# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# NEW DELHI
**PRINCIPAL BENCH-COURT NO. 3**

## CUSTOMS APPEAL NO. 550 OF 2011

[Arising out of Order in Appeal No. CCA/ICD/323/2011 dated 04.08.2011 passed by the Commissioner of Customs (Appeals), New Delhi]

**KAY PEE ENTERPRISES,** **......APPELLANT**
B-34, 3rd Floor,
Jungpura Extension, New Delhi-110 014

Vs.

**COMMISSIONER OF CUSTOMS- NEW DELHI** **.......RESPONDENT**
Inland Container Depot, Tughlakabad,
New Delhi-110 037

**Appearance:**

Present for the Appellant : Shri A. K. Mishra, Consultant

Present for the Respondent: Shri Rajesh Singh, Authorised Representative

**CORAM:**
**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**
**HON'BLE MR. P. V. SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO. 50693 /2025**

**Date of Hearing : 23/04/2025**
**Date of Decision: 16/05/2025**

**BINU TAMTA:**

1. M/s Kay Pee Enterprises[1] has challenged the order-in-appeal No. CCA/ICD/323/2011 dated 04.08.2011 confirming the findings of undervaluation and consequent re-determination of enhanced value along with redemption fine and penalties under the provisions of Customs Act, 1962[2].

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**1. The appellant**
**2. The Act**

2. The appellant imported unbranded motorcycle inner tubes in bulk packing of 50 pieces per carton from M/s Quigdao Huawang, China vide Bill of Entry[3] No. 2790730 dated 17.02.2011. On the basis of intelligence, the said B/E was called by SIIB for scrutiny and it was found that the appellant paid CVD on the impugned item as per section 4 of the Central Excise Act, 1944[4] whereas in terms of Sl. No. 108 to Notification No. 49/2008-CE (NT) dated 27.02.2010 issued under section 4A of CEA this item attracts CVD on retail sale price based assessment. The department referred to the NIDB data which showed value range of Rs. 31 to Rs. 39 per piece. Market inquiry was conducted and it was found that the impugned item is used in Hero Honda and Pulsar motorcycle and its retail price is at Rs. 110 per piece. It was found that prior to the present B/E, the appellant had made the clearance of the said items by paying duty as per section 4 of CEA instead of section 4A in respect of B/E No. 2611062 dated 19.01.2011 and BE No. 2280702 dated 25.10.2010.

3. The statement of Shri Kulvinder Pal Singh, Proprietor of the appellant company was recorded under section 108 of the Act on 11.03.2011 and 18.03.2011 where he admitted the price of motorcycle inner tubes should be at least Rs. 32 per piece and he agreed to pay the duty on the enhanced assessable value of Rs. 32 per piece for CVD purpose and Rs. 110 per piece retail sale price for CVD purpose. He, therefore, submitted two cheques dated 11.03.2011 and 18.03.2011 for a sum of Rs. 11,04,527/-

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**3. BE**
**4. CEA**

and Rs. 1,47,216/- respectively towards the differential duty and interest pertaining to the above said B/E.

4. The appellant waived the requirement of issuance of show cause notice and personal hearing so as to avoid further demurrage, container detention charges and other expenses due to delay in clearance of the consignment.

5. The adjudicating authority vide order dated 25.03.2011 has re-determined the valuation of the goods imported observing that the importer has voluntarily admitted the value of the similar goods as per NIDB data and therefore, the value of contemporaneous import may be taken for this purpose. Accordingly, the declared value was rejected, enhanced value was determined and accordingly duty was demanded along with interest. The goods pertaining to the live consignment were ordered to be confiscated, giving the option to redeem the same on payment of redemption fine of Rs. 1 lakh. In respect of past B/Es, since the goods were assessed and already cleared were not available for confiscation, fine of Rs. 2 lakhs was imposed in lieu of confiscation. Penalty of Rs. 1 lakh was imposed under section 112(a) of the Act.

6. Being aggrieved, the appellant preferred an appeal which has been rejected by the impugned order. Hence the present appeal before this Tribunal.

