

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

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75992 of 2025

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/22/2025 dated 16.06.2025 passed by the Commissioner of Customs (Port) Custom House, 15/1 Strand Road, Kolkata-700001)

M/s. Deepak Jindal

RP 105 Pitam Pura Delhi-110088

: Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

Custom House, 15/1 Strand Road,
Kolkata-700001

: Respondent

AND

Customs Appeal No. 75997 of 2025

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/22/2025 dated 16.06.2025 passed by the Commissioner of Customs (Port) Custom House, 15/1 Strand Road, Kolkata-700001)

M/s. Gemini Metal Corporation,

Proprietorship firm of Mr. Gaurav Jindal Carrying of Business
At. CF 235, Sector 1, Salt Lake,
Bidhannagar, North Kolkata-700 064

: Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

Custom House, 15/1 Strand Road,
Kolkata-700001

: Respondent

APPEARANCE:

Shri Sudhir Mehta, Sr. Advocate

Assisted by Ms. Riya Debnath, Advocate for the Appellants

Shri F. Ahmed, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

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

FINAL ORDER NOS. 77199-77200/ 2025

DATE OF HEARING: 05.08.2025

DATE OF PRONOUNCEMENT: 07.08.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Customs Appeal No. 75992 of 2025 has been filed M/s. Gemini Metal Corporation (herein after referred as the appellant 1) against the Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/22/2025 dated 16.06.2025 passed by the Commissioner of Customs (Port) Custom House, 15/1 Strand Road, Kolkata-700001, wherein demand of differential customs duty of Rs. 2,45,46,574/- has been confirmed along with interest and imposed penalties under sections 112(b), 114A and 114AA of the Customs Act, 1962. The goods were held as liable for confiscation. Since the goods are not available for confiscation, redemption fine has been imposed in lieu of confiscation.

Customs Appeal No. 75997 of 2025 has been filed against the same Order-in-Original No. Kol/Cus/Commissioner/Port/Adjn/22/2025 dated 16.06.2025, wherein penalty of Rs.24,54,657/- has been imposed on Shri. Deepak Jindal (herein after referred as the appellant 2) under Section 112(b) of the Customs Act, 1962.

As both the appeals emanate from the same Order-in-Original, both are taken up together for decision by a common order.

2. Brief facts of the case are that The Appellant 1, M/s. Gemini Metal Corporation, is a manufacturer of various types of steel utensils. For this purpose, the Appellant 1 imports diverse steel sheets as raw material. The finished goods are subsequently sold on GST invoices to wholesalers, who then distribute them to retailers. Customs duty on the import of

steel comprises of Basic Customs Duty (BCD) and Integrated Goods and Services Tax IGST. IGST paid at the time of import is adjustable against the GST liability incurred at the time of sale of the manufactured goods.

2.1. The appellant 1 has imported the goods 'Cold Rolled Stainless Steel Coils' vide the following four Bills of Entries:

- Bill of Entry No. 3849208 dated December 21, 2022
- Bill of Entry No. 7204062 dated August 4, 2023
- Bill of Entry No. 691619 dated July 17, 2023
- Bill of Entry No. 383122888 dated December 28, 2022

2.2. On 20th March, 2024, the Appellant 1 was called to the office of the Directorate of Revenue Intelligence (DRI), Delhi and questioned about their business connections with Appellant 2, Mr. Deepak Jindal, who operates under the name and style of "S. S. Stainless." The Appellant 1 informed the officers that there existed no business connection whatsoever with Mr. Deepak Jindal, save for a distant familial relationship as cousins, where interactions are limited to social functions.

2.3. The DRI officers informed Appellant 1 that four Invoices related to import of 'Cold Rolled Stainless Steel Coils' made by the appellant 1 vide the four Bills of Entry mentioned in para 2.1 supra have been retrieved from the phone belonged to Mr. Deepak Jindal and the said Invoices show a higher value of the goods imported by appellant 1 than the

value declared by them in the said Bills of Entry for the purpose of assessment and payment of customs duty. On the basis of the said four Invoices, the officers alleged that the appellant 1 has imported similar goods by mis-declaring the value during the past five years. Accordingly, the officers alleged that the appellant has undervalued the goods imported in respect of 165 consignments imported under 27 Bills of Entry during the past five years.

