CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
WEST ZONAL BENCH
COURT No.

Appeal No. C/86499/2017

(Arising out of Order-in-Appeal No. 104-110 (G.IV)/2017/(JNCH)-Appeals-II dated 21.02.2017 passed by Commissioner of Customs (Appeals-II), Mumbai-II)

Bhitti Impex **Appellant**
16 Rungta Bhavan,
94/100 Fanaswadi,
Mumbai 400 004.

Vs.

Commissioner of Customs (NS-III) **Respondent**
JNCH, Taluka Uran
Dist. Raigad, 400 707

WITH

Appeal No. C/87209/2017

(Arising out of Order-in-Appeal No. 104-110 (G.IV)/2017/(JNCH)-Appeals-II dated 21.02.2017 passed by Commissioner of Customs (Appeals-II), Mumbai-II)

Dilip Kumar Dugar **Appellant**
16 Rungta Bhavan,
94/100 Fanaswadi,
Mumbai 400 004.

Vs.

Commissioner of Customs (NS-III) **Respondent**
JNCH, Taluka Uran
Dist. Raigad, 400 707

Appearance:

Shri Anil Balani, Advocate for the Appellant
Ms. Trupti Chavan, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. A/**85722-85723/2019**

Date of Hearing: 04.12.2018
Date of Decision: 12.04.2019

PER: SANJIV SRIVASTAVA

These appeal are directed against order in appeal No 104 to 110 (Gr.IV)/2017(JNCH)-Appeal-I dated 21.2.2017/28.2.2017 of the Commissioner Custom (Appeal-II) Nhava Sheva. By the said order Commissioner (Appeal) has held as follows:

"27. In view of the above, I uphold the Order in Original No 1373/2015-16 except portions s(i) and t(i),(ii),(iii) and (iv) of "order" portion of the said order in original and the appeal Nos 565/205, 566/2015, 568/2015, 569/2015, 622/2015, 623/2015 and 624/2015 are disposed accordingly."

1.2 Adjudicating authority has by the said order in original held as follows:

ORDER

a. I reject the total declared CIF value of Rs. 17,12,887.05/- in respect of 2 consignments of non ferrous metal scrap imported by M/s. Bhitti Impex for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported Goods) Rules, 1988 made thereunder and redetermine at the ascertained value of Rs. 33,98,320.80/- (As enumerated in Annexure A to the SCN).

b. I order confiscation of the goods (as mentioned at Sr. No. 1 to 2 of Annexure-A and Sr. No. 1 to 5 of Annexure-B to the SCN) of ascertained CIF of Rs. 1,32,21,343.38/- in terms of provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as the goods were misdeclared with reference to value. Since the said goods are not physically available, I refrain from imposing redemption fine on the goods imported.

c. I demand, confirm and recovery of total duty amount of Rs. 10,76,642/- leviable on total reassessed value of Rs. 34,14,686.50 of goods covered under bills of entry (as enumerated at Sr. No. 1 & 2 in Annexure A to this SCN) after adjusting duty amount of Rs. 5,70,466/- and differential duty amounting to Rs. 5,06,176/- (as enumerated at Sr. NO. 1 & 2 in Annexure-A of the SCN) from them under the proviso to Section 28(2) {now 28(8)} of the Customs Act, 1962 with interest under Section 28AB (now 28 AA)

d. I reject the total declared CIF value of Rs. 20,56,724.25/- in respect of 2 consignments of non ferrous metal scrap imported by M/s. Dee Vee Metals (as mentioned at Sr. No. 3 & 4 of Annexure-A to the SCN) for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported Goods) Rules, 1988 made thereunder and redetermined at the ascertained value of Rs. 43,66,583.55/- (As enumerated in Annexure A to the SCN).

e. I order confiscation of the goods (as mentioned at Sr. NO. 3 to 4 of Annexure A) of ascertained CIF of Rs. 43,66,583.55/- in terms of provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as the goods were misdeclared with reference to value. Since the said goods are not physically available, I refrain from imposing redemption fine on the goods imported.

f. I demand, confirm and recovery of total duty amount of Rs. 12,57,406/- leviable on total reassessed value Rs. 44,10,240/- of goods covered under bills of entry (as enumerated at Sr. No. 3 & 4 in Annexure A to the SCN) after adjusting duty amount of Rs. 6,96,608/- and the differential duty amounting to Rs. 5,60,798/- (as enumerated at Sr. No. 3 % 4 in Annexure-A) should be recovered from them under the proviso to Section 28(2) {now 28(8)} of the Customs Act, 1962 with interest under Section 28AB (now 28AA) of the Customs Act, 1962.

g. I reject the total declared CIF value of Rs. 11,06,097.10/- in respect of 1 consignment of non ferrous metal scrap imported by M/s. Mittal Pigments Pvt Ltd (as mentioned at Sr. no. 5 of Annexure-A to the SCN) for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported Goods) Rules, 1988 made there under and re-determined at the ascertained value of Rs. 27,14,950/- (As enumerated in Annexure A to the SCN).

h. I order confiscation of the goods (as mentioned at Sr. No. 3 to 4 of Annexure A) of ascertained CIF of Rs. 27,14,950/- in terms of provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as the goods were misdeclared with reference to the value. Since the goods are not physically available, I refrain from imposing redemption fine on the goods imported.

i. I demand, and confirm the recovery of total duty amount of Rs. 8,54,932/- leviable on total reassessed value Rs. 27,96,941.40/- of goods covered under bills of entry (as enumerated at Sr. No. 5 in Annexure A to the SCN) after adjusting duty amount of Rs. 3,48,306/- and the differential duty amounting to Rs. 5,06,626/- (as enumerated at Sr. No. 5 in Annxure-A) from them under the proviso to Section 28(2) {Now 28(8)} of the Customs Act, 1962 along with interest under Section 28AB (now 28AA).

j. I reject the total declared CIF value of Rs. 22,21,590.60/- in respect of 1 consignment of non ferrous metal scrap imported by M/s. Leadage Alloys Ltd (as mentioned at Sr. No. 6 of Anneuxre-A to the SCN) for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported Goods) Rules, 1988 made thereunder and redetermined at the ascertained value of Rs. 28,38,699.10/- (As enumerated in Annexure A to the SCN).

