

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Customs Appeal No. 75933 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(Port)/132/2020 dated 02.01.2020 passed by Commissioner of Customs (Appeals), Kolkata.)

M/s Anjum International,
(13A, Phears Lane, Kolkata-700012.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata,
(15/1, Strand Road, Customs House, Kolkata-700001)

...Respondent

..

APPEARANCE :

None, for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)

HON'BLE MR. RAJEEV TANDON MEMBER (TECHNICAL)

Final Order No...75444/2026

DATE OF HEARING : 23.03.2026

DATE OF DECISION : 23.03.2026

PER R. Muralidhar :

Appellant had imported non-LED and LED lights during the period 12.09.2016 to 14.10.2016. The appellant filed three Bills of Entry for the consignments received from abroad. They have declared the total assessable value of Rs.45,36,497/-. They were allowed to clear the imported goods on provisional basis. Subsequently, Order in Original dated 27.03.2018 was passed, finalizing the provisional assessment. The adjudicating authority has relied on the NIDB data to enhance the value of the imported goods. He has re-determined the assessable value as Rs.15,32,982/-. He has re-determined the duty at Rs.29,57,568/- as against Rs.11,81,184/- paid by the appellant. He has

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also ordered for payment of interest under Section 18(3) of the Customs Act 1962.

2. Being aggrieved by the enhancement of the value and enhanced determined customs duty, the appellants have filed their appeal before the Commissioner (Appeals). After going through all the data made available to him and the documentary evidence placed before him, the Commissioner (Appeals), has held that the assessing officer has erred in rejecting the transaction value without any valid basis or reasons and without following the due procedure as specified under Section 14 of the Customs Valuation Rules. He has remanded the matter back to the original authority to re-examine the matter after giving opportunity to the appellant. The appellant has filed an appeal being agitated by this remand order by the Commissioner (Appeals).

3. No one has appeared on behalf of the appellant. We find that even the intimation letters being sent to the appellant is being returned back by the postal authority. Therefore, we have taken up the appeal itself for disposal with the active help of the Ld D R.

4. On going through the OIO, we find that the adjudicating authority has enhanced the value of the imported goods, based on the NIDB data as can be seen from Para 5 of this order, which is reproduced below.

"5. At the time of finalization of the said provisional assessment under Section 18(2) of Customs Act, 1962, the

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Department had come across evidences of contemporaneous imports of similar goods through other Customs locations at much higher value than the value at which provisional assessments were done in this Port. As per NIDB data, it had been noticed that during the period from July,2016 to September, 2017 in 1978 cases, covering 348 Bills of Entry, the other Customs locations like INTKD6(Tuglaqabad ICD), INNSAI (Nhavasheve Port), INBOM1 (Mumbai Port) & INMUN1 (Mundra Port), have assessed Led Christmas light after taking alue per bulb as Rs.55/bulb or more and in 1341 cases, covering 384 Bills of Entry and non-LED Christmas lights have been assessed at 0.30/ bulb or more.”

5. In terms of Customs Valuation Rules 2007, first and foremost, if the transaction value as shown by way of invoice and documentary details by the importer, the assessing officer is required to go through the veracity of the same. Only when he is not satisfied with the transaction value shown in the invoice, the Revenue can go to the other portion of the C V Rules to enhance the value of the consignment. As per Section 14(1) of the Customs Act, 1962, the value of imported goods shall be the 'transaction value', in the normal course even if the exporter and importer are related parties. There is no allegation to this effect in the present proceedings. 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. Therefore, in order to invoke the other provisions of these Rules to determine the value, first of all, the Revenue is required to come out with proper plausible explanation as to why the transaction value is to be discarded. In the present proceedings, there is nothing to indicate that the Department

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has undertaken any investigation to show that the appellant was under-valuing the goods for which any extra amount was being sent by any other means.

6. In this case, this procedure was not followed as has been correctly observed and held by the Commissioner (Appeals). The relevant portion of the Commissioner (Appeals) Order is extracted below.

7. The Hon'ble Supreme Court in the case of **Century Metal Cycling Pvt Ltd v 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

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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,*

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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.

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(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*

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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'."

8. We find that the ratio laid down in the judgment is squarely applicable to the facts of the present case.

9. The Chennai Tribunal in the case of **Sai Exports Vs. Commissioner of Customs Duty Courier 2019-370-ELT-398 (Tri-Chennai)** has held as under.

"2. The appellants imported 100% Knitted Polyester Fabrics from China declaring the price of US \$ 2.30 per kg. Department felt that the unit price declared by the importer was low and enhanced it by comparing the same with prevalent data in the NIDB database maintained by department. Accordingly, the Asst. Commissioner vide Order No. 75/2014-A.C. (Imports), dated 13-2-2014 enhanced the value and redetermined the amount of duty payable accordingly. On appeal, the first appellate authority upheld the order of the lower authority and rejected the appeal. Hence, this appeal.

9. Simply because the value declared by the appellant is lower than the value found in the NIDB database, the value cannot be revised by the department. Such difference in value does not constitute in itself a reasonable doubt needed to reject the transaction value under Rule 12. Consequently, the impugned order is liable to be set aside and we do so".

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10. We find that even in the present case, the Department has not come out with any reason as to why the Transaction Value is not found to be correct or as to why NIDB data should be directly applied, without rejecting the Transaction value. We also find that they have not followed the CVR 2007 sequentially to arrive at the enhanced value.

11. Therefore, applying the ratio of the Supreme Court's decision and the cited case law, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.