7. Heard both sides and perused the records.

8. Shri Abhas Mishra, learned consultant for the appellant challenged the rejection of the declared value being contrary to the provisions of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[5] as no cogent reasons have been assigned. He further submitted that the department has failed to show that any payment over and above the invoice value was paid by the appellant to the overseas supplier. Reliance has been placed on the decision of the Supreme Court in **Eicher Tractor Ltd.** vs. **Commissioner of Customs, Mumbai**[6]**.** He further submitted the motorcycle tubes imported by the appellant were unbranded and were imported from manufacture /exporter. Therefore, the goods have to be comparable with the identical or similar goods imported from similarly placed exporter, quantity under imports are same and import is at or about the same time. Learned counsel for the appellant argued that the allegations of undervaluation cannot be applied in respect of past consignments which were duly cleared by the department after due assessment and examination. On the assessment of duty in terms of section 4A, it was submitted that the motorcycle inner tubes imported by the appellant were in wholesale packing of 50 pieces per carton and as such the provision of Standards of Weight & Measure Act, 1976[7] is not applicable, which means that CVD was chargeable under section 4 of CEA and not under Section 4A. In support of his submissions learned counsel has relied on Circular No. 625/CE dated 28.02.2002 which clarified that it is not necessary to

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**5 CVR**
**6 2000(22)ELT 321 (SC)**
**7 SWMA**

declare RSP under SWMA in case of bulk packaging of the projects of the goods. The appellant has also challenged the impugned order on other counts of confiscation, imposition of redemption fine and penalty on the appellant.

9. Learned authorized representative appearing for the department has reiterated the findings of the authorities below. On the applicability of the provisions of section 4A, it was submitted that the motorcycle tubes are generally sold to any end consumers as individual pieces in cloth or paper packaging rather than in bulk cartons and it is not the case of the appellant that the goods were intended for industrial or institutional consumers. He argued that the goods are notified under Sl. No. 108 of the Notification No. 49/2008-CE(NT) dated 27.02.2010, making them liable for CVD based on the retail sale price. Moreover, the appellant in his submissions had accepted the RSP of Rs. 110 per piece and paid the duty towards the differential amount. On the applicability of the Circular, it was submitted that the appellant has failed to provide evidence that the motor cycle inner tubes were sold only in packs of 50 per cartons. It was, therefore, prayed that the appeal needs to be dismissed.

10. The principle for valuation of imported goods is found in section 14(i) of the Act which provides that the assessment of duty is to be made on the value of the goods. The value, according to section 14(i) shall be deemed to be the price at which, such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of

international trade subject to the conditions specified therein. The Customs Valuation Rules, 1998 have been framed in this behalf. Under rule 3(i) the value of imported goods shall be the transaction value. Rule 4 provides that the price actually paid or payable for the goods imported shall be taken to be the value in the absence of any special circumstances. Thus, both section 14(1)and rule 4(2) speaks of the transaction value and the authorities are required to accept the same subject to the special circumstances specified therein. The subsequent rules provide for alternate modes of evaluation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. It is commonly accepted that it is only when the transaction value under rule 4 is rejected then under rule 3(ii), the value shall be determined by proceeding sequentially through rules 5 to 8 of the rules. The Apex Court in **Eicher Tractors Private Limited** vs. **Commissioner of Customs, Mumbai**[8] has categorically held that there has to be sequential application of rules to re-determine the value. Considering the legal position, we find that the authorities below have failed to sequentially, apply the rules and have passed a cursory order which is completely unwarranted.

11. No doubt that the Customs Authorities have the power to reject the transaction value and enhance the assessable value in terms of the Valuation Rules, however, the rejection of the transaction value and re-determination of the assessable value has to be on the basis of cogent reasons and evidence on record.

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**8. 2000(122)ELT 321 (SC)**

The onus to prove the allegation of undervaluation has been cast on the department. The allegation of undervaluation is not sustainable unless it is proved that additional consideration was involved or any of the exceptions in terms of Rule 4(2) are attracted. The legal provisions required the proper officer to intimate the grounds for enhancing the value and providing reasonable opportunity before taking the final decision on the issue of valuation. As the rejection of declared value on B/E is a serious issue, repeatedly, it has been interpreted by judicial forums that the primary requirements for re-determination of the value is that the transaction value should be rejected for cogent reasons as prescribed in CVR.

