

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76862 of 2019

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/20/2019 dated 08.07.2019 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s.Sunny Sales

29B, Bentick Street (Near Orient Cinema),
Kolkata – 700 001

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

AND

Customs Appeal No. 76863 of 2019

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/20/2019 dated 08.07.2019 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Sanjay Mehta, Partner,

M/s. Sunny Sales

29B, Bentick Street (Near Orient Cinema),
Kolkata – 700 001

: Appellant

VERSUS

Commissioner of Customs (Port)

Custom House, 15/1, Strand Road,
Kolkata – 700 001

: Respondent

APPEARANCE:

Shri Sudhir Kumar Mehta, Advocate for the Appellant(s)

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs.77144-77145/ 2024

DATE OF HEARING: 07.10.2024

DATE OF DECISION: 09.10.2024

ORDER:[PER SHRI K. ANPAZHAKAN]

There are two appeals filed against the against the impugned Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/20/2019 dated 08.07.2019 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001.

1.1. Customs Appeal No. 76862 of 2019 has been filed by the importer, M/s. Sunny Sales (hereinafter referred to as 'appellant') against the demand of customs duty along with interest and penalties. Customs Appeal No. 76863 of 2019 has been filed by Shri Sanjay Mehta, partner of the Appellant-company against imposition of penalty on him. As both the appeals emanate from the same Order-in-Original, both are taken up together for decision by a common order.

2. The facts of the case are that the appellant had imported 129 consignments of Sewing Machinery and parts of various brands through Kolkata port and one consignment of sewing machinery at ICD Tughlakabad, between the years 2012 and 2014. All the Bills of Entry were assessed/ reassessed to duty finally by accepting the transaction value declared by the appellant in the respective Bills of Entry.

2.1. On 01.12.2014, the officers of Directorate of Revenue Intelligence (DRI), Bangalore, searched the business premises of the appellant at Kolkata and seized the import documents relating to the 130 consignments mentioned above. After initial verification of the documents, DRI, Bangalore transferred the documents to DRI, Kolkata for further

investigation at their end in the year 2015. After receipt of the documents from DRI, Bangalore, DRI, Kolkata started an independent investigation. On completion of the investigation, a Show Cause Notice dated 15.05.2017 was issued to the appellant proposing to reject the transaction value declared by them in all the 130 Bills of Entry and demanded differential customs duty amounting to Rs.2,52,61,853/-. The Notice also proposed to demand interest and impose penalty under Section 112(a) and (b) and Section 114AA of the Customs Act, 1962.

2.2. The Notice was adjudicated vide the impugned order wherein the Ld. Commissioner has confirmed the demand of customs duty of Rs.2,57,27,920/- along with interest. He also ordered for confiscation of the goods imported and imposed equal amount of duty as penalty on the appellant-company. A penalty of Rs. 50,00,000/- has also been imposed on Shri Sanjay Mehta, Partner of the appellant-company, under Section 114AA of the Customs Act.

2.3. Aggrieved against the confirmation of differential customs duty, interest and penalties, the appellants have filed these appeals.

3. The appellants submit that the initial investigation was conducted by DRI, Bangalore and they could not find any undervaluation; subsequently, when the case was transferred to DRI, Kolkata, they started fresh investigation; DRI Kolkata presented two documents: one was a mail allegedly found with one Mr. Mahesh Agarwal at Bangalore and another was a proforma invoice in the name of Jaiswal Trading Company. It is submitted that on the basis of

these documents, the officers of DRI, Kolkata alleged that the appellant has undervalued the goods imported through the 130 Bills of Entry; the Department alleged that in the mail, the appellant has guided his friend company, namely, M/s. Sleek Corporation, Bangalore to disclose lower value and gave his declared value before the Customs at Kolkata. It is also pointed out that it was also alleged that the proforma invoice of Jaiswal Trading Company shows a much higher value and accordingly, it was alleged that the appellant has undervalued the goods imported by them.

3.1. The appellant further submits that they were asked to explain the reasons for the price variation between other imports and the value declared by them in the Bills of Entry; In the statements, the appellant had contended that the email relied upon by the officers was a fake and fabricated document and no such email was ever given by them; Mr. Sanjay Mehta, the appellant's partner, under deposition, also stated that the Proforma Invoice was fake and manufactured which is apparent from the document itself. To substantiate the allegation that the Mail and the Proforma Invoice relied upon in the impugned order are fake, the appellant submits that the Mail is mentioned as excel sheet, which would be in word format and the alleged enclosure was a photo document which would be in PDF, where no one can write, but there were writings on it. The appellant also submits that the invoice copy would be a photo, which is not in word format, and the emails have no authentication under Section 138C. It is also stated that the officers have not disclosed from the premises where the document was recovered; the interrogating

authority had nothing to explain in rebuttal and the Id. adjudicating authority has also not given any finding on this in the impugned order. Accordingly, the appellant submits that the declared value in the Bills of Entry cannot be rejected on the basis of some details mentioned in these documents, which are fake.

