CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. III

CUSTOMS APPEAL NO. 614 OF 2010

[Arising out of the Order-in-Original No. 02/APSS/CC/DRI/NCH/2010 dated 16/08/2010 passed by Commissioner of Customs (Adjudication), New Delhi – 110 037.]

M/s Edag Technologies India Pvt. Ltd. **......Appellant**
A, 603, Signature Tower, South City,
Gurgaon – 122 001.

Versus

Commissioner of Customs, **....Respondent**
New Customs House,
Near IGI Airport,
New Delhi – 110 037.

WITH
CUSTOMS APPEAL NO. 613 OF 2010

[Arising out of the Order-in-Original No. 02/APSS/CC/DRI/NCH/2010 dated 16/08/2010 passed by Commissioner of Customs (Adjudication), New Delhi – 110 037.]

Mr. Ludger Von der bey, EDAG GmbH & Co. KGaA, Germany, (Erstwhile EDAG Engineering + Design AG Germany) **......Appellant**
St Paul 17 85435 Erding Germany.

Versus

Commissioner of Customs, **....Respondent**
New Customs House,
Near IGI Airport,
New Delhi – 110 037.

WITH
CUSTOMS APPEAL NO. 615 OF 2010

[Arising out of the Order-in-Original No. 02/APSS/CC/DRI/NCH/2010 dated 16/08/2010 passed by Commissioner of Customs (Adjudication), New Delhi – 110 037.]

EDAG GmbH & Co. KgaA, (EDAG Germany), (formerly known as (EDAG Engineering + Design AG Germany) **......Appellant**
Reesbergstrasse 1 36039 Fluda, Germany.

Versus

Commissioner of Customs, **....Respondent**
New Customs House,
Near IGI Airport,
New Delhi – 110 037.

WITH
CUSTOMS APPEAL NO. 616 OF 2010

[Arising out of the Order-in-Original No. 02/APSS/CC/DRI/NCH/2010 dated 16/08/2010 passed by Commissioner of Customs (Adjudication), New Delhi – 110 037.]

Mr. Holger Merz, EDAG GmbH & Co. KgaA Germany, **......Appellant**
(Erstwhile EDAG Engineering + Design AG, Germany)
Reesbergstrasse 1 36039 Fluda, Germany.

Versus

Commissioner of Customs, **....Respondent**
New Customs House,
Near IGI Airport,
New Delhi – 110 037.

AND
CUSTOMS APPEAL NO. 617 OF 2010

[Arising out of the Order-in-Original No. 02/APSS/CC/DRI/NCH/2010 dated 16/08/2010 passed by Commissioner of Customs (Adjudication), New Delhi – 110 037.]

Ms. Babita Chopra, Finance Controller, **......Appellant**
C/o M/s Edag Technologies India Pvt. Ltd.
A, 603, Signature Tower, South City,
Gurgaon – 122 001.

Versus

Commissioner of Customs, **....Respondent**
New Customs House,
Near IGI Airport,
New Delhi – 110 037.

APPEARANCE:

Shri R. Krishnan, Advocate for the appellant.
Shri Rakesh Kumar, Authorized Representative for the Department

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

FINAL ORDER NO. 50864-50868/2025

DATE OF HEARING : 23.04.2025
DATE OF DECISION: 06.06.2025

P.V. SUBBA RAO

The order-in-original dated 16.8.2010 passed by the Commissioner of Customs (Adjudication)[1] is assailed by **M/s. EDAG Technologies Ltd.[2] (Customs Appeal No. 614/2010), Mr. Ludger Von Der Bey of EDAG Germany[3] (Customs Appeal No. 613/2010), M/s. EDAG GMBH SEVEN Co KGA.[4] (Customs Appeal No. 615/2010), Mr. Holger Merz of EDAG Germany[5] (Customs Appeal No. 616/2010), Mrs. Babita Chopra, Finance Controller.[6] (Customs Appeal No. 617/2010)** in these appeals to the extent it applies to them.

