CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 1

CUSTOMS APPEAL NO. 52804 OF 2019

[Arising out of Order-in-Appeal No. CC (A) CUS/D-II-ICD-TKD-605 TO 608/19-20 dated 28.08.2019 passed by the Commissioner of Customs (Appeals), New Delhi]

M/S SUNLIGHT OVERSEAS **Appellant**

1/73, WHS Kirti Nagar, New Delhi

Vs.

COMMISSIONER, CUSTOMS- (ICD TKD)(IMPORTS) NEW DELHI **Respondent**

Commissioner of Customs, Import Commissionerate, ICD, Tughlakabad, New Delhi

WITH

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CUSTOMS APPEAL NO. 52806 OF 2019

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M/S SUNLIGHT OVERSEAS **Appellant**

1/73, WHS Kirti Nagar, New Delhi

Vs.

COMMISSIONER, CUSTOMS- (ICD TKD)(IMPORTS) NEW DELHI **Respondent**
Commissioner of Customs, Import Commissionerate, ICD, Tughlakabad, New Delhi

AND

CUSTOMS APPEAL NO. 52807 OF 2019

[Arising out of Order-in-Appeal No. CC (A) CUS/D-II-ICD-TKD-605 TO 608/19-20 dated 28.08.2019 passed by the Commissioner of Customs (Appeals), New Delhi]

M/S SUNLIGHT OVERSEAS **Appellant**
1/73, WHS Kirti Nagar, New Delhi

Vs.

COMMISSIONER, CUSTOMS- (ICD TKD)(IMPORTS) NEW DELHI **Respondent**
Commissioner of Customs, Import Commissionerate, ICD, Tughlakabad, New Delhi

Appearance:
Ms. Anjali Gupta with Shri Rajatdeep Sharma, Advocates for the Appellant

Shri Rajesh Singh, Authorized Representative of the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 51328-51331 /2023

Date of Hearing : 21/08/2023
Date of Decision: 20/09/2023

P V SUBBA RAO:

1. M/s. Sunlight Overseas filed these four appeals to assail the Order in Appeal[1] dated 28.8.2019 passed by the Commissioner of Customs (Appeals) Delhi whereby he rejected

1 Impugned order

the appellant's appeals and upheld two orders in original[2] dated 13.1.2017 and two Orders in original dated 8.2.2022 passed by the Joint Commissioner.

2. The appellant had filed four Bills of Entry No. 7732792 dated 05.12.2017, 7831426 dated 15.12.2016, 8216202 dated 17.01.2017 & 8216204 dated 17.01.2017 self-assessing the duty in the Indian Customs Electronic Data Interface System[3]to clear imported "Misc. Furniture of Different Types etc" imported from M/s Hong Kong Overseas, China. The details of consignments are as under

S.No	B/E No.	B/L No.	Declared weight (kg)	Weight found (kg)	Difference (kg)
1	8216204/17.01.2017	9582375650/9.11.16	15760	24090	8330
2	7831426/15.12.2016	CGZ0755773/03.11.16	15630	23510	7880
3	7732792/05.12.2017	958149486/01.11.16	15650	24590	8940
4	8216202/17.01.2017	GGZ0753599/27.10.16	15760	26720	10960

3. Receiving specific intelligence that the quantity of the goods was mis-declared in these four Bills of Entry, the Directorate of Revenue Intelligence[4] placed an alert, acting on which, the assessing officer ordered first check examination, i.e., directed the goods to be examined first before assessing the Bills of Entry. It was specifically indicated that the weight of the goods must be checked. Examination of the goods revealed mis-

2 OIO
3 ICES
4 DRI

declaration of the quantity of the goods in terms of weight as indicated above.

4. Through its Customs Broker, the appellant submitted letters dated 23.12.2016 and 02.02.2017 stating that it did not want any show cause notice or personal hearing in the matter and that it was ready to pay re-determined Customs duty as well as fine and penalty.