3.2. The appellant submits that the Id. adjudicating authority has rejected the transaction value declared by them in the Bills of Entry and confirmed the differential customs duty in the impugned order on the basis of the statement given by one Mr. Abdul Khaleque on 24th December 2014 and the price list tendered by him. The appellant submits that they never interacted with Mr. Abdul Khaleque and did not even know that he was manager of M/s Focus Garments. They submit that Mr. Abdul Khaleque did not file any document showing that he was in any way associated with M/s Focus Garments and gave a price list to DRI, which was neither printed nor authenticated but typed on a plain sheet of paper. Accordingly, they submit that the said Price list was irrelevant and on the basis of such unverified price list, the transaction value declared by them cannot be rejected. Further, it is the contention of the appellant that the items mentioned in the price list were not comparable to the imports of the appellant-company. In this regard, the appellant also submits that on the basis of the statement and price list typed on a plain sheet, the transaction value declared by them in the 130 Bills of entry cannot be rejected. In this regard, the appellant relied on the decision of the Hon'ble Supreme Court in the case of *Eicher Tractors P. Ltd. reported in 122 ELT page 321*.

3.3. The appellant further submits that in the impugned order, it has been admitted that there was no contemporaneous import available; in the impugned order, Rule 9 has been applied in a bizarre manner, without looking into the part, without looking into the model, without looking into the items imported. Thus, the appellant submits that Rule 9 could not have been applied under these circumstances. Accordingly, the appellant submits that the transaction value declared by them in the 130 Bills of Entry should not have been rejected based on the documents whose genuineness is in doubt.

3.4. The appellant also submits that impugned order has been passed without challenging the original assessments orders. In support of this contention, the appellant relied on the decision of the Hon'ble Apex Court in the case of *ITC vs. Commissioner 368 ELT page 216(SC)*. Relying upon this decision, this Tribunal has also held the same view in the case of *Rumen Dey vs. Commissioner 386 ELT page 894 (KOL)*. Thus, the appellant contends that the impugned order passed is legally not sustainable and liable to be set aside on this ground also.

3.5. The appellant submits that the Show Cause Notice issued is barred by limitation. It is their submission that there is no case for invoking extended period of limitation when the basis of dispute is not even NIDB data, but fictitious reference to the Bills of Entry without producing it in the course of hearing. Since the Department has not produced any corresponding higher value of contemporaneous imports, the appellant prays for setting aside the demands of duty, interest and penalties confirmed in the impugned order.

3.6. Shri Sanjay Mehta, Partner of the appellant-company submits that the ingredients required for imposing penalty under Section 114AA of the Customs Act are not existing in this case and hence the penalty imposed on him is liable to be set aside.

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the transaction value declared by the appellant in the 130 Bills of Entry were rejected by the Ld. Commissioner on the basis of two documents, namely, an email found with one Mr. Mahesh Agarwal at Bangalore and a proforma invoice issued in the name of Jaiswal Trading Company. For ready reference, the said documents are extracted below:

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浙江百惠缝纫机有限公司
ZHEJIANG BAIHUI SEWING MACHINE CO.,LTD.
 ADD: LIUYANG INDUSTRIAL AREA, JIAOJIANG, TAIZHOU, ZHEJIANG, CHINA TEL: 0086-576-88177577 FAX: 0086-576-88177829

PROFORMA INVOICE

JAI SWAL TRADING CO. 171, DEBAIPUKUR ROAD, HIND MOTOR, HOOGHLY, WEST BENGAL, INDIA. MOBILE: +91 80137 15450 EMAIL ID: sanjayjaiswal151@gmail.com		INVOICE NO.: 2014XQ201001 DATE: AUG.30, 2014 PAYMENT: 50% T/T advance BALANCE PAID BY BL COPY
LOADING PORT: NINGBO, CHINA		
DESTINATION PORT: KOLKATA, INDIA		
DELIVERY TIME: ANY TIME		
INSURANCE: INSURED BY BUYER		
MAINS	DESCRIPTION OF GOODS	QUANTITY
COMPLETE SET INDUSTRIAL SEWING MACHINE		
FOB NINGBO, CHINA		
N/M	1404PMD	15SETS
	7000C	55SETS
	1412P 1/8	15SETS
	1408PL	45SETS
	1404PSF	55SETS
	1433PPSSM 3/16	25SETS
	1425PPSSM 1/4	25SETS
	1406PMD 1/4	55SETS
	1425P 1/8	25SETS
	1433PPSSM 5/16	35SETS
		55SETS/174CTNS
		US\$56,968.00

