

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, WEST ZONAL BENCH AT MUMBAI**

REGIONAL BENCH - COURT NO. 02

Customs Appeal No. 86782 of 2013

(Arising out of Order-in-Original No. 51/2013 dated 07.11.2019 passed
by Commissioner of Customs (Export), Nhava Sheva)

Shri Sushil Kumar Agarwal

.....Appellant

M/s Sunland Metal Recycling
Industries, Survey No. 89/1/2,
Karanjgaon Silvassa (D&NH)

VERSUS

**Commissioner of Customs
(Export), Nhava Sheva**

.....Respondent

Jawaharlal Nehru Custom House,
Post Uran, Dist: Raigad,
Nhava Sheva-400707

WITH

(i) Customs Appeal No. 86783/2013 (Shri Pravin A. Ranka); (ii) Customs Appeal No. 86784/2013 (Shri Sanjiv Kumar Agarwal); (iii) Customs Appeal No. 86785/2013 (M/s Sunland Alloys); (iv) Customs Appeal No. 86846/2013 (Shri Mihir Bhatt); (v) Customs Appeal No. 86889/2013 (Shri Tarun Jhingon); (vi) Customs Appeal No. 87311/2013 (Shri Ehsan A. Gadawala)

(Arising out of Order-in-Original No. 51/2013 dated 07.11.2019 passed
by Commissioner of Customs (Export), Nhava Sheva)

Appearance:

Smt. Nisha Bineesh, Shri J.C. Patel, Shri Kumar Vikram and Shri A.K. Prabhakar, Advocates for the Appellant
Shri K.K. Srivastava, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER
(TECHNICAL)**

FINAL ORDER NO. A/85177-85183/2020

Date of Hearing : 07.11.2019
Date of Decision: 10.02.2020

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that M/s Sunland Alloys, one of the appellants herein, are a

partnership firm engaged, *inter alia*, in the manufacture of metal ingots of Aluminium, Zinc, Copper, etc., located at Silvasa. During the period between April 2004 and May 2006, M/s Sunland Alloys had imported Zinc and Aluminium scrap, for use in or in relation to manufacture of the said final products, through the ports of Nhava Sheva, Mundra, Kandla, ICD – Tughlakabad and Mumbai. In context with import of Zinc and Aluminium scrap, the Customs department received specific information that various metal scrap importers including M/s Sunland Alloys have manipulated the actual value of the consignments in collusion with overseas suppliers and indenters inasmuch as they managed to obtain the invoices at lower value for the purpose of duty assessment and paid the differential amount to the overseas suppliers through Hawala transaction. On the basis of the intelligence received, officers of DRI visited the premises of the factory, office and residence of the partners of M/s. Sunland on 11/05/2006. Aluminium, zinc scrap and ingots totally weighing 956.236 MT were also seized. In subsequent investigation, premises of other partners Sanjay Agarwal, Sushil Agarwal and Shri Tarun Jhingon, the indenter were also searched. Statements of Shri Praveen Ashok Ranka, Sanjay Agarwal, Sushil Agarwal, partners of M/s. Sunland Alloys; Shri Tarun Jhingon, Director of Trendene India Pvt. Ltd; Shri Ehesan Hazi, Ameen Gadawala, Chairman of Bibi Group of Companies, Surat; Shri Anil Parolia of Nihon Ispat, indenters were recorded under Section 108 of the Customs Act, 1962.

2. During the course of search operation, the department seized the lap top from the possession of the indenter Shri Tarun Jhingon and retrieved the e-mail dated 17.04.2006, allegedly showing correspondences exchanged between M/s Aboura Trading and Commission Co., Jordan and Shri Tarun Jhingon, Director of M/s Trendene India Pvt Ltd., with regard to under valuation of Aluminium Scrap and payment of the differential amount in cash through Hawala route. Further, the department had also obtained reports dated 10.01.2007 and

17.04.2007 from High Commission of India, UK, price bulletin of London Metal Exchange (LME), Scrap Specification Circular issued by the Institute of Scrap Recycling Industries (ISRI). It appeared that M/s Sunland Alloys suppressed the value of the scrap imported with intent to evade payment of duty and the values declared therefore, did not represent the true transaction value.

