

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – I

Customs Appeal No. 224 of 2012

[Arising out of Order-in-Original No. 03/SU/Commr/2012 dated 20.03.2012 passed by the Commissioner of Customs, New Delhi]

M/s. Chahat Impex

3198/16, Ground Floor,
Shree Balaji Market,
Gali Rajawali, Peepal Mahadev,
Hauz Quazi, Delhi - 110006

...Appellant

VERSUS

**Commissioner of Customs (Preventive)-
New Delhi**

New Custom House
New Delhi - 110037

...Respondent

APPEARANCE:

Ms. Reena Rawat and Ms. Gunjan Tanwar, Advocates for the Appellant
Shri M.K. Shukla, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

DATE OF HEARING: 09.12.2025
DATE OF DECISION: 09.12.2025

FINAL ORDER NO. 51919/2025

JUSTICE DILIP GUPTA

M/s. Chahat Impex¹, has filed this appeal to assail the order dated 20.03.2012 passed by the Commissioner confirming the demand of differential duty under section 28(1) of the Customs Act, 1962² by resorting to invocation of the extended period of limitation as contemplated under the proviso to section 28(1) of the Customs Act.

2. It transpires from the records that the appellant imported 17 consignments of ball valves/cartridges and submitted Bills of Entry in the Year 2007-08. The goods were cleared by the proper officer

1. the appellant
2. the Customs Act

of customs after examination of the goods and after accepting the value declared by the appellant. After the lapse of about three years from the date of first import, the department searched the company premises of the appellant on 16.04.2011 and resumed goods and documents.

3. The show cause notice dated 31.03.2011 was thereafter issued to the appellant proposing to reject the assessable value under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007³ and proposed to enhance them under rule 3 read with section 14 of the Customs Act. The show cause notice also invoked the proviso to section 28(1) of the Act as the notice was issued after a period of six months, which is the normal period prescribed for issuance of show cause notice.

4. The appellant filed a reply to the show cause notice and denied the allegations about valuation. The appellant also contended that the extended period of limitation could not have been invoked in the facts and circumstances of the case.

5. The Commissioner, by the impugned order, has rejected the value declared by the appellant and re-determined under rule 8 of the 2007 Valuation Rules. Regarding the invocation of the extended period of limitation the Commissioner has touched this issue in Paragraph 50 of the order, which paragraph is reproduced below:

"50. In view of the detailed discussions as mentioned above, I agree that all the provisions of Customs Act have been appropriately invoked as the importer had fraudulent intention and willfully evaded duty and after having made up his mind of

3. the 2007 Valuation Rules

paying duty, backed off again. Moreover he has not come out with a proper defence to justify his claims.”

6. Ms. Reena Rawat, learned counsel appearing for the appellant submitted that the Commissioner was not justified in rejecting the transaction value and re-determining it under Rule 8 of the 2007 Valuation Rules. Learned counsel also submitted that the extended period of limitation, in the facts of the circumstances of the case, could not have been invoked.

7. Shri M.K. Shukla, learned authorized representative appearing for the department however supported the impugned order and submitted that not only was the Commissioner justified in rejecting the transaction value and re-determining it, but was also justified in invoking the extended period of limitation.

8. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

9. It would first be appropriate to examine whether the extended period of limitation was correctly invoked in the present case because if this issue is decided in favour of the appellant, it may not be necessary to examine whether the Commissioner was justified in rejecting the transaction value and re-determining it.

10. It is not in dispute that the Bills of Entry were submitted in 2007-08 and they were cleared by proper officer without raising any objection about valuation. It is after period of almost three years after the submission of first Bill of Entry that investigation was started based on some information. The statement of the appellant was recorded under the 108 of the Customs Act. The

appellant stated that the goods were undervalued and the appellant would pay the differential duty.

11. The show cause notice was issued to the appellant on 31.03.2011 i.e. after more than three years from the date the Bills of Entry were submitted and even more than six months after the investigation had started. The allegations regarding invocation of the extended period of limitation, as contained in the show cause notice, are reproduced below:

“19.1 M/s Chahat, Impex and its Proprietor Sh. Sandeep Goyal, had indulged in fraudulent import practices in as much as they had evaded customs duty in the import of consignments of various items imported under Bills of Entry detailed above in the Chart in Para 15 of this Notice, by mis-declaring the value of goods and submitting false invoices showing the purchase price lower than the actual transaction value. Because, whatsoever be the savings on labour cost, a manufactured product cannot be available at a cost price lower than the value of either the scrap (i.e. Trariff Value of brass scrap) or the international trading price of the base metal ie (LME price of zinc).

19.2 It appears that in all the cases, since the invoices submitted by the said firm at the time of its import into India were false invoices and as the same had been raised to show the lower value by the importer, the value shown in the said invoices is liable to be rejected under Rule 12(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 in as much as the value/ price shown/ declared by the importer, of the various items of brass/zinc in the above mentioned _____Bills of Entry were even less than the relevant Tariff value of brass scrap/LME price of Zinc, as the case may be, and is liable to be re-determined under appropriate provisions of Customs Valuation Rules, 2007.

