

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

REGIONAL BENCH - COURT NO.2

**Customs Appeal No.75975 of 2023**

(Arising out of Order-in-Appeal No.KOL/CUS/PORT/KS/703/2023 dated 18.09.2023  
passed by Commissioner of Customs (Appeals), Kolkata.)

**M/s.Sadani Brothers (IEC AVUPS7681J)**

(62 B, Netaji Subhash Road, 1<sup>st</sup> Floor, Kolkata-700001.)

**...Appellant**

*VERSUS*

**Commissioner of Customs (Port), Kolkata**

**.....Respondent**

(15/1, Strand Road, Custom House, Kolkata-700001.)

**APPEARANCE**

Ms. Anasua Roy Karmokar, Authorized Representative for the Appellant (s)

Shri Tariq Suleman, Authorized Representative for the Revenue

**CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)  
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)**

**FINAL ORDER NO. 75426/2026**

DATE OF HEARING : 19.03.2026  
DATE OF DECISION : 25.03.2026

**Per :R. MURALIDHAR :**

The appellant imported one of the consignment of fishing net  
from Malaysia. They imported a quantity of 25,958.20 kgs with unit

price of USD 5.20/kg. The exporter issued the invoice dated 14.05.2022 showing the total value of the consignment as USD 134,982.64. The appellant filed the Bill of Entry No. 8885168 dated 29.05.2022 based on the invoice raised by the overseas exporter. They also enclosed all the relevant documents like packing list, details of goods imported and other details pertaining to the import. 100% physical examination of the goods was undertaken by the officials on 01.06.2022 and Out of Charge was issued by them. However, the consignment was verbally put on hold by the officers of the import shed on the basis of alert issued by SIB Port. On 03.06.2022 100% physical examination of the consignment was taken up. The goods were found to be in accordance with the declarations made in the Bill of Entry. Proceedings were initiated on the ground that the assessable value adopted by the appellant was lower than the assessable value of comparable goods. The adjudicating authority passed the Order-in-Original dated 13.09.2022, holding that the rate determined unit price would be USD 7.07 per kg. Accordingly, the differential duty payable was determined. The differential duty of Rs.1,90,769 along with interest of Rs.14,033 was paid by the appellant Under Protest and they cleared the goods. Being aggrieved by the Order in Original enhancing the Assessable value, the appellants have preferred an appeal before the Commissioner of Appeals, which came to be dismissed by him. Therefore, being aggrieved by the impugned OIA, the appellant is before the Tribunal.

2. The Ld.Authorized Representative appearing on behalf of the appellant submits that the revenue failed to follow the procedure as prescribed under Customs Valuation Rules 2007. The appellant has provided the copy of the invoice raised by the overseas exporter and the relevant payments made through banking channels. This transaction value was never doubted nor was it discarded by the Revenue before proceeding to enhance the Assessable Value based on the NIDB data. She takes us through to Para 16 of the OIO, wherein

under Table B, the comparative prices have been gathered and given by the Revenue, in respect of 13 consignments. Out of 13 consignments, in respect of 12 consignments, the value declared was around USD 4.01 to USD 4.30 per kg., which is much below the price of USD 5.20 adopted by the appellant. In spite of finding that 12 consignments were showing lesser assessable value than the assessable value adopted by the appellant, the Department has considered the only the one Bill of Entry wherein the unit assessable value was shown as USD 7.07 per kg. She submits that no proper procedure has been followed at all to come to a conclusion that the enhanced value is required to be paid by the appellant.

3. She also relies on the case law of **Century Metal Cycling Private Limited Vs Union of India, 2019 (367) ELT 3 SC**, wherein the Hon'ble Supreme Court has clearly held that the Customs Valuation Rules have to be followed sequentially only after discarding the transaction value, with proper reason, if it is found to be not correct. In the present case, there is nothing to suggest in the entire proceeding that the department doubted the transaction value adopted by the appellant. On a specific query by the Bench, she submitted that there is no allegation that the exporter and the Indian importer are related in any way. In view of these submissions, she prays that the impugned order may be set aside and the appeal may be allowed.

4. She also submits that the consignment was detained for more than about five months, because of which the appellant had been fastened with detention and demurrage charges of more than Rs.27 lakhs, for which they had pleaded for waiver, which was also granted by the Department. It shows that the appellant was forced to pay the higher Customs Duty along with interest 'under protest' at the time of imports just to ensure that the consignment is cleared without further charges being incurred on account of prolonged litigation. In view of the above submissions, she prays that the appeal may be allowed

granting consequential relief towards the excess Customs Duty and Interest paid along with interest on this entire amount.