k. I order confiscation of the goods (as mentioned at Sr. No. 6 of Annxure-A) of ascertained CIF of Rs. 28,38,699.10/- in terms of provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as the goods were misdeclared with reference to value. Since the goods are not physically available, I refrain from imposing redemption fine on the goods imported.

l. I demand, confirm and recovery of total duty amount of Rs. 6,60,298/- leviable on total reassessed value Rs. 29,24,427.80/- of goods covered under bills of entry (as enumerated at Sr. NO. 6 in Annexure-A to the SCN) after adjusting duty amount of Rs. 5,28,239/- and the differential duty amounting to Rs. 1,32,059/- (as enumerated at Sr. No. 6 in Annexure-A) from them under the proviso to Section 28(2) {now 28(8)} of the Customs Act, 1962 with interest under Section 28AB (now 28AA).

m. I reject the total declared CIF value of Rs. 23,90,319/- in respect of 1 consignment of non ferrous metal scrap imported by M/s. Associated Stabplast & Chemicals (as mentioned at Sr. No. 7 of Annexure-A to the SCN) for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported Goods) Rules, 1988 made thereunder and redetermined at the ascertained value of Rs. 28,38,699.10/- (As enumerated in Annexure A to the SCN).

n. I order confiscation of the goods (as mentioned at Sr. No. 7 of Annexure-A) of ascertained CIF of Rs. 30,54,296.50/- in terms of provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as the goods were misdeclared with reference to value. Since the goods are not physically available, I refrain from imposing redemption fine on the goods imported.

o. I demand, confirm and recovery of total duty amount of Rs. 7,10,448/- leviable on total reassessed value Rs. 31,46,536.25/- of goods covered under bills of entry (as enumerated at Sr. No. 7 in Annexure-A to the SCN) after adjusting duty amount of Rs. 5,68,358/- and the differential duty amounting to Rs. 1,42,090/- (as enumerated at Sr. No. 7 in Annexure-A) from them under the proviso to Section 28(2) {now 28(8)} of the Customs Act, 1962 along with interest under Section 28AB (now 28AA).

p. I reject the total declared CIF value of Rs. 43,07,758.20/- in respect of 1 consignment of non ferrous metal scrap imported by M/s. Premier Pigments (as mentioned at Sr. No. 8 of Annexure-A to the SCN) for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported Goods) Rules, 1988 made thereunder and redetermined at the ascertained value of Rs. 55,04,357.10/- (As enumerated in Annexure A to the SCN).

q. I order confiscation of the goods (as mentioned at Sr. NO. 8 of Annexure-A) of ascertained CIF of Rs. 55,04,357.10/- in terms of provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as the goods were misdeclared with reference to value. Since the goods are not physically available, I refrain from imposing redemption fine on the goods imported.

r. I demand and confirm the recovery of total duty amount of Rs. 12,80,347/- leviable on the reassessed value Rs. 56,70,589.30/- of goods covered under bills of entry (as enumerated at Sr. No. 8 in Annexure-A to the SCN) after adjusting duty amount of Rs. 10,20,937/- and the differential duty amounting to Rs. 2,59,410/- (as enumerated at Sr. No. 8 in Annexure-A) from them under the proviso to Section 28(2) {now 28(8)} of the Customs Act, 1962 with interest under Section 28AB (now 28AA).

s. I impose penalty on M/s. Bhitti Impex, M/s. Dee Vee Metals, M/s. Mittal Pigments Pvt Ltd, M/s. Leadage Alloys India Ltd, M/s. Associated Stabplast & Chemicals and M/s. Premier Pigments, which is equal to the differential duty demanded and confirmed plus interest, under the provisions of Section 114A of the Customs Act, 1962.

(i). I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri Dilip Dugar, Proprietor of M/s. Bhitti Impex, M/s. Dee Vee Metals under Section 112(a) of the Customs Act, 1962.
(ii). I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri Ramesh Agarwal, Director of M/s. Mittal Pigments under Section 112(a) of the Customs Act, 1962.
(iii). I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri Ramanand Agarwal, representative of M/s. Associated Stabplast & Chemicals under Section 112(a) of the Customs Act, 1962.
(iv). I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on Shri S. Ayyappan, Partner of M/s. Premier Pigments under Section 112(a) of the Customs Act, 1962.

t(i). I impose a penalty of Rs. 50,000/- (Fifty Thousand Only) on Shri Dilip Dugar, Proprietor of M/s. Bhitti Impex and M/s. Dee Vee Metals under Section 114AA of the Customs Act, 1962.
(ii) I impose a penalty of Rs. 50,000/- (Fifty Thousand Only) on Shri Ramesh Agarwal, Director of M/s. Mittal Pigments PVt Ltd under Section 114AA of the Customs Act, 19652.
(iii). I impose a penalty of Rs. 50,000/- (Fifty Thousand Only) on Shri Ramanand Agarwal, Representative of M/s. Associated Stabplast & Chemicals under Section 114AA of the Customs Act, 1962.
(iv). I impose a penalty of Rs. 50,000/- (Fifty Thousand Only) on Shri M.S. Ayyappan, Partner of M/s. Premier Pigments under Section 114AA of the Customs Act, 1962.

2.1 Specific intelligence was received by Director General Revenue Intelligence Mumbai Zonal Unit, to effect that M/s Bhitti Impex (Appellant 1) and M/s Dee Vee Metals proprietorship concerns of Shri Dileep Kumar Dugar had imported “Non Ferrous Metal Scrap” by mis-declaring the value. They had also sold certain consignments on High Sea sales basis which also have been cleared by mis declaring the value.

2.2 Investigations revealed that M/s Bhitti Impex and M/s Dee Vee Metals had imported consignments of “Non Ferrous Metal Scrap” from UK, Germany and other countries. Enquiries were initiated through Consulate General of India (CGI), London and Brussels. Based on the reference made and investigations conducted a show cause notice dated 06.08.2008 was issued to M/s Bhitti Impex and others, 2.3 Subsequent to issuance of show cause notice, CGI, Brussels forwarded a report with regards to 34 consignments of the subject goods imported by the said persons from overseas supplier namely M/s Nord Schrott GmbH & Co KG, Fiensberg, Germany and M/s TSR Recycling GmbH & Co KG Hamsburg, Germany. It was intimated that these persons made part payment of the finally negotiated price (contract amount) with their supplier prior to shipments of goods and the balance at time of shipment of goods against the invoice which was only for the balance amount. They submitted the invoice of balance amount to Customs while filing the Bill of Entry for clearance of the said consignments. Thus by adopting this modus operandi the imported goods were under invoiced to the extent of US$ 218100.13. Thus they had got the imported goods under invoiced by their overseas supplier to the extent of advance paid.