12. We may first deal with the findings of the authorities below regarding admission and acceptance by the appellant the charge of undervaluation. We cannot ignore the facts that the appellant had filed B/E dated 17.02.2011 for clearance of motorcycle tubes and pursuant to an intelligence the statement of Shri Kulvinder Pal Singh was recorded on 11.03.2011 and 18.03.2011 where he admitted the price to be at Rs. 32 per piece and also paid the duty on enhanced assessable value on the date of the statement itself. Further, they also waived the requirement of show cause notice and personal hearing so as to avail early clearance of the consignment. Merely because the appellant has accepted the higher value and also made the payment of differential duty does not absolve the department from discharging their responsibility under the provisions of section 14 read with Valuation Rules. The department is still required to produce the necessary evidence

and cogent reasons to reject the transaction value and re-determine the same on the same principles. In the present case, we do not find that the department has discharged its burden of carrying out the requisite exercise and conducting enquiry with reference to the nature of the imported goods, being 'unbranded' along with other factors like quality, quantity, time and country of origin etc. The goods imported by the appellant were 'unbranded' and it was therefore, relevant that the comparable goods should be of the same category 'unbranded' as there is bound to be marked difference in the valuation of 'branded' and 'unbranded' goods which is not forthcoming from the records. No such evidence has been led by the department to ascertain the price for such re-assessment.

13. Referring to a few decisions where the issue of rejection of transaction value was considered, we take note of the judgment of the Apex Court in **Hon'ble Apex Court in C.C.E. & S.T., Noida Vs. Sanjivani Non-Ferrous Trading Pvt. Ltd.**[9]**,** wherein findings of the Tribunal that the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not the sole consideration, the transaction value can be rejected and taking into account the other evidences, the assessable value can be arrived at. Since such exercise has not been done in this case by the department, the enhancement of the assessable value was rejected. Referring to the provisions of Section 14 of the Act and the Customs Valuation Rules as interpreted in the earlier decision by the Apex Court in **Eicher**

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**9. 2019 (365) ELT 3 (SC)**

**Tractors Ltd,** it was concluded that the declared price could be rejected only with cogent reason by undertaking the exercise as to on what basis the assessing authority could hold that the paid price was not the sole consideration of the transaction value and since there is no such exercise done by the assessing authority to reject the price declared in the Bills of Entry, the Order-in-Orginal was held to be erroneous and the appeal filed by the Revenue was rejected.

14. Considering the fact of the present case, we would like to refer to the decision of the **Ahmedabad Bench of the Tribunal in CMR Nikkei India (P) Ltd. Vs. Commr. of Customs**[10]**,** where the dispute was regarding the valuation of the goods imported by the appellant and the assessing authority reassessed the imported goods at values higher than what was declared in the Bills of Entry and the importer had accepted the enhanced value by submitting the consent letter. The Tribunal was pleased to observe as under:

> **"10. Perusal of the records of the case indicates that the only reason cited for re-assessment of value is that the Appellant has accepted the enhanced value. No doubt acceptance of the enhanced value in writing waives the requirement of the issue of speaking order under Section 17(5) ibid. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming from the record of the case that what is the basis of such re-assessment.**
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> 11. Revenue has vehemently argued that the department were justified in enhancement of

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**10. 2022 SCC Online CESTAT 2765**

> value since the importer had accepted such enhancement. We note that in the present matter, other than the admission on the part of the importer, no basis for the adoption of the enhanced value is given. We find that the appellant in their ground of Appeals also submitted that the assessment orders have been passed in complete defiance of the provisions of Section 14 of the Customs Valuation Rules, 2011. Neither the provisions of Section 14 of the Customs Act dealing with "Valuation of Goods" nor the provisions of the Customs Valuation Rules, 2011 have been followed while assessing the impugned bills of entry. The assessment order do not assign any reason for discarding the transaction value nor do they mention under which rule of Customs Valuation Rules, the value has been determined.
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> **12. Considering the above facts, we are of the view that, in spite of the admission on behalf of the importer, the Revenue is required to satisfy the requirements prescribed under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation."**

15. Similarly, Principal Bench of the Tribunal in **ACC (Import), TKD Vs. AAA Impex**[11]**,** took note of the fact that other than the admission on part of the importer, there was no basis for adoption of the enhanced value and therefore, emphasized on the compliance of Section 14 and the Valuation Rules.