5. The learned AR reiterates the findings of the lower authorities. He submits that the quality of the fishing net was not properly mentioned by the appellant both in the invoice as well as in the bill of entry. It was found that this was of superior grade. Therefore, the Department had to resort to getting the comparable rates from the various other importers. Only after comparing the prices of other importers in respect of similar goods, the value has been enhanced to USD 7.07 per kg as against USD 5.20 per kg USD adopted by the appellant. Therefore, he justifies the enhancement of the value.

6. We have heard both sides and perused the appeal papers and the documentary evidence placed before us. We find from the records that the appellant has enclosed the details of earlier consignments imported by them which are nearer to the value of USD 5.20 per kg adopted for the present consignment. In the present case, we find that the appellant has imported the goods from Jaya Net Malaysia, wherein the Invoice shows the unit price has USD 5.20 per kg. We have gone through the bank payment details. These documents are reproduced below:



**Jaya Nets Sdn. Bhd.** lssso10a0006 {859212-d}  
H0: SSTNO : e10 1808 21012575  
Lot 720, Jalan Ka par Bat u 5-c, 42100 Kl an g, Selan gor D. E., Mal ays ia.  
Tel: +603-3 29 9588 Fax: +603 3 291 7977 (A/C) , +603-3 291 1555  
E-mail: salesgjava nets.com/export@ja ya ne ts.com Website: http://www.jayanets.co m  
Branch:  
Lot 6, Lingkaran Sultan Hishamuddin, North Klang Straits Industrial Estate,  
42000 Port Klang, Selangor D. E., Malaysia.  
Tel: +603-3 J76 2363 Fax: +603-3176 1996  
Manufacturer of all kinds of Synthetic Nets, Ropes, Twines & Yarns.



PROFORMA INVOICE

|                                                                                                                                                                                                                                                                     |                                            |                                                                                                                                                                                      |                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| <b>For Account &amp; Risk of Messrs</b><br><b>SADANI BROTHERS</b><br>62B. NETAJI SUBHASH ROAD<br>1ST FLOOR, KOLKATA 700001,<br>WEST BENGAL, INDIA<br>IEC NO : AVUPS 7681J / GST NO : 19AVUPS 7681J1ZB<br>EMAIL : sadanibros@gmail.com<br>NAME : RAJESH KUMAR SADANI |                                            | <b>No. 8 Date</b><br>E-005752<br>14/05/2022                                                                                                                                          |                                         |
| <b>Notify Party</b> AS ABOVE                                                                                                                                                                                                                                        |                                            | <b>Remark:</b><br>(T PAYMENT FOR USD ACCOUNT<br>A/C NAME JAYA NETS SDN BHD<br>A/C NO: 705-130300-8<br>BANK: OCBC BANK (M'SIA)BHD<br>KUALA LUMPUR, MALAYSIA<br>SWIFT CODE OCBCMYKLXXX |                                         |
| <b>Port of Loading</b><br>PORT KLANG, MALAYSIA                                                                                                                                                                                                                      | <b>Final Destination</b><br>KOLKATA, INDIA |                                                                                                                                                                                      |                                         |
| <b>Carrier</b>                                                                                                                                                                                                                                                      | <b>Sailing on or about</b>                 |                                                                                                                                                                                      |                                         |
| <b>MARKS AND NUMBERS OF PKGS</b> TOTAL: 505 BALES                                                                                                                                                                                                                   |                                            |                                                                                                                                                                                      |                                         |
| <b>DESCRIPTION OF GOODS</b>                                                                                                                                                                                                                                         | <b>QUANTITY</b>                            | <b>Unit price</b>                                                                                                                                                                    | <b>Amount in USD CIF KOLKATA, INDIA</b> |
| FISHING NET, MIX SIZE NYLON<br>MONOFILAMENT NET                                                                                                                                                                                                                     | 25,958.20 KG                               | USD 5 20/ KG                                                                                                                                                                         | USD 134,982.64                          |
| TOTAL FOB PORT KLANG, MALAYSIA                                                                                                                                                                                                                                      |                                            | USD 130,563.86                                                                                                                                                                       |                                         |
| ADD OCEAN FREIGHT                                                                                                                                                                                                                                                   |                                            | USD 4,300.00                                                                                                                                                                         |                                         |
| ADD INSURANCE                                                                                                                                                                                                                                                       |                                            | USD 118.78                                                                                                                                                                           |                                         |
| TOTAL CIF KOLKATA, INDIA                                                                                                                                                                                                                                            |                                            | USD 134,982.64                                                                                                                                                                       |                                         |
| <b>TOTAL</b>                                                                                                                                                                                                                                                        |                                            | 25,958.20                                                                                                                                                                            | USD 134,982.64                          |