2.3 Overseas enquiries conducted through Consulate General of India revealed existence of two set of invoices in respect of impugned consignments. The set of invoices (2^{nd} Set) which was for final contract value was submitted by the overseas suppliers to German Customs while exporting the said goods. The other set (1^{st} Set) which was submitted to Indian Customs for clearance of imported consignments was for value excluding the advance payments.

2.4 After completion of investigations a show cause notice dated 25.11.2009 was issued to a number of noticees. Para 15 of the Show Cause Notice reads as follows:

15) Now, therefore, M/s Bhitti Impex, M/s Dee Vee Metals, Shri Dileep Dugar proprietor of M/s Bhitti Impex and M/s Dee Vee Metals, M/s Mittal Pigments Pvt Ltd, Shri Ramesh Agarwal, director of M/s Mittal Pigments, M/s Leadage Alloys India Ltd, M/s Associated Stabplast & Chemicals, Shri Ramanad Agarwal, representative of M/s Associated Stabplast & Chemicals, M/s Premier Pigments, and Shri M S Ayyappan, partner of M/s Premier Pigments, are hereby called upon to show cause to the Additional Commissioner of Customs (Import), Group IV having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Taluka Uran, District-Raigad within thirty days of the receipt of this Show Cause Notice as to why;

(a) the total declared C.I.F value of Rs.17,12,887.05 in respect of 02 consignments of non ferrous metal scrap imported by M/s. Bhitti Impex (as mentioned at Sr. No. 1 & 2 Annexure-A to this show cause notice) should not be rejected for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act 1962 read with the valuation (Determination of price of imported goods) Rules 1988 made thereunder and redetermined at the ascertained value of Rs. 33,98,320.80 (as enumerated in Annexure A to this Show Cause Notice);

(b) the goods (as mentioned at Sr. No. 1 to 2 of annexure A and Sr. No. 1 to 5 of annexure B) of ascertained CIF of Rs.1,32,21,343.38 should not be held liable to confiscation in terms of provisions of Sec.111(d) and 111(m) of the Customs Act 1962 as the goods were misdeclared with reference to value, though the said goods are not physically available;

(c) total duty amount of Rs.10,76,642/- leviable on total reassessed value Rs.34,14,686.50 of goods covered under bills of entry (as enumerated at Sr.No.1 & 2 in Annexure A to this Show Cause Notice) should not be demanded after adjusting duty amount of Rs.5,70,466/- and the differential duty amounting to **Rs.5,06,176/-** (as enumerated at Sr.No.1 & 2 in Annexure-A) should not be recovered from them under the proviso to Section 28 of the Customs Act, 1962 with interest under section 28 AB;

(d) the total declared C.I.F value of Rs.20,56,724.25 in respect of 02 consignments of non ferrous metal scrap imported by M/s. Dee Vee Metals (as mentioned at Sr. No. 3 & 4 of Annexure-A to this show cause notice) should not be rejected for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act 1962 read with the valuation (Determination of price of imported goods) Rules 1988 made thereunder and redetermined at the ascertained value of Rs. 43,66,583.55 (as enumerated in Annexure A to this Show Cause Notice);

(e) the goods (as mentioned at Sr. No. 3 to 4 of Annexure A) of ascertained CIF of Rs.43,66,583.55 should not be held liable to confiscation in terms of provisions of Sec.111(d) and 111(m) of the Customs Act 1962 as the goods were mis-declared with reference to value, though the said goods are not physically available;

(f) total duty amount of Rs.12,57,406/- leviable on total reassessed value Rs.44,10,240/- of goods covered under bills of entry (as enumerated at Sr.No.3 & 4 in Annexure A to this Show Cause Notice) should not be demanded after adjusting duty amount of Rs.6,96,608/- and the differential duty amounting to **Rs.5,60,798/-** (as enumerated at Sr. No. 3 & 4 in Annexure-A) should not be recovered from them under the proviso to Section 28 of the Customs Act, 1962 with interest under section 28 AB of the Customs Act,1962;

(g) the total declared C.I.F value of Rs.11,06,097.10 in respect of 01 consignment of non ferrous metal scrap imported by M/s. Mittal Pigments Pvt Ltd (as mentioned at Sr.No.5 of Annexure-A to this show cause notice) should not be rejected for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act 1962 read with the valuation (Determination of price of imported goods) Rules 1988 made thereunder and redetermined at the ascertained value of Rs.27,14,950/- (as enumerated in Annexure A to this Show Cause Notice);

(h) the goods (as mentioned at Sr.No.3 to 4 of Annexure A) of ascertained CIF of Rs.27,14,950/- should not be held liable to confiscation in terms of provisions of Sec.111(d) and 111(m) of the Customs Act 1962 as the goods were misdeclared with reference to value, though the said goods are not physically available;

(i) total duty amount of Rs.8,54,932/- leviable on total reassessed value Rs.27,96,941.40 of goods covered under bills of entry (as enumerated at Sr.No.5 in Annexure A to this Show Cause Notice) should not be demanded after adjusting duty amount of Rs.3,48,306/- and the differential duty amounting to **Rs.5,06,626/-** (as enumerated at Sr.No.5 in Annexure-A) should not be recovered from them under the proviso to Section 28 of the Customs Act, 1962 with interest under section 28 AB;

(j) the total declared C.I.F value of Rs.22,21,590.60 in respect of 01 consignment of non ferrous metal scrap imported by M/s. Leadage Alloys Ltd (as mentioned at Sr.No.6 of Annexure-A to this show cause notice) should not be rejected for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act 1962 read with the valuation (Determination of price of imported goods) Rules 1988 made thereunder and redetermined at the ascertained value of Rs.28,38,699.10 (as enumerated in Annexure A to this Show Cause Notice);