19.3 In respect of the goods covered under the Bills of Entry mentioned above, the value mentioned therein being thus not the actual transaction value actually paid or payable by the importer, the assessable value is liable to be re-determined under Rule 3 of the Customs Valuation (Determination of Value of Imported Goods)

Rules 2007, on the basis mentioned in Para 17 above in terms of Rule 8 of the Rules, *ibid*.

19.4 The wilful act of misdeclaration, suppression of fact and undervaluation of goods by M/s Chahat Impex and its proprietor Sh. Sandeep Goyal, led to evasion of Customs duty amounting to Rs. 1,21,76,507/- (Rupees One Crore twenty one Lacs seventy six thousands five hundred seven only) on the B/Es mentioned above as explained/detailed in Annexure A & B to this Notice. This short levied and short paid duty is therefore liable to be demanded and recovered from M/s Chahat Impex and its Proprietor Sh. Sandeep Goyal, under Section 28 (1) of the Customs Act, 1962, invoking the extended period since the goods were imported in India by suppression of facts and misdeclaration of value with intention to evade duty of Customs, along with the interest on the delayed payment of the said differential duty, as applicable, under Section 28AB of the Act."

12. The appellant has submitted a detailed reply to the show cause notice and in respect of the allegation relating to invocation of the extended period of limitation stated:

"4.1 The present Show Cause Notice has been issued on 31.03.2011 in respect of goods imported in May 2007 to January, 2009 and the only reason ascribed for leveling the charge of undervaluation and consequent short levy of duty as stated in the para 19.1 of the Show Cause Notice is that "whatsoever be the savings on labour costs, a manufactured product cannot be available at a cost price lower than the value of either the scrap (i.e. Traiff value of brass scrap) or international trading price of the base metal (i.e. LME price of Zinc). The Noticee respectfully submits that the aforesaid information was very much available with the department at the time of assessment of subject Bs/E and therefore, there being no collusion, willful misstatement or suppression of facts, the Impugned Show Cause Notice is *ex facie* time barred having been issued beyond the period of limitation of 6 months from the date of payment of duty as prescribed under Section 28 as it stood on the date of import or issuance of Show Cause Notice.

4.2 The demand in the instant case has been issued invoking the extended period under proviso to Section 28 (1)(b) of the Customs Act, 1962 which in the Noticee's submission is also patently illegal as in the entire investigation the department has not unearthed any evidence to show that any of the material particulars declared in the Bs/E or import documents were false or that the Noticee had deliberately suppressed any information from the Department. Thus, the invocation of extended period being illegal, the present demand cannot be sustained.

(emphasis supplied)

13. The Commissioner was obliged to examine the reply submitted by the appellant on the extended period of limitation but as noted above in Paragraph 50 of the order, the Commissioner merely stated that the appellant had fraudulent intention and willfully evaded duty after having made up his mind of paying duty backed off again.

14. The finding recorded by the Commissioner to the effect that the appellant after having made up his mind of paying duty backed off is based to the statement made by the appellant under section 108 of the Customs Act. This statement of the appellant cannot be considered as relevant in view of the decision of this Tribunal in the case of **Surya Wires Pvt. Ltd. Vs. Principal Commissioner of CGST, Raipur⁴**

15. Even otherwise, mere undervaluation of goods cannot be a ground to invoke the extended period of limitation unless the department brings on record relevant material to show that undervaluation was with an intent to evade payment of duty. The Commissioner has not recorded any reason as to why the appellant had any intention to evade payment of duty and only in a routine

4. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

manner has confirmed its invocation under the proviso to section 28(1) of the Customs Act.

16. In this connection it would be appropriate to refer the decision of the Delhi High Court in **Mahanagar Telephone Nigam Ltd. vs. Union of India and others**⁵. The Delhi High Court observed that merely because MTNL had not declared the receipt of compensation as payment for taxable service, does not establish that it had wilfully suppressed any material fact. The Delhi High Court further observed that the contention of MTNL that receipt was not taxable under the Act is a substantial one and no intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return. The relevant portion of the observations are:

"28. In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made thereunder with an intent to evade payment of service tax. **However, the impugned show cause notice does not contain any allegation of fraud, collusion, or wilful misstatement on the part of MTNL. The impugned show cause notice alleges that the extended period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax.** Thus, the main question to be addressed is whether the allegation that MTNL had suppressed material facts for evading its tax liability, is sustainable."

41. **In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of**

5. W.P. (C) 7542 of 2018 decided on 06.04.2023

receipt of consideration for rendering any taxable service. On the contrary, the statements of the officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/financial support from the Government of India was not taxable. **Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable.** The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. **As stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact.** MTNL's contention that the receipt is not taxable under the Act is a substantial one. **No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return."**

(emphasis supplied)

17. In view of the aforesaid discussion, the extended period of limitation could not have been invoked by resorting to the proviso to section 28(1) of the Customs Act.

18. The impugned order dated 20.03.2012 passed by the Commissioner deserved to be set aside on this ground alone. It is, accordingly, set aside and the appeal is allowed.

[Dictated and pronounced in the open court]

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(C.J. MATHEW)
MEMBER (TECHNICAL)**