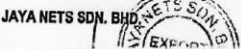
IMPORTING COUNTRY HS CODE 5608110000  
EXPORTING COUNTRY HS CODE 5608110000

Accepted

ORIGIN: MALAYSIA



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ICICI Bank

27 Jan, 2023

Foreign Advice

To:

SADANI BROTHERS  
1ST FLOOR  
KOLKATA, WEST BENGAL - 700001  
GSTIN : 19AVUPS7681J1ZB

From:

ICICI BANK LIMITED  
KolkataPortuguesChurchStreet  
ICICI BANK LTD., CATHEDRAL ANNEXE, GROUND FLOOR , 15  
PORTUGUESE CHURCH STREET, KOLKATA  
West Bengal -  
GSTIN : 19AAACI1195H1ZJ

Category of service

: Foreign exchange services

HSN No

: 997157

SAC No

: 99711919

Registration No

: MIV/ST/Bank & Finc / 4

Dear Customer,

Your Customer ID : 540644282

Customer Reference Number :

We advise having debited your account as per the following details towards .

Drawer : JAYA NETS SDN BHD

TOL Ref No : OR65746923

|                  |                  |                                   |            |
|------------------|------------------|-----------------------------------|------------|
| Our Bill No.     | 6949NMDC0087623  | Event Type                        | Realised   |
| Bill Amount      | USD 52,000.00    | Event Date                        | 27-01-2023 |
| GSTIN Invoice No | 3797DA2327001744 | Value of Supply for FC conversion | 8,742.68   |

Break-up of Charges

| Description      | Remitting CCY Amount | Deal ID  | Conversion Rate CCY | Amount          |
|------------------|----------------------|----------|---------------------|-----------------|
| Principal Amount | USD 52,000.00        | 45908765 | @81.59 INR          | 42,42,680.00 Dr |

| Description                            | ccy | Amount    |
|----------------------------------------|-----|-----------|
| Commission                             | INR | 300.00 Dr |
| CGST                                   | INR | 27.00 Dr  |
| SGST                                   | INR | 27.00 Dr  |
| Value of supply FC Conversion Tax CGST | INR | 786.84 Dr |
| Value of supply FC Conversion Tax SGST | INR | 786.84 Dr |

Debit Advice

|                                                                           |            |              |
|---------------------------------------------------------------------------|------------|--------------|
| A/C Number: 694905600732                                                  | Total: INR | 1,927.68     |
| RupeeOne Thousand Nine Hundred Twenty Seven and Sixty Eight Paise Only    |            |              |
| A/C Number: 694905600732                                                  | Total: INR | 42,42,680.00 |
| Rupee Four Million Two Hundred Forty Two Thousand Six Hundred Eighty Only |            |              |

ICICI Bank

09 Feb, 2023

Foreign Advice

To:

SADANI BROTHERS  
1ST FLOOR  
KOLKATA, WEST BENGAL - 700001  
GSTIN : 19AVUPS7681J1ZB

From:

ICICI BANK LIMITED  
KolkataPortuguesChurchStreet  
ICICI BANK LTD., CATHEDRAL ANNEXE, GROUND FLOOR , 15  
PORTUGUESE CHURCH STREET, KOLKATA  
, West Bengal -  
GSTIN : 19AAACI1195H1ZJ

Category of service

: Foreign exchange services

HSN No

: 997157

SAC No

: 99711919

Registration No

: MIV/ST/Bank & Finc / 4

Dear Customer,

Your Customer ID : 540644282

Customer Reference Number :

We advise having debited your account as per the following details towards .

Drawer : JAYA NETS SDN BHD

TOL Ref No : OR67715723

Our Bill No.