2. The facts which lead to the issue of the impugned order are that EDAG is the Indian subsidiary of EDAG, Germany. EDAG received a turnkey project to set up the plant of Ford India in Chennai. As per the agreement, the total value of the project was Rs. 22.21 crores of which import content was to be 49% and local content was to be 51%. EDAG imported certain goods necessary to execute the project from EDAG Germany and paid Customs duties on the value of the goods. EDAG entered into a

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1. **impugned order**
2. **EDAG**
3. **Ludger**
4. **EDAG Germany**
5. **Holger**
6. **Babita**

contract with M/s. Neel Metal Products Ltd.[7] to carry out certain local supplies and services.

3. Receiving intelligence, the Directorate General of Revenue Intelligence[8] initiated investigation, conducted enquiries, recorded statements and came to the conclusion that the goods imported by EDAG were undervalued to evade payment of customs duties and that these goods were imported through (i) Customs port, Chennai, (ii) Indira Gandhi International Airport, Delhi, (iii) Inland Container Depot, Tughlakabad, (iv) Air Cargo Unit, Chennai, and (v) Jawaharlal Nehru Port Trust, Nhava Sheva. DRI issued a Show Cause Notice dated 7.1.2009[9] to ten persons and entities including the five appellants herein calling upon them to show cause to the respective Commissioners in respect of the goods imported through the respective ports. Thereafter, the Commissioner of Customs (Adjudication), Airport & General, New Delhi was appointed as the common adjudicating authority to decide all proposals in the SCN and he accordingly issued the impugned order.

4. The SCN proceeds on the basis that EDAG had signed a turnkey contract with Ford India for Rs. 22,21,76,296/- of which 49% was to be import content (amounting to Rs.10,79,69,632/-) and the remaining 51% (amounting to Rs 11,42,06,664/-) was to be local content. EDAG imported goods and components totally

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7. Neel Metal
8. DRI
9. SCN

valued at Rs.9,60,68,958/- (values declared in the Bills of Entry) for the project. Thereafter, EDAG imported more goods and for this purpose, made a provision to pay 1 million Euro to EDAG Germany. Since this amount was not reflected in the Bills of Entry, EDAG appeared to have suppressed the value of the imported goods to the extent of Rs.6,97,00,000/-. It does appear that EDAG Germany had raised an invoice for this amount on EDAG but later cancelled the invoice.

5. The SCN proposed to reject the values declared under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988[10] and re-determine it under Rule 8 of the 1988 Rules, recover the differential duty under section 28 of the Customs Act, 1962[11] along with interest. It also proposed to confiscate the imported goods under section 111(m) of the Act and impose penalties under section 114A/112 of the Act.

6. The SCN relies on 31 documents of which 9 are statements of various persons recorded under section 108 of the Act. Rest are the panchnamas and other documents seized or recovered during the investigation.

7. The Commissioner passed the impugned order confirming the proposals made in the SCN.

Submissions of the appellant

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10. 1988 Rules
11. Act

8. Learned counsel for the appellant submits as follows:

(i) It is true that EDAG entered into a turnkey contract with Ford to set up its plant in Chennai and as per the contract, 49% was supposed to be import content and 51% was to be local content. This contract includes not only the value of the goods but also of the services because it is a turnkey contract.

(ii) To the extent the goods were imported, the value of the goods was correctly declared and duty was paid on the values.

(iii) In order to carry out its local work, EDAG entered into a contract with Neel Metal who could not perform the tasks as required.

(iv) Therefore, EDAG entrusted this task to its parent company, EDAG, Germany. For it's services, EDAG Germany, invoiced EDAG 1 million Euros. This amount was not the price for import of any goods nor was it any additional consideration for sale of the goods nor was the payment a condition for sale of the goods by EDAG Germany. Later, however, EDAG Germany cancelled this invoice considering the financial situation of EDAG.

(v) Thus, at any rate, there was no additional payment by EDAG to EDAG Germany either for services or for goods.