5. Accordingly, the Joint Commissioner, Inland Container Depot, Tughlakabad, passed OIOs rejecting the transaction value under Rule 12 of the Customs Valuation(Determination of Value of imported goods) Rules, 2007[5]and re-determining the value on the basis of contemporaneous imports of similar goods under Valuation Rule 5. He demanded the differential duty, confiscated the goods under section 111(l) and 111 (m) for mis-declaration, allowed their redemption on payment of fine under Section 125 and imposed penalties. The details of the duty fine and penalties in the OIOs were as follows.

Bill of Entry	Value of goods confiscated (Rs.)	Duty assessed (Rs.)	Redemption fine (Rs.)	Penalty (Rs.)
7831426 dated 15.12.2016	17,16,230	5,05,275	4,00,000	2,00,000
8216204 dated 17.1.2017	15,66,312	7,02,141	5,00,000	3,00,000
7732792 dated 7.12.2016	10,76,361	5,06,768	4,00,000	2,00,000
8216202 dated 17.1.2017	15,17,826	7,55,197	5,00,000	3,00,000

5 Valuation Rules

6. On appeal, the Commissioner (Appeals) passed the impugned order upholding the four OIOs passed by the Joint Commissioner.

7. Aggrieved, the appellant filed this appeal. We have heard learned counsel for the appellant and the learned authorised representative for the Revenue and perused the records. The four questions to be answered in these four appeals are:

(a) Can the rejection of the declared transaction value and re-determination of the duty by the original authority and its affirmation in the impugned order be sustained?

(b) Can the confiscation of the imported goods in the four Bills of Entry under section 111(l) and (m) on the ground of mis-declaration of the quantity and their release on payment of redemption fine be sustained?

(c) If the confiscation of the goods is sustained, are the amounts of redemption fine imposed correct or excessive?

(d) Are the amounts of penalty imposed under section 112 correct or excessive?

Rejection of transaction value under Rule 12 of the Valuation Rules and its re-determination under Rule based on the NIDB data

8. Learned counsel for the appellant submitted as follows:

(a) the imported goods were furniture which are not traded by weight but by number;

(b) the appellants had themselves approached the customs authorities for first check, i.e., requested the authorities to first examine the goods and so it cannot be alleged that there was mis-declaration or suppression of the description or weight of the imported goods;

(c) the Customs authorities failed to verify if the number of pieces imported were the same as in the invoice, which was possible even though the imported goods were in semi-knocked down (SKD) condition;

(d) the allegation of mis-declaration therefore fails and any excess weight found during examination does not change the value declared by the appellant;

(e) it was wrong on the part of the assessing officer to reject the transaction value under Rule 12; for this purpose they place reliance on:

(i) Abhiman Impex vs CC (Import) Nhava Sheva[6]

(ii) Nilkamal Ltd. vs Commissioner of Customs (Import) Nhava Sheva[7]

(f) since the appellant had filed the Bills of entry as per the invoices and other documents, no mis-declaration can be alleged on its part and they place reliance on:

Scorpian International vs CC[8]

CC Excise vs Akshay Aluminum Alloys Pvt Ltd.[9]

(g) there is no evidence of any undeclared flow-back to the exporter or any evidence of underhand payment and therefore, there is no reason to discard the transaction value;

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6 2019 (369) ELT 1255 (Tri-Mum)
7 2019 (370) ELT 923 (Tri-Mum)
8 2017 (357) ELT 1093 (T)
9 2018 (364) ELT 170 (T)

(h) the appellant was forced to apply for waiver of show cause notice as they had suffered huge warehousing & shipping line demurrages and could not afford to continue the goods in custom warehouse and wanted to avoid these damages;

(i) the assessment was done on the basis of the weight reflected in the weighment slip issued by the CONCOR which is against the statute;