2.4. On the basis of the said allegation, a Show Cause Notice dated 13.12.2024 was issued to the appellant1 demanding differential customs duty of Rs.2,45,46,574/-, along with interest and penalty. The said Notice was adjudicated by the Ld. Commissioner of Customs (Port), wherein the demand of customs duty raised in the Notice has been confirmed along with interest. Various penalties were also imposed penalties under sections 112(b), 114A and 114AA of the Customs Act, 1962. Penalty of Rs. 24,54,657/- has also been imposed on Mr. Deepak Jindal, for his role in the alleged offence. The goods were held as liable for confiscation. Since the goods are not available for confiscation, redemption fine has been imposed in lieu of confiscation.

2.5. Aggrieved against the confirmation of the demands of duty along with interest and imposition of penalties, both the appellants have filed appeals before this Tribunal. The appellants have contested the confiscation of the goods and imposition of redemption fine in lieu of confiscation.

3. Appellant 1 submits that the entire demand has been confirmed on the basis of four invoices retrieved from the Phone of Mr. Deepak Jindal. The submission of the appellant1 is that many documents

were retrieved from the mobile phones, but the investigation has relied upon four invoices which are unconnected with the appellant's imports. The documents retrieved from the mobile phones includes import by others not connected with the appellant. The appellant 1 submits that he has no business relation with Mr. Deepak Jindal and he doesn't know how Mr. Deepak Jindal got those Invoices. Further, appellant 1 submits that the officers have not followed the procedure prescribed under section 138 C of the Custom act 1962 while retrieving the invoices from the mobile phone. The appellant submits that the mobile phones were not sent for forensic test to any Government Laboratory but the same were sent to a private mobile dealer namely M/s Cyint Technologies, Okhla Phase-I, New Delhi, which is a private Lab not approved by the Government for conducting forensic tests. The Appellant submits that in the Report submitted by the Private Lab, it is mentioned that data was only encrypted and path of data was opened. There is no mention in the reports that the said four Invoices were retrieved from the mobile phones. This is evident from the fact that the signatures of the officers and witnesses available in the Reports are not available in the Invoices retrieved. Thus, the appellant 1 submits that the alleged invoices which are stated to be retrieve from the mobile phone have not fulfilled the conditions stipulated under section 138 C of the Custom Act 1962, for admitting the same as evidence. The documents retrieved from the mobile phones would require authentication under section 138C of the Customs Act 1962, which has not been done in this case. There is no certificate or name of the person who decrypted the data is

available on record. Accordingly, the appellant 1 submits that the four invoices cannot be relied upon as documentary evidence in this proceedings. As the entire demand has been confirmed only on the basis of the value available in the said Invoices, the appellant 1 submits that the demand of differential customs duty confirmed on the basis of the said four invoices in the impugned order is not sustainable.

3.1. The appellant submits that Statement of the appellant1 has been recorded under section 108 of Customs Act 1962 without any summons. Thus, the statement recorded is legally not valid and the same cannot be relied upon against the appellant company.

3.2. The appellant 1 submits that the impugned order has been passed by the Adjudicating Authority confirming the Customs duty demand in respect of 165 Bills of Entry imported by the Appellant 1 during the last five years, whereas the show cause notice was issued on the basis of four invoices allegedly related to 4 Bills of Entry only. Thus, the appellant 1 submits that the confirmation of demand of customs duty in respect of 165 Bills of Entry has been made without any comparison of goods, and without examining the details of these Bills of Entry or the goods imported thereunder. The appellant 1 submits that there is no material available with the department for doing the comparison. It is pertinent to mention here that no import documents other than the initial four Bills of Entry were part of the relied upon documents, and there is no material basis upon which the goods related to the remaining Bills of Entry could be compared.

3.3. The appellant 1 submits that the Ld. Adjudicating Authority, in an omnibus fashion and without any application of mind, confirmed the demand for all imports over the last five years. This was done without considering the similarity, nature, or quality of the goods, all of which significantly influence the value based on thickness, quality of steel, and other factors. The appellant 1 submits that the Adjudicating Authority lacked any material to justify this across-the-board re-valuation and failed to ascertain whether these Bills of Entry had been previously assessed or re-assessed. The appellant 1 submits that the photocopies of the invoices are demonstrably fake. Notably, the Adjudicating Authority himself admitted in the adjudication order that the data extracted from the phone was fake. Nonetheless, the Adjudicating Authority confirmed the demand based on the purported statement made under Section 108 of the Customs Act, 1962 (which was not admitted in the proceedings) and a few fake documents, without examining actual imports, verifying actual goods, or conducting any comparison of the goods.