3. On the basis of detailed investigation, the department issued a show cause No. DRI/SRU/INV-7?2006 dated 07-05-2007, against the appellant M/s Sunland Alloys, seeking for rejection of the declared value, recovery of differential customs duty along with interest and for imposition of penalties. Besides, proceedings were also initiated against the other appellants Shri Sushil Agarwal, Shri Pravin A. Ranka, Shri Sanjiv Kumar Agarwal, partners of the said appellant company, Shri Mihir Bhatt, Shri Tarun Jhingon and Shri Ehsan A Gadawala, indenters, seeking for imposition of penalty under Section 112(a) of the Customs Act, 1962 on the ground that they have facilitated and abetted knowingly in suppression of actual transaction value and accordingly, the goods are liable for confiscation under Section 111 *ibid*.

4. As the show-cause notices were issued answerable to different adjudicating authorities, the CBEC has appointed Commissioner of Customs (Export), JNCH, as common adjudicating authority vide Notification No. 126/2007-Cus. (NT) dated 27/12/2007. Accordingly, learned Commissioner has passed the impugned order No. 51/2013 dated 24/01/2013, which came to be issued on 04/02/2013. Learned Commissioner confirmed the differential duty demanded against M/s Sunland Alloys; confiscated the seized goods and allowed to be redeemed on payment of fine; imposed penalty equal to the duty demanded on M/s Sunland Alloys and imposed penalties on various persons involved in the case under Section 112(a) of the Customs Act, 1962. In addition to the evidence mentioned above, learned Commissioner has relied upon parameters prescribed by the Directorate General of

Valuation in its Alert Circular dated 16.12.2005, holding that the actual price of the aluminium and zinc scrap is dependent upon the metal content and the prevailing LME prices minus discount band. Being aggrieved by the impugned order dated 24/01/2013, the appellants have preferred the following appeals before the Tribunal.

Sl. No.	Appeal No.	Name of the party(s)/Shri	Duty/Penalty
1	C/86782/2013	Sushil Kumar Agarwal	Penalty u/s 112 (a) 2,47,00,000/-
2	C/86783/2013	Pravin A. Ranka	-do-
3	C/86784/2013	Sanjiv Kumar Agarwal	-do-
4	C/86785/2013	Sunland Alloys	Duty Rs. 8,67,03,864/- Penalty Rs. 8,67,03,864/- and Fine Rs. 10,93,50,000/-
5	C/86846/2013	Mihir Bhatt	Penalty u/s 112 (a) 1,23,50,000/-
6	C/86889/2013	TarunJhingon	-do-
7	C/87311/2013	Ehsan A. Gadawala	-do-

5. Ms. Nisha Bineesh, the learned Advocate appearing for the appellants M/s Sunland Alloys, Shri Sushil Agarwal, Shri Pravin Ranka and Shri Sanjiv Kumar Agarwal made a detailed forceful submission explaining the facts of the case, provisions of law and the non-reliability of evidence therein.

5.1 She submits that the SCN attempts to re-determine the value on the basis of price of prime metal as per LME (minus discount) under Rule 8 of the Customs Valuation Rules 1988, stating that the actual price of Aluminium and Zinc Scrap depends upon the metal content and the prevailing LME prices minus respective discount band; Re-determination of Value of Aluminium Scrap and Zinc based on Price of LME is not proper and against law and precedents; the method of accepting the LME prices as the principle of valuation of the scrap has

been out rightly rejected by the various courts including the Hon'ble Supreme Court.

5.2 She also submits that re-determination of value as per parameters of DGOV Alert Circular dated 16.12.2005 is wrong and against law and precedents; the Circular relied upon by the department came into force with effect from 16.12.2005 and will only apply prospectively; the circular only provides for average price difference between the price of prime metal and different grades of scrap as determined on the basis of study of difference in prices of scrap and prime metal; the circular only requires the department staff to check possible under-valuation after ensuring all relevant specifications; it cannot override the provisions of Valuation Rules; application of the circular in re-determination of the value of goods has been held bad by various decisions of the Tribunal.

5.3. She further submits that re-determination of the value in terms of Rule 8 of Customs Valuation Rules 1988, without proceeding sequentially through Rules 5 to 7 of Customs Valuation Rules, 1988 is incorrect; a clear mandate has been cast on the revenue authorities to accept the price actually paid or payable for the goods, in respect of the goods under assessment, as the transaction value if no exception is available as specified in 4(2) of the Rule; respondents have ignored the fact of contemporary import of identical goods; moreover, there is no evidence of higher price also; even then, respondent wrongly re-determined the value under Rule 8, instead of proceeding sequentially.