(k) the goods (as mentioned at Sr.No.6 of annexure A) of ascertained CIF of Rs.28,38,699.10 should not be held liable to confiscation in terms of provisions of Sec.111(d) and 111(m) of the Customs Act 1962 as the goods were misdeclared with reference to value, though the said goods are not physically available;

(l) total duty amount of Rs.6,60,298/- leviable on total reassessed value Rs.29,24,427.80 of goods covered under bills of entry (as enumerated at Sr.No.6 in Annexure A to this Show Cause Notice) should not be demanded after adjusting duty amount of Rs.5,28,239/- and the differential duty amounting to **Rs.1,32,059/-** (as enumerated at Sr.No.6 in Annexure-A) should not be recovered from them under the proviso to Section 28 of the Customs Act, 1962 with interest under section 28 AB;

(m) the total declared C.I.F value of Rs.23,90,319/- in respect of 01 consignment of non ferrous metal scrap imported by M/s. Associated Stabplast & Chemicals (as mentioned at Sr.No.7 of Annexure-A to this show cause notice) should not be rejected for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act 1962 read with the valuation (Determination of price of imported goods) Rules 1988 made thereunder and redetermined at the ascertained value of Rs.30,54,296.50 (as enumerated in Annexure A to this Show Cause Notice);

(n) the goods (as mentioned at Sr.No.7 of Annexure A) of ascertained CIF of Rs.30,54,296.50 should not be held liable to confiscation in terms of provisions of Sec.111(d) and 111(m) of the Customs Act 1962 as the goods were misdeclared with reference to value, though the said goods are not physically available;

(o) total duty amount of Rs.7,10,448/- leviable on total reassessed value Rs.31,46,536.25 of goods covered under bills of entry (as enumerated at Sr.No.7 in Annexure A to this Show Cause Notice) should not be demanded after adjusting duty amount of Rs.5,68,358/- and the differential duty amounting to **Rs.1,42,090/-** (as enumerated at Sr.No.7 in Annexure-A) should not be recovered from them under the proviso to Section 28 of the Customs Act, 1962 with interest under section 28 AB;

(p) the total declared C.I.F value of Rs.43,07,758.20 in respect of 01 consignment of non ferrous metal scrap imported by M/s. Premier Pigments (as mentioned at Sr.No.8 of Annexure-A to this show cause notice) should not be rejected for the purpose of assessment of goods to duty in terms of provisions of Section 14(1) of the Customs Act 1962 read with the valuation (Determination of price of imported goods) Rules 1988 made thereunder and redetermined at the ascertained value of Rs.55,04,357.10 (as enumerated in Annexure A to this Show Cause Notice);

(q) the goods (as mentioned at Sr.No.8 of annexure A) of ascertained CIF of Rs.55,04,357.10 should not be held liable to confiscation in terms of provisions of Sec.111(d) and 111(m) of the Customs Act 1962 as the goods were misdeclared with reference to value, though the said goods are not physically available;

(r) total duty amount of Rs.12,80,347/- leviable on total reassessed value Rs.56,70,589.30 of goods covered under bills of entry (as enumerated at Sr.No.8 in Annexure A to this Show Cause Notice) should not be demanded after adjusting duty amount of Rs.10,20,937/- and the differential duty amounting to **Rs.2,59,410/-** (as enumerated at Sr.No.8 in Annexure-A) should not be recovered from them under the proviso to Section 28 of the Customs Act, 1962 with interest under section 28 AB;

(s) Penalty under the provisions of Section 112(a)/114A of the Customs Act, 1962 should not be imposed on M/s Bhitti Impex, M/s Dee Vee Metals, Shri Dileep Dugar proprietor of M/s Bhitti Impex and M/s Dee Vee Metals, M/s Mittal Pigments Pvt Ltd, Shri Ramesh Agarwal, director of M/s Mittal Pigments Pvt Ltd , M/s Leadage Alloys India Ltd, M/s Associated Stabplast & Chemicals, Shri Ramanand Agarwal, representative of M/s Associated Stabplast & Chemicals, M/s Premier Pigments, and Shri S. Ayyappan, partner of M/s Premier Pigments whose acts of omission and commission rendered said goods liable to confiscation

(t) Penalty under the provisions of Section 114AAof the Customs Act, 1962 should not be imposed on Shri Dileep Dugar proprietor of M/s Bhitti Impex and M/s Dee Vee Metals, Shri Ramesh Agarwal, Director of M/s Mittal Pigments Pvt Ltd , Shri Ramanand

Agarwal, representative of M/s Associated Stabplast & Chemicals, and Shri M S Ayyappan, partner of M/s Premier Pigments who had knowingly or intentionally made, signed or used, or caused to be made, signed, or used, the declaration, statement or document which were false and/or incorrect in material particulars pertaining to the valuation particulars in the transaction of business for the purposes of section 14 and 46 of Custom Act.

They are further required to specifically state in their written explanation, whether they wish to be heard in person by the concerned Adjudicating Authority, before the case is adjudicated. If no reply is received within 30 days from the date of receipt of this notice or if they fail to appear before the Adjudicating Authority, whenever the case is posted for hearing, the case will be decided on the basis of available evidence on record without any further notice to them.

Copies of all the relied upon documents as enlisted are enclosed with this notice as Annexure. However, in case the noticee wish to inspect any of the documents relied upon by the department in this Show Cause Notice and to obtain further copies thereof, they may do so by prior appointment with the Assistant Director, 'D' Cell, DRI Zonal Unit, 13, Vithaldas Thackersay Marg, New Marine Lines, Mumbai – 20 (Telephone No. 022-22050191/92/93/94, Fax- 022-22010323)

This notice is issued without prejudice to any other action that may be taken in respect of the goods in question and / or for the persons companies concerned, covered and/ or not covered by this Show Cause Notice under the provisions of the Customs Act, 1962 and / or any other law for the time being in force in the Republic of India.

2.5 Show cause notice was adjudicated by the Additional Commissioner of Customs Nhava Sheva vide his order as indicated in para 1, supra.