3.4. The appellant 1 submits that under the Customs Valuation Rules, if the transaction value is rejected, the sequence of Rules 4 to 9 must be scrupulously followed. The Appellant furnished undeniable evidence of contemporaneous imports, including details of Bills of Entry and importers, which has not been disputed. In such a scenario, these values must be accepted under Rule 4 and Rule 5 of the Valuation Rules. It is not mandatory for contemporaneous import data to originate from the department; it can be submitted by the importer as part of their defense. Unless such data is disputed, it

must be accepted. The Appellant1 submitted instances of approximately 3,000 imports taking place at various ports by various importers, where goods were released at the same price or at a lesser price. Given these undisputed facts, Rule 9 could not have been adopted for the purpose of valuation of the goods. The Appellant submitted they have submitted their cost value under the deductive method, which has not been disputed by the Adjudicating Authority. The cost sheet unequivocally certifies the import value.

3.5. Thus, the appellant submits that the confirmation of differential customs duty in an arbitrary manner without following the Valuation Rules for re-determination of the value is legally not sustainable. Accordingly, the appellant 1 prayed for setting aside the demands of customs duty along with interest and penalties confirmed in the impugned order.

4. Appellant 2, Shri. Deepak Jindal submits that penalty has been imposed on him under section 112(b) of the Customs Act, 1962. In the subject case, there is no allegation of dealing in smuggled goods by him, which could fall under section 112 (b) of the Customs Act, 1962. The allegation against him is that four invoices belonged to the appellant 1 company having higher import prices have been retrieved from his mobile phone. Appellant 2 submits that he has categorically denied that the said invoices were retrieved from his mobile phone. The investigation has not found out the sender of the Invoices, if any, to his mobile phone. There is no number from which the alleged invoices were forwarded or sent to his phone. Such forwarded

document needs to be presented in full and it cannot be presented in any truncated form. Further, the officers have not followed the procedure prescribed under section 138 C of the Custom act 1962 while retrieving the invoices from the mobile phone. Hence, the four invoices said to be allegedly retrieved from his mobile phone cannot be relied upon as a documentary evidence in this proceedings. Thus, appellant 2 submits that the penalty imposed on him for his role in the alleged offence is not sustainable and prayed for setting aside the same.

5. The Ld. A.R. reiterated the findings in the impugned order. The Ld. A.R. submits that the assessable value adopted by the appellant 1 has been rejected by the adjudicating authority on the basis of invoices showing higher value for the same goods. thus, he supported the demand of differential customs duty on the basis of the invoices retrieved.

6. Heard both sides and perused the appeal documents.

7. We observe that the appellant1 had imported the goods 'Cold Rolled Stainless Steel Coils' vide the four Bills of Entry. The assessable value declared by the appellant 1 in the said four Bills of Entry were accepted and the appellant 1 has cleared the said goods on payment of appropriate customs duty.

7.1. Later, officers of DRI conducted some search of the premises of one person by name Shri. Deepak Jindal in respect of another investigation. During the course of such search, the officers alleged to have recovered four invoices from the mobile phone of Shri. Deepak Jindal, which said to have contain higher value for the goods imported by the appellant

1 in respect of the four Bills of Entry mentioned above. We find that Shri. Deepak Jindal in his written reply has categorically denied that any invoice has been recovered from his mobile phone. Appellant 1 also questioned the alleged recovery of the four invoices from the mobile phone of Shri. Deepak Jindal. Thus, appellant 1 questioned the reliability of the invoices recovered in the proceedings against the appellant 1.

7.2. For the sake of ready reference, the report received from the Private lab and copy of one of the Invoice said to have been extracted from the mobile phone of Shri. Deepak Jindal are extracted below:

Paul L. Venable
12/12/2023

~~10/12/23~~

~~2/2/2~~
10/12/22

Vitroajinda
12/12/22

Amir
18/11/23

Y

43

143

6

LEO METALS LIMITED

UNIT D3 11/F LUK HOP INDUSTRIAL BUILDING NO.8 LUK HOP ST SAN PO KONG KI

PROFORMA INVOICE

SELLER: LEO METALS LIMITED

ADDRESS: UNIT D3 11/F LUK HOP INDUSTRIAL BUILDING NO.8 LUK HOP ST SAN PO KONG KI,

BUYER: Genlei metal corporation

ADDRESS: 131 cotton street, 1st floor, Room no 306, Kolkata 700007, West Bengal, India