16. We find that the adjudicating authority has recorded the finding on the basis that Shri Kulvinder Pal Singh had admitted undervaluation and the fact that he deposited huge amount at the time of recording his statement itself proves the guilt of the appellant. We have no hesitation in rejecting this findings and would like to rely on the decision of the Principal Bench in **River**

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**11. 2019 SCC Online CESTAT 2523**

**Side Impex Vs. Commr.**[12], where the issue of admission by the Authorized Representative of the appellant and also voluntary payment made towards discharging of duty was considered, inter alia, observing as under:

> "21. It appears that the sole ground for the confirmation is the admission of the authorized representative of the appellant in his statement dated 20.01.2017. The said statement is perused vide which the said authorized representative has accepted the reassessed value and offered to pay differential duty along with the applicable fine and penalty..............................**The voluntary payment hence cannot be called as admission of the appellant towards alleged mis-declaration for value from the above discussion. Since it is apparent that the Department has not followed the statutory procedure nor there was any mis-declaration of quantity as alleged, the mere acceptance of the re-assessed value and payment thereof will not be sufficient to confirm the allegations of under valuation. The burden was still on the Department to prove the allegations levelled. The said burden has not been discharged."**

17. Lastly, we would like to refer to the decision of the Division Bench of Hon'ble High Court of Delhi in **Niraj Silk Mills Vs. Commissioner of Customs (ICD) Patparganj**[13]**,** where the decision of the Apex Court in **Commissioner of Customs Vs. South India Televisions (P) Ltd**[14]**,** was analyzed as under:

> "99. Burden of proving incorrect valuation lies on the Department. It held that before rejecting the transaction value declared in an invoice, the department must provide cogent reasons and evidence. This includes indentifying import of identical or similar goods at higher prices around the same time. The Court emphasized that an invoice serves as evidence of the transaction value and mere suspicion or allegations of

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**12. 2023 SCC OnLine CESTAT 924**
**13. CUSAA 26/2022 dated 27 November 2024**
**14. (2007) 6 SCC 373**

> undervaluation are insufficient for rejection. The Department must, it held, conduct detailed inquiries, gather material evidence, or present information on comparable imports to substantiate its claim. If relying on declarations from the exporting country, the Department much explain how such declarations were obtained and establish their probative value, even in adjudication proceedings where strict rules of evidence do not apply. **The Supreme Court further clarified that once the Department provides evidence of contemporaneous imports at higher prices the burden shifts to the importer to validate the declared invoice. The Supreme Court thus highlighted that without adequate evidence or comparable import data, the declared invoice value must be accepted and the benefit of doubt should favour the importer.”**

18. We find that reliance has been placed on the contemporaneous imports available in NIDB data which showed the value of the impugned goods and which has been relied on by the authorities below. In the case of **M/s Sedna Impex Pvt Ltd.** vs. **Commissioner of Excise, Mundra[15],** the Tribunal observed that the declared value cannot be enhanced merely on the basis of the NIDB data. From series of decisions we find that the Tribunal has taken a consistent view that the declared value cannot be enhanced solely on the basis of NIDB data or in other words NIDB data cannot be made the basis for enhancement of the declared import value. In **Impex Steel & Bearing Co**., the Tribunal has specifically held that reliance on NIDB data without going into the details of the goods is not appropriate. Referring to various decisions, the High Court of Delhi in **Niraj Silk Mills** held that the Tribunal has consistently found valuation addition based

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**15. Final Order No. 10397-10407/2023 dated March 06, 2023**

solely on NIDB data would wholly be unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. We are, therefore, of the view that the NIDB data along is insufficient for value re-assessment without any corroborative evidence or contemporaneous import data.