6949NM7C0093723

Event Type

Registered

Bill Amount

USD 65,000.00

Event Date

09-02-2023

GSTIN Invoice No

373Y0622000000000000

Value of Supply for FC conversion

9,866,237.50

Break-up of Charges

Description

Remitting FC Amount

IBID ID

Conversion Rate CCY

Amount

Principal Amount

USD 65,000.00

46086007

@82.5575 INR

53,66,237.50 Dr

Description

CCY

Amount

Commission

INR

300.00 Dr

CGST

INR

27.00 Dr

SGST

INR

27.00 Dr

Value of supply FC Conversion Tax CGST

INR

887.96 Dr

Value of supply FC Conversion Tax SGST

INR

887.96 Dr

Debit Advice

A/C Number: 694905600732

Total: INR

2,129.92

Rupee Two Thousand One Hundred Twenty Nine and Ninety Two Paise Only

A/C Number: 694905600732

Total: INR

53,66,237.50

Rupee Five Million Three Hundred Sixty Six Thousand Two Hundred Thirty Seven and Fifty Paise Only

7. It is specified in the statute that the valuation of goods as per Section 14(1) of the Customs Act, 1962, in the normal course, the value of imported goods shall be the 'transaction value'. In case this

value is not found to be correct, the procedure specified under Customs Valuation (Determination of value of Import goods, 2007) (CVR, 2007 in short) Rules, is required to be followed, sequentially. As per Rule (3)(1) of CVR 2007, in the normal course, the value of imported goods shall be taken as per Overseas Invoice and Shipping Bill. Rule 3(2) states that the transaction value shall be accepted even where the buyer and seller are related so long as the relation has not influenced the price. Therefore, in order to invoke the other provisions of these Rules to determine the value, first and foremost, the Revenue is required to come out with plausible explanation as to why the transaction value is to be discarded. In the present proceedings, there is nothing to indicate that the Department has undertaken any investigation or verification on this aspect or has come across any data to show that the appellant was under valuing the goods for which any extra amount was being sent by any other means.

8. Thus, the very first and foremost important aspect of the Customs Valuation Rules 2007 has not been properly followed by the Revenue.

9. We have also gone through the Table given at Para 16 of the Order in Original, which is extracted below :

CUS/AG/MISC/1620/2022-GR 3-O/O PR COMM-R-CUS-PORT-KOLKATA

2860/2022

90

16. The available data for similar/ identical goods are detailed in the following Table:

TABLE B

| s. No | BE Number | Bill of Entry Date | Description                                                                                                               | Country | Customs Tariff Heading | Custom House | Quantity | Unit Quantity Code | Unit Ass. Value in Rs. | Brand     |
|-------|-----------|--------------------|---------------------------------------------------------------------------------------------------------------------------|---------|------------------------|--------------|----------|--------------------|------------------------|-----------|
| 1     | 9142677   | 16/06/2022         | NYLON MONO FILAMENT FISHING NETS                                                                                          | MY      | 56081110               | INCCU1       | 25949.3  | KGS                | 412.79                 | UNBRANDED |
| 2     | 9365205   | 01/07/2022         | NYLON MONO FILAMENT FISHING NETS                                                                                          | MY      | 56081110               | INCCU1       | 26322.4  | KGS                | 410.54                 | UNBRANDED |
| 3     | 9449857   | 07/07/2022         | FISHING NET/ NYLON MONO FILAMENT NET (DETL. AS PER INV.)                                                                  | MY      | 56081110               | INCCU1       | 12955    | KGS                | 401.03                 | NA        |
| 4     | 9467861   | 08/07/2022         | NYLON MONO FILAMENT FISHNET- AA GRADE/MON O THICKNESS 0.08-0.23MM, MESS SIZE 15-200MM, MESH DEPTH 50-400MM (AIFTA CERT NO | MY      | 56081110               | INNSA1       | 25959.6  | KGS                | 555.67                 | JAYA      |
| 5     | 9593601   | 17/07/2022         | NYLON MONO FILAMENT NET (FISHING NET, MIX SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25959    | KGS                | 415.48                 | UNBRANDED |
| 6     | 9571877   | 15/07/2022         | NYLON MONO FILAMENT NET (FISHING NET, MIX SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25953.6  | KGS                | 415.48                 | UNBRANDED |
| 7     | 9751297   | 27/07/2022         | NYLON MONO FILAMENT NET (FISHING NET, MIX SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25963.1  | KGS                | 420.94                 | UNBRANDED |
| 8     | 9707826   | 25/07/2022         | NYLON FISHING NET                                                                                                         | MY      | 56081110               | INCCU1       | 26019.5  | KGS                | 420.94                 | UNBRANDED |
| 9     | 9718536   | 25/07/2022         | NYLON MONO FILAMENT FISHING NET (ASSORTED SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25962.8  | KGS                | 420.94                 | UNBRANDED |
| 10    | 9887664   | 05/08/2022         | NYLON MONO FILAMENT NET (FISHING NET, MIX SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25975.6  | KGS                | 417.3                  | UNBRANDED |
| 11    | 9838187   | 02/08/2022         | NYLON MONO FILAMENT NET (FISHING NET, MIX SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25972    | KGS                | 420.94                 | UNBRANDED |
| 12    | 2030561   | 16/08/2022         | NYLON MONO FILAMENT NET (FISHING NET, MIX SIZE)                                                                           | MY      | 56081110               | INCCU1       | 25970.3  | KGS                | 417.3                  | UNBRANDED |
| 13    | 9585342   | 16/07/2022         | NYLON MONO FILAMENT FISHING NETS-API                                                                                      | MY      | 56081110               | INCCU1       | 26256.4  | KGS                | 415.48                 | UNBRANDED |