GST NO: UALXTP21019A1ZIV

FAX NO: ALXTP21019A

REC: 0216907101

PI NO: IF230826GM82

DATE: AUG 26, 2023

1. COMMODITY: CR STAINLESS STEEL COILS (GRADE)

ITEM	SIZE	QUANTITY	UNIT PRICE	AMOUNT
	MM	MT	USD/MT	USD
N1 (BIS CR N1 GRADE)	0.50*(573+667)MM	9.000	1450	13050
	0.50*(530+710)MM	9.000	1450	13050
	0.50*1240MM	9.000	1450	13050
TOTAL		27.000	/	39,150.00

REMARKS: ABOVE UNIT PRICE DO NOT CONTAIN DELIVERY PORT CONGESTION SURCHARGE OR IMBALANCE SURCHARGE

2. PRICE TERM: CIF MUNDRA, INDIA (IN CASE CHINA EXPORT DUTY INCREASE, BUYER HAVE TO BEAR 100% OF EXTRA DUTY COST. OR CONTRACT WILL BE CANCELED)

3. DELIVERY TIME: SEPTEMBER, 2023

4. PAYMENT: TT USD5000 AS ADVANCE BALANCE AGAINST BL COPY WITHIN 7 DAYS
In case the buyer fails to make payment on time, the Seller shall have the right to charge unit price or cancel the contract and claim cost and losses from the buyer, or extend the latest shipment date accordingly without any penalty.

5. QUANTITIES: ABOVE QUANTITY ARE THEORETICAL, THE FINAL PAYMENT AMOUNT WOULD BE DEPENDED ON THE ACTUAL LOADING WEIGHTS.

6. PACKING: EXPORT STANDARD PACKAGE

7. SHIPPING MARK: AS PER CUSTOMER'S REQUIREMENT.

8. BANK INFORMATION:
BENEFICIARY NAME: LEO METALS LIMITED
BANK NAME: BANK OF COMMUNICATIONS CO. LTD. OFFSHORE BANKING UNIT
BANK ADDRESS: NO.121, YINCHENG ZHONG ROAD, SHANGHAI CHINA
SWIFT CODE: COMMCN33080
BANK ACCOUNT NO: 05A90000343828100

9. TITLE & RISK
The Buyer must bear all risks of loss of or damage to the goods from the time they have passed the ship's rail at the named port of shipment. However, the title shall pass from the Seller to the Buyer only after the Seller has received full balance of the commodity shipped.

10. FORCE MAJEURE
The Seller shall not be held liable for failure or delay in delivery of the entire lot or a portion of the goods under this Sales contract in consequence of any Force Majeure incidents.
If there are other force majeure factors that lead to a substantial increase in export costs, the seller should have the right to negotiate with the buyer a new contract price based on the latest export costs. Any additional costs and losses arising from the adjustment of national policies shall be borne by the buyer.
The Buyer is requested to sign and return one copy of this Sales Contract immediately after receipt of the same. Otherwise, if any should be raised by the Buyer within five days after the receipt of this Sales Contract in the absence of which it is understood that the Buyer has accepted all the terms and conditions of this Sales Contract.

FOR AND ON BEHALF OF
PERSON OR BANK OF
MUNDRA

FOR AND ON BEHALF OF
BUYER

7.3. From the above, we observe that the signatures of the officers and witnesses available in the Report are not available in the Invoices retrieved. Thus, we agree with the submission of the appellant that the evidences available on record does not indicate that the said invoices were recovered from the mobile phone of Shri. Deepak Jindal.

7.4. We also find merit in the submission of the appellant 1 that the alleged invoices which are stated to be retrieve from the mobile phone have not fulfilled the conditions stipulated in section 138 C of the Custom act 1962, for admitting the same as evidence. In this regard, we observe that for admitting it as evidence, the documents retrieved from the mobile phones require authentication under section 138C of the Customs Act 1962, which has not been done in this case. We find that there is no certificate or name of the person who decrypted the data available on record. Accordingly, we hold that the four invoices cannot be relied upon as documentary evidence in this proceedings. As the entire demand has been confirmed only on the basis of the value available in the said Invoices, we hold that the demand of differential customs duty confirmed on the basis of the said four invoices in the impugned order is not sustainable.