2.6 Against the said order of Additional Commissioner which covered 10 noticees, appeals were filed by 7 noticees namely M/s Bhitti Impex, M/s Dee Vee Metals, M/s Mittal Pigments Pvt Ltd, M/s Associated Stabplast & Chemicals, M/s Premier Pigments and Shri Ramesh Aggarwal Director of M/s Mittal Pigments and Shri S Ayyappan Partner of Premier Pigments, before the Commissioner (Appeals). Commissioner (Appeal) has by order in appeal No 104 to 110 (Gr. IV)/2017/(JNCH)-Appeal-II disposed of the Appeals of these seven appellants.

2.7 At present we are concerned with the appeals filed by M/s Bhitti Impex [Appeal No 86499/17-Mum] and Shri Dileep Kumar Dugar [Appeal No C/87209/17-Mum]

2.8 Tribunal has vide its order No A/85100-85101/18 dated 23/01/2018 disposed of the Appeals filed by M/s Mittal Pigments Pvt Ltd [C/86768/2017-Mum] and Shri Ramesh Agarwal [Appeal No 86767/17-Mum].

4.1 We have heard Shri Anil Balani, Advocate for both the Appellants and Ms Trupti Chavan, Assistant Commissioner, Authorized Representative for the revenue.

4.2 Arguing for the Appellants learned Advocate submitted-

i. Hon'ble Tribunal has in its order dated 14/12/2017, disposed of the appeals filed by M/s Mittal Pigments Pvt Ltd and Shri Ramesh Agarwal. While disposing of the said appeals tribunal stated " ….. for the reasons mentioned above, we set aside the impugned order and allow the appeal." The impact of the said order of tribunal is setting aside the whole of impugned order in appeal no 104-110 (Gr IV)/2017 (JNCH)-Appeal-II dated 21.02.2017 of the Commissioner (Appeal). Since the whole order in appeal has been set aside the present appeals also need to be allowed. The earlier order of Tribunal was passed relying on the decisions as follows:
   a. South India Televisions Pvt Ltd. [2007 (214) ELT 3 (SC)]
   b. Contessa Commercial Co Pvt Ltd [2007 (208) ELT 299 (T-Kol)]
   c. Ramkrishna Sales Pvt Ltd. [2008 (230) ELT 431 (T-Ahd)]
   d. Taito Watch Manufacturing Inds [2009 (173) ELT 17 (T-Del)]

ii. Tribunal has in its earlier order also noted that original authority has recorded evidence showing that nothing had been paid more than the agreed price through the banking channels and thus there were no clandestine remittances over and above the invoice price and thus the whole case of under invoicing is required to be quashed.

iii. Since the charges against them are identical to the charges against M/s Mittal Pigment Pvt Ltd, whose appeal have been decided by the order dated 23.01.2018, their appeal also need to be allowed.

iv. Since the show cause notice in the present case has been issued by Additional Director of DRI, Mumbai, the same is without jurisdiction and hence needs to be set aside, relying on the decisions in case of-

a. Syed Ali [2011 (265)ELT 17 (SC)]
b. Mangali Impex Ltd [2016 (335) ELT 605 (Del)]
c. Rajendra Arora [2016 (339) ELT 370 (P&H)]
d. Navneet Kumar [2018 (362) ELT 17 (Cal)]

4.3 Learned Authorized Representative submitted-

i. The case of Appellants in the present case is not akin to the case of co-noticees decided by the Tribunal vide its order dated 23/01/2018. In the case considered by the Tribunal in its earlier order, the goods were purchased on the High Sea Sales by the importer, whereas in the case now under consideration appellants have purchased the goods directly from the foreign supplier. Since the goods were purchased directly from the foreign supplier the invoices issued by the foreign supplier assume significance for the purpose of determination of assessable value.

ii. In the case of present appellants the duty has been determined and paid after determination of value under Section of Customs Act, 1962 on the basis of actual transaction value, and not on the basis of fixed tariff rate.

iii. Tribunal has vide its order No A/85502-85509/2018 dated 14.03.2018, has in similar circumstance relying on similar evidences upheld the charge of under valuation.

iv. Jurisdiction High Court has in case of Sunil Gupta vs Union Of India [2015 (315) ELT 167 (Bom)],has held that after amendments made in the Custom Act, 1962 in 2011, DRI officers have the jurisdiction to issue the show cause notice.

5.1 We have considered the submissions the made in appeal and during the course of arguments.

5.2 The first issue that needs to be considered is whether by the order dated 23.01.2018, the entire order of Commissioner (Appeal) has been set aside in respect of all the appellants or the said order has been set aside in respect of only those appeals which were under consideration by the bench then. In the present case it is noticed that Show Cause Notice dated 25.11.2009 was issued to 11 Noticees namely, M/s Bhitti Impex, M/s Dee Vee Metals, M/s Mittal Pigments Pvt Ltd, M/s Leadage Alloys Ltd., M/s Associated Stabplast & Chemicals, M/s Premier Pigments, Shri Dileep Dugar Proprietor of M/s Bhitti Impex and M/s Dee Vee Metals, Shri Ramesh Aggarwal Director of M/s Mittal Pigments, Shri Ramanand Agrawal Representative of M/s Associated Stabplast & Chemicals and Shri S Ayyappan Partner of Premier Pigments. The show cause notice demanded duty separately from each of noticee as detailed in Annexure attached to the show cause notice. Relevant details from the said annexure are reproduced below:

S N	Importer	Bill of Entry		Description	Quantity in MT	Supplier/ Shipper	Duty Demanded
		No	Date				
1	M/s Bhitti Impex	752490	29.11.04	Nickel Silver Scrap Malic /Niece	19.62	M/s Nord Schroff Gmbh & Co	272030
2		879772	31.05.05	Shredded Nickel Silver Scrap /Niece	20.58		234146
3	M/s Dee Vee Metals	670715	13.01.06	Shredded Nickel Silver turning Scrap /Niece	17.72		219836
4		840747	07.12.05		25.14	M/S TSR Recycling GMBH	340962
5	M/s Mittal Pigments Pvt Ltd	744680	13.04.06	Zinc Scrap "Score"	44.84		506626
6	M/s Leadage Alloys India Ltd.	648295	16.12.05	Remelted Lead Ingots	53.72	M/s Nord Schroff Gmbh & Co	132059
7	M/s Associated Stabplast & Chemicals	642940	09.12.05		57.8		142090
8	M/s Premier Pigments	628455	23.11.05		105.66		259140
9	M/s Bhitti Impex	784790	17.01.05	Shredded Brass Scrap Turnings "Nomad"	25.27		
10		800890	09.02.05		25.92		
11		814415	05.03.05		22.55		
12		871924	19.05.05	Brass Scrap Honey	21.44		
13		877857	27.05.05		26.28		

Additional Commissioner has while adjudicating the case separately examined the issue in respect of each importer (person filing the Bill of Entry), and confirmed the demand separately in each case. He also examined the role of each of the noticee and adjudicated in respect of imposition of penalty separately. Against this order 7 noticees filed the appeal to Commissioner (Appeal) all these 7 appeals were decided by the Commissioner (Appeal) by impugned order but the number given to the order were equivalent to the number of appeals considered by him.