(j) the decision of this Tribunal in **Final Order dated 20.10.2020 in the case of Hanuman Prasad & Sons is not applicable** to this case because in that case, the importer accepted the enhancement and in this case, there was no acceptance of undervaluation by the appellant; the values of the contemporaneous imports under NIDB were not shown by the proper officer;

(k) the very act of filing of an appeal against an order imposing customs duty is a protest against the duty assessed as held in

(i) Principal Commissioner of Customs vs Cisco Systems India Pvt. Ltd.[10]

(ii) Mafatlal Industries vs Union of India[11]

(iii) Mohan Textile Mills vs Commissioner[12]

(iv) Commissioner of Customs vs Ganesh Trading Company[13]

(v) Bayshore Glass Trading Pvt. Ltd. vs CC Kolkata[14]

(vi) S&H Gears Pvt. Ltd. vs Commissioner[15]

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10 2023 (384) ELT 165 (Del.)
11 1997 (89) ELT 247 (SC)
12 2018(363) ELT 536 (Tri-Chan.)
13 2013 (297) ELT 75 (Tri-Del)
14 2002 (148) ELT 1243 (Tri-Kol)

(l) in **UOI vs Kamlakshi Finance Corporation Ltd.**[16] it has been held by the Hon'ble Apex Court that Department should pay utmost regard to judicial discipline and give effect to orders of higher authorities which are binding on them.

9. Learned authorised representative for the Revenue submitted that the quantity of the imported goods was checked in terms of weight in this case for the reason that the unique quantity code (UQC) prescribed for furniture is weight. He explained that the quantity of any consignment of goods can be indicated in variety of ways- kg, tons, litres, number, running length, etc. depending on the nature of the goods. Often, the quantity of the same goods can be indicated in more than one ways and commercial transactions can be on any terms. However, in order for ICES to make meaningful compilation of the data and comparison of values and the customs Risk Management System[17] to determine the risk, a unique quantity code is necessary. For this reason, a unique quantity code (UQC) is fixed for each type of goods and the importer is required to indicate the quantity in that code. For furniture, it is weight in kg. The appellant grossly mis-declared the quantity of the goods and the excess quantity found was between 50 and 70% of the declared quantity in the four bills of entry. Therefore, the adjudicating authority was fully justified in rejecting the

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15 2004(167) ELT 538 (Tri-Mum)
16 1992 (55) ELT 433 (SC)
17 RMS

transaction value and re-determining it.

10. On the question of the appellant itself requesting for a first check, i.e., requesting for the goods to be examined first before assessment, he asserts that this submission of the appellant is not true. While filing the Bills of Entry, the importer has an option to request for first check and the importer can get the goods examined before self- assessing the bills of entry and the appellant had not opted for it but self-assessed the Bills of Entry mis-declaring the quantity of the goods.

11. DRI received specific intelligence that the appellant had mis-declared the quantity of goods and put an alert in the system and accordingly, the assessing officer directed the examining officer to conduct 100% examination of the goods which exposed the mis-declaration.

12. When confronted with the examination report, the appellant had not disputed either the mis-declaration or that the value should accordingly be re-determined. It had also not contested the re-determination of value in any manner. It had, in fact, waived the SCN and the personal hearing thereby precluding the possibility of the proper officer indicating how he proposed to re-determine the duty before issuing the OIO. The appellant undertook to pay the differential duty and fine and penalty.

13. Having accepted the re-assessment of the Bills of Entry, the appellant cannot now contest it. The appellant’s contention

that it was forced to accept the re-assessment to avoid demurrages has no force because nothing in its letters indicated that it was accepting the re-assessment only to avoid demurrages. He places reliance on **Hanuman Prasad**

14. We have considered the submissions on both sides. As per section 17(1), the importer is required to self-assess duty on the imported goods and as per section 17(4), the proper officer can re-assess it. As per section 12, the value for assessing the duty is the transaction value subject to some conditions. However, there are situations in which the transaction value can be rejected and the value can be re-determined as per Rule 12 of the Valuation Rules by the proper officer. It reads as follows:

> **"Rule 12. Rejection of declared value.** –
> (1) When **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 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 a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).**
>
> Explanation.- (1) 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."