5.4. She further submits that rejection of the value declared by the Appellant in the absence of cogent evidence or contemporary import of higher value of similar goods, is bad in law; it has been held by various courts including the Hon'ble Apex court that rejection of the declared/transaction value can only be for cogent reasons arrived at by undertaking exercise as to on what basis it

could be held that paid price was not the sole consideration of transaction value; respondent have not put forth any cogent or tangible evidence against the Appellant to prove the allegation of under-valuation.

In respect of submissions as above, at 5.1 to 5.4, she relies upon the following decisions of Hon'ble Supreme Court and various other Benches of the Tribunal:

(i). Final Order No. A/11871-11874/2019 dated 01.10.2019 passed by CESTAT, Ahmedabad.

(ii). *C.C.E. & S.T., Noida Vs Sanjivani Non-Ferrous Trading Pvt Ltd.*, 2019 (365) E.L.T. 3 (S.C.)

(iii). *Vardhaman Sales Agency/Akshay Aluminium Alloys (LLP) Vs Commissioner of Customs ICD, Patpargunj, New Delhi* vide Order dated 08.04.2019, by CESTAT New Delhi (relying upon CC(Import) , Nhava Sheva Vs Bharath Rubber Lining & Allied Services Pvt Ltd. 2013(287)ELT.124 (Tri-Mumbai), *CCE & ST Noida Vs Sanjivani Non-Ferrous Trading Pvt Ltd*, 2019 (365) ELT 3 (S.C.) and CBEC clarification F.No.387/W/9/2013-JC dated 25th June,2013),

(iv). *Ratanlal Aluminium*, 2019-TIOL-2469-CESTAT

(v). *Modern Manufacturers Vs Commissioner of Customs, New Delhi*, 2018 (363) ELT. 1020 (Tri.- Del)

(vi). *Pushpak Metal Corporation Vs Commissioner of Customs, Kandla*, 2014 (312) ELT 381 (Tri- Ahmedabad). (This case has attained finality in view of Board's letter F.No. 387/W/9/2013-JC dated 25th June,2013 to Commissioner, Kandla)

(vii). *Agravanshi Aluminium Ltd. vs. Commissioner of Cus. (I), Nhava Sheva*, 2014 (299) E.L.T. 83 (Tri.-Mumbai)

(Viii). *Associated Aluminium Industries Ltd. vs. Commissioner Of Customs (Import)*, by CESTAT Order dated 22.01.2013

(ix). *Baheti Metals and Ferro Alloys Ltd*, final Order No.(A.2015-2040/WZB/AHD/2011 dated 24.11.2011

5.5. Learned Counsel for the appellants submits that ISRI (Institute of Scrap recycling Industries, Inc) or LME (London Metal Exchange) have not prescribed any discount band for various grades of Zinc and Aluminium Scrap as alleged by the Respondent in the Show Cause Notice. ISRI is only a trade organization and it does not prescribe any discount band as claimed by the department. ISRI gives specification for different scraps and thereby

assists the members in buying and selling of their materials and products viz., Nonferrous scarp, Ferrous Scrap, Glass Cullet, Paper Stock, Plastic Scrap, Electronic Scrap. On a specific query made to ISRI to explain how Aluminium scrap prices are determined, ISRI by letter dated 29th October 2008 replied that 'ISRI, as a trade association, does not become involved in scrap pricing'.

5.6. Learned Counsel for the appellants further submits that The E-mails and letter of U.K. Consulate relied upon by the Respondent cannot be considered as valid documents to confirm the allegation of under valuation against the Appellant; the e-mails relied upon by the department are inadmissible as the Laptop belongs to Tarun Zingon has been seized by the DRI officers without complying with the mandatory provisions and conditions of Section 138C of Customs Act and Section 110 Customs Act, as held in the following cases.

- i) *Tele Brands (India) Pvt Ltd Vs Commissioner of Cus. (Import), Mumbai*, 2016 (336)ELT 97 (Tri. Mumbai).
- ii) *Commissioner of C.Ex & Customs Vs Ambica Organics*, 2016 (333)ELT A-67(Guj).
- iii) *Harsinghar Gutka Pvt Ltd Vs Commissioner of C. Ex. Lucknow*, 2008 (334) ELT 77 (Tri. Delhi).
- iv) *Premier Instruments & Controls Ltd. vs. Commissioner of C.Ex., Coimbatore*, 2005 (183) ELT 65 (Tri. Chennai).