T/T MATERIAL:

BENEFICIARY:	ZHEJIANG BAIHUI SEWING MACHINE CO.,LTD. ADD: LIUYANG INDUSTRIAL AREA, JIAOJIANG, TAIZHOU, ZHEJIANG, CHINA TEL: 0086-576-88177577 FAX: 0086-576-88177829
OPENING BANK:	THE AGRICULTURAL BANK OF CHINA, TAIZHOU BRANCH ADD: 436 JIEFANG ROAD, JIAOJIANG 318000, TAIZHOU, ZHEJIANG, CHINA
SWIFT CODE:	ABOCCN3110
ACCOUNT NO.:	19905814040002560

浙江百惠缝纫机有限公司
 ZHEJIANG BAIHUI SEWING MACHINE CO.,LTD.

19/08/2015

Appeal No(s): C/76862 & 76862/2019-DB



Mahesh Agarwal <mahesh73.agarwal@gmail.com>

Re: Fw: Fwd: Re: Re: First order
: messages

Sanjay Sunny <sansun66@gmail.com>
To: Bangalore Mahesh agarwal Cell <mahesh73.agarwal@gmail.com>, SLEEK CORPORATION
<sleekcorp@gmail.com>
Sat, Feb 15, 2014 at 2:46 PM

On Sat, Feb 15, 2014 at 2:46 PM, Gourti Dutta <gdutta1506@gmail.com> wrote:

Forwarded message
From: Gourti Dutta <gdutta1506@gmail.com>
Date: Fri, Feb 14, 2014 at 12:52 PM
Subject: Re: Fw: Fwd: Re: Re: First order
To: Sanjay Sunny <sansun66@gmail.com>

Dear Sir

Please find & enclose the attachment.

Thanks & Regards

Gouri

On Fri, Feb 14, 2014 at 12:35 PM, <sansun66@gmail.com> wrote:
Sent on my BlackBerry® from Vodafone

From: sc blr <sc53.blr@gmail.com>
Date: Fri, 14 Feb 2014 12:51:17 +0530
To: Sanjay Sunny <sansun66@gmail.com>
Subject: Fwd: Re: Re: First order

Dear Sanjay Bhai,

Pls inform me your invoicing price for the machines comp.set as listed in the attached P/L.

Thanks n Regards,
Mahesh Agarwal



Scanned
19/02/2015

Sanjay Sunny <sansun66@gmail.com>
To: sc blr <sc53.blr@gmail.com>, Bangalore Mahesh agarwal Cell <mahesh73.agarwal@gmail.com>
Sat, Feb 15, 2014 at 2:47 PM

Forwarded message
From: Gourti Dutta <gdutta1506@gmail.com>

Scanned
19/02/2015

Scanned
19/02/2015

ZHEJIANG MAQI SEWING MACHINE CO.,LTD
193# MID XINXIN RD,XINHE TOWN,WENLING CITY,ZHEJIANG PROVINCE, CHINA.
TEL:0086-576-86558208 FAX:0086-576-86555970

PROFORMA INVOICE

TO :Sleek Corporation
#24,K.V. Temple Street,"Valli Complex",1st Floor,Sultanpet Cross,
Bangalore,India -560053
80-41225394 FAX:91-80-2253055