17. I find from Table B above that the Bill of Entry bearing No.9467861 dated 08/07/2022 (at sl. no 4)having assessable value of Rs.555.67 per kgs have

10. From the above table, we find that in respect of 12 consignments out of the total 13 consignments, the unit rate per kg was ranging between USD 4.01 to USD 4.40 per kg, which is much

below the rate of USD 5.20 adopted in the relevant Invoices. This being so, we find that without sequentially following the Rules of CVR 2007, the Department has directly jumped to find out the comparative price of the imported goods and latched on to one single Bill of Entry 9467861 dated 8.7.2022, wherein the Unit Price is shown as USD 7.07 ( Indian Rupees 555.67), which is not as per the prescribed procedure. As a matter of fact, this Bill of Entry came into existence after about two months after the present import by the appellant. Therefore, as on the date of filing of the present Bill of Entry, the Revenue had no information whatsoever to the effect that the value of the goods would be more than USD 5.20/kg. On the contrary, in case of three earlier imports the value was around USD 4.01 to 4.12/kg.

11. The present Bill of Entry was filed by the appellant on 29-05-2022, along with all the relevant documentary evidence. They have filed all the documents sought for by the Revenue from time to time as can be seen from the evidence placed by them in the Appeal paper book. However, the appellant was made to pay the differential duty of Rs.1,90,769 along with interest of Rs.4,033, which has been paid by them 'Under Protest' on 30-9-2022. As per the factual and statutory details discussed above, we find that the Department had absolutely no case to enhance the value of the imported goods.

12. The Hon'ble Apex Court in the case of **Century Metal Cycling Private Limited Vs Union of India, 2019 (367) ELT 3 SC**, has held as under :

*"12. Rules 3 and 12 of the 2007 Rules i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were enacted and enforced with effect from 10th October, 2007 replacing and superseding the 1988 Rules. Rule 3(1) of the 2007 Rules states that value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the 2007 Rules which Rule, as observed above, deals with the costs and services which are*

*to be added to the price actually paid or payable for the imported goods for determining the transaction value. Sub-rule (1) to Rule 3 is however subject to Rule 12 and therefore give primacy to Rule 12 which we shall subsequently elaborate and explain. Sub-rule (2) to Rule 3 states that value of the imported goods under sub-rule (1) shall be accepted i.e. accepted by the Customs authorities. The proviso then vide different clauses sets out the pre-conditions for accepting value of the imported goods. Rule 11 provides for declaration to be given by the importer or his agent certifying that they had disclosed full and accurate details of the value of the imported goods and any other statement, information and document including invoice of the manufacturer or producer of the goods where the goods are imported from or through a person other than the manufacturer of goods, as considered necessary by the proper officer for valuation of the imported goods. Sub-rule (2) states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after an enquiry in consultation with the importers.*