Against the order of Commissioner (Appeal) appeals have been filed. Out of the appeals filed before this tribunal, two appeals were considered by this tribunal earlier and decided by order dated 23.01.2018. Appellants in the present case have claimed that since the appeals of two of the co-noticees have been allowed and the impugned order of Commissioner (Appeal) has been set aside, there appeal should also be allowed as the impugned order has been set aside. For this purpose they rely on the last sentence of the para 5 of the order of tribunal stating " *5. ….. For the reasons mentioned above, we set aside the impugned order and allow the appeals*."

5.3 Though the argument advanced by the Counsel for appellants look attractive but is without any substance. The scope of order of the appellate authority is limited to the appeal under consideration. The order of appellate authority cannot be held to have decided the appeal which was not under consideration before the bench then. In para 6 of the order dated 23.01.2018, which is operative portion of the order, bench has stated "6. In the result, the appeals filed by the appellants are allowed." This clearly implies that order of the Commissioner (Appeal), [impugned order], to the extent of appellants before that bench is set aside, and not the entire order. It may happen in case where there are multiple noticees, few may not chose to challenge the order passed against by them. In case the order is set aside in respect of those who have filed the appeal is set aside then it will not imply that relief has been granted to the all the noticees. A nine member bench of Apex Court has in case of Mafatlal Industries [1997 (89) ELT 247 (SC)] observed as follows:

"70. *Re : (II) :We may now consider a situation where a manufacturer pays a duty unquestioningly - or he questions the levy but fails before the original authority and keeps quiet. It may also be a case where he files an appeal, the appeal goes against him and he keeps quiet. It may also be a case where he files a second appeal/revision, fails and then keeps quiet. The orders in any of the situations have become final against him. Then what happens is that after an year, five years, ten years, twenty years or even much later, a decision is rendered by a High Court or the Supreme Court in the case of another person holding that duty was not payable or was payable at a lesser rate in such a case. (We must reiterate and emphasise that while dealing with this situation we are keeping out the situation where the provision under which the duty is levied is declared unconstitutional by a court; that is a separate category and the discussion in this paragraph does not include that situation. In other words, we are dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, rule, notification or regulation, as the case may be.) Is it open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the ease may be, in the case of another person has made him aware of the mistake of law and, therefore, he is entitled to refund of the duty paid by him? Can he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case, it can be held that reading Section 72 of the Contract Act along with Section 17(1)(c) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law? Kanhaiyalal is understood as saying that such a course is permissible. Later decisions commencing from*

Bhailal Bhai have held that the period of limitation in such cases is three years from the date of discovery of the mistake of law. With the greatest respect to the learned Judges who said so, we find ourselves unable to agree with the said proposition. Acceptance of the said proposition would do violence to several well-accepted concepts of law. One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law."

5.4 Following the principle laid down by the Apex Court in the said decision we are not inclined to agree with the submissions made by the counsel for appellants to this effect and reject the same.

5.5 Now we take up the issue of jurisdiction that has been raised by the Appellants stating that Show Cause Notice issued by the Additional Director DRI is without jurisdiction in view of the decisions relied upon by them as indicated in para 3(2)(iv). This submission made by the counsel is contrary to the decision of Hon'ble Bombay High Court in case of Sunil Gupta [2015 (315)ELT 167 (Bom)]. In that decision, jurisdictional High Court has held as follows:

"23. *We have found that Section 28(11) was inserted by Act 14 of 2011 w.e.f. 16th September, 2011. That alters the basis of the Judgments, which have been delivered by any Court of law, Tribunal or other authority. Once this section says that all persons appointed as officers of Customs under Section 1(4) before 6th July, 2011 shall be deemed to have been and always to be the proper officers for the purpose of this section, then, the Notifications, which are referred by us above at page 369 and 373 of the paper book are specifically saved and validated. They have* *been given a retrospective effect. These Notifications were holding the field and were not quashed or set aside. In the teeth of such Notifications, the legislature stepped in to clarify the position that if the functions of the Customs officer can be entrusted or assigned by the Central Government or the Board in terms of Section 6 of the Customs Act, 1962, then, all such Notifications, have been validly issued and enforced. They enable the Parliament to clarify that the officers mentioned therein shall be deemed to be the proper officers for the purposes of Section 17 and 28 of the Act. Precisely, that has been done in the instant case.*

24. *If that has been done, then, no assistance can be derived from the Judgment of the Hon'ble Supreme Court in the case of Sayed Ali (supra). There, for want of jurisdiction or competence in the Collector of Customs (Preventive), the show cause notice was quashed by the Tribunal and that order was upheld by the Supreme Court. Before us, the issue is not whether any Collector of Customs (Preventive) could be said to be on par with the officers mentioned in the earlier Notification dated 26th April, 1990. The assignment of functions to these officers, who were earlier carrying on preventive work came w.e.f. 6th July, 2011. That Notification was not, at the relevant time, given retrospective effect. It is in such circumstances that the Hon'ble Supreme Court held that in terms of the Notifications, which were issued and holding the field, not designating the Collector of Customs (Preventive) as a proper officer for the purpose of Section 28 as it then stood, he was not competent to issue show cause notice (see para 24 of Sayed Ali's Judgment). This position has now undergone a change and from 6th July, 2011, admittedly, they have been assigned these functions and of the Custom officers. They are therefore competent and the Notification in that behalf at page 373 of the paper book has been given a retrospective effect. It is not the argument of Mr. Singh that the law cannot be amended* *retrospectively. It is also not his argument that the validating Act does not validate anything which may be or is invalid. In the circumstances and the Parliament being competent to make such a law, we find no force in the arguments canvassed before us. Once the above view is taken, then, no reference is required to be made to the other Judgments cited by both Mr. Singh and Mr. Jetly.*