5.7. Learned Counsel further submits that Annexure A and B of the Show Cause Notice are inadmissible; the undated email claimed by the department and referred in the impugned Order cannot be considered as an e-mail, hence cannot be admitted as evidence; further, no details of invoice, contract, quantity, port of loading etc are figuring; this piece of paper can neither be accepted nor be admitted; Annexure B, proves the case of the Appellant and disproves the allegation of Undervaluation; E-Mail dated 17.04.2006, refers to an invoice against which a Show Cause Notice was issued to M/s Sunland Alloys and the order of Lower authority was set aside by Commissioner (Appeals) vide Order-in-Appeal No.217 to

256 (GR-IV)/2010 (JNCH)/IMP-205 to 244 dated 09.09.2010 by accepting the value declared by the Appellant; no Appeal has been preferred against the same by the department and hence the Order-in-Appeal stands final and a contrary stand cannot be taken by the department against the very same Appellant in the instant case.

5.8. Learned Counsel also submits that the High Commission report dated 10.01.2017 not admissible; the report is not relevant as it pertains to M/s.Sunland Metal Recycling Industries; not even a single consignment mentioned in the report pertains to the Appellants; further, this document was relied upon document in Show Cause Notice dated 07.05.2007, issued to M/s Sunland Metal Recycling Industries (where the Appellants in Appeal Nos. C/86782/2013 and C/867684/2013 are partners); CESTAT Ahmedabad in final Order No 11871 to 11874 dated 01.10.2019, held such declaration have no relevance as the same were not authenticated by the New Zealand and Spanish Customs; The allegations, based on High Commission report dated 17.4.2007, made in paragraph 32 of SCN is not tenable; it is alleged that 3 consignments were imported by firm B.E. no.446022 dated 24.08.2005; as per the report this consignment was purchased by Ala international from SID Metal, Greece at USD 1240 PMT as per invoice dated 10.06.2005; this price is not relevant as the goods were purchased by SA from Ala vide invoice dated 5.7.2005 @USD1090 PMT which was the price for export to India. The value has been re-determined @USD1240 on the basis of SID Invoice; as per B/E scrap was of grade TALK; as per the LME minus discount the price should be LME price minus 6% discount; on this basis price should have been more or less USD 1557.9 PMT as determined at sr.no.11 of Annexure E in respect of Talk; it proves that the prices in the international market are not based on LME minus discount as alleged in SCN; further two consignments are alleged to have been cleared under B/E 814268 dated 31.06.2006; the B/E was assessed on

the value on the basis of LME minus discount; such Determination of value has been rejected by CESTAT in their own case; however, no duty has been demanded in the SCN in respect of this B/E; hence, no reliance can be placed on it.

5.9. Learned counsel further submits that the department cannot hold the Appellants liable for undervaluation solely on the basis of the statements made on different dates by the Appellants in the absence of any tangible or cogent evidence of undervaluation; there is no tangible evidence produced by the Respondent to substantiate the statements of the Appellant; Moreover, the very same statement of Sushil Agarwal, the Appellant in Appeal No. C/86782/2013, was relied upon in Appeal No. C/11160/2019, which was allowed by CESTAT vide Final Order No. A/11871-11874/2019 dated 01.10.2019; statements dated 29.05.2019 and 23.04.2019 of Shri Sushil Kumar Agarwal cannot be relied upon for the reason there is contradiction in statements; during the course recording his statement dated 29.05.2006, he was shown an alleged abstract of LME price of Aluminium scrap as per which the Aluminium scrap was 80% of the LME price; another statement was recorded on 23.04.2007 that the import price of Aluminium Scrap was negotiated by applying different discount bands ranging from 5% to 35% to the LME price for various grades such as Trump, Tense, Throb etc. which corresponded to the discount bands provided in the Alert Circular No.14/2005 dated 16.12.2005; discrepancy clearly shows that initially the officers were attempting to apply 80% of the LME but later realizing that DGOV was not recommending 80% of LME, they conveniently abstracted the statement of Shri Sushil Kumar Agarwal to match the discount band, as per the DGOV circular.

5.10. Learned Counsel submits that there is no tangible proof of any payment to foreign suppliers or indenters produced against the Appellant; it was held in *Tele Brands*

(India) Pvt Ltd (*supra*) and Dee Kay Exports - 2012 (285) ELT 109 (Tri-Del) that in the absence of tangible proof or evidence of payment to foreign supplier, the allegation of under valuation will not stand.

