA is strongly contested. We note that the provisions of Section 114AA will apply in cases where a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular. As discussed elaborately above, we find that there is no situation of any false document submitted by the importer or by the Director of the importer. As such, we *find that the application of provisions of Section 114AA is not fully justified by the impugned order and accordingly, we set aside the penalties imposed under Section 114AA.*

21. Though the liability for penalty under Section 112(a) is not being contested, the Learned Counsel pleaded for appropriate reduction of penalty keeping in view the consistent practice of imposing penalty of 5% of assessable value in similar cases. Applying ratio as discussed for redemption fine and also keeping in view the consistent practice followed by the Tribunal and Hon'ble High Courts in such cases, we find that the ends of justice shall be met if the penalties imposed under Section 112(a) are reduced to Rs. 25 lakhs (Rupees twenty-five lakhs only) for M/s. Atul Automation Pvt. Ltd. and Rs. 5 lakhs (Rupees five lakhs only) on Shri Ketan Kamdar. The penalties imposed under Section 112(a) on M/s. Parag Domestic Appliances is reduced to Rs. 7 lakhs (Rupees seven lakhs only)."

It is seen from the said decision that there was no absolute confiscation and approximately 10% of the value of the goods was imposed as redemption fine in the similar facts and circumstances. Penalty of 5% of assessable value was imposed in the similar facts and circumstances. The said decision of Tribunal was approved by the Hon'ble Apex Court. The Hon'ble Apex Court dismissed the appeal filed by Revenue citing following grounds :-

"7. We have considered the submissions on behalf of the parties. The MFDs were imported in October-November, 2016. They were detained by the customs authorities opining that the imports had been made in violation of the Foreign Trade Policy, 2015- 2020 framed under Sections 3 and 5 of the Foreign Trade Act and the Wastes Management Rules.

8. Clause 2.01 of the Foreign Trade Policy provides for prohibition and restriction of imports and exports. The export or import of restricted goods can be made under Clause 2.08 only in accordance with an authorisation/permission to be obtained under Clause 2.11. Photocopier machines/Digital multifunction Print and Copying Machines are restricted items importable against authorisation under Clause 2.31. Indisputably, the respondents did not possess the necessary authorisation for their import. The Customs authorities therefore, prima facie cannot be said to be unjustified in detaining the consignment. Merely because earlier on more than one occasion, similar consignments of the respondent or others may have been cleared by the Customs authorities at the Calcutta, Chennai or Cochin ports on payment of redemption fine, cannot be a *justification simpliciter to demand parity of treatment for the present consignment also. The defence that the DGFT had declined to issue such authorisation does not appeal to the Court.*

9. Unfortunately, both the Commissioner and the Tribunal did not advert to the provisions of the Foreign Trade Act. The High Court dealing with the same has aptly noticed that Section 11(8) and (9) read with Rule 17(2) of the Foreign Trade (Regulation) Rules, 1993 provides for confiscation of goods in the event of contravention of the Act, Rules or Orders but which may be released on payment of redemption charges equivalent to the market value of the goods. Section 3(3) of the Foreign Trade Act provides that any order of prohibition made under the Act shall apply mutatis mutandis as deemed to have been made under Section 11 of the Customs Act also. Section 18A of the Foreign Trade Act reads that it is in addition to and not in derogation of other laws. Section 125 of the Customs Act vests discretion in the authority to levy fine in lieu of confiscation. The MFDs were not prohibited but restricted items for import. A harmonious reading of the statutory provisions of the Foreign Trade Act and Section 125 of the Customs Act will therefore not detract from the redemption of such restricted goods imported without authorisation upon payment of the market value. There will exist a fundamental distinction between what is prohibited and what is restricted. We therefore, find no error with the conclusion of the Tribunal affirmed by the High Court that the respondent was entitled to redemption of the consignment on payment of the market price at the reassessed value by the Customs authorities with fine under Section 112(a) of the Customs Act, 1962.

10. The Central Government had permitted the import of used MFDs with utility for at least five years keeping in mind that they were not being manufactured in the country. The Chartered Engineer commissioned by the Customs authorities had certified that the MFDs were capable of utility for the next 5 to 7 years without any major repairs. Considering that at import they had utility, the High Court rightly classified them as "other wastes" under Rule 3(1), (23) of the Waste Management Rules, which reads as follows :-

"Other wastes means wastes specified in Part B and Part D of Schedule III for import or export and includes all such waste generated indigenously within the country."