**13.** *Sub-rule (3) to Rule 3 deals with cases when the buyer and seller are related. We would not dilate on the said sub-rule for this is not required for the purpose of the present decision. As per sub-rule (4), where the value cannot be determined under sub-rule (1) to Rule 3, the transaction is to be valued by step wise applying Rules 4 to 9. Rule 4 deals with transaction value based on identical goods. Rule 5 deals with transaction value based on similar goods. Rule 6 deals with the determination of value where the transactional value cannot be determined under Rules 3, 4 and 5. Rules 7 and 8 deal with deductive value and computed value respectively. Rule 9 prescribes the residual method for computing the transaction value. What is important to note is that Rules 4 to 9 are subject to the provisions of Rule 3 thereby giving primacy to Rule 3 which in turn gives primacy to Rule 12 of the 2007 Rules.*

**14.** *Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages*

*a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.*

*Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).*

**15.** *The requirements of Rule 12, therefore, can be summarised as under :*

*(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.*

*(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;*

*(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.*

*(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.*

*(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.*

*(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.*

*(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.*

*(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.*

**16.** *Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make*

*assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.*

**17.** *The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'."*

13. We find that the ratio laid down in this judgement is squarely applicable to the facts of the present case.

14. The Ld AR had taken a stand that the quality of the goods imported was different than what was found during the examination. We have gone through the letter submitted by the appellant and the letter issued by the Revenue towards waiver of demurrage charges, which are reproduced below:

# SADANI BROTHERS

62B, NETAJI SUBHAS ROAD (1st Floor) KOLKATA - 700 001  
Ph : 9331018448, E-mail : sadanibros@gmail.com

Annexure

To,  
The Deputy Commissioner of Customs  
Appraising Group - III  
Custom House,  
15/1, Strand Road  
Kolkata - 700001.

Date: 30.09.2022.

Respected Madam,

Sub: - Intimation of payment of duty under protest and request for issuing detention waiver certificate.

At the very beginning we express our heartfelt thanks to your goodself for extending relief to us up to some extent by assessing the Bill of Entry which has been pending since long due to investigation undertaken by the department.

In order to avoid unnecessary container detention and ground rent incurring on daily basis we are ready to pay the duty redetermined by the department under protest. Since the re-assessment done in this case is contrary to the self-assessment, hence you are requested to issue Speaking Order and provided us the copy of relied upon evidence (B/E 946786 DATED 08.07.2022 VALUE 555.67 RS KGS) and unedited comparable data for last six months pertaining to import by other Importers for identical / similar goods from the same supplier, so that we may know the reason for the re-assessment and be in a position to file appeal against the same.

We like to bring to your kind notice that due to prolonged detention and delay in release of the goods the Shipping line and the CFS are asking us to pay Rs. 27,00,000.00 (approx.) towards container detention and ground rent and we are not in a position to pay the same. In view of the same, we once again request you to kindly Issue the waiver certificate towards the container demurrage charges to Star Shipping Services (I) PVT Ltd, Azimganj House, 5<sup>th</sup> Floor, Unit No 5, 7, Camac Street, Kolkata - 700 017 in terms of Rule 10(1)(L) of Sea Cargo Manifest and Transshipment Regulations, 2018 and instruct / direct All Cargo, CFS, P-22, Sonarpur Road, Paharpur, Garden Reach, Kolkata - 700088 not to charge ground rent in terms of the provisions of the Regulation 6(1)(I) of Handling of Cargo in Customs Areas Regulations, 2009.