TEL:91-
NO.:SF1406
DATE:FEB.10,2014

DESCRIPTION OF GOODS	QUANTITY (SETS)	UNIT PRICE (USD) CIF Chennai	TOTAL AMOUNT (USD)
MAQI BRAND			
INDUSTRIAL SEWING MACHINE COMPLETE SET			
1,LS8700 Lockstitch Sewing Machine	49	US\$163.00	US\$7,987.00
2,LS202 Lockstitch Sewing Machine	30	US\$167.00	US\$5,010.00
3,LS747F-514M2-24 Overlock Sewing Machine	20	US\$238.00	US\$4,760.00
4,LS757F-516M2-95 Overlock Sewing Machine	10	US\$243.00	US\$2,430.00
5,LS8520 Lockstitch Sewing Machine With Edge Cutter	3	US\$243.00	US\$729.00
6,LS3830 Three Needle Chainstitch Sewing Machine	10	US\$320.00	US\$3,200.00
7,LS31016-01CB Interlock Sewing Machine	5	US\$350.00	US\$1,750.00
8,LS 3888-1 Hand-stitch Sewing Machine	3	US\$310.00	US\$930.00
9,LS-T373-1 Button Attaching Sewing Machine	5	US\$385.00	US\$1,925.00
10,LS-T1377 Button Attaching Sewing Machine	2	US\$490.00	US\$980.00
11,LS-T781 Button Holing Sewing Machine	5	US\$850.00	US\$4,250.00
TOTAL VALUE	142		US\$33,951.00
TOTAL VALUE:(IN USD) THIRTY-THREE THOUSAND NINE HUNDRED AND FIFTY-ONE USD ONLY			
REMARKS:-CONTAINER SIZE=1X20'			
1.TERMS OF PAYMENT:USD by T/T advance, Balance by D/P at sight.			
2.PACKING: In export quality.			
3.SHIPPING MARKS: At the buyer's option.			
4.TIME OF SHIPPMENT: Within 25 days upon the confirmation of the P/L.			
5.PORT OF SHIPPMENT AND DESTINATION: From Ningbo,China By Ship to Chennai,India.			

Scanned
19/02/2015

Scanned
19/02/2015

6.1. We observe that the appellant submitted that the email extracted above is a fake one. In support of this allegation, the appellant has submitted that the phone number found in the email is fake and that the email address belonged a Member of Parliament, who has not been interrogated. We also find that the alleged enclosure to the email is a photo document which would be in PDF where no one can write. However, there were writings on the invoice attached. We also observe that the invoice copy is a photo, not in word format, and the email has no authentication under Section 138C. Further, we observe that the Department has not disclosed from where the email and the invoice attached to it were recovered. The Id. adjudicating authority has not given any findings in the impugned order on these allegations made against the appellant. Thus, we observe that the Department has failed to establish the genuineness of the invoice.

6.2. We find that the Department has alleged that in the said mail, the appellant has guided their friend company namely, M/s Sleek Corporation, Bangalore to disclose lower value and gave the declared value before the Customs, Kolkata. We observe that there is no evidence to substantiate this allegation. Thus, in the absence of any evidence to establish the authenticity of the email, we hold that the invoice attached with the mail cannot be relied upon to reject the value declared by the appellant.

6.3. It was also alleged that the proforma invoice of Jaiswal Trading Company shows much higher value. The appellant has stated in its defence that there is no Jaiswal Trading Company known in the trade and the appellant has been falsely implicated by fabricated

documents. The appellant asked the interrogating authority to find I.E. code number of Jaiswal Trading Company and PAN number which would be found from the DGFT portal. These details have not been furnished. Thus, we observe that the genuineness of the Proforma Invoice has not been established and hence it cannot be relied upon to reject the transaction value.

6.4. It is also observed that it is the appellant's submission that the Id. adjudicating authority has rejected the transaction value declared by them in the Bills of Entry and confirmed the differential customs duty in the impugned order on the basis of the statement given by one Mr. AbdulKhaleque on 24th December 2014 and the price list tendered by him. The appellant have stated that they never interacted with Mr. Abdul Khaleque and did not even know that he was manager of M/s Focus Garments. We observe that Mr. Abdul Khaleque did not file any document showing that he was any way associated with M/s Focus Garments and gave a price list to DRI which was neither printed nor authenticated but was typed on a plain sheet of paper. Thus, we observe that the said Price list is not a reliable document and based on such a document, the transaction value cannot be rejected. We further observe that the items mentioned in the price list price list are also not comparable to the imports of the appellant. Thus, we hold that on the basis of the statement and price list typed on a plain sheet the transaction value declared by the appellant in the 130 Bills of entry cannot be rejected. We observe that this view is supported by the decision of the Hon'ble Supreme Court in the case of *Eicher Tractors P. Ltd. reported in 122 ELT page 321.*

The relevant part of the said decision is reproduced below:

"22.In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis-description of the goods imported as was the case in Padia Sales Corporation. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially acceptable measure, which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one time sale of 5 year old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to any one else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1).

23.In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was not the "ordinary" sale price of the bearings imported.