11. Rule 13(2) provides the procedure for import of other wastes listed in Part D Schedule III. Item B1110 of the Schedule mentions used Multifunction Print and Copying Machines (MFDs). Entry 4(j) lists out five

> *documents required for import of used MFDs. The respondents have been found to be substantially compliant in this regard and the requirement for the country of origin certificate has been found to be vague by the High Court. Form 6 has rightly been held to be not applicable to the subject goods.*
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> *12. Rule 15 of the Waste Management Rules dealing with illegal traffic, provides that import of "other wastes" shall be deemed illegal if it is without permission from the Central Government under the Rules and is required to be re-exported. Significantly, the Customs Act does not provide for re-export. The Central Government under the Foreign Trade Policy has not prohibited but restricted the import subject to authorisation. The High Court, therefore, rightly held that the MFDs having a utility period, the Extended Producer Responsibility would arise only after the utility period was over. In any event, the E-waste Rules, 2016 certificate had since been issued to the respondents by the Central Pollution Control Board before the goods have been cleared.*
>
> *13. We therefore find no reason to interfere with the impugned orders. In the statutory scheme of the Foreign Trade Act as discussed, we further find no error in the penultimate direction to the respondents for deposit of bond without sureties for 90% of the enhanced valuation of the goods leaving it to the DGFT to decide whether confiscation needs to be ordered or release be granted on redemption at the market value, in which event the respondents shall be entitled to set off.*
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> *14. The appeals are dismissed."*

In view of the above decision and the fact that the Tribunal has covered all the aspects and the said decision has been approved by the Hon'ble Apex Court, the issue attains finality.

7. The Revenue has sought to rely on the changes made in the policy vide Notification No. 5/2015-2020, dated 7 May, 2019. It is seen that the said changes are subsequent to the date of import thus, have no impact on the present proceedings. Consequently, the appeal filed by Revenue seeking confiscation of goods absolutely is dismissed.

8. The appellants have sought relief relying on the decision of Hon'ble Apex Court. The Revenue has sought to rely on the Paras 9 and 13 of the Hon'ble Apex Court order to seek imposition of redemption fine equal to the market value of the goods. It is seen that the Hon'ble Apex Court approved the decision of the Tribunal. Perusal of the Paras 9 and 13 of the Hon'ble Apex Court decision does not indicate that Hon'ble Apex Court has sought to enhance redemption fine equal to market value of the goods. The Tribunal had directed release of goods at redemption fine of approximately 10% of the assessable value of the goods and imposition of penalty at the rate of 5% of the assessable value of the goods. In that context, the Revenue has inappropriately attempted to rely on and the selectively pick up words, out of context from the decision of Hon'ble Apex Court.

9. The next issue relates to revision of assessable value on the strength of Chartered Engineer certificate, the impugned order records the following for the purpose of approving the enhanced value on the strength of Chartered Engineer certificate :-

> *"3. Further Shri Rajesh John in his report dated 18-9-2018 stated that despite best efforts, CIF value of the new machines in the year of manufacture could not be found by browsing Internet and referred websites but he suggested the price which revealed significantly higher values of identical/similar goods. Thus the transaction/declared value was rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (In short 'the CVR, 2007') and re-determined on the basis of the report of the Chartered Engineer. As the data of identical goods was not available, the value could not be determined under Rule 4 of the CVR, 2007 and the data of similar goods as suggested by the Chartered Engineer was taken and value was re-determined under Rule 5 ibid."*

We do not find any merit in the above observation. The impugned order itself finds flaws in the Chartered Engineer certificate as the Chartered Engineer failed to obtain current market value of the said goods. The impugned order also does not indicate the Rule under which the value was revised. In these circumstances, revision of value by the lower authorities is not sustainable for want of evidence. The declared value is accepted.

10. Accordingly, relying on the decision of Hon'ble Apex Court decision, redemption fine and penalty under Section 112(a) of the Customs Act, are reduced to 10% and 5% of the assessable value, respectively. Accordingly, the appeal is partly allowed in above terms. ……..”

8. In view of our above discussion and by following the ratios of the above cited decisions of Tribunal as well as Hon'ble Apex Court, we set aside the enhancement of the value and also reduce the redemption fine to 10% and penalty to 5% of the assessable value.

9. In result, both the appeals are partially allowed in above terms.

(Order pronounced in the open court on 17.03.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi