

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

REGIONAL BENCH – COURT NO. 1

**Customs Appeal No. 77034 of 2016**

(Arising out of Order-in-Original No. KOL/CUS/PORT/COMMR./63/2016/SIB dated 14.10.2016 passed by the Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700 001)

**M/s. S.K. Works & Vyapar Private Limited** : **Appellant**  
18/1, Maharshi Debendra Road, Room No. 111,  
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** : **Respondent**  
Custom House, 15.1, Strand Road,  
Kolkata – 700 001

**AND**

**Customs Appeal No. 77037 of 2016**

(Arising out of Order-in-Original No. KOL/CUS/PORT/COMMR./63/2016/SIB dated 14.10.2016 passed by the Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700 001)

**Shri Shalabh Jalan, Director,** : **Appellant**  
**M/s. S.K. Works & Vyapar Private Limited**  
18/1, Maharshi Debendra Road, Room No. 111,  
Kolkata – 700 001

**VERSUS**

**Commissioner of Customs (Port)** : **Respondent**  
Custom House, 15.1, Strand Road,  
Kolkata – 700 001

**APPEARANCE:**

Shri K.K. Sanyal, Advocate for the Appellant(s)

Shri Tariq Sulaiman, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**  
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NOS. 75620-75621 / 2025**

DATE OF HEARING: 26.02.2025

DATE OF DECISION: 06.03.2025

**ORDER: [PER SHRI K. ANPAZHAKAN]**

The instant appeals have been filed against the Order-in-Original No. KOL/CUS/PORT/COMMR./63/2016/SIB dated 14.10.2016 passed by the Commissioner of Customs (Port), 15/1, Strand Road, Custom House, Kolkata – 700 00, wherein the Ld. Commissioner has confirmed the differential duty demand of Rs.24,46,788/- under Section 28(4) of the Customs Act, 1962, confiscated the goods under Section 111(i), (l) and (m) of the Customs Act, 1962 with an option to redeem the goods against payment of fine of Rs.25,00,000/- and imposed a penalty of Rs.20,00,000/- under Section 114A of the Customs Act. Penalty of Rs.20,00,000/- was also imposed under Section 114AA of the Customs Act on M/s. S.K. Works and Vyapar Private Limited (hereinafter referred to as the “appellant”). A penalty of Rs.24,46,788/- under Section 114A and a penalty of Rs. 50,00,000/- under Section 114AA of the Act were also imposed on Shri Shalabh Jalan, Director of the appellant-company(one of the appellants herein).

2. Aggrieved by the confirmation of the demands and imposition of penalties and redemption fine, the appellants have filed these appeals.

3. The facts of the case are that the appellant-company, M/s. S.K. Works & Vyapar Pvt. Ltd., imported 3 consignments of different consumer goods such as bowl sets, buckle, elastic rope button cells, garment accessories, umbrella, bags, etc., in the month of February, 2014 from M/s. Lakshmi Overseas Hong Kong Limited, Hong Kong. The total value of

these consignments was USD 33,293.48 (C&F). Accordingly, the appellant filed 3 Bills of Entry after adding insurance charge as 1.125%, as per norms. The details of the Bills of Entry, as submitted by the appellants, are furnished below: -

| Sl. No. | Bill of Entry No. | Date       | Declared Ass. Value (in Rs.) | Admitted duty (in Rs.) |
|---------|-------------------|------------|------------------------------|------------------------|
| 1.      | 4746451           | 26.02.2014 | 5,57,580.65                  | 1,90,593.00            |
| 2.      | 4746281           | 26.02.2014 | 4,15,159.00                  | 1,43,312.00            |
| 3.      | 4720638           | 24.02.2014 | 25,44,356.82                 | 7,31,266.00            |
| Total   |                   |            | 35,17,097.00                 | 10,65,171.00           |

4. The office of the Special Investigation Branch (SIB) intercepted the goods and conducted 100% examination of the goods. Upon examination, some of the goods were found to be in excess than the quantity declared by the appellant in the Bills of Entry. The appellant admitted their mistake and immediately took up the matter with the supplier, who vide their letter dated 22.03.2014 admitted that it was their mistake in wrongly loading excess goods. The supplier further sent the amended invoices and packing lists, which were submitted by the appellant to the Department for consideration. However, the Department did not take into consideration the amended invoices and demanded the differential duty payable. The appellant deposited an additional duty of Rs.7,20,695/- and furnished a bank guarantee of Rs.61,71,413/-, on the basis of which the goods were released provisionally.

5. A Show Cause Notice dated 24.09.2014 was issued to the appellant proposing to reject the declared assessable value of Rs.12,27,175.67 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the value as Rs.1,25,29,980.84/- as per Rule 5 of the Customs Valuation Rules read with Section 14 of the Customs Act, 1962. Accordingly, differential duty amounting to Rs.24,46,788/- was proposed to be recovered under Section 28(4) of the Customs Act, 1962, along with interest and penalties.

5.1. The said notice was adjudicated by the Id. adjudicating authority who passed the following order: -

*"21.1. I reject the total declared assessable value at Rs.35,17,097/- for Bills of Entry Nos. 4746451 dated 26.02.2014, 4746281 dated 26.02.2014 and 4720638 dated 24.02.2014 (as detailed in Table A above) in terms of Rule 12 (1) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 read with section 14 of Customs Act, 1962.*

*21.2. I order re-determination of the assessable value of the goods imported by them vide Bills of Entry Nos. 4746451 dated 26.02.2014, 4746281 dated 26.02.2014 and 4720638 dated 24.02.2014 as Rs.22,43,617/-, Rs. 16,08,490/- and Rs.88,77,874/- respectively (as detailed in Table No. 4 & 5 at above) under the provisions of Rule 5 of the CVR, 2007 read with Section 14 of the Customs Act, 1962.*

*21.3. I order re-determination of MRP/RSP of the goods imported as detailed in Table No. 4 at*

*above in terms of provision to sub-Section (2) of Section 3 of Customs Tariff Act, 1975 read with section 44 of the central Excise Act, 1944.*

*21.4. 1 order demand and recovery of the differential duty amounting to Rs. 24,46,788/- under section 28 (4) of the customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 from the importer.*

*21.5. 1 order appropriation of the already paid duty of Rs. 10,65,171/- and Revenue deposit of Rs. 7,20,695/- and Bond of Rs. 61,71,413/- furnished at the time of provisional release of goods imported vide the said three Bills of Entry towards the duty demand of Rs. 24,46,788/- as detailed in Table No. 5.*

*21.6. I order confiscation of the goods imported vide Bills of Entry Nos. 4746451 dated 26.02.2014, 4746281 dated 26.02.2014 and 4720638 dated 24.02.2014 and valued at Rs.22,43,617/-, Rs. 16,08,490/- and Rs.88,77,874/-respectively (as detailed in Table No. 4 & 5 at above) under Section 111(i), (1) & (m) of Customs Act, 1962. However, the noticee is given an option to redeem the goods under Section 125 of the Customs Act, 1962 on payment of a fine of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only).*

*21.7. I impose a penalty on M/s S.K. Works and Vyapar Pvt. Ltd. under Section 114A of the Customs Act, 1962 for Rs. 20,00,000/- (Rupees Twenty Lakhs only).*

*21.8. I impose a penalty on M/s S.K. Works and Vyapar Pvt. Ltd. under Section 114AA of the*

*Customs Act, 1962 for Rs. 20,00,000/- (Rupees Twenty Lakhs only).*

*21.9. I order enforcement of Bank Guarantee towards duty liabilities and other penal liabilities of the importer.*

*21.10. I impose a penalty on Shri Shalabh Jalan, Director of M/s S.K. Works and Vyapar Pvt. Ltd under Section 114A of the Customs Act, 1962 for Rs. 24,46,788/- (Rupees Twenty Four Lakhs, Forty Six Thousands, Seven Hundred Eighty Eight only).*

*21.11. I impose a penalty on Shri Shalabh Jalan, Director of M/s S.K. Works and Vyapar Pvt. Ltd under Section 114AA of the Customs Act, 1962 for Rs. 50,00,000/- (Rupees Fifty Lakhs only)."*

6. Both the appellant-company and its Director viz. Shri Shalabh Jalan have filed the present appeals against the above confirmed demands of duty and penalties confirmed against them in the impugned order.

7. The appellants submit that some goods were found to be in excess as compared to the declaration made in the Bills of Entry filed by them. They submit that upon coming to know about the discrepancy, they took up the matter with their supplier, who admitted their mistake in wrongly loading the goods in excess of the invoiced quantity and sent the amended invoices and packing lists. The appellant submits that they had submitted the amended invoices and packing lists to the Department for consideration, but the same were not considered.

7.1. The appellants also submit that they are agreeable to pay the duty on the goods found to be in excess; however, as the excess quantity is not due to their mistake, they contend that the goods are not liable for confiscation and accordingly penalties not imposable for the mis-declaration.

7.2. Regarding the valuation of the impugned goods, the appellants contend that they had properly declared the assessable value as per the invoices submitted by the supplier and thus, the duty is liable to be paid as per the transaction value declared in the invoices. It is submitted that in the impugned order, the Id. adjudicating authority has accepted that there is no corresponding value available for identical items and hence, the value could not be determined in terms of Rule 4 of the Valuation Rules, 2007; finally, the value of similar goods has been taken into consideration for re-determining the value under Rule 5 of the Customs Valuation Rules. In this regard, the appellant submits that the invoices submitted by the importer-firm at the time of import has been rejected by the Id. adjudicating authority as false and without any evidence, but sufficient materials were not placed on record by the Id. adjudicating authority for rejection of the invoices issued by the supplier.

7.3. The appellant has also made the following submissions in support of their contentions: -

- (i) In respect of the allegation at Para 12 of the SCN that the invoice submitted at the time of import was false / wrong invoice, the appellant submits that the supplier had already admitted their mistake in wrong shipment of goods vide a letter dated 22.03.2014. Therefore, the invoice should not be held as false / wrong

invoice as the invoice was issued by the supplier themselves. The invoice could only be treated as false if the supplier affirmed that they had not issued those invoices. Merely for such a mismatch, the invoice should not be, ipso facto, treated as false/wrong invoice.

(ii) In Para 9 of the SCN it is proposed to reject the transaction value under Rule 12 of the Customs Valuation Rules, 2007 on the ground that the declared value was quite low as compared to ascertained value. Though the notice referred some values purported to be of contemporaneous imports, no documentary evidence such as copies of Bills of Entry and relevant invoices were supplied along with the notice. Thus, it is evident that the relied upon documents were not provided to them. Therefore, reliance on such documents is not sustainable; that it is a settled position of law that in the absence of evidence in the form of contemporaneous imports, transaction value should not be rejected. The CESTAT in the case of *M/s Sara Electro Acoustics Pvt. Ltd [2009(240) ELT 448 (Tri-Del)]* had held that wide variation between price found in price list etc and prices declared by the importers although throw strong suspicion, but no evidence in the form of contemporaneous import of comparable goods was relied upon to enhance the value. Hence, enhancement of value was not justified.

(iii) Rule 3(2) of CVR, 2007 mandates to accept the transaction value provided the circumstances mentioned under that sub-rule

are satisfied. The Show Cause Notice did not allege existence of any of these circumstances in the impugned importation which might point towards rejection of transaction value and therefore the declared value should not be rejected. In this regard, the appellants cited the case of *Eicher Tractor Ltd. Vs- C.C. [2001 (122) ELT 321 (S.C.)]*, settled by the Hon'ble Supreme Court, that actual transaction value should not be rejected only for reasons specified in Rule 4 (2) of the Valuation Rules, 1988. The said principal has been adopted by the Tribunals in the following cases:

- *PV Ukkru International Trade Vs C.C.[2005 (187) ELT 489 (Tri)]*;
- *Andhra Sugars Ltd-[2006 (193) ELT 68 (Tri-Bang)]*;
- *Hutchison Essar South Ltd-[2006 (193) ELT (Tri-Bang)]*;
- *Agarwal Industries-[2006 (193) ELT 421 (Tri-Bang)]*.

(iv) There was no allegation of extra payment for the difference in value through any other channel other than normal banking channel. Therefore, the transaction value should not be rejected. It is a settled principle of law that transaction value should not be rejected in the absence of any allegation of extra payment. In this regard, the appellant cited the following decisions :

a) Rajashree Packagers-(2006(195) ELT 254 (Tri-Bang)] in the absence of any allegation of extra payment, transaction value cannot be rejected;

b) Bayer India Ltd-[2006(198) ELT 240 Tri)]- Rule 10A of CVR'88 can be invoked only if there is doubt as to genuineness of transaction value between exporter and importer such as in the event of extra remittance

c) CC Vs- Radheshyam Ratanlal-[2006 (202) ELT 500 (Tri-Mum)]- there was no evidence that there was a flow back of any additional funds from the importer to the supplier and hence held the transaction value to be genuine which was affirmed by the Supreme Court-2007(210) ELT A 72.

(v) In Para 8 of the Show Cause Notice it has been stated that the contemporaneous import data of identical and similar goods was accessed and it was found that identical/similar items were being imported at higher values than the declared value of the imported goods by the importer. On the other hand, it is stated at Para 9 that as the contemporaneous import data of identical items was not available, the value should not be re-determined under Rule 4 of the Custom Valuation Rules, 2007. Such a contradictory statement of fact itself made the SCN null and void.

(vi) The notice demanded differential duty amounting Rs. 24,46,788/- under Section 28(4) of the Customs Act, 1962. In this regard, the appellant submits that the goods were released provisionally under Section 18 of the Customs

Act, 1962. The said Section suggested that the provisionally released goods should first be finally assessed and thereafter the importer should pay the deficiency. Section 28 also provided limitation period of issuing demand from the relevant date. Explanation 1(b) appended at the end of Section 28 provided that the relevant date in case where duty was provisionally assessed under Section 18, will be the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be. Thus, from conjoint reading of these two Sections, it is clear that once the provisional assessment has been finalized, the importer will automatically be liable to pay the deficiency on receipt of the final assessment order and there was no need of issuance of demand notice. However, if the importer failed to pay the deficiency in duty, then the question of raising demand should arise. In the subject case, no order of final assessment had yet been issued. Thus, it is evident that the demand raised in the subject case is premature and therefore, not sustainable.

- (vii) The SCN proposed to re-determine the MRP/RSP as detailed in Table 4. Table 4 indicates RSP of four items only viz. (i) Toothbrush-Rs. 55/- (ii) Button Cell AG13-Rs. 0.31 (iii) Button Cell AG10-Rs. 0.31 and (iv) Button Cell AG3- Rs. 0.31. The basis of such RSPs was not indicated in the notice. Contemporaneous import price for Toothbrush relied upon in the notice was Rs. 3.86/pc whereas the RSP was shown as Rs. 55/- i.e. more than 14 times of Contemporaneous import

price. Similarly, the RSP for rest 3 items were more than 98 times, 113 times and 133 times respectively. Moreover, though the contemporaneous import price of these button cells were different, RSP of all three types of button cells were taken as same. From this, it is evident that the RSPs were proposed arbitrarily without any basis and thus needs to be ignored.

(viii) Regarding the excess goods found, the appellant submitted that the investigation at Para 5 of the notice mentioned that the Director had already explained to the investigation on 11.09.2014 while giving statement that the overseas supplier had admitted their mistake. They had confirmed that due to heavy pressure in their warehouse and just before the Chinese New Year, some mistakes were made during loading of goods of various customers and hence mis-match of the goods occurred. The supplier had also forwarded the amended invoice and packing list which were submitted before the department. Thus, it is clear that there was no mala fide intention on their part to import excess goods. Therefore, the goods should not be liable for confiscation.

(ix) The importer further submitted that even assuming but not admitting that re-determination of higher value in terms of Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, is sustainable in law, it did not necessarily mean mis-declaration of value. Mis-declaration of value could sustain in law only when there was remittance of extra payment to the overseas supplier. Remittance

of extra payment to the overseas supplier had not even been alleged against them and therefore confiscation under Section 111(m) should not sustain in law. They also claimed that enhancement of value cannot be considered as evidence of mis-declaration and hence the goods should not be liable to confiscation under Section 111(m).

(x) The SCN at Para 11 proposes to confiscate the entire goods under Section 111(i), (1) & (m) of the Customs Act, 1962. The proposal to confiscate the goods which were declared in the Bills of entry is legally not sustainable.

(xi) Section 111(i) is invocable for the dutiable or prohibited goods which are found concealed in any manner in any packages either before or after the loading thereof. The impugned goods are not liable to confiscation under Section 111(i) in as much as the goods were not found concealed in any manner in any package and no such allegation has even been made in the facts of the case. Concealment and coverage are different. Coverage of contraband items with bona fide consignment was not concealment as held by the Tribunal in the case of *M/s Mazda Chemicals [1996(88) ELT 767(Tri)]*. The same view has been taken by the Delhi Bench of the Tribunal also in the case of *M/s Century Plyboard (1) Ltd [2008(221) ELT 271 (Tri-Del)]*.

(xii) Section 111(1) is invocable for the dutiable or prohibited goods which are not included or are found in excess. Even assuming but not admitting that the excess goods found in the subject consignment are liable for

confiscation under Section 111(1), rest of the goods cannot be liable to confiscation under Section 111(1).

(xiii) Similarly, Section 111(m) is invocable for the goods which do not corresponds in respect of value or in any other particular with the entry made under the Customs Act, 1962 which means that this Section is invocable only in respect of declared goods. Therefore, even assuming but not admitting that the declared goods are liable for confiscation under Section 111(m), the undeclared goods i.e. excess goods cannot be held liable to confiscation under Section 111(m) since those were not declared in the Bill of Entry.

(xiv) Even assuming but not admitting that the goods are liable to confiscation under Section 111 of the Customs Act, 1962, penalty may be imposed on them under Section 112(a) of the Customs Act, 1962. However, since there is no proposal for penalty under Section 112(a) of the Customs Act, 1962 in the SCN, the same cannot be imposed.

(xv) The SCN proposes penalty under Section 114A against them. The mandatory penalty under Section 114A is imposable where the duty has not been levied or has been short levied by the reason of collusion or any wilful mis-statement or suppression of facts. This means that when the demand is required to be issued invoking larger period of five years under Section 28(4) of the Customs Act, 1962, then only Section 114A comes in the picture.

- (xvi) Firstly, the subject case was not at all a case of non-levy or short levy of duty/interest. Before provisional release of the goods, excess goods were detected and the higher values of all the goods including the excess goods were estimated by the department itself. Consequently, they have paid the difference of duty or Rs. 7,20,695/- and furnished bank guarantees for Rs. 6,14,827/-, Rs. 13,40,963/- and Rs. 5,00,896/-. Thus it is clear that short levy of duty, if any, was properly secured by the department before release of the goods.
- (xvii) Secondly, the subject demand notice itself is premature as the provisional assessment has not been finalised.
- (xviii) Thirdly, the subject demand notice has been issued within normal period of one year and there was no need to invoke extended period. Therefore, there was no scope to impose any penalty under Section 114A.
- (xix) The SCN also proposed penalty under Section 114AA. This Section is applicable when there is no existence of goods but the documents are filed fraudulently to enjoy some benefit, since other provisions for imposing penalty cannot be invoked in such cases. Section 114AA of the Customs Act, 1962 cannot be invoked in the instant case since the goods were physically imported and neither of the documents was false or incorrect.

7.4. In respect of the penalties imposed on Shri Shalabh Jalan, the following submissions have been made: -

- (i) Though there was a proposal for imposition of penalty on him under Section 114A & 114AA of the Customs Act, 1962 he has not been asked to show cause therefore, the show cause notice is defective and on the basis of which no penalty can be imposed on him;
- (ii) The importing company has made a detailed reply denying the charges and the show cause notice neither discussed any role on his part nor there are any allegations against him which would render him liable to any penalty.
- (iii) Section 114A provides imposition of mandatory penalty on the person who is liable to pay the duty and in this case the importing company is liable to pay duty and not him, and therefore, penalty cannot be imposed on him. Penalty can be imposed on the Director of an importing company under Section 112(a) of the Customs Act, 1962 only on the charge of abatement of commission / omission of some act which would render the imported goods liable to confiscation under Section 111 of the Customs Act, 1962. Since, there was no proposal for imposing penalty on him under Section 112(a) in the show cause notice, penalty imposed on him under Section 112(a) is not sustainable.
- (iv) Section 114AA is applicable when there is no existence of goods but the documents are filed fraudulently to enjoy some benefit, since

other provisions for imposing penalty cannot be invoked in such cases. Section 114AA of the Customs Act, 1962 cannot be invoked in the instant case since the goods were physically imported and neither of the documents were false or incorrect. Therefore, no penalty can be imposed on him legally and therefore, the proceedings may be dropped.

8. The Ld. Authorized Representative of the Revenue submitted that the excess quantity was found only upon examination of the goods and hence, the appellant had resorted to mis-declaration of the goods imported. He also submitted that the value declared in the invoices were found to be very low as compared to similar goods imported to other locations. Thus, the value has been enhanced on the basis of value of similar goods available at contemporaneous imports. Thus, mis-declaration of the quantity of the goods imported and under valuation of the goods imported have been established. Accordingly, he justified the enhancement of value as per Rule 5 of the Customs Valuation Rules, 2007. Thus, he submits that the goods are liable for confiscation and both the appellants and the Director of the Appellant-company are liable for penalty.

8.1. In view of the above submissions, the Ld. Authorized Representative of the Revenue supported the impugned order.

9. Heard both sides and perused the appeal records.

10. We find that in the present case, three Bills of Entry were filed by the appellant-company and the declared assessable value of the goods was Rs.12,27,175.67. On 100% examination, the goods were found to be in excess quantity than the quantity declared in the Bills of Entry. The details of the goods which were found upon examination by the SIB Officers in respect of each Bill of Entry is as under: -

**TABLE - 1**

| SL No. | Description of the Goods            | UQC | Quantity Declared | Quantity Found | Excess Quantity |
|--------|-------------------------------------|-----|-------------------|----------------|-----------------|
| 1      | Bowl Set (6Pcs/Set) Opal Ware       | KGs | 400               | 1600           | 800             |
| 2      | Adult Buckle (Iron)                 | KGs | 1350              | 1930.8         | 580.8           |
| 3      | Elastic Rope (1.2 MTR. )            | Doz | 3000              | 4000           | 1000            |
| 4      | Bag Accessories                     | KGs | 390               | 662.6          | 272.6           |
| 5      | Button Cell AG3                     | PCS | Not Declared      | 3200000        | 3200000         |
| 6      | Microwave Cooking Pot (M. No. 1256) | Set | Not Declared      | 240            | 240             |
| 7      | Disco Lamp                          | PCS | Not Declared      | 48             | 48              |
| 8      | Mug                                 | PCS | Not Declared      | 5000           | 5000            |
| 9      | Plasma Light (M-No.A50, A51)        | PCS | Not Declared      | 528            | 528             |

(ii) Bill of Entry No. 4720638 dated 24.02.2014

**TABLE - 2**

| SL No. | Description of the Goods | UQ C | Quantity Declared                   | Quantity Found                    | Excess Quantity |
|--------|--------------------------|------|-------------------------------------|-----------------------------------|-----------------|
| 1      | Ladies Bag U/B           | PCS  | 750                                 | 900                               | 150             |
| 2      | Golf Umbrella            | PCS  | Kids umbrella (528)<br>USD 0.35/pcs | Golf Umbrella<br>(528) USD 10/pcs |                 |
| 3      | Puller ( Iron )          | KGs  | 4880                                | 6344                              | 1464            |
| 4      | Button ( Iron )          | KGs  | 920                                 | 1196                              | 276             |

(iii) Bill of Entry No. 4746281 dated 26.02.2014

**TABLE - 3**

| SL No. | Description of the Goods          | UQC | Quantity Declared | Quantity Found | Excess Quantity |
|--------|-----------------------------------|-----|-------------------|----------------|-----------------|
| 1      | Bag Accessories                   | KGs | 510               | 980            | 470             |
| 2      | Bowl Set (10pcs/set )             | KGs | 240               | 800            | 560             |
| 3      | Button Cell AG3                   | PCS | 00000.64          | 1632000        | 831999.36       |
| 4      | Button Cell AG13                  | PCS | Not Declared      | 624000         | 624000          |
| 5      | Button Cell AG10                  | PCS | Not Declared      | 960000         | 960000          |
| 6      | Garden Umbrella                   | PCS | Not Declared      | 180            | 180             |
| 7      | Eraser                            | KGs | Not Declared      | 50             | 50              |
| 8      | Garments Accessories (Broach)     | KGs | Not Declared      | 540            | 540             |
| 9      | Garments Accessories (Fabric Toy) | KGs | Not Declared      | 28             | 28              |

10.1. From the above, we observe that that in respect of some goods declared in the Bills of Entry, the quantities were found to be in excess than the declared quantity. Some of the items were found to be not declared. The appellant submits that this was the mistake of the supplier while loading the goods and they cannot be held responsible for the mistake of the supplier. The appellant submitted that when the issue was taken up with them, the supplier agreed to their mistake and corrected the invoice and sent the revised invoice and packing list, but the Department has not accepted it.

10.2. We observe that the confiscation of the impugned goods have been done on account of mis-declaration of quantity as well as mis-declaration of value.

10.3. Regarding mis-declaration of quantity and non declaration of goods, we observe that the explanation given by the appellant that the supplier has loaded excess goods by mistake is not acceptable. The appellant has failed to produce any evidence to show that the goods loaded in excess were due to mistake of the supplier. The letter dated 22.03.2014 issued by the supplier accepting their mistake cannot absolve the appellant from the mis-declaration and excess quantity of goods found on examination. Had there been no examination, the excess goods could have been cleared without payment of customs duties. In these circumstances, we hold that the mis-declaration of the goods in respect of the three Bills of Entry filed by the appellant is established. Accordingly, we hold that the goods found to be in excess are liable for confiscation. However, from the impugned order we observe that confiscation has been ordered even in

respect of the quantity of goods declared in the Bills of Entry, which is not correct. Thus, we hold that the goods found in excess and the undeclared goods alone are liable for confiscation. Accordingly, we uphold the confiscation of the goods found to be in excess than the declared quantities in the bills of Entry and the non declared goods and set aside the confiscation of the goods declared in the bills of entry.

10.4. Regarding confiscation of the goods on account of mis-declaration of value, we observe that the Id. adjudicating authority has adopted the value of similar contemporaneous imports for redetermination of the value of the goods. In the impugned order, the Id. adjudicating authority has admitted that the value of identical goods were not available and therefore, the he has adopted the value of similar goods in contemporaneous imports. However, we observe that no documentary evidence such as copies of invoices, Bills of Entry and relevant invoices were supplied to the appellants, in support of the higher value of contemporaneous imports of similar goods cited by the Revenue. It is the settled position of law that transaction value cannot be rejected on the basis of assumptions and presumptions. There should be cogent evidence for contemporaneous imports to substantiate the rejection of transaction value. This view has been held the case of *Bayer India Ltd. v. Commissioner of Cus., Mumbai* [2006 (198) E.L.T. 240 (Tri.)], wherein it has been held as under: -

*"12. The Commissioner has held that sale price of the formulation manufactured by the imported Mancozeb in India has been constantly increasing. However, we note that not only is there no material in the show cause notice or in the impugned order to substantiate this finding but the price of imported Mancozeb which was fixed at US \$ 2.10 per kg. in view of the long term agreement is to be treated as*

*the transaction value and the price fluctuation in the international market will not affect assessment of the goods in the importing country and the local selling price of the formulation made from the imported goods will also not affect such price, as per para 4 of the Explanatory Note 1.1 of Technical Committee on Customs Valuation, World Customs Organization which clarifies that " consequently, provided that the conditions prescribed in Article 1 are fulfilled, the transaction value of imported goods should be accepted irrespective of any market fluctuations after the date when the contract was concluded."*

*13. The Commissioner has held that the transaction between Bayer and R&H is not under fully competitive condition. This is not relevant for the purpose of the present appeal as the requirement that transaction value is to be accepted only when the transaction between the importer and the exporter are under fully competitive condition came into force only in September 2001 with amendment of Rule 4(2) of the Customs Valuation Rules.*

*14. The Commissioner has found that the price at which Mancozeb has been imported into India by others during 1994 to 2000 is steadily increasing and for this purpose, the following evidence has been cited :-*

*Import by United Phosphorous from China and Lupin Agro Chemicals from Netherlands*

|             |                          |
|-------------|--------------------------|
| <i>1994</i> | <i>Rs. 63.52 per kg.</i> |
| <i>1999</i> | <i>Rs. 77.93 per kg.</i> |
| <i>2000</i> | <i>Rs. 78.99 per kg.</i> |

*15. We agree with the appellants that import of mancozeb from other countries cannot be treated as import of identical goods into India as per the definition of identical goods in Rule 2(c). The cif price in US\$ is being compared with the price in Indian rupees. It is, however, to be kept in mind that due to rupee devaluation and increase in exchange rate of US\$, the cif price in US\$ after conversion into Indian rupees always shows a higher price of the goods. Applying the exchange rate of US\$ as mentioned in Ground F of the memo of appeal filed by Bayer of US\$ 2.10 i.e. the price at which Bayer has imported the goods, then the price in Indian rupees is as under:*

*Imports from China*

|             |                  |
|-------------|------------------|
| <i>1999</i> | <i>Rs. 91.45</i> |
| <i>2000</i> | <i>Rs. 94.29</i> |

*Imports from Netherlands*

|            |           |
|------------|-----------|
| Sept. 1997 | Rs. 81.40 |
| Dec. 1997  | Rs. 89.55 |
| Jan. 1998  | Rs. 88.51 |

*Further, the quantity imported either by M/s. United Phosphorus and M/s. Lupin Agro Chemicals has not been mentioned in the impugned order. Therefore, the price at which others imported Mancozeb into India cannot be treated as import of identical goods so as to reject the value declared by Bayer."*

10.5. We observe that Rule 3(2) of the Customs Valuation Rules, mandates that if the transaction value is to be rejected, there must be evidence available on record to justify the same. However, it is seen that there is no allegation of extra payment made by the appellant over and above the transaction value declared in the invoices. Thus, we find that the transaction value declared by the appellant cannot be rejected in the absence of any allegation of extra payment thereof. This view has been held by the Tribunal in the case of *Commissioner of Cus. (Export), Mumbai v. Radhey Shyam Ratanlal* [2006 (202) E.L.T. 500 (Tri. – Mum.)]. The relevant portion of the said decision is reproduced below: -

*"6. We have considered the submissions. We find that the Revenue has challenged the value only in respect of consignments where cloves of Zanzibar origin were imported and not the cloves imported during the period July, 1999 which were of Indonesian origin even though the prevailing international market price as per the department was much higher when initially all the consignments were assessed at US \$1800 PMT. The main ground of the Revenue's appeal is that as per the Supreme Court decision in *Rajkumar Knitting Mills (P) Ltd.* case the contract value cannot be accepted once the import is at a time much later than the time of entering into contract specially when the international market prices has gone up quite considerably. It has been presumed by the Revenue that once the goods are not supplied within the contracted period, the balance supply cannot be*

*considered as per the terms of the contract. We are afraid that the facts as brought out in the Order in Original and the facts narrated in the memorandum of appeal do not support the department's contention. The facts clearly state that the supplier was unwilling to fulfil the contractual obligation and it was only with the intervention of the DGFT and the Indian Embassy and with the full knowledge of the authorities in the Custom House that the foreign supplier was forced to supply the contracted quantity. **There is no mention in the facts or in the evidence that the subsequent supplies were not made at the contracted value or that there was a flow back of any additional funds from the importers to the supplier. In other words it can be conclusively held that the transaction value declared was the genuine value and there was no other consideration either direct or indirect received by the supplier.** Therefore, once the transaction value cannot be rejected as per Rule 4(1) and Rule 3 the same has to be considered as the value for the purpose of Section 14(1). There is no contradiction between the Rules and the provisions of Section 14(1) as has been brought out by the Apex Court in the case of Bureau Veritas cited supra wherein it has been very clearly held that both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularized in Rule 4(2)."*

(Emphasis supplied)

10.6. Thus, we hold that the differential duty demanded on account of enhancement of value is not sustainable. Therefore, the transaction value declared by the appellant is found to be acceptable and the value declared in the invoices is to be adopted for the purpose of determination of Customs Duty payable by the importer. Thus, we hold that the confiscation of the impugned goods on account of mis-declaration in value is not warranted.

