CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 51792 of 2022

[Arising out of Order-in-Appeal No. CC(A)/Customs/D-II/IMP/ICD/TKD/1883/2021-22 dated02.03.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Barfo Impex, **...Appellant**
Shop No. 17, CSC-6,
Sector-7, Rohini,
Delhi - 110085

VERSUS

Principal Commissioner, Customs –
New Delhi (ICD TKD) **...Respondent**
Inland Container Depot (Import),
Tughlakad, New Delhi - 110020

WITH

Customs Appeal No. 51588 of 2022

[Arising out of Order-in-Appeal No. CC(A)/Customs/D-II/IMP/ICD/TKD/1884/2021-22 dated 02.03.2022 passed by the Commissioner of Customs (Appeals), New Delhi]

M/s. Barfo Impex, **...Appellant**
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VERSUS

Principal Commissioner, Customs –
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Inland Container Depot (Import),
Tughlakad, New Delhi - 110020

APPEARANCE:
Shri B.L. Garg, Advocate for the Appellant
Shri Rajesh Singh, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 03.09.2025
DATE OF DECISION: **19.12.2025**

FINAL ORDER NO. 51896-51897/2025

DR. RACHNA GUPTA

Present order disposes of two appeal filed to assail the Order-in-Appeal No. 8826/2021-22in Appeal No. 51792 of 2022 and 1884/2021-22in Appeal No. 51588 of 2022, both dated 02.03.2022. The facts which culminated into the said orders are as follows:

1.1 The appellant is engaged in import of automobile parts of famous brands like Rockberg, Delpi, Toyota, Chevrolet, Renault, Hankai etc. Based on an information about the appellant being involved in mis-declaration in respect of brand description and value of the imported goods, the alert was placed. Goods imported vide Bill of Entry No. 3494446 dated 05.10.2017 were given out of charge clearance for home consumption on 10.10.2017. However due to the said alert placed andthe goods had not left the customs bonded area that the goods got examined by SIIB on 11.10.2017.

1.2 The goods during examination of the goods it was found that 80% of the goods were of reputed brands viz. Delphi, Hitachi, Chevrolet, Skoda, Bosch etc. However no brand was declared by the appellant. From verification of ICES, it was observed that the appellant-importer had earlier also imported automobile parts without declaring any brand in the Bills of Entries filed by the appellant. Thus intentional suppression on part of the appellant was alleged. After recording various statements of the proprietor namely Shri Saurabh Jain mis-declaration and under valuation was alleged and Detention Memo dated 14.10.2017 was issued. 34866 pieces of imported auto parts of different brands/unbranded goods imported by the appellant and recovered/detained during searches conducted at the warehouses of the appellant and shop-cum officer

of M/s. Vardhanan Automobiles got seized. Panchnama dated 17.10.2017 was also prepared.

1.3 Appellant vide letter dated 02.04.2018 had requested for waiver of written Show Cause and personal hearing. No such show cause notice is on record. Still, Order-in-Original No. 41/2019 dated 05.04.2019 was issued ordering rejection of transaction value. Later Order-in-Appeal No. 8821 dated 02.03.2022 was passed rejecting the declared value of impugned goods [i.e. goods imported vide Bill of Entry No. 3494446 dated 05.10.2017 and goods recovered from his warehouse/godown] under Rule 12 of the CVR, 2007 and re-determined the transaction value as Rs.1,74,24,498/- under Rule 7 of CVR, 2007. The adjudicating authority also ordered for recovery of differential duty of Rs.45,64,420/- along with applicable interest under Section 28AA of the Customs Act, 1962; confiscated the branded seized goods and redeemed the same on payment of R.F. of Rs.7,00,000/- and also imposed penalty of Rs.45,64,420/- on the appellant under Section 114A and Rs.10,000/- under Section 117 of the Customs Act, 1962. Imported goods having redetermined value of Rs.12,455/-, seized at shop cum office of M/s. Vardhaman Automobiles were also confiscated and redeemed on payment of R.F. of Rs.2,000/- and also imposed penalty of Rs.5,000/- each under Section 112 (b) and 117 of the Customs Act, 1962 on them. The already paid customs duty or Rs. 5,13,648/- was appropriated and the differential duty was confirmed. The goods were held liable for confiscation. The penalty were imposed in terms of Section 114A and 117 of the Customs Act, 1962. However, goods were allowed to be

provisionally released vide order dated 03.05.2014 subject of furnishing all bonds bank guarantee and undertakings as are mentioned in the said letter. The duty was reassessed Rs.38,03,296/- with customs duty liability of Rs.15,66,349/-. Being aggrieved the appellant is before this Tribunal.