15. As can be seen, as per Valuation Rule 12, if the proper officer, has reason doubt the truth or accuracy of the value declared, he can call for information and if no information is provided by the importer or after receiving the information, if he still has a reasonable doubt, then it shall be deemed that the value cannot be determined as per the transaction value. Thus, in the first stage, it is sufficient if the officer has some reason to doubt to call for information but at the second stage to reject the transaction value, he should have reasonable doubt. No restrictions have been placed on the proper officer in this Rule on raising doubts. However, explanation 1(iii) to the Rule lays down six conditions, which may be the reason for the officer to doubt the transaction value. However, the use of the words "*raise*

doubts on the truth or accuracy of the declared value based on certain reasons which may include" in this explanation shows that the officer's power to raise doubts is not limited to the six conditions listed therein and can raise doubts for other reasons as well. One of the six reasons listed is **the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production.** In this case, there was a specific intelligence that the quantity of the goods were mis-declared in these consignments to evade duty. Due diligence required the officer to check the consignment. On examination, it was indeed, found that the quantity of the goods in terms of weight (which is the unique quantity code for furniture) was mis-declared. The proper officer, therefore, had very good reason to doubt the transaction value because what was imported was 50% to 70% more than what was declared in the Bill of Entry, invoice and other documents.

16. Having found the mis-declaration, the proper officer could call for information from the appellant. No specific method has been prescribed for calling for the information- it could be in writing or across the counter. The appellant submitted two letters in which it nowhere disputed that the quantity of the goods imported was more than what was declared. It also did not dispute that the value should therefore, be re-determined. It had also not provided any documents or explanation for the excess quantity of the goods found. On the contrary, it agreed to pay the differential duty and fine and penalty. Under such circumstances, the proper officer had a reasonable doubt about

the transaction value and therefore, he correctly rejected the transaction value under Valuation Rule 12.

17. Having rejected the transaction value, the proper officer re-determined the value based on the value of contemporaneous imports of similar goods. Since the appellant had also waived both the Show Cause Notice and Personal hearing, neither was an SCN issued with the relied upon documents indicating how the duty was proposed to be re-determined nor was a personal hearing held in which the appellant could have put forth its defence orally or in writing. We find that the goods which were imported were miscellaneous furniture and therefore, assessment of the value as per the value of contemporaneous imports of similar goods is fair and proper.

18. Learned counsel for the appellant submitted that determination of the quantity of the goods based on the weight taken at the CONCOR was not proper. She also argued that since furniture is not sold by weight but by numbers, the quantity should have been determined as per the number of articles, which, even though the imported goods were in SKD condition, was possible. Neither of these arguments can be accepted. If the appellant had any doubt or reservation about the weight taken, it could have asked the weight to be re-checked on another weigh bridge but the appellant had not done so. If the appellant wanted to contest that the quantity of the goods was the same even if the weight was more, it could have said so and these factual aspects could have been verified. It could also have been

ascertained as to why the weight was more-whether it was because more furniture was imported or stronger and heavier furniture was imported while invoices were issued for lighter furniture. Insofar as this case is concerned, the fact that excess quantity of 50 to 70% was imported in the Bills of Entry was not disputed. Therefore, the assertion of the learned counsel that the quantity of the goods was not more in the Bills of Entry cannot be accepted.

19. Learned counsel also argued that even if the excess quantity is imported, it makes no difference to the value and the transaction value should have been accepted. This submission cannot be accepted. When the transaction value shown in the invoice and other documents was for a certain quantity and what was actually imported was 50% to 70% more, the value in the documents cannot be treated as the value for the total quantity actually imported. While it is true that generally furniture is sold by pieces and not by weight, it is equally true that heavier and stronger furniture costs more than lighter and weaker ones. Therefore, there was no error in the transaction value being rejected. Learned counsel placed reliance on **Abhiman Impex and Nilkamal Ltd.** Both these cases are distinguishable inasmuch as there is nothing in either of these cases to indicate that the importer had accepted the quantity of the goods was more as is it in the present case.

