

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Customs Appeal No. 610 of 2011

[Arising out of Order-in-Appeal No. CC(A)CUS/ICD/302/2011 dated 29.07.2011 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Krishna Impex International

...Appellant

No. 79, Syam Lal Road,
Darya Ganj, Delhi

VERSUS

Commissioner of Customs (ICD)

...Respondent

New Delhi

ICD, Tughlakabad,
New Delhi - 110020

APPEARANCE:

Shri Prachit Mahajan, Advocate for the Appellant

Shri Rajesh Singh, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 24.04.2025
DATE OF DECISION: **16.05.2025**

FINAL ORDER No. 50697/2025

BINU TAMTA

M/s Krishna Impex International¹ has assailed the Order-in-Appeal No. CC(A)CUS/ICD/302/2011 dated 29.07.2011 upholding the Order-in-Original confirming the differential duty amount along with penalty and redemption fine under the provisions of the Customs Act, 1962² and Customs Valuation (Determination of Price of Imported Goods), Rules, 1988³.

¹ the appellant

² the Act

³ CVR, 1988

2. Acting on the intelligence, the officers of DRI conducted search on 05.06.2008 at the residential, office and godown premises of the appellant. During investigation, the statement of Shri Amarnath Jhunjhunwala, proprietor of appellant was recorded under section 108 of the Act, on 13.03.2009 and 1.10.2009. He admitted that he had undervalued the consignments of Tussah Silk Yarn, 33/37D, A/B/C/2A Grade in hanks covered under Bills of Entry No. 872014 dated 12.9.05, 891715 dated 14.10.05, 452552 dated 4.5.7, 593789 dated 11.5.07, 608261 dated 3.7.07, 624007 dated 29.8.07 and 824536 dated 12.5.08. The goods were assessed and cleared by customs at the respective ports on the basis of the prices mentioned in the invoices submitted with the said Bills of Entry, except in few cases where the value was enhanced. Shri Jhunjhunwala submitted a pay order of ₹10 lakhs towards the differential duty.

3. On the allegations, that Shri Jhunjhunwala appeared to have imported the consignments of Tussah Silk Yarn by way of misdeclaring the actual value of the imported consignment covered under the referred bills of entry in the name of his firm from M/s. Zhejiang Cathaya International Co. China and M/s. Zhejiang Cathaya Light, China and he was controlling and managing all fraudulent activities of the said firm and used to raise invoices, showing lesser value than the actual value of the said goods and use to file the same before the customs authorities with an intent to avoid customs duty, show cause notice dated 16.04.2010 was issued. As the declared value did not appear to be correct transaction value under rule 4 and rule 10A of the 1988 Rules, read with section 14 of the Act, the declared value was proposed to be

rejected and on the basis of the redetermined value, proposed the recovery of differential amount of customs duty with penalty under section 112 (a) and (b), section 114A and 114AA. In lieu of confiscation of goods redemption fine was also proposed. The adjudicating authority confirmed the demand. The appeal, challenging the Order in Original was rejected by the impugned order. Hence, the present appeal has been filed.

4. Heard Shri Prachit Mahajan, learned Advocate for the appellant and Shri Rajesh Singh, Authorized Representative for the department.

5. The main submission of the learned counsel is that the statements cannot be the sole reason to confirm the charge of undervaluation. The department has not produced any evidence to show that any excess amount over and above the invoice price was paid to the suppliers. There is no corroborative evidence regarding undervaluation of imported goods, and therefore the charge of undervaluation of imported goods is unsustainable.

6. Per contra, the learned AR submitted that the Proprietor Shri Amarnath Jhunjhunwala in his statement had admitted undervaluation and had given all the details regarding description of goods, details of custom house agents, exporters of the goods and extent of undervaluation resorted by him. He also submitted that Shri Jhunjhunwala repeatedly avoided the summons issued to him since 5.06.2008 and finally his statement was recorded after lapse of long period on 13.03.2009 and on 1.10.2009. He emphasised that there is misdeclaration of the value of the imported goods and in some cases description of the imported goods.