5.11. Learned Counsel submits that no CVD is payable on scrap of Aluminium and zinc of various grades; the imported goods are not the branded manufactured product but a waste/by-product generated during the course of manufacturing; it is settled law laid down by the Hon'ble Apex Court that if the article not liable to excise duty since it is not a manufactured product no CVD is liable. She relies upon the following decisions:

- (i). CESTAT, Ahmedabad Final Order No. A/11871-11874/2019 dated 01.10.2019
- (ii). Hyderabad industries Ltd, 1999 (108)321 (SC).
- (iii). Ratanlal Aluminium, 2019 –TIOL-2469-CESTAT-ALL.

She further submits that Provisional assessment of the goods is bad and relies on Final Order No. A/11871-11874/2019 dated 01.10.2019 passed by CESTAT, Ahmedabad; imposition of Penalty under Sections 112 & 114A is bad in law; imposition of Penalty on Sushil Kumar Agarwal and partners under Section 112(a) is bad in law being beyond SCN.

6. Learned Advocates/Counsels Shri J.C. Patel, Shri A.K. Pravakar and Shri Kumar Vikram appeared on behalf of the other appellants namely, Shri Mihir Bhatt, Shri Tarun Jhingon and Shri Ehsan A. Gadawala, on whom penalties were imposed under Section 112(a) *ibid* in the impugned order; they adopted the arguments placed on behalf of the main appellant M/s Sunland Alloys to state that under the circumstances of the case, imposition of penalty is uncalled for; they relied upon the decisions of Tribunal in the case of Agarvanshi Aluminium Ltd Vs CC (I), Nhava Sheva - 2014 (299) E.L.T. 83 (Tri. - Mumbai) and Pushpak Metal Corporation Vs CC, Kandla - 2014 (312) E.L.T. 381 (Tri. - Ahmd.) to state that the adjudged demands cannot be sustained inasmuch as the department

has not brought on any credible evidence to reject the declared value; department did not produce any convincing reason, justifying invocation of the said penal provision.

7. Per Contra, Shri K.K. Srivastava, the learned Authorised Representative vehemently defended the case of the department. Appearing for the Revenue, he reiterated the findings recorded in the impugned order. He specifically stated that since the department had thoroughly investigated into the matter of undervaluation, resulting in evasion of Customs duty, the impugned order passed by the adjudicating authority is sustainable and the findings recorded therein cannot be brushed aside, in absence of any convincing evidence being produced/submitted by the appellants in their defence. He submitted that the respective persons concerned have accepted the modus operandi adopted in the statements recorded under Section 108 of Customs Act, 1962. Department has corroborated the statements with cogent and irrefutable evidence. Therefore, the confiscation of seized goods, confirmation of differential duty, imposition of fine and penalty on M/s Sunland Alloys and imposition of penalties on others are justified.

8. Heard both sides and perused the records, including the written note of arguments submitted by the appellants during the course of hearing of appeals. On going through the records of the case, we find that the evidence appears to have been relied upon by the Revenue is as follows:

(i) Printout of e-mail marked as 'A' (RUD-11) as email addressed to Sunland Alloys and Printout of e-mail dated 17/04/2006 recovered from the computer of Tarun Jhingan on 26/04/2006.

(ii) Reports dated 10/01/2007 and 17/04/2007 submitted by Second Secretary (Trade), High Commission of India, U.K.

(iii) LME prices and discounts band shown by ISRI

(iv) Statements of Sanjiv Agarwal on 25/04/2006, 26/04/2006, 28/04/2006; Statements of Sushil Agarwal on 23/05/2006, 29/05/2006, 14/04/2007, 19/04/2007, 23/04/2007, 29/04/2007 and 03/05/2007; Statement of Shri Pravin A. Ranka on 02/03/2007; Statement of Shri Mihir Bhatt on 16/01/2007; Statement of Shri Jhington on 25/26/28-04/2006; Statement of Shri Gadawala on 17/01/2007 and Statement of Anil Parolia on 11/05/2005.

8.1. In the present case, proceedings were initiated by the department against M/s Sunland Alloys on the premise that they had resorted to undervaluation of Zinc and aluminium scrap imported by them during the period between August' 2004 to July' 2005, with the intent to evade payment of customs duty. On the basis of investigation, the value of above scrap items declared by the importer-appellant for the purpose of assessment was rejected and re-determined under Rule 8 of the Customs Valuation Rules, 1988. The basic contention of department for re-determination of the value of scrap items was based on the fact that the import price of the said items were much lower than the prevailing prices contained in the bulletin published by the London Metal Exchange (LME). According to the department, the transaction of metallic scrap is dependent upon prevailing prices of prime metal declared in the LME and are arrived at after deducting certain percentage of discount for the impurities found in the scrap. In this case, the department has considered the Scrap specification circulars issued by the Institute of Scrap Recycling Industries Inc. (ISRI) and parameters of valuation of Aluminium Scrap fixed by the Director General of Valuation in the Alert Circular No. 14/2005 dated 16.12.2005 for arriving at the discount band for the disputed scrap items. Further, the department has also relied upon the e-mails and letters issued by the High Commission of U.K. to conclude that the appellant M/s Sunland Alloys had suppressed the actual transaction value by resorting to under-valuation of the imported scrap items and that the differential price was paid to the overseas supplier through Hawala route.

8.2. Valuation of imported goods for the purpose of assessment is contained in Section 14 *ibid*, which

mandates that the value of goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale for delivery at the time and place of importation, in the course of international trade. The said statutory provision also provides for consideration of the deemed value in the ordinary course of trade, where the seller and the buyer should not have any interest in the business of each other and the price should be the sole consideration for the sale or offer for sale. In the case in hand, the appellant M/s Sunland Alloys had entered into contract with the overseas suppliers for importation of the scrap items in question. Pursuant to the contractual norms, the goods were supplied by the overseas entities under the cover of commercial invoices, bearing the reference of description of goods, quantity, price etc. On the basis of the import documents, the appellant had filed the Bills of Entry before the jurisdictional Customs Authorities for duty assessment and for clearance of the imported consignments for home consumption. It is not the case of Revenue that over and above the contractual amount, the appellant had paid any other amount either to the overseas supplier or any other person in context with importation of the subject goods. Further, Revenue has also not alleged that the appellant had any interest in the business of the overseas suppliers and vice-versa. It is noted that the adjudicating authority at paragraph 86.1, while invoking the provisions of Rule 8 of the Valuation Rules, has held that the transaction value cannot be determined under Rule 5 and 6 *ibid* inasmuch as the said value of identical or similar goods is not available in India. Thus, under the circumstances, we are of the considered view that the assessment has to be made under Section 14 *ibid* read with Rule 4(1) of the Customs Valuation Rules, 1988 and the provisions of Rule 3(ii) *ibid* should not be applicable for re-determination of the declared value. In this context, the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. (supra) have held that when the transaction value under Rule 4 is rejected, then under Rule 3(ii), the value shall be determined by proceeding

sequentially through Rule 5 to 8 of the Rules; conversely, if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), then there is no question of determining the value under the subsequent rules. Further, considering the valuation provisions contained in Section 14(1) and 14(1A) read with the Valuation Rules, 1988, the Hon'ble Apex Court in the case of Sanjivani Non-Ferrous Trading Pvt Ltd. (supra) have held as under:-

"10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value."

Therefore, we find that the department has not made any valid case for rejection of the declared transaction value.

9. Moreover, we find that the learned counsel for the appellants has challenged the validity of the printouts taken from the Laptop of Shri Jhington on the point that mandatory provisions and conditions of Section 138C of Customs Act, 1962 have not been complied with. We find that the Panchnama dated 25/04/2006 simply mentions that the DRI officers also searched one Laptop of Shri Tarun Jhington and one CPU for further investigation. Details of seized documents and laptop and CPU were given in the Annexure to Panchnama. It is evident from the Panchnama that the seizure of the Laptop was not in

terms of Section 138C *ibid*. Moreover, we find that such evidence was declared to be not admissible by this very Bench in the case of Tele brands India Ltd Vs Commissioner of Customs (Import), Mumbai (supra), holding as under:

"7.5 In the case of Agarvanshi Aluminium Ltd., [2014 \(299\) E.L.T. 83](#) (T) the Tribunal held as under:-

"From the above provisions, it is clear that for admissibility of computer printout there are certain conditions have been imposed in the said section. Admittedly condition 4C of the said section has not been complied with and in the case of Premier Instruments & Controls (supra) this Tribunal relied on the case of International Computer Ribbon Corporation - [2004 \(165\) E.L.T. 186](#) (Tri.-Chennai) wherein this Tribunal has held that "computer printout were relied on by the adjudicating authority for recording a finding of clandestine manufacture and clearance of excisable goods. It was found by the Tribunal that printouts were neither authenticated nor recovered under Mahazar. It was also found that the assessee in that case had disowned the printout and was not even confronted. The Tribunal rejected the printouts and the Revenue's finding of clandestine manufacture and clearance. Thereafter it was found that there is strong parallel between the instant case and the case cited. Nothing contained in the printout generated by the PC can be admitted as evidence for non-fulfilment of the statutory condition." In this case also, we find that the parallel situation as to the decision of Premier Instruments & Controls (supra). Therefore, the printout generated from the PC seized cannot be admitted into evidence for non-fulfilment of statutory condition of Section 138C of the Customs Act, 1962."

