CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41484 of 2015

(Arising out of Order-in-Appeal No.19/2015, dated 13.04.2015 passed by the Commissioner of Customs and Central Excise (Appeals – 2) , Tiruchirappalli 620 001)

Barani Industries **.....Appellant**
S F No.242, Mamarathottam
Periyaveerasangili Post
Erode, Tamil Nadu 638 001

Versus

Commissioner of Customs **...Respondent**
Customs House
New Harbour Estate
Tuticorin, Tamil Nadu

APPEARANCE:

Shri N. Manickam, Advocate for the Appellant
Shri N. Satyanarayana, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41139/2025

DATE OF HEARING: 11.07.2025
DATE OF DECISION: 14.10.2025

Per Ajayan T.V.

Barani Industries, the appellant herein has preferred this appeal aggrieved by the Order in appeal No.19/2015, dated 13.04.2015 of the Commissioner of Customs and Central Excise (Appeals), Trichy, rejecting the appeal and upholding the assessment of bill of entry no.8027156 dated 19.01.2015.

2. Brief facts are that the appellant had filed the aforementioned bill of entry for the import of twelve numbers of used Picanol Gamma Rapier weaving looms with standard accessories and declared the value at Euro 12,800 per unit. The customs authorities were of the view that the value declared by the appellant was very low when compared to contemporary imports and hence enhanced the value of

the said imported goods to Euro 19,000 as the assessable value per unit, based on the approved Chartered Engineer's Certificate. The bills of entry were assessed accordingly and aggrieved by the said assessment order, the appellant preferred an appeal before the aforementioned Appellate Authority. However, the Appellate Authority rendered a finding that the appellant has not produced any valid documents to show that the invoice value declared is correct. Placing reliance on the decision in the case of *M/s. Om Prakash Bhatia Vs. Commissioner of Customs, Delhi, 2003 (155) E.L.T.423 (S.C.)*, it was held that in the absence of such evidence, the invoice value declared by the appellant is liable to be rejected under Rule 12 of Customs Valuation Rules, 2007 (CVR,2007) and the department enhanced value is to be accepted under Rule 4 *ibid*. Aggrieved and dissatisfied with the impugned order in appeal, the appellant having preferred this appeal, is now before this forum.

3. Shri N. Manickam, Ld. Advocate appearing on behalf of the appellant, submitted as under:

a. The department has enhanced the value based on the local Chartered Engineer's Certificate, ignoring the invoice value certified to be reasonable by the Load Port Chartered Engineer's Certificate and the letter of credit submitted by the appellant for assessment.

b. The appellant filed letter of protest dated 23.01.2025 and paid the duty on the enhanced value to avoid demurrage and detention charges.

c. The transaction value could not be rejected only on the basis of Chartered Engineer's Certificate. The Hon'ble Supreme Court in the case of ***Tolin Rubbers Pvt. Ltd. Vs. Commissioner, 2004 (163) E.L.T. 289 (S.C.)*** has held that transaction value can be rejected only in exceptional circumstances.

d. In the case of ***Motor Industries Co. Ltd. V. Commissioner, 2009 (244) E.L.T. 4 (S.C.)***, the Hon'ble Supreme Court, citing the principle laid down in *Eicher Tractors Ltd. 2000 (122) E.L.T. 321 (S.C.)*, held that it is settled law that rejection of transaction value without recording special or extraordinary reasons is not acceptable. The Certificate of the local Chartered Engineer cannot be considered as a special or extraordinary reasons to reject the transaction value.

e. The Appellate Authority has held that the declared value has been rejected by the Customs Authorities under Rule 12 of CVR 2007 and the value was redetermined based on the Chartered Engineer's Certificate under Rule 4 (2) of CVR 2007. This Rule 4 (2) is related to value of "identical goods". The definition of "identical goods" as per CVR 2007 means imported goods which are same in all respects including physical characteristics, quality and reputation as the goods been valued, except for minor difference in appearance that do not affect the value of goods. Second hand machinery can not be considered as identical goods because of year of manufacture, condition of the machinery, wear and tear etc and hence the redetermination of the value citing Rule 4 (2) of CVR 2007 is not legally sustainable.

f. In the case of ***Mech. and Tech. Vs. Commissioner of 2009 (247) E.L.T. 305 (Tri. – Chennai)***, in the matter of rejection of load port CE certificate, it has been held that it is impermissible to reject the load port CE Certificate especially as load port certificate was not impugned for its genuineness or as fraudulently obtained and the invoice value is also debited from the bank. The Tribunal held that statutorily prescribed circumstances for rejection of transactional value was not made out.

g. The Board vide its circular no.4/2008-Cus. dated 12.02.2008 issued guidelines regarding valuation of second-hand machinery wherein it was stipulated that in the absence of proper load port engineer certificate, the local Chartered Engineer's Certificate may be accepted. It is submitted that the load port Chartered Engineer's Certificate certifying that the machinery of the standard invoice value of Euros 12,800 is reasonable, is available.

h. The Appellate Authority has relied on the decision in the case of Omprakash Bhatia, where it was held that when margin of profit appears unreasonable, it is for the exporter to establish that it was the true value stated. It is submitted that there is no finding of the Appellate Authority with worksheet on the margin of profit alleged to be unreasonable in the appellant's case. Hence, the reliance on the said decision was incorrect.

i. The appellant had produced valid documents namely letter of credit, invoice and load port CE certificate before the Appellate Authority and hence finding that the appellant has not produced any valid documents to show that the declared value is correct is contrary to truth.