7. The basic question which emerges from the argument raised by both the sides is whether the charge of undervaluation and redetermination of value of the imported goods is sustainable on the basis of the statement of Shri Amarnath Jhunjunwala. Before considering the issue on merits, it is necessary to take note of the relevant part of the statement of Shri Amarnath Jhunjunwala, which is quoted below:

*"On being asked about the details and undervaluation regarding my eight import consignments of import of Tassah Silk, I state that in all the consignments, I might have made undervaluation to some extents. As regards to the Bills of Entry No.872014/12.09.2005, I have declared 17.60 USD **but the actual value might be USD 19.25**. In respect of B/E No.89175/14.10.2005, the reported value was 17.60, however **the actual value might be around USD 19.25**. In respect of B/E No.452522/04.05.2007, 593783/11.05.007, 608261/31.07.2007 and 624007/09.08.2007, the declared value USD/6.25, 15.40, 15.40. However, **the value might be around 20.10** - and in respect of B/E 537241/ 30.05.2005 the declared value as 14.50, however, **the actual value might be 19.25 USD** and again import of Tassah Silk import vide B/E No.824536/ 12.05.2008 the declared value was USD15 **but the actual value might be 20.25**.*

Further, I state that am ready to pay the differential duty as demanded by the department against my import of Tassah Silk against the abovementioned Bills of Entries. The above statement tendered by me is true and factual and tendered by me without and pressure, duress or threat."

From the contents of the statement, it appears that there is no positive admission to the actual valuation as Shri Jhunjunwala has repeatedly used the word "might be" which in common parlance denotes that it "could be". In other words, Shri Jhunjunwala had only spoken about the possibility of the actual value. In the

circumstances, it was necessary on the part of the revenue to have placed corroborative evidence to show the actual value of the goods imported by the appellant. On the basis of the statement of Shri Jhunjhunwala, the goods cannot be said to be undervalued to the extent stated by him and on that basis the department could not have redetermined the value of the goods.

8. 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,**

Mumbai⁴ 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.

9. 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. 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.

10. The issue of rejection of the declared value on the ground of undervaluation and reassessment of the valuation has been the subject matter of consideration in several decisions. The learned Counsel for the appellant has relied on the decision in the case of **Junaid Kudia versus Commissioner of Customs,**

⁴. **2000(122)ELT 321 (SC)**

Mumbai Import –II⁵, where the Tribunal, observed that rejection of declared value on bill of entry is a serious charge and the same could have been rejected on the basis of cogent examination of evidences and justifiable reasons and further that statements cannot be the sole reason to confirm the charge of undervaluation. It was also observed that no evidence has been produced by the department of the excess amount over and above the invoice price paid to the suppliers. It was, therefore, concluded that as the department has failed to produce corroborative evidences regarding the undervaluation of imported goods, the charge of undervaluation of imported goods is not sustainable.

11. In the case of **Red Elan Distributors Vs. Commissioner of Customs, New Delhi**⁶, the importer had filed Bills of Entry, which were first assessed on the prices declared by the importer and cleared by concurrent audit and counter signed by the proper office. In the context that the prices of the importer were much below than the declared prices of Delhi Duty Free Shop Pvt. Ltd., the department was of the view that there was deliberate attempt to undervalue the goods and evade customs duty. The Tribunal took note of the fact that the department has not brought any iota of evidence that the importer had paid any additional consideration in respect of the imported goods, other than payments through the approved banking channel and in such eventuality, the burden of proof is entirely on the department.

⁵ (2024) 16 Centax 503

⁶ 2018 (359) ELT 258 (Tri. Del.)

12. In the case of **Taito Watch Manufacturing Inds. Vs. Commissioner of Cus., Jaipur**⁷, the Tribunal held that the value of imported goods could not be enhanced on the basis of export declaration of the foreign exporter showing the price higher than that on the Bill of Entry as this could have been done by the foreign exporter to obtain higher export incentive and therefore in such a case, the transaction value had to be accepted.