20. Learned counsel also submitted that there is no evidence of any undeclared flow-back to the exporter or any evidence or any

evidence or underhand payment and therefore, there is no reason to discard the transaction value. However, to reject transaction value under Rule 12, what is required is the reasonable doubt of the officer. Evidence of flow back to exporter or underhand payment are not necessary.

21. Learned counsel for the appellant also stated that they were forced to apply for waiver of show cause notice as they had suffered huge warehousing & shipping line demurrages and could not afford to continue the goods in custom warehouse to avoid these damages. This submission cannot be accepted since, in the first place, there is no evidence of the appellant being forced to waive the SCN or personal hearing. Secondly, the argument is inherently contradictory. Demurrages are generally steep and are levied by the custodian (Port Trust or CFS, etc.) to discourage the imported goods blocking the space which can be used by other importers. Goods in the Customs warehouse, however, do not suffer any demurrages and all one is required is to pay the rent to the warehouse keeper. Often, importers keep their goods in the Customs bonded warehouse for months or years. If the goods in these cases were in the Customs bonded warehouse, there cannot be any demurrages at all.

22. Learned counsel also submitted that the very act of filing of an appeal against an order imposing customs duty is a protest against the duty assessed. Reliance was placed on **Cisco Systems India Pvt. Ltd., Mafatlal Industries, Mohan Textile Mills, Ganesh Trading Company, Bayshore Glass Trading Pvt. Ltd. vs CC Kolkata, and S&H Gears Pvt. Ltd.**We find that

all these decisions were in the context of refund of duty paid but which was, on appeal, set aside, could be denied on the ground that the assessee had not paid it under protest. These do not carry the case of the appellant any further.

23. This appeal is against re-assessment in which the appellant waived, in writing, the SCN and personal hearing and in which it had not even disputed that the goods which were imported were much more than what was declared. The question is whether the appellant can, after the goods have been cleared after paying duty, fine and penalty, now dispute the assessment of duty on facts which are now impossible to recheck but which could have easily be re-checked before clearance. We find that similar case up before this Tribunal in the case of **Hanuman Prasad.** Relevant extracts of this order are below:

> 2. The records indicate that Hanuman Prasad had submitted 27 Bills of Entry declaring the value of the goods at 1.2 USD per kg and Niraj Silk had submitted 9 Bills of Entry declaring the value of the goods at 1.2 USD per kg. The Assessing Officer believed that he had reason to doubt the accuracy of the value so declared, since it was lesser than the contemporaneous export data. On being confronted with such data, both Hanuman Prasad and Niraj Silk submitted identical letters in connection with the Bills of Entry. Hanuman Prasad specifically stated that though it had declared the value of the goods at 1.2 USD per kg but on contemporaneous data having been shown, it agrees for enhancement of the value to 1.80 USD per kg and that it did not want any show cause notice to be issued to it or personal hearing to be provided, nor did it want any speaking order to be passed on the aforesaid Bills of Entry. It further stated that it was voluntarily relinquishing the rights provided to it under sections 124 and 17(5) of the Customs Act, 1962**5. The letter written by Niraj Silk is identically worded, except for agreeing to the enhancement of the value of the declared goods to 1.94 USD per kg**.
>
> ***
>
> 5. The value of the declared goods was thereafter enhanced by the Assessing Officer to 1.80 USD per kg.

in the case of Hanuman Prasad and to 1.94 USD per kg. in the case of Niraj Silk.