11. Regarding the penalty imposed on the appellant importer, we observe that penalty equal to the differential customs duty which is confirmed on account of mis declaration in quantity/ non declaration, if at all, is liable to be imposed under section 112(a) of the Customs Act, 1962. However, we observe that the said section has not been invoked in the impugned order and hence penalty under Section 112(a) of the Act is not imposable in this case.

11.1. Regarding the penalties imposed on the appellant-company and its Director under Sections 114A of the Customs Act, we find that there is mis-declaration of quantity and non declaration of goods, in the impugned Bills of Entry. We observe that Section 114A provides imposition of mandatory penalty on the person who is liable to pay the duty and in this case the importing company is liable to pay duty. Hence, penalty equal to the differential customs duty which is confirmed on account of mis declaration in quantity/ non declaration is liable to be imposed on the appellant-company under section 114A of the Customs Act, 1962. Even though the appellant-company has claimed that the mis-declaration has occurred on account of the mistake of the supplier, we do not agree with the contention of the appellant in the absence of any evidence in support of their claims. Thus, we hold that the appellant-company is liable to be penalized for mis-declaration of the goods, under Section 114A. However, we hold that such penalty should commensurate with the quantity mis-declared only.

11.1.1. Regarding the penalty imposed on the Director of the appellant company under Section 114A *ibid.*, we find that the show cause notice neither

discussed any role on his part nor there are any allegations against him which would render him liable to any penalty. Section 114A provides for imposition of mandatory penalty on the person who is liable to pay the duty and in this case the importing company is liable to pay and penalty has already imposed on the appellant importer under this section. Accordingly, we hold that penalty under section 114A is not imposable on the Director of the appellant company. Penalty can be imposed on the Director of an importing company under Section 112(a) of the Customs Act, 1962 only on the charge of abatement of commission / omission of some act which would render the imported goods liable to confiscation under Section 111 of the Customs Act, 1962. However, since there was no proposal for imposing penalty on him under Section 112(a) in the show cause notice, we observe that penalty under Section 112(a) is not imposable on the Director.

11.2. Regarding the penalties imposed on both the appellants under Section 114AA, we observe that the said section is applicable when there is no existence of goods but the documents are filed fraudulently. In this case, the supplier has agreed that the documents issued by him are genuine, Accordingly, we hold that Section 114AA of the Customs Act, 1962 cannot be invoked in the instant case to impose penalty either on the appellant importer or on the Director of the appellant importer. Consequently, we hold that no penalties are imposable on the appellants under Section 114AA *ibid.*, in the facts and circumstances of the case.

12. In view of the above discussions, we pass the following order:

- (i) We uphold the confiscation of the goods found to be in excess than the declared quantities in the bills of Entry and the non-declared goods. We set aside the confiscation of the goods declared in the bills of entry.
- (ii) We hold that the differential duty demanded on account of enhancement of value is not sustainable. Thus, we hold that the confiscation of the impugned goods on account of mis-declaration in value is not warranted.
- (iii) The transaction value declared by the appellant is found to be acceptable and the value declared in the invoices is to be adopted for the purpose of determination of Customs Duty payable by the importer.
- (iv) The appellant-company is liable to be penalized for an amount equal to the duty confirmed at Sl. No. (iii) supra, under Section 114A of the Customs Act, 1962. No penalty is imposable on the appellant-importer under section 114AA of the Customs Act.
- (v) Penalties under section 114A and 114AA *ibid.* are not imposable on the Director of the appellant company.
- (vi) Redemption fine is liable to be imposed in consonance with the excess quantity found.

(vii) In these terms, we remand the matter to the adjudicating authority for recalculating the duty payable in respect of the excess quantity of goods found on the declared goods and the non-declared goods and the quantum of redemption fine imposable in consonance with the same. The amount of Rs.7,20,695/- already deposited by the appellant is to be adjusted against the duty demand confirmed.

13. The appeals filed by both the appellants are disposed of on the above terms, by way of remand.

(Order pronounced in the open court on **06.03.2025**)

Sd/-

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)

Sd/-

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

Sdd