4. Shri N. Satyanarayana, Ld. AR appearing for the Respondent reiterates the finding of the Appellate Authority in the impugned Order in Appeal. Ld. A.R. submits that the redetermination of value done on the basis of the local CE Certificate is just and proper and the impugned order merits no interference.

5. Heard the rival submissions, carefully perused the appeal records and the citations submitted as relied upon.

6. The sole issue that arises for consideration is whether the rejection of the load port CE certificate and the consequent redetermination of value based on the certificate of the local approved chartered engineer under Rule 4 of CVR 2007 is tenable.

7. We note that as per the provisions of Section 14 of the Customs Act, 1962 which were in force w.e.f. 10-10-2007, for the purpose of Customs Tariff Act, 1975 or any other law for the time being in force, the value of the imported goods shall be the transaction value of such goods, that is to say the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation where the buyer and seller are not related and the price is the sole consideration for sale, subject to such of the conditions as may be specified in the Rules in this behalf. It is not the allegation of the department that the importer and the foreign supplier are related persons and that relationship has influenced the transaction value. There is no allegation that the situations in which the transaction value cannot be accepted, as mentioned in proviso to Rule 3(2) of the Customs Valuation Rules, 2007 are present. There is no evidence that the appellant has surreptitiously remitted to the foreign supplier any amount more than the amount the appellant

actually paid as the transaction value declared. There must be some reasonable basis for arriving at the belief that the transaction value is unacceptable, which belief should be supported by cogent evidence. Mere suspicion that the importers are out to take advantage over the authorities and thereby deprive the exchequer of legitimate revenue would be an approach which is antithetical to nurturing a conducive environment to conduct business.

8. We have perused the Load Port Chartered Engineer’s Certificate as well as the Local Chartered Engineer’s Certificate. The local CE Certificate states that on examination of the imported consignment it was found that the description and other details given in the Bill of entry, Checklist, B/L, Packing list and commercial invoice of the exporter are tallying with the items available. The machines were found to be used machines and were found to be not reconditioned. While these observations are in sync with that of the Load Port CE Certificate, we notice that the local CE Certificate has merely stated that the valuation of the machinery is based on one or the combination of the following factors and while tabulating nine factors below therein, has nevertheless failed to indicate which of these factors or a combination of which of these factors were taken into consideration and as to what was the finding qua each of these factors that were considered while rendering the opinion. In fact, the local CE Certificate is silent on whether they had carried out any test as to the operational condition of these machines, in contradistinction to the load port CE certificate which has stated that the machinery was tested in full operation under controlled cycle with tests taken on mechanical and electrical systems throughout the cycle and the standard tests as laid down in BS5750 were carried out to the acceptable national/international standard. Thus, in the absence of any reference to any technical manual or additional information based on which value of the machines have been reassessed by the local chartered Engineer, we find no justifiable reason emanating that would warrant the load port CE certificate to be discarded. In In the light of the above, we are of the view that Customs authorities have merely transposed the local CE Certificate for that of the load CE Certificate which tantamount to mere

substitution of the opinion of one expert for that of another, without any sufficient independent basis for its adoption. It is also pertinent that the customs authorities have not impugned the load port certificate as not genuine or as one obtained by fraud. We are therefore of the considered opinion that such rejection of the load port CE Certificate in favour of the one issued by the local CE Certificate cannot sustain and the consequent rejection of transaction value and enhancement of the same as carried out in the assessment of the Bill of entry No.8027156 dated 19.01.2015 is untenable and is liable to be set aside.

9. We notice that such rejection of load port CE certificate in favour of the local CE certificate has been held to be untenable given that the load port CE Certificate has not been impugned for its genuineness or as fraudulently obtained in the decision of this Tribunal in ***Mech and Tech v Commissioner of Customs, Tuticorin, 2009 (247) ELT 305 (Tri-Chennai)***. It is also seen that in the Circular No.4/2008-Cus dated 12-2-2008 prevailing for the relevant period, the Board, in para 8(c) while enumerating the guidelines in respect of valuation of second hand machinery has stipulated that in the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted, thereby indicating the primacy of the Load Port Certificate. We find that the reliance placed by the Appellate Authority in the case of Om Prakash Bhatia is misconceived as it is in the context of valuation of export goods and the facts and circumstances are entirely different. The said decision therefore has no application in the instant case.

10. Resultantly, in the peculiar facts of this case, we hold that the declaration, by the appellant, of the value of the imported second-hand machinery premised on the load port certificate is liable to be accepted for all purposes. The declared value (transaction value) is liable to be accepted in terms of Section 14 of the Customs Act for assessment of the goods for duty of Customs, there being no misdeclaration on the part of the appellants. Accordingly, the impugned order in appeal cannot sustain and is hence set aside.

The appeal is allowed with consequential relief in law, if any.

(Order pronounced in open court on 14.10.2025)

(AJAYAN T.V.)	**(M. AJIT KUMAR)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

ra