7.5. We observe that the show cause notice has been issued in this case on the basis of four invoices allegedly related to the 4 Bills of entry filed by the appellant 1 for clearance of the goods namely, 'Cold Rolled Stainless Steel Coils' imported by them. However, we find that the impugned order has confirmed the Customs duty demand in respect of 165 Bills of Entry imported by the Appellant during the last five years, which is legally not permissible. From the impugned order, we find that the Ld. Adjudicating Authority has confirmed the demand of customs duty in respect of all the Bills of Entry without any comparison of goods. We find that no import documents other than the initial four Bills of Entry were part of the relied upon documents, and there is no material basis upon which the goods

related to all the Bills of Entry could be compared. Thus, we find that the Ld. Adjudicating Authority has confirmed the demand customs duty for all imports over the last five years, without considering the **similarity, nature, or quality of the goods**. We observe that factors such as thickness, quality of steel, and many other factors significantly influence the value of the goods imported. We observe that the Adjudicating Authority lacked any material to justify the re-valuation. We find that the Adjudicating Authority confirmed the demand without examining actual imports, verifying actual goods, or conducting any comparison of the goods.

7.6. Regarding the method of valuation adopted by the adjudicating authority, we observe that under the Customs Valuation Rules, if the transaction value is rejected, the sequence of Rules 4 to 9 must be scrupulously followed, which has not been done in this case. We also observe that the Appellant1 furnished evidence of contemporaneous imports, including details of Bills of Entry and importers, which has not been disputed by the adjudicating authority. We observe that Appellant1 has submitted instances of approximately 3,000 imports taken place at various ports by various importers, where goods were assessed and cleared at the same price or at a price lesser than the one declared by the appellant1. We find that the Ld. adjudicating authority has not given any reason for rejecting the contemporaneous import value submitted by appellant1. In such a scenario, we hold that values declared by the appellant 1 must be accepted.

7.7. We find that the Ld. adjudicating authority has confirmed differential customs duty in an arbitrary manner without following the Valuation Rules for re-determination of the value. Accordingly, we hold that the demand of customs duty along with interest confirmed in the impugned order is not sustainable and hence we set aside the same. As the demand against the appellant 1 is not sustained, the question of imposing penalty on them does not arise and hence we set aside the penalties imposed on appellant 1 in the impugned order. Further we find that the ingredients required for imposing penalties under the sections 112(b), 114A and 114AA of the Customs Act, 1962 are not available in this case. Accordingly, we set aside all the penalties imposed imposed against both the appellants under the sections 112(b), 114A and 114AA of the Customs Act, 1962 in the impugned order.

8. Regarding the penalty imposed on Appellant 2, Shri. Deepak Jindal, we observe that penalty has been imposed on him under section 112(b) of the Customs Act, 1962. In the subject case, we find that there is no allegation against the appellant 2 that he has dealt with smuggled goods in any manner. The allegation against him is that four invoices belonged to the appellant 1 company having higher import prices have been retrieved from his mobile phone. However, Appellant 2 has categorically denied that the said invoices were retrieved from his mobile phone. We also observe that the investigation has not found out the sender of the Invoices, if any, to his mobile phone. There is no number from which the alleged invoices were forwarded or sent to his phone. Further, we observe that the officers have not followed the procedure prescribed under section

138 C of the Custom act 1962 while retrieving the invoices from the mobile phone. Thus, we observe that the said invoices allegedly retrieved from his mobile phone cannot be relied upon as a documentary evidence in this proceedings. Thus, we hold that appellant 2 has not committed any offence warranting imposition of penalty as envisaged under Section 112(b) of the Customs Act, 1962. Accordingly, we set aside the penalty imposed on appellant 2.

9. In the result, we pass the following order:

(i) We set aside the demand of differential customs duty confirmed in the impugned order.

(ii) We set aside all the penalties imposed against appellant 1 under sections 112(b), 114A and 114AA of the Customs Act, 1962 in the impugned order.

(iii) We set aside the confiscation of the goods and the redemption fine imposed in lieu of confiscation in the impugned order.

(iv) We set aside the penalty imposed on Shri. Deepak Jindal, appellant 2 under Section 112(b) of the Customs Act, 1962 in the impugned order.

(v) The appeals filed by both the appellants are disposed off in the above manner, with consequential relief, if any, as per law.

(Order Pronounced in Open court on 07.08.2025)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

RKP