6. **However, Hanuman Prasad and Niraj Silk challenged the order passed by the Assessing Officer on the Bills of Entry by filing 36 appeals before the Commissioner (Appeals).**

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42. It has to be noted that the two importers, Hanuman Prasad and Niraj Silk, had not made any statement that they have accepted the value of the goods proposed by the Revenue to save demurrage charges nor did they state in the letter that the value was being accepted by them under protest and they would agitate the matter in appeal. It is only in this appeal that it has been suggested that the value was accepted to save demurrage charges, perhaps prompted by the observations made by the Tribunal in **Artex Textile Private Limited.**

43. Learned Counsel for the Respondent also relied upon the decision of the Tribunal in **Commissioner of Customs, New Delhi (ICD TKD) vs M/s UniexcelPolychemPvt. Ltd.** The Tribunal observed that:

4. On the merit of enhancement of value, we are in agreement with the findings in the impugned order. **No detailed reason has been given by the Original Authority for rejection of the transaction value. Apparently he was guided only by DRI alert which formed basis of enhancement of value**. It has been repeatedly held by this Tribunal as well as Hon'ble High Courts that the transaction value cannot be rejected mechanically based on suspicion or general alert without supporting evidence to the effect that the invoice value does not reflect the transaction value required for assessment. In the present case, we find that no evidence of any nature has been brought out or discussed before such enhancement. Even contemporaneous value of similar or identical goods have not been examined and discussed"

44. This decision also does not indicate that the importers had accepted the value of the goods proposed by the Revenue in writing or that the importers had waived their right to a speaking order. In fact, it was the DRI alert that formed the basis of enhancement of value.

45. The Supreme Court observed in **Eicher Tractors Ltd.,** which decision has also been relied upon by the learned counsel for the Respondent, that it is only when the transaction value under rule 4 of the Valuation Rules is rejected that the transaction value is required to be determined by proceeding sequentially through

> rules 5 to 8. The decision of the Supreme Court in **Century Metal Recycling** also holds that if the declared transaction value is rejected, then it has to be determined in accordance with the procedure prescribed in rules 4 to 9. These decisions of the Supreme Court, for the reasons stated above, do not help the respondent.
>
> 46. Learned counsel for the respondent has also emphasized that NIDB data cannot be the sole basis to reject the transaction value without any cogent reasons. As seen above, the importers had in writing accepted the transaction value and it is perhaps for this reason that they did not require any show cause notice to be issued to them or a personal hearing to be granted to them. The respondent is, therefore, not justified in asserting that the transaction value has been determined on the basis NIDB data. It was their acceptance of the value that formed the basis for determination of the value. The decisions relied upon by the respondent to support the contention sought to be raised are, therefore, of no benefit to them.
>
> 47. The general observations made the Commissioner (Appeals) in the impugned order that the value declared in the Bills of Entry were being enhanced uniformly by the Department for a considerable period of time was uncalled for. The Commissioner (Appeals) completely failed to advert to the crucial aspect that the importers had themselves accepted the enhanced value. The Commissioner (Appeals) in fact, proceeded to examine the matter as if the assessing officer had enhanced the declared value on the basis of other factors and not on the acceptance by the importers. This casual observation is not based on the factual position that emerges from the records of the case.
>
> 48. Thus, for all the reasons above, the Commissioner (Appeals) was not justified in setting aside the orders passed by the assessing officer on the Bills of Entry.Recycling also holds that if the declared transaction value is rejected, then it has to be determined in accordance with the procedure prescribed in rules 4 to 9. These decisions of the Supreme Court, for the reasons stated above, do not help the respondent.
>
> 48. Thus, for all the reasons above, the Commissioner (Appeals) was not justified in setting aside the orders passed by the assessing officer on the Bills of Entry.