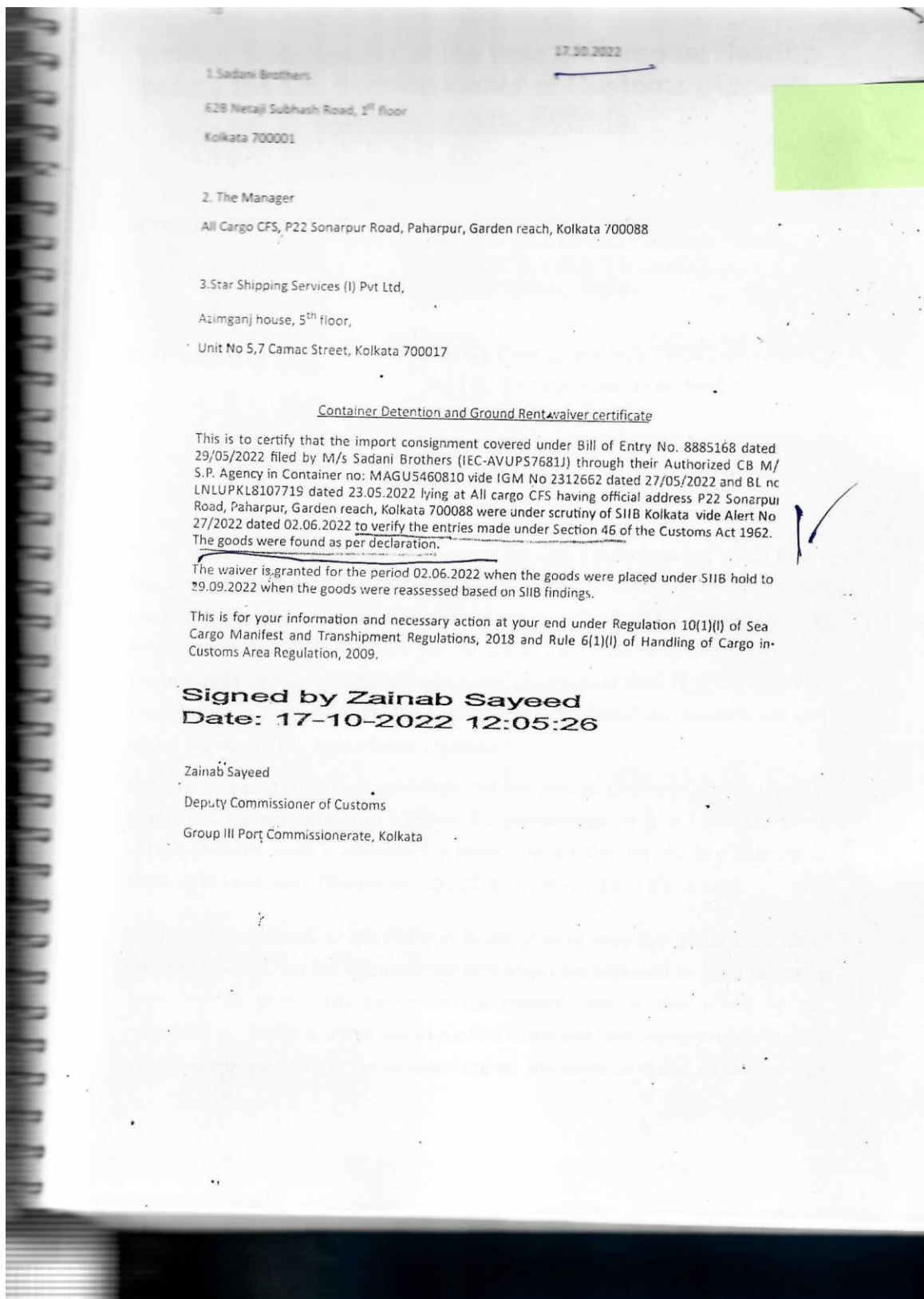
We confidently look forward to your positive response.

Thanks & Regards  
For Sadani Brothers

Rajesh Sadani

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15. From the above letter, it is seen that the Revenue authority has stated that **"the goods were found as per declaration"**. Therefore, the stand taken by the Ld. AR has no legs to stand on.

16. In view of the above discussions, we set aside the impugned order and allow the appeal.

17. We also find from the letter extracted above that the inordinate delay in the releasing the consignment resulted in more than Rs.27 lakhs being demanded on account of detention / demurrage charges, which has been waived by the Revenue authorities. This is the cost for carrying the inventory which in the normal course would be payable. But due to the botched and erroneous detention of consignment, which even as per the Revenue's own revised enhanced assessment would have resulted in enhanced Customs Duty of just Rs.1.90 lacs, has resulted in waiver of Rs.27.00 lacs towards demurrage charges. The Bench strongly feels that the concerned officials of the Revenue should be made accountable for losing out Rs.27 lacs on account of storage / demurrage charges.

18. Further, the appellant was made to pay Rs.1,90,769 along with interest of Rs.14033 which is legally not required to be paid at all as has been held by us after detailed discussions. This amount paid by the appellant on 30.09.2022 is required to be refunded fully along with applicable rate of interest for the period 30.09.2022 till the date of refund to the appellant. The Revenue cannot unjustly enrich themselves by keeping the money belonging to assessee as has been held by the Hon'ble Supreme Court in the case of **Sandvik Asia Ltd vs Commissioner Of Income Tax-I, Pune & Ors** (Judgement dated 27 January, 2006).