6.5.We observe that in the impugned order the transaction value declared by the appellant was rejected on the basis of some contemporaneous imports. In our view, the rejection of transaction value

can be done only on the basis of cogent and comparable material and when there is no case of contemporaneous bill of entry or contemporaneous import available on record, the transaction value cannot be rejected on the basis of materials which are not admissible into evidence. For rejection of transaction value, contemporaneous import of identical and/or similar import is essential. This view has been crystallized by the Hon'ble Supreme Court in the case of *Commissioner of Customs, Calcutta Vs- South India Television Pvt. Ltd. reported in 214 ELT page 3 SC*. The relevant part of the said decision is reproduced below:

"7. Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s. Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19-9-1996. In the present case, the importer has alleged that the original declarations were with the Department. That certain portions of the originals were not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Department to produce the original declaration in the Court. No reply has been filed to the said I.A. till date. In the

circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22-7-1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. For the aforesaid reasons, we find no infirmity in the impugned judgment of the Tribunal."

6.6. From the impugned order, we observe that not a single bill of entry of identical imports at higher value has been cited. On the contrary, we observe that the appellant has cited several imports mentioned in the chart at page 231 Volume II and enclosed invoices and bill of entry from pages 232 to 476 which are identical and of near same value. However, no findings have been given by the Id. adjudicating authority on these averments made by the appellant. In the Show Cause Notice, we observe that the appellant has submitted some evidence of identical imports at lower value, which has been admitted in paragraph 14.3 and paragraph 14.4 of the notice. The relevant paragraph 14.3 of the Show Cause Notice is set out hereinbelow;

" ...The import value data base of the contemporaneous period, therefore contains in abundance data of import of comparable

goods at such misdeclared low value , which themselves have either been already subjected to or may be subjected to the scanner under the ongoing process of investigation relating to import made by other importers”

6.7. Thus, we observe that the Id. adjudicating authority has not taken into account the evidences submitted by the appellant on contemporaneous imports with lower value. Also, he has not furnished the details of the Bills of Entry where higher value has been adopted.

6.8. We observe that the Id. adjudicating authority has also not followed the valuation rules in a systemic mannerto re-determine the Assessable value, by stating that it will be in conflict with the intelligence about the rampant under-invoicing as alleged in paragraph 14.4 of the notice. In the impugned order, it has been admitted that none of the Rules from Valuation Rule 4 to Rule 8 are applicable and valuation has been done under Rule 9 of the valuation rules. We observe that in the impugned order, valuation was disputed in the manner and the procedure adopted to re-determine the value is unknown to law. We observe that the machine with only head were compared with certain imports where head was not imported, but some other parts were imported, and by application of Rule 9, the prices were sought to be adjusted even when there is no comparability of the goods in part , model, valuation, etc. Thus, we hold that the transaction value in this case could not have been rejected under Rule 12 of the Valuation Rules.

6.9. In view of the above discussions, we hold that the declared value in the Bills of Entry cannot be rejected on the basis of some details mentioned in the Proforma Invoice and documents attached with the said email.

7. We also find that, in this case, the appellants have imported 129 consignments of Sewing Machinery and parts of various brands through Kolkata port and one consignment of sewing machinery at ICD Tughlakabad, between the years 2012 and 2014. All the Bills of Entry were assessed/reassessed to duty by accepting the transaction value declared by the appellant in the respective Bills of Entry. We observe that the Assessment Orders have not been challenged and hence they became final. We agree with the submission of the appellant that demand cannot be raised without challenging the assessment orders. In this regard, we rely upon the decision of the Hon'ble Apex Court in the case of *ITC vs. Commissioner 368 ELT page 216(SC)*. Relying upon this decision, this Tribunal has held the same view in the case of *Rumen Dey vs. Commissioner 386 ELT page 894 (KOL)*. The relevant part of the said decision is reproduced:

"10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd., has held as under :

When we consider the overall effect of the "47. provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set

aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also."

7.1. Thus, relying on the decision of the Hon'ble Apex Court cited above, we hold that the impugned order is legally not sustainable. Accordingly, we hold that the demands of duty, interest and penalties confirmed in the impugned order are not sustainable.

8. Regarding the penalty imposed on Shri Sanjay Mehta, Partner of the Appellant-company, we observe that the ingredients required for imposing penalty on him under Section 114AA of the Customs Act are not existing in this case. Accordingly, we hold that the penalty imposed on him is liable to be set aside.

9. In view of the above discussions, we set aside the impugned order and allow the appeals filed by both the appellants.

(Order pronounced in the open court on 09.10.2024)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)