9.1. We find that the impugned order refers to the e-mail correspondences retrieved from the laptop of Shri Tarun Jhington. On the basis of such alleged incriminating documents, the department has concluded that the goods imported by the appellant M/s Sunland Alloys were grossly under-valued and payments of differential amount were made through Hawala route. The said e-mails relied upon by the department are inadmissible for consideration as evidence inasmuch as the same were seized by the officers of DRI from the laptop belonging to Shri Tarun Zingon and the mandatory requirements provided under Section 138C *ibid* have not been complied with. In this perspective, the law is well settled in the case of Harsinghar Gutka Pvt. Ltd (supra) that computer print- outs based on reconstructed or retrieved data is not admissible as evidence. The relevant paragraph in the said decision of Tribunal is quoted below:

"10. *The short point is that a computer printout would be admissible in evidence, only if the said print out was produced by the computer during the period over which it was used regularly to store or process information. In other words, the important point is that the print out should have been produced when the computer was in regular operation. In the present case, it is not in dispute that the print out or the R-documents is a reconstructed data and obviously it was not produced during the period over which the computer was used regularly to store or process information. A demand based on the reconstructed or retrieved data will not satisfy Section 36(B)2 of the Central Excise Act, 1944 and prima facie such demand is not sustainable."*

9.2. Though the above decision was rendered by the Tribunal under the Central Excise statute, but the ratio is squarely applicable to the present case, because the provisions of Section 36(B)2 *ibid* is *pari-materia* with Section 138C of the Customs Act, 1962. On going through the different evidences put forth by the Department, it appears that the Revenue has made out a case on the basis of a few computer reports; two reports of Second Secretary (Trade); LME prices; ISRI grades for various scraps of aluminium and zinc and host of statements recorded during the interrogation. The entire case appears to have been made taking in to account a couple of e-mails and based on the statements of the concerned that the prices of scrap are dependent on LME prices. We find that the invoices mentioned therein in the e-mail correspondence are not linked to any particular Bill of Entry.

9.3. Moreover, we find that the Department has already issued a show-cause notice to M/s Sunland Metal Recycling Industries a sister concern of the appellants i.e. M/s. Sunland Alloys on the basis of the printouts taken from the Laptop of Shri Jhingan. The case travelled up to the Tribunal and the co-ordinate Bench of the Tribunal at Ahmedabad has not appreciated the evidence and set aside the duties confirmed therein vide Final Order No. A/11871-11874/2019 dated 01/10/2019. The Bench observed that

"There is no evidence found at the end of the Appellant and the documents relied upon to support the allegation were of third party.

Hence in such circumstances, we are of the view that the charges of misdeclaration and undervaluation does not sustain."

We find that no order either overturning or staying the above decision is placed on record. Therefore, we find that judicial discipline requires that we follow the decision. Evidence which is not accepted as proof enough by one co-ordinate bench in one case cannot be held to be acceptable in another case by a different Bench.

10. Coming to the reports of Second Secretary (Trade) of Indian High Commission, U.K, we find that the report dated 10/01/2007 mentioned the supplier to be M/s. Sunberg Ltd., who supplied aluminium scrap to Indian importers and that M/s. Sunland Alloys have also shown procurement of aluminium scrap from the same supplier. Second report dated 17/04/2007, mentions the prices declared in Greece for a quantity of 19.22 MT, 22.71 MT and 22.56 MT, by M/s. Ala International Trading, Dubai and European Metal Re-cycling Ltd., Warrington and the consignments were subsequently imported by M/s. Sunland Alloys. We find that in both the cases, there is no direct reference in the reports to the appellants. Moreover, both the reports suffer from the infirmity that the reports are not signed by the respective Customs authorities either at U.K or Greece. Thus, the reports may at best throw some light on the value of the aluminium scrap traded but cannot be held to be a conclusive proof to show that the appellants have undervalued their imports. Moreover, the above cited evidences pertain to 7 to 8 consignments (as against 630 consignments of aluminium scrap and 6 consignments of zinc scrap alleged to have been imported by M/s. Sunland Alloys). As mentioned above, the documents would certainly throw some light on the commodity prices traded internationally but cannot be treated as conclusive proof as against the appellants. Moreover, they are at best third party documents and as such in view of the decision of Ahmedabad Bench in the case of M/s. Sunland Re-cycling Industries cannot be considered to have established the charge of undervaluation against the appellants.