19. The basic allegation of the department is that the declared value of the impugned goods were found different being on the lower side as the goods were required to be subjected to countervailing duty based on RSP under section 4A of CEA. Before proceeding further, the provisions of section 4A are quoted below:

> **"SECTION 4A. Valuation of excisable goods with reference to retail sale price. -**
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> (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.
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> (2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.
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> (3) The Central Government may, for the purpose of allowing any abatement under sub-section (2), take into account the amount of duty of excise, sales tax and other taxes, if any, payable on such goods.
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> (4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer –
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>> (a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

**Explanation 1.** — For the purposes of this section, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like and the price is the sole consideration for such sale :

**Provided** that in case the provisions of the Act, rules or other law as referred to in subsection (1) require to declare on the package, the retail sale price excluding any taxes, local or otherwise, the retail sale price shall be construed accordingly.

**Explanation 2.** — For the purposes of this section, -

(a) where on the package of any excisable goods more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;

(b) where the retail sale price, declared on the package of any excisable goods at the time of its clearance from the place of manufacture, is altered to increase the retail sale price, such altered retail sale price shall be deemed to be the retail sale price;

(c) where different retail sale prices are declared on different packages for the sale of any excisable goods in packaged form in different areas, each such retail sale price shall be the retail sale price for the purposes of valuation of the excisable goods intended to be sold in the area to which the retail sale price relates."

Section 4A makes it clear that it applied only in those cases where there is an allegation to print RSP on the packages of the goods under the provisions of SWMA or the Rules made thereunder. In terms of section 4A, Central Government had issued Notification No. 49/2008-CE(NT) dated 27.02.2008 and Sl. No. 108 therein refers to as "parts, components and assemblies of automobiles".

20. Since in the present case the inner tubes were imported by the appellant in the packing of 50 pieces per cartons and the said tubes were not in individual package, reliance has been placed on Circular No. 625 dated 28.02.2002 which provides that in case of bulk packing there is no requirement of declaring RSP on the packages under the provisions of SWMA or the Rules made thereunder. The findings in the impugned order is that since the appellant has not shown that the inner tubes were sold only in the packing of 50 pieces per cartons the benefit of said circular is not available. In this context, learned counsel for the appellant has referred to a decision of this Tribunal in **Titan Industries Limited** vs. **Commissioner of Customs, Chennai**[16], where the appellant as manufacturer of Titan brand watches had imported button cells declaring them as for own use and cleared on payment of duties based on the transaction value. The adjudicating authority concluded that the impugned imports attracted assessment of CVD on RSP as provided under section 3(2) of the Customs Tariff Act, 1975 and demanded differential duty. Reliance was placed on Circular No. 625 and it was urged that the impugned goods were imported packed in thermo formed trays, each tray holding 100 button cells with 10 such trays shrink wrapped and stacked in a carton and each shipment consisted of Rs.1,50,000/- thousand button cells so packed. It was, therefore, argued that the imports were in bulk packages and did not attract MRP based assessment. In view of the clarification given in the Circular it was held that imported goods

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**16. 2007 (216) ELT 327**

do not attract section 4A for the purpose of assessment of CVD. Considering the facts of the present case, we are of the opinion that the decisions in the case of **Titan Industries** is squarely applicable as the tubes were purchased in bulk and not in retail packaging and are, therefore, not covered for assessment under the provisions of Section 4A.

21. We, therefore conclude that the declared value cannot be rejected, merely on the statement of the Proprietor. The department has failed to exercise its power in conformity with the provisions of section 14 read with the Valuation Rules so as to adduce cogent reasons to establish the charge of undervaluation. Further, to re-determine the valuation of the imported goods, we do not find sufficient evidence satisfying the test of equivalence in comparison to the imported goods. In the absence of requisite exercise to collect cogent evidence to arrive at reassessment, the goods have to be assessed on the basis of the declared value/transaction value.

22. In view of our discussion above, the impugned order is unsustainable and is hereby set aside. The appeal is, accordingly, allowed.

[Order pronounced on **16th May, 2025**]

**(BINU TAMTA)**
**MEMBER (JUDICIAL)**

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

Tejo