25. *As a result of the above discussion and finding that Explanation 2 has not been dealing with the case, which was specifically dealt with by sub-section (11) of Section 28 of the Act, that we are of the opinion that the challenge in the Writ Petition is without any merit. The Explanation removes the doubts and states that even those cases which are governed by Section 28 and whether initiated prior to the Finance Bill, 2011 receiving the assent of the President shall continue to be governed by Section 28, as it stood immediately before the date on which such assent is received. The reference to Finance Bill therein denotes the bill by the section itself was substituted by Act 8 of 2011 w.e.f. 8th April, 2011. Prior to this Bill by which the section was substituted receiving the assent of the President of India, some cases were initiated and Section 28 was resorted to by the authorities. The Explanation 2 clarifies that they will proceed in terms of the un-amended provision. The position dealt with by insertion of Section 28(11) is distinct and that is about competence of the officer. The officers namely those from the Directorate of Revenue Intelligence having been entrusted and assigned the functions as noted above, they are deemed to have been possessing the authority, whether in terms of Section 28 un-amended or amended and substituted as above. In these circumstances, for these additional reasons as well, the challenge to this sub-section must fail."*

The decision of Delhi High Court relied upon by the appellant counsel has been stayed by the Hon'ble Apex Court. In view of direct decision of the jurisdiction High

Court on the subject we do not find any merits in this submission too.

5.6 Now coming to issue in hand Counsel for appellants have relied upon the decision of tribunal, in case of Mittal Pigments [Order Dated 23.01.2018]. In his view this decision squarely covers the case of present appellants. He relied on para 5 of the said decision, reproduced below:

"5. After hearing the rival submissions of both parties and in the light of above discussion, we are of the view that department has failed to collect corroborative evidence. It may be mentioned that such uncorroborated allegations cannot be made the basis for assessments of imports/ exports as held by the Hon'ble Supreme Court in the case of ***CC v South India Television Pvt Limited [2007 (214) ELT 3 (SC)} as well as Tribunal in the following cases-***

(a) Contessa Commercial Co.op Pvt Ltd [2007 (208) ELT 299 (Tri Kol)]

(b) Ramkrishna Sales Pvt Ltd [2008 (230) ELT 431 (Tri Ahmd)

(c) Taito Watch Manufacturing Inds Vs CC [2004 (173) ELT 17 (Tri Del)]

There is a strong possibility of the supplier having made export declaration and enhanced the price in order to claim incentives. As the consignments were subjected to fixed tariff rate, the appellants should not be penalized for the deed of the supplier who enhanced the value with intent to avail some incentives available to them in their country. In the instant case the original authority has recorded various statement such as Bank statements evidencing that nothing had been paid more than the agreed price through banking channel. For the above mentioned reason, we are of the view that department has no material in possession for rejecting the transaction value stated in the invoice."

5.7 From the facts as recorded by the tribunal in para 2, 3 & 4 of the order reproduced below, it is quite evidence that the case of the present appellants is not the same as the case considered by the tribunal.

"2, Brief facts of the case are that during the period November 2002 to September, 2003, Shri Dileep Dugar, Proprietor of M/s Dee Vee Metals has sold some consignments of "Non Ferrous Metal Scrap" on high sea sales to the appellants M/s Mittal Pigments Pvt Ltd, M/s Leadage Alloys India Pvt Ltd., M/s Associated Stabplast & Chemicals and M/s Premier Pigments. The metal scrap was sold in 34 consignments of which demand on 19 consignments were found time barred. Of the remaining 15 of the said consignments of the said 34 consignment that was investigated it was found that in 13 of the consignments imported by various importers from Germany there was under invoicing. So the value of the consignments were enhanced and penalties were imposed. Being aggrieved, the appellants have filed the present appeals.

3. In the present case, Shri Dileep Dugar, Proprietor of M/s Bhitti Impex and M/s Dee Vee Metals has sold the "Non Ferrous Metal Scrap" on the basis of high sea sales.

4. The sole case of the department is made out on the basis of invoices of higher value received from Brussels through Consulate General of India ((Trade) for the impugned consignments submitted for clearance of the consignments."

The facts as noted by the Tribunal in the said order is that the M/s Mittal Pigments had purchased the goods on High Sea Sale from Shri Dileep Dugar. It would be on the basis of sale price between Shri Dileep Dugar and M/s Mittal Pigments, that relevant documents for clearance of import consignment would have been filed. Thus the transaction value for determination of the assessable value would be sale price on High Sea Sales and not on the sale price between the foreign supplier and the Appellants therein. Further as noted by the Tribunal albeit wrongly that the appellant i.e. had paid the custom duty on the fixed tariff rate. Since the facts of present two appeals are entirely different and are in respect of the imports, undertaken by M/s Bhitti Impex and M/s Dee Vee Metals directly from the foreign supplier located in Germany, the case considered by the tribunal earlier is distinguishable.

5.8 Further from para 5 of the order of Tribunal, it is observed that tribunal has noted that *"consignments were subjected to fixed tariff rate"*. This fact as recorded is far from being correct, is also not present in the appeals under consideration. In appeals under consideration the Custom Duty to be paid is not on fixed tariff rate but is ad-valorem. In our view the facts of this case are clearly distinguishable from those considered in earlier decision.

5.9 Since the present appeals and those considered earlier by tribunal though arise out of proceedings initiated by a common show cause, and adjudicated together are in respect of different importers, different bill of entries and also based on different nature of transactions. It is not the case where the transactions under consideration are common for all the noticees. The decision of Hon'ble Chhattisgarh High Court relied upon by the counsel for appellant was in respect of the Company and its Director, who were party to the same transaction. Hence in our view the said decision is not applicable to present case.