13. The issue of rejection of transaction value was considered by the **Hon'ble Apex Court in C.C.E. & S.T., Noida Vs. Sanjivani Non-Ferror Trading Pvt. Ltd.**⁸, 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 sole consideration, the transaction value can be rejected and taking into account the other evidences, the assessable value can be arrived at and since such exercises has not been done in this case by the department, the enhancement of the assessable value was rejected. Referring to the provision of Section 14 of the Act and the Customs Valuation Rules as interpreted by the earlier decision of the Hon'ble Apex Court in **Eicher Tractors Ltd Vs. Commissioner of Customs**⁹, 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 exercises done by the assessing authority to reject the price declared in the Bills of Entry, the Order-in-Original was

⁷ 2004 (173) ELT 17 (Tri.-Del.)

⁸ 2019 (365) ELT 3 (SC)

⁹ 2000 (122) ELT 321 (SC)

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 Customs¹⁰**, 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.

11. Revenue has vehemently argued that the department were justified in enhancement of 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

¹⁰ 2022 SCC OnLine CESTAT 2765

transaction value nor do they mention under which rule of Customs Valuation Rules, the value has been determined.

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 Impex¹¹**, 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 Jhunjhunwala had admitted undervaluation and the fact that he deposited the huge amount at the time of recording his statement on 13.03.2009, itself proves the guilt of the appellant. We completely disagree with these findings as acceptance of revised valuation cannot be treated as a voluntary consent by the importer. We would like to rely on the decision of the Principal Bench in **River 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**

¹¹ 2019 SCC OnLine CESTAT 2523

¹² 2023 SCC OnLine CESTAT 924

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 **Neeraj Silk Mills Vs. Commissioner of Customs (ICD) Patparghanj**, where the decision of Hon’ble Apex Court in **Commissioner of Customs Vs. South India Televisions (P) Ltd**¹³, 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 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.”

¹³ (2007) 6 SCC 373

18. As noticed above, the main controversy in the present case is regarding valuation of the goods imported by the appellant. From the provisions of section 14 of the Act read with the Valuation Rules, it is clear that in the ordinary course, the transaction value has to be taken as the assessable value. The main issue before the authorities below was, whether the declared assessable value of the imported goods should be rejected in terms of section 14 of the Act read with rule 4 and rule 10A of the Valuation Rules, 1988 and why the same should not be redetermined, however, there is no discussion on the provisions of law which specifically casts mandatory duty on the department to record reasons as to why the declared value is being rejected and the exercise of re-determination has to be based in terms of the Valuation Rules. Repeatedly, the Courts have laid much emphasis on the principle that even where there is admission by the importer, the department is required to satisfy the compliance of the provisions of section 14 and the Valuation Rules while redetermining the value of the goods. Merely because there is admission by the importer does not absolve the department to act in compliance of the mandatory provisions. Recording the basis for such an enhancement is the sine-quo-non of re-determination. From the perusal of the records of the case, we do not find that the department has made any effort to ascertain quality, quantity, characteristics of the goods of contemporaneous import from which the basis for such reassessment can be made out. In fact, there is no evidence at all to show that the department had carried out any exercise for ascertaining the basis for redetermining the value of the imported goods. It is not even forthcoming that the overseas supplier has been paid consideration higher than the amount

declared in the invoices. In the present case, the revenue has merely re-assessed the value on the basis of the statement of Shri Jhunjhunwala, which is not the prescribed requirement for reassessment of the value of the imported goods. The revenue has not discharged its burden and therefore, we conclude that the transaction value declared by the importer should form the basis of assessment and consequently, the enhanced value reassessed by the revenue is unsustainable.

19. We do not find any merits in the impugned order and hence the same is set aside. The appeal is, accordingly, allowed.

[Order pronounced in the open court on **16.05.2025**]

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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