1.4 In Appeal No. C/51588/2022 the appellant filed another Bill of Entry No. 4041988 dated 17.11.2017 filed by the appellant through CHA M/s. Sky Moon Impex Cargo Services under first check and the goods covered under the same were examined by the officers of SIIB, ICD, Tughlakabad, New Delhi on 21.11.2017 in presence of representative of CHA. In view of the voluntarily acceptance by proprietor of the appellant for payment of the customs duty calculated on the basis of market enquiry and adopting reverse calculation and after making proper deductions as rule 7 of the CVR, 2007 total differential duty payable by the appellant was worked out as Rs.5,01,217- in respect of goods imported vide Bill of Entry No. 4041988 dated 17.11.2017.

2. We have heard Shri B.L. Garg, Advocate and Shri Rajesh Singh, Authorized Representative for the department.

3. Learned counsel for the appellant submitted that the violation of impugned goods as 'branded' is absolutely untenable. It is mentioned that all the impugned goods were either unbranded or misbranded as was stated by Shri Saurabh Jain, Proprietor of the appellant in his statement dated 14.03.2018. It was stated that many of the auto parts in question not actually branded and only bearing some false marking on the outer covering of the packages instead of bearing mark of the items. He also specifically stated

that mis branding of auto mobile parts was done to make more marketable during sale in India. It is for this that no brand was declared in the Bills of Entry. The allegation of suppression are also not sustainable because of this reason. Investigating officers also got verified from few of the involved brands that the goods were not spurious/fake. Hence, the goods have wrongly been treated as branded goods. Reassessed value based on these observations is therefore liable to be set aside. Learned counsel further submitted that there is a clear admission of the original adjudicating authority itself that in case of unbranded goods, there is no violation. Once all the goods were unbranded, the brands names were fake. The allegations of under valuation are not sustainable. Otherwise also, there is no clarity in impugned orders as to why final values were determined and as to why the declare price of unbranded items have been enhanced.

3.1 Learned counsel while submitted technical reasons has mentioned that the provisions of Section 14 of the Customs Act, 1962 were not followed. The adjudicating authority has failed to rely upon any actual import data to substantiate the charge of under valuation. There is no evidence about appellant-importer to have made any payment to the overseas suppler beyond the declared invoice value. It is impressed upon that the actual value of goods was declared and the appellant had paid the amount to their supplier as per invoice provided by the said supplier. Further after rejection the valuation has not been done by sequentially Rule 4 of Rule 9 of the Customs Valuation Rules, 2007. Even if, Rule 3, 4, 5 could not be applied due to absence of similar counterfeit

goods, still the value need to be determined in terms of Rule 7 of the Rules. Ignoring Rule 7 while reassessing the value is not at all tenable. The reassessment is liable to be set aside. Since there is no positive evidence about any suppression on part of the appellant penalty has also been wrongly invoked. Above all present is the case of violation of principles of natural justice is despite of demand of show cause notice was never issued to the appellant. With these submissions the order under challenge is prayed to be set aside and appeal is prayed to be allowed.

4. While rebutting these submissions, learned Departmental Representative foremost reiterated the finding arrived at in the impugned order. It is submitted that voluntary payment is sufficient corroboration to the admitted manipulation for having the doubt. The decisions of this Tribunal in the case of **Shahid Ali, Jaskaran Enterprises & Ors. Vs. Principal Commissioner of Customs (Import), New delhi (ICD TKD) reported as 2021 (6) TMI 171 – CESTAT New Delhi** and **Carpenter Classic Exim Pvt. Ltd. Vs. Commissioner of Customs, Bangalore reported as 2006 (200) ELT 593 (Tri. Bang.)** has been relied upon. With these submissions, the appeal is prayed to be dismissed.

5. Having heard both the sides and perusing the records, we observe and hold as follows:

5.1 The issue involved in these appeals relates to under valuation of the imported goods. Section 14 of the Customs Act deals with Valuation of Goods. It would be seen that Section 14 of the Customs Act, 1962 provides that the transaction value of goods shall be the price actually paid or payable for the goods when sold

for export to India where the buyer and the seller of the goods are not related and the price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. The valuation Rules have been framed in exercise of the power conferred by Section 14 of the Customs Act. In **Eicher Tractors Ltd., Haryana Vs. Commissioner of Customs, Mumbai reported as (2001) 1 SCC 315**, the Hon'ble Supreme Court, in paragraph 6, held as under:

> *"Under the Act customs duty is chargeable on goods. According to Section 14 (1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), 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. The word ordinarily necessarily implies the exclusion of extraordinary or special circumstances. This is clarified by the last phrase in Section 14 which describes an ordinary sale as one where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale.. Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under S. 14(1A) in accordance with the rules framed in this behalf."*

5.2 "Onus to prove that declared price did not reflect true transaction value is always on department – department is bound to accept transaction value entered between two parties in absence of any evidence that identical or similar goods are imported by other importers at higher price". This was held by Hon'ble Apex Court in the case titled as**Commissioner of Customs, New Delhi**

Vs. Prodelin India (P) Ltd. Reported as 2006 (202) ELT 13 (SC) . In the present case, it is observed that the undervaluation is alleged based on the allegation that the goods imported by the appellants were of renowned brand but no brand was declared by appellant in Bill of Entry No. 3494446 dated 05.10.2017. We observe that verification got conducted through those brands. None come forward except M/s. Bosch Ltd. It is on record also in paragraph 515 of the impugned Order-in-Original that the authorized representative of M/s. Bosch Ltd. had visited the SIIB office on 21.11.2017 and inspected the goods i.e. fuel pump of Bosch Brand and vide their letter dated 21.11.2017 had submitted that the said fuel pump was not genuine and it was spurious/fake. Thus it stands established that there is no evidence produced by the department to discharge their onus the impugned goods were branded goods. Even the impugned Order-in-Original accepted that the goods were counterfeit, hence these could not be treated as branded and valuation done as per original branded items. It is on record that the proprietor of appellant namely Mr. Saurabh Jain had stated in this statement dated 14.10.2017 that the goods in question/auto parts were not actually branded and were only bearing some spurious markings/brand names on the outer covering of the packages. For goods found to be bearing other brands such as Rockberg, Hengxing, Sorl, Syndicate, Spazollo etc., no enquiries were conducted by the Investigating Officers with the respective brand-owners. It is also on record that during market enquiry, it was found that all the goods were only bearing fake brands names. Thus the findings in impugned order that goods in

question were branded are held to be wrong without any basis/evidence for the same.

5.3 Further, adjudicating authority itself admitted that there was no under-valuation in case of un-branded goods. It is on record in paragraphs 33 and 36.3 of the impugned Order-in-Original that in respect of auto parts declared as unbranded vide the same Bills of Entry, there was no under-invoicing. Hence, there was no ground for loading of value of the goods that were found to be unbranded during examination. As per information on record in the impugned Order-in-Original, such goods comprised at least 20% of the total goods. However, while determining the values of various imported items including allegedly branded and unbranded, there was no clarity in the impugned Order-in-Original as to how the final values were determined and as to why declared prices of unbranded items were also enhanced. Though there had been a market inquiry in presence of CHA/Authorized Representative of the appellant. However, before adopting any contemporaneous import price for valuation of the goods in question, it is imperative to take into consideration the quality standards, grade, brand etc. which only make the goods comparable for the purpose of valuation. In the instant case, no such comparison of quality standards has been made before loading of value since no comparable import data has been incorporated in the impugned Order-in-Original. The adjudicating authority completely failed to cite or rely upon any actual import date to substantiate the charge of under valuation. Therefore, the essential tenets of Section 14 had been flouted. Further, there is no evidence to establish that the

appellant/importer had made any payment to the overseas suppliers beyond the declared invoice value. On the contrary, it is recorded in paragraph 19 of the impugned Order-in-Original that-

> "On being asked he stated that their supplier did not charge any extra amount for embossing the brand name on the goods. He further stated that the actual value of goods was declared value and they had paid the amount to their supplier as per invoice provided by their supplier"

5.4 We find that the Hon'ble Supreme Court in the case of **Union of India Vs. Mahindra & Mahindra reported as 1995 (76) ELT *481 (SC)****has held as under:*

> *"Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs. It is, no doubt, open to the Revenue to allege and prove that the apparent is not the real and that the price for the sale of the CKD packs is not the true price, and the price was determined by reckoning or taking into consideration the lump sum payment made under the collaboration agreement in the sum 15 million French Francs. The short question is whether the Revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the* true sale price and so Section 14(1)(b) of thewas properly invoked."