*"45. The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30-4-1997. Interest on delayed payment of refund was not paid to the appellant on 27-3-1981 and 30-4-1986 due to the*

erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesseees, the Department first adjusts the amount paid towards interest so that the principal amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only up to the date of refund of tax while they take the benefit of assessee's funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesseees. Very large number of assesseees are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesseees amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it has been deprived of an amount of Rs. 40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

#### **Compensation :**

**46.** The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows :

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the

*person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."*

**47.** *There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.*

**48.** *This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially."*

19. Relying on the above judgement, the Delhi High Court has held as under:

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**17.** We are unable to find any justification for the respondents to retain the said amount of Rs. 2,38,00,000/-. We have thus enquired from the Counsel for the respondents, what should be the rate of interest for which the respondents should be held liable.

**18.** The Counsel for the respondents states that as per the statute, the respondents are liable for interest @ 6% per annum only.

**19.** Per contra, the Counsel for the petitioner has drawn attention to:

(A) Sandvik Asia Ltd. v. Commissioner of Income Tax-I, Pune, (2006) 2 SCC 508 = [2006 \(196\) E.L.T. 257](#) (S.C.) where interest @ 9% per annum was awarded;

(B) Surinder Singh v. Union of India, 2006 SCC OnLine Del 1863 (DB) = [2006 \(204\) E.L.T. 534](#) (Del.) where interest @ 12% per annum was granted on delayed refund;

(C) Hello Minerals Water (P) Ltd. v. Union of India, 2004 SCC OnLine All 2187 (DB) = [2004 \(174\) E.L.T. 422](#) (All.) where interest @ 10% per annum was granted;

(D) Hindustan Coca-Cola Beverages Pvt. Ltd. v. Union of India, 2013 SCC OnLine Guj 1487 (DB) = [2015 \(324\) E.L.T. 299](#) (Guj.) where interest @ 9% per annum and future interest @ 6% per annum was granted; and,

(E) Ebiz.com Pvt. Ltd. v. Commissioner of Central Excise, Customs & S.T., [2017 \(49\) S.T.R. 389](#) (All.) where costs of Rs. 50,000/- were imposed on the Department.

**20.** In the present case, as aforesaid, the amount of Rs. 2,38,00,000/- was deposited by the petitioner of its own volition, during the audit/investigation, though under protest and the petitioner has not chosen to detail the circumstances in which the petitioner felt compelled to make the deposit. The

*petitioner for the first time sought refund of the said amount vide letter dated 2nd May, 2018.*

**21.** *Considering the said facts, we do not find the petitioner entitled to interest at any higher rate than @ 6% per annum from the date of deposit i.e. 27th October, 2006 till the end of May, 2018 i.e. 31st May, 2018. However, we do not find any justification for the respondents retaining the said amount thereafter and find the respondents liable for interest with effect from 1st June, 2018 onwards and till date @ 7.5% per annum. While so enhancing the rate of interest, we have also taken into consideration the non-compliance by the respondents of the orders of this Court as detailed above, leading to a contempt notice being issued to the respondents and in response where to Ms. Niharika Gupta, Assistant Commissioner in the Office of Division-Nehru Place, Central GST, Delhi East Commissionerate is present in the Court.*

**22.** *The respondents are expected to at least now, on or before 15th July, 2020 refund the amount of Rs. 2,38,00,000/- with interest @ 6% per annum from 1st November, 2006 to 31st May, 2018 and with interest @ 7.5% per annum from 1st June, 2018 till the date of refund on or before 31st July, 2020. However, if the said amount is not refunded by 15th July, 2020, the rate of interest with effect from 1st August, 2020 shall stand enhanced to 12% per annum. A mandamus to the said effect is issued to the respondents GST Department."*

20. Following the ratio laid down in the above decisions, we hold that the appellant would be eligible for interest payment from Revenue from 30.09.2022 till the date the Customs Duty + Interest (paid by the appellant), is refunded to them.

21. To summarize :

- (a) The enhanced value adopted by the Revenue is legally not sustainable.
- (b) The Customs Duty on enhanced value paid [under protest] along with interest by the appellant is not payable, in the first place. Therefore, the amount of Rs.1,90,769 and Rs.14,033

paid is required to be refunded along with interest at the applicable rate from 30.09.2022.

22. The Appeal stands allowed, with consequential relief, as detailed above.

(Order pronounced in the open court on 25.03.2026.)

Sd/

**(R. MURALIDHAR)**  
**MEMBER (JUDICIAL)**

Sd/

**(RAJEEV TANDON)**  
**MEMBER (TECHNICAL)**

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