24. The only difference between this appeal and the one in **Hanuman Prasad** is that in this case, the re-valuation had to be done because more goods were imported than what were

declared which fact has been accepted by the appellant and which it had not disputed during assessment whereas in the case of **Hanuman Prasad** the re-assessment became necessary because the declared value was much lower than the contemporaneous values and the enhanced value itself was accepted by the importer. In **Hanuman Prasad,** after accepting the enhanced value and clearing the goods for home consumption, the importer assailed the re-assessment. In this case, after not disputing mis-declaration of the quantity of goods imported, the appellant did not even ask as to on what value the goods would be assessed or the basis for taking that value. **By waiving the SCN and also the personal hearing, the appellant made it both unnecessary and impossible for the department to show the basis of re-determining the value of the goods.** The assessing officer, having rejected the value under Valuation Rule 12, re-determined it on the basis of contemporaneous imports of similar goods based on the information available in the National Import Database (NIDB). The appellant, having waived the SCN, personal hearing, and having paid the re-assessed duty and clearing the goods for home consumption cannot now ask for the evidence or basis for re-assessment all of which it had waived, thus, putting the department in an impossible situation.

Confiscation of the goods:

25. Learned counsel submitted that the appellant had not violated any provisions of customs law and even assuming that the differential duty as adjudicated in the impugned orders was

correct, there was no case to confiscate the goods under section 111. It is her submission that since the appellant filed the Bills of Entry as per the invoices and other documents, no mis-declaration can be alleged. It is also her submission that the appellant itself had sought first check of the consignment. Therefore, there was no mis-declaration in the Bills of Entry.

26. According to the learned authorised representative, the appellant had not sought first check of the consignment although such a facility was available in the ICES. First check was undertaken along with 100% examination of the consignment for the reason that there was a specific alert in the system by DRI regarding the mis-declaration of the quantity of the goods in this case. The appellant had self-assessed duty as per its declaration in the Bills of Entry. The actual quantity of goods imported was much more than what was declared and hence confiscation under section 111(m) was fully justified.

27. We have considered the submissions on this aspect. It is not possible to accept the submission of the learned counsel that so long as the declaration in the Bills of Entry is as per the invoices, no mis-declaration can be alleged. The charge of duty of Customs and all the restrictions and prohibitions are **on the goods imported into India** and NOT on **the goods said to be imported into India in the invoices or other documents. Usually, the documents match the goods actually imported and it provides a convenient way of assessing and clearing goods. However, in case of differences, what is important is the goods which are actually imported and not just what**

have been indicated in the invoices. Relevant legal provisions are reproduced below:

> “ **Section 11. Power to prohibit importation or exportation of goods.-**
>
> (1) If **the Central Government** is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it **may,** by notification in the Official Gazette, **prohibit either absolutely or subject to such conditions** (to be fulfilled before or after clearance) as may be specified in the notification, **the import or export of goods** of any specified description.
>
> *****
>
> **Section 12. Dutiable goods.** -
>
> (1) Except as otherwise provided in this Act, or any other law for the time being in force, **duties of customs shall be levied** at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, **on goods imported into, or exported from, India**.
>
> (2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.
>
> **Section 111. Confiscation of improperly imported goods, etc. -**
> The following **goods brought from a place outside India shall be liable to confiscation**: -
>
> (m) **any goods which do not correspond in respect of value or in any other particular with the entry made under this Act** or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;”

Thus, it is the goods which must correspond to the declaration and if they do not, they will be liable to confiscation under section 111(m). The declaration in the Bills of Entry matching the invoices, bills of lading, etc. is of no avail. The importer is responsible for what is imported and how much is imported.