(vi) Therefore, the SCN was issued wrongly proposing to reject the declared value under Rule 10A of the 1988 Rules and to redetermine it under Rule 8 of the 1988 Rules.

(vii) The SCN relies heavily on the statements recorded under section 108 of the Act which will be relevant to prove the truth of their content only if the persons are examined as witnesses by the adjudicating authority and he comes to the conclusion that they should be admitted as evidence.

(viii) As far as the persons and entities outside India are concerned, they are outside the jurisdiction of the Act and therefore, no penalties could have been imposed on them.

Submissions on behalf of the Revenue

9. Learned authorized representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference.

Findings

10. We have considered the submissions on both sides and perused the records. The case of the department is based on the fact that EDAG, which imported the goods, had, in its books of accounts, made a provision to pay 1 million Euro to EDAG Germany from whom it imported goods and therefore, this amount has been suppressed in the value of the goods shown in the Bills of Entry. Therefore, the declared value should be rejected under Rule 10A of the 1988 Rules and it should be redetermined under Rule 8 of the 1988 Rules.

11. The first question to be answered is if this amount has been paid and the answer is negative. Even according to the SCN, the invoice was raised by EDAG Germany on the EDAG but it was later cancelled. Thus, nothing was paid. So, the question of adding any amount treating as if it was paid is not correct.

12. Even if the amount had been paid, what needs to be seen is if it was paid as a consideration for the imported goods or for some other purpose. According to the appellant, since its local contractor Neel Metal could not perform his job, EDAG sought the services of EDAG Germany and it is for this purpose, EDAG raised the invoice. This cannot be the consideration for the imported

goods but can only be consideration for the services. It needs to be noted that between the parent company EDAG, Germany and its Indian subsidiary EDAG, there could be payments or financial transactions for many reasons. Simply because EDAG paid an amount to EDAG Germany, it does not become additional consideration for the sale of the goods.

13. It also needs to be noted that the SCN relies heavily and quotes extensively from various statements recorded under section 108 of the Act. Such statements are valid as per Section 138B of the Act if the procedure indicated therein is followed. This requires the adjudicating authority to examine the person who made the statement as a witness and then decide that it should be admitted as evidence in the proceedings. Only then will the statement be relevant to prove any case. Section 138B reads as follows:

> **"SECTION 138B. Relevancy of statements under certain circumstances.** — (1) A statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, -
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> > (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
> >
> > (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
>
> (2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a

> proceeding before a court, as they apply in relation to a proceeding before a court.]

14. None of the persons whose statements were relied on were examined by the Commissioner. If they were examined, naturally, noticees must be given an opportunity to cross examine them. By not following the procedure under section 138B, the Commissioner rendered all the statements relied on in the SCN irrelevant to the case.

15. Learned counsel for the appellants is also correct in his submission that during the relevant period, the Customs Act extended to the whole of India and not beyond. Therefore, penalties imposed on persons and entities outside India cannot be sustained at any rate.

16. To conclude:

a) No additional consideration was paid in the case and the invoice for Euro 1million was cancelled and no payment was made.

b) The invoice was, according to the appellants was for the services rendered by EDAG Germany after Neel Metal failed to carry out its work.

c) Therefore, there is no case for rejection of declared value under Rule 10A of the 1988 Rules or its re-determination under Rule 8 of the 1988 Rules.

d) None of the statements relied on in the SCN and in the impugned order are relevant because the Commissioner had not followed the procedure prescribed in section 138B of the Act.

e) Therefore, the rejection of the transaction value and its redetermination and recovery of duty under section 28 of the Act cannot be sustained.

f) Consequently, confiscation of the goods, imposition of penalties which have as their basis the re-determination of values cannot be sustained.

g) The penalties imposed on persons and entities outside India cannot also be sustained as the Customs Act did not extend outside India during the relevant period.

17. The impugned order is set aside and all appeals are allowed.

(Order pronounced in open court on 06/06/2025.)

(BINU TAMTA)
MEMBER (JUDICIAL)

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

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