5.10 In the case under consideration, it is an admitted fact and finding recorded in para 23 & 24" of order of adjudicating authority as follows:

23. I find that it is the fact that the suppliers M/s. Nord Schrott GmbH & Co KG, Flensburg, Germany and M/s. TSR Recycling GmbH & Co, KG, Hamburg, Germany issued two separate invoices for the purpose of under-invoicing the value by the noticees. I find that one set of invoices (2^{nd} set) was issued for the finally negotiated amount i.e. contract amount and the same was submitted to German Customs for export purpose; the other set of invoices (1^{st} set) was sent to M/s. Bhitti Impex and M/s. Dee Vee Metals. I find that the 1^{st} set of invoices was used by the noticee for clearance of imported goods. I further find that the importer had made part payment of finally negotiated contract amount prior to shipment of goods from Germany and the balance contract amount was paid after receipt of goods, which is equivalent to the value shown in the 1^{st} set of invoice provided by the supplier to the importer. I find that the 1^{st} set of invoices was used and submitted to Customs by the importer at the time of filing of bills of entry. On account of this modus operandi perpetuated by the importer, the differential value worked out to USD 198792.30.

24. The above facts were supported by the correspondence received from Consulate General of India, Brussels. They had submitted documentary evidence to corroborate the above facts. I further find that Shri Dilip Dugar, proprietor of M/s. Dee Vee Metals and M/s. Bhitti Impex in his statement dated 27.10.2009 clearly admitted that 2^{nd} set of invoices, received from German Customs through CGI, matched with 1^{st} set of invoices in all respects except value and the 2^{nd} set of invoices had been of higher value than the value given in 1^{st} set of invoices. Shri Dilip Dugar, in his statements recorded on 31.7.09, 12.6.08 and 17.6.08 clearly admitted the mis-declaration of value.

5.11 Two set of invoices have been recovered during the investigation from foreign supplier, through Consulate General of India ((Trade), Brussels. Also in the export of documents filed by the filed by the foreign shipper, the value declared is as per the invoice showing the higher value. Importer namely Shri Dilip Dugar admitted about mis declaration of value He also admitted that value as per 2^{nd} Set of invoices received from German Customs through Consulate General of India ((Trade), Brussels was higher than value declared as per 1^{st} Set of invoices used for filing the Bill of Entries.

5.12 There is sufficient corroboration to the charge of undervaluation of goods made in the show cause notice. Further we also find that tribunal has in case of similar nature vide Final Order No 85502-85509/18 dated 01.03.2018, in case of Ramesh Dalmia and Others, held as follows:

“6. The issue to be decided by us is that whether the documentary evidence produced by the High Commission of India, U.K. which was obtained from Italian Customs can be relied upon. If it can be relied upon, whether the value should be enhanced or otherwise. We find that the appellant declared the value as per the invoice shown to have been issued by M/s Delbi Fibres. However, on enquiry from the Italian Customs, documents were obtained from supplier M/s Delbi Fibres. Those documents are invoices, bill of exports, bill of lading and M/s Delbi Fibres in the said enquiry also submitted co-relation chart. On close scrutiny of these documents, we find that the invoice no. and date are matching with those invoices. Bill of export,

bill of lading etc produced by M/s Delbi Fibres to Italian Customs authorities showing the higher value.

6.1 As regard authenticity of these documents, there cannot be any doubt for the reason that Italian Customs authority has obtained these documents directly from the supplier M/s Delbi Fibres and the same was obtained by the High Commission of India, U.K. From perusal of these documents, it cannot be said that these documents are authentic.

6.2 As regard the issue raised by the learned Counsel that the invoices was unsigned, we do not find much force in the arguments of the learned Counsel for the reason that other corroborative evidence of bill of lading, bill of export etc which are duly signed and showing the corresponding invoice details and the higher value. As per the chart prepared and submitted by M/s Delbi Fibres, it is clearly shown that even the total payment of value shown in the invoices provided by Italian Customs were made in two parts. Therefore, it is further established that the actual value shown in the invoice and documents submitted by M/s Delbi Fibres to the Italian Customs authorities is authentic and valid documents which cannot be questioned. On going through the reports submitted by the High Commission, the supplier of goods M/s Delbi Fibres in their statement have stated as follows:-

> *"(d) The supplier of the goods, M/s. Delbi Fibres SRL in their statement to Italian Customs authorities have stated as follows:-*
>
> *"I confirm that among the clients for whom you have requested for the documentation,……..for the period requested, I held the relations ascertained by you only with individuals. Therefore, I would like to specify that I have never held any relations with "CANNON INDSTRIES PVIVATE LTD', Ludhiana (India) and for the period requested, not even with 'VIJAY CHEMICAL WORKS'.*
>
> *With regard to the cash collections, the money is directly delivered at my firm by the representative DALMIA di JAIPUR and / or by the clients themselves.*
>
> *With regard to all of my Indian clients, I would like to specify that in the quality description of the product, I have been obliged to always use the same wording 'Synthetic Waste', whilst actually, in the transport document and in the Bill of Entry, the correct kind of the product sold was indicated.*
>
> *For business reasons, and as directed by Mr. DALMIA di Jaipur (India), at times, a weight lower than the real one has been indicated. I have nothing else to declare."""*
>
> *Details on the identity of Mr. Dalmia of Jaipur has not been ascertained from the Italian supplier."*

6.3 From the above statement of M/s Delbi Fibres given by the Italian Customs authorities, it clearly reveals that all the documents submitted by the supplier are genuine and correct and considered as valid evidence. Therefore the same cannot be doubted.

6.4 Taking into consideration of the documents produced as evidence, we are of the view that all these documents are authentic and cannot be doubted. If it is so, it is established *that the appellant had under-valued the goods. Accordingly, enhancement of the value and confirmation of differential duty demand and penalty related to such demand are correct and legal. Hence the same are upheld. As regard the redemption fine, we find that though the redemption fine was imposed but the goods were not available for confiscation. In the case of Shiv Krupa Ispat Pvt. Ltd. (supra) wherein it was held that in case the goods are not available and if the goods are not released provisionally, redemption fine cannot be imposed. Therefore, in the present case neither the goods were available nor the same were released on provisional basis therefore, redemption fine imposed by the adjudicating authority is not legal and proper. Hence we set aside the redemption fine."*

5.13 Thus we do not find any merits in the contentions raised by the appellants in their appeal or during the course of arguments.

6. The appeals filed by the Appellants are dismissed and the impugned order of Commissioner (Appeals) in respect of these two appellants upheld.

(Order pronounced in the open court on 12.04.2019)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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