Thus it is the established principle of law that the transaction value should be taken as correct value unless there is evidence to the contrary. Further, it is well settled law that unless there is additional consideration involved or any of the exception of Rule 4(2) are attracted transaction value cannot be rejected. Reference is made to the decision in the case of **Commissioner of Customs (Bombay) Vs. Bureau Veritas – 2005 (181) ELT 3 (SC) and Tolin Rubber (P) Limited Vs. Commissioner of Customs, Cochin – 2004 (163) ELT 289 (SC) as held in Auto Stores**

(India) Vs. Commissioner reported as 2014 (305) ELT A 75 (SC).

5.5 Now we look into Rule 12 of the 2007 Valuation Rules which deals with rejection of the declared value and Rule 3 thereof which determining the method of Valuations. It is observed that Rule 12 does not provide for a method of valuation as explicity stated therein. It only mentions the circumstances under which transaction value can be rejected. Once the transaction value is rejected, then the value has to be determined sequentially. Applying Rules 4 to 9 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and not by directly applying Rule 7 thereof. So far as the question of valuation of the goods is concerned, the declared transaction value as mentioned under sub-rule (2) of Rule 4 of the Valuation Rules are not satisfied or in terms of the provisions of Rule 12 of the Valuation Rules, the proper officer has reasons to believe that the declared transaction value is not acceptable in which case, an order has to be passed by following the prescribed procedure.

5.6 In the present case, the impugned order does not discuss as to why the declared transaction value is not acceptable in view of the provisions of sub-rule (2) of Rule 4 of the Valuation Rules and whether they are, for any valid reasons, doubting the declared value. The basis for rejecting the value in the impugned order that the declared value is less than the average price of the raw materials - plastic, glass, metals, etc., is totally incorrect, as the prices of these raw materials in India have been adopted, while the goods have been imported from China. In any case, even if the

declared transaction value is rejected, the same has to be determined by sequentially applying under Rules 4 to 9 of the Valuation Rules and the assessing officer cannot jump directly to Rule 7. Even in respect of Rue 7, which provides for valuation of the goods based on the wholesale price of the similar gods or like goods in India imported by other importers, the impugned order does not discuss as to who is the importer of similar goods. There is no mention in the impugned order as to whether the contemporaneous import of like goods or similar goods in comparable quantity at the prices proposed in the show cause notice has been noticed. In view of this, we hold that the impugned order upholding the rejection of the transaction value and raising the same to Rs.7,18,890/- is not sustainable. For the same reason, the confiscation of the goods under Section 111 (m) and imposition of penalty under Section 112 on this count is not sustainable. As already mentioned above that identical goods were not verified, rejection of transaction value is not sustainable.

5.7 Finally coming to the plea of violation of principles of natural justice, we observe that undoubtedly, the appellant had waived the right of issue of show cause notice. But the appellant was not confronted by the adjudicating authority as for enhancing the valuation of the goods. The principles of natural justice require that the Revenue authorities should have confronted the appellant with the material available for enhancing the value. There is, thus, denial of natural justice. In the instant case, the stage of issuing the show cause notice has not been crossed. Even if it were to be taken that the Petitioner validly waived the right to be served with

the show cause notice, an adjudication order had to be passed within a reasonable time after the seizure. Here, not only has the initial period of six months after the date of seizure lapsed, but the next six months also lapsed without any order having being passed in respect of extension of the period of six months for the reason indicated in Section 110(2) of the Act. Merely because there was a waiver by the petitioner of the right to be served with the show cause notice, it does not mean that the respondents could indefinitely postpone the adjudication order without which the respondents could not have, in terms of Section 124(A) proceeded to confiscate the seized goods. We place reliance on the decision passed in the case of **Shiv Shakti Trading Co. Vs. Commissioner of Customs (Preventive) reported as 2016 (336) ELT 415 (Del.)**

6. The goods in the present case were seized on 17.10.2017 and were provisionally released on 23.05.2018. Appellant requested for a written show cause notice on 12.11.2018. The Order-in-Original dated 05.04.2019 has failed to maintain the mandatory timeline. Non-issuance of show cause notice is definite violation of principles of natural justice. This violation goes to the root of the impugned adjudication order. In totality of the discussion arrived, as above, we hold that Commissioner (Appeals) has failed to observe the mandate of Section 14 and 12 of the Customs Act, 1962. In the absence of any evidence produced by the department the goods have wrongly been alleged of all imported goods have been enhanced including those which were admittedly unbranded. No proper opportunity was given to the importer to defend himself vis-

à-vis the allegations especially when appellant/importer initially waived off the right of being served with the show cause notice. Resultantly, we hereby set aside the impugned order/Order-in-Appeal dated 02.03.2022. Consequent thereto appeals are allowed.

[Order pronounced in the open court on **19.12.2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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