28. Reliance was placed by the appellant on **Scorpian**

International vs Commissioner of Customs[18]and **Commissioner of Central Excise vs Aluminium Alloys Pvt. Ltd.**[19]**.** In **Scorpian International,** a learned Member of the Tribunal held as follows:

> " **8.** We find that in this case during the course of physical verification, the goods were not found as declared. Therefore, the appellant contended that it is an inadvertent mistake of the supplier of the goods. In that circumstances, the revenue has alleged that it is an afterthought. We find that in that such situation, the *mala fide* intention of the appellants are missing. As the appellant has placed order to the foreign supplier and he has filed the bills of entry as per the packing list and declaration made by the supplier in invoices. The appellant is not known about the correct declaration, description, quantity and value of the goods. **It is a fact on record that the appellant has declared the description, quantity and value of the goods as per the invoice/packing list, therefore, the benefit of doubt goes in favour of the appellant that it is an inadvertent mistake of the supplier by non- supplying the goods as per the invoice/order/packing list. In that circumstances, the goods cannot be held liable for confiscation and consequently, the penalty is not imposable on the appellant**.
>
> In **Aluminum Alloys Pvt. Ltd.,** a learned Member of this Tribunal held as follows:
>
> **6.** In this case, it is a fact on record that respondent has purchased the impugned goods on high seas sale basis from M/s. Sage Global, New Delhi. As per the Packing List, Pre-Inspection Report, Bill of Lading, Invoice, Bill of Entry & Description of Goods are shown as "Aluminium Scrap". In that circumstance, it cannot be alleged against the respondent that he had deliberately misdeclared the goods. Moreover, from any stretch of means it is impossible to ascertain the goods contained in the container are not such goods as declared in the documents."

29. We respectfully disagree with the learned Member's finding that if the declaration was as per the invoice, packing list, etc. and the goods actually imported were different, no mis-declaration can be alleged. If it is held that it is sufficient if the declaration in the Bills of Entry match the invoices or Bills of

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18 2017(357) ELT 1093
19 2018(364) ELT 3 (SC)

Lading even if it does not match the goods which are actually imported, it will open the floodgates for smuggling and mis-declaration. For instance, one can get an invoice for say, paracetamol and file a Bill of Entry accordingly and actually import heroin and claim that he has not mis-declared. One can get an invoice for iron and actually import gold. One can get an invoice for and declare, in the Bill of Entry, say 100 kg and actually import 1000 kg. The importer is responsible for what he has imported and it is not sufficient if he files Bills of Entry corresponding to the documents. The declaration in the Bills of Entry must match with the goods actually imported. We therefore, find no infirmity in the confiscation of the imported goods in this case. It also needs to be pointed out that the appellant had not contested before the adjudicating authority that the goods were liable for confiscation. In fact, it had, in writing agreed to pay the redemption fine.

Quantum of redemption fine

30. Learned counsel submitted that even if the confiscation is upheld, the quantum of redemption fine was excessive and not proportionate to the alleged mis-declaration. Learned authorised representative for the Revenue asserted that the quantum of redemption fine is fair and proper. The value of the goods confiscated and the redemption fine and penalties imposed in the four Bills of Entry was as follows.

31. Section 125 does not prescribe how much redemption fine must be imposed but only places the upper limit of market value

of the goods. It reads as follows:

> **"Section 125. Option to pay fine in lieu of confiscation. -**
>
> (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:
>
> **Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed:
>
> **Provided** further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, **such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.**
>
> (2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.
>
> (3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.
>
> **Explanation** .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received."

32. Thus, in terms of the second proviso to Section 125, the maximum redemption fine in case of imported goods shall be the

market value of the goods minus the duty chargeable thereon. The redemption fine imposed in each of the four Bills of Entry is way below this limit. In the factual matrix of this case, we find that amount of redemption fine imposed is fair and proper and calls for no interference.

Quantum of penalty

33. Learned counsel for the appellant submitted that even if the demand of differential duty and confiscation of the goods is upheld, the penalties imposed upon the appellant are excessive. Learned authorised representative for the Revenue supports the penalties imposed in the impugned order. Considering the factual matrix of this case, we find that the penalties under section 112 are a small fraction of the market value of the goods confiscated which is fair and proper and calls for no interference.

34. The impugned orders are upheld and the four appeals are dismissed.

[Order pronounced on **20.09.2023**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Tejo