10.1. The Report dated 10.01.2007 of High Commission of India in U.K. referred to in paragraph 116(c) in the impugned order is not relevant for consideration of the present dispute inasmuch as the said report pertains to M/s Sunland Metal Recycling Industries and not even a single consignment mentioned in the said report pertains to the present appellant M/s Sunland Alloys. Further, the said report was relied upon against M/s Sunland Metal Recycling Industry in another show cause notice dated 07.05.2007, where the present appellant in appeal Nos. C/86782/2013 and C/86784/2013 were the partners of the said firm. In the Final Order No. 11871 to 11874 dated 01/10/2019, the Ahmedabad Bench of Tribunal at paragraph 14 has precisely held that "*such declarations have no relevance, as the same were not authenticated by New Zealand and Spanish Customs*". Thus, placing reliance on the report dated 10.01.2007 for alleged undervaluation of goods in the present case cannot be sustained. Further, the department has referred to the Report dated 17.04.2007 of High Commission of India in U.K. to allege that three consignments were imported vide Bill of Entry No. 446022 dated 24.08.2005 at a lesser value. The said report reveals that the consignments were purchased by Ala International from SID Metal, Greece at USD 1240 PMT as per invoice dated 10.06.2005. The price as per the said invoice is not relevant as the goods were purchased by M/s Sunland Alloys from Ala vide invoice dated 05.07.2005 @ USD 1,090 PMT, which was the price for export to India.

10.2. Learned Counsel for the appellants submitted that the High Commission report dated 10.01.2017 not admissible; the report is not relevant as it pertains to M/s. Sunland Metal Recycling Industries; not even a single consignment mentioned in the report pertains to the Appellants; further, this document was relied upon document in Show Cause Notice dated 07.05.2007, issued to M/s Sunland Metal Recycling Industries (where the

Appellants in Appeal Nos. C/86782/2013 and C/867684/2013 are partners); CESTAT Ahmedabad in final Order No 11871 to 11874 dated 01.10.2019, held such declaration have no relevance as the same were not authenticated by the new Zealand and Spanish Customs. She further submits that the allegations, based on High Commission report dated 17.4.2007, made in paragraph 32 of SCN is not tenable; it is alleged that 3 consignments were imported by firm B.E. no.446022 dated 24.08.2005; as per the report this consignment was purchased by Ala international from SID Metal, Greece at USD 1240 PMT as per invoice dated 10.06.2005; this price is not relevant as the goods were purchased by SA from Ala vide invoice dated 5.7.2005 @USD1090 PMT which was the price for export to India. The value has been re-determined @USD1240 on the basis of SID Invoice; as per B/E scrap was of grade TALK; as per the LME minus discount the price should be LME price minus 6% discount; on this basis price should have been more or less USD 1557.9 PMT as determined at sr.no.11 of Annexure E in respect of Talk; it proves that the prices in the international market are not based on LME minus discount as alleged in SCN; further two consignments are alleged to have been cleared under B/E 814268 dated 23.06.2006; the B/Es were assessed on the value on the basis of LME minus discount; such Determination of value has been rejected by CESTAT in their own case; however, no duty has been demanded in the SCN in respect of this B/Es; hence, no reliance can be placed on it. We find that there is force in the argument of the counsel. We find that the reports received from High Commission UK do not fortify the allegation made by the department. Rather, on a close analysis they create contradictions, wherein one will be constrained to take a view that they cannot be relied upon as evidence to support the allegation of undervaluation.

11. The department has referred to the circular issued by ISRI for arriving at the discount band for the disputed scrap items imported by the appellant. In this context, we

have perused the certificate dated 29.10.2008 issued by Shri Robin K. Wiener, President, ISRI. The paragraph in the said certificate, relevant for the present dispute is extracted herein below:-

"We have been asked to explain how aluminum scrap prices are determined. Please be advised that ISRI, as a trade association, does not become involved in scrap pricing. However, our understanding of the market is that scrap aluminum price are determined through negotiations between buyers and sellers based upon then current market information derived from a variety of sources, including trade press such as the American Metal Market and the Metal Bulletin, as well as futures markets. These information sources are utilized as a general market trend basis for the negotiation. It should be noted that scrap metal is not traded directly on the futures exchanges – rather it is alloy ingots derived from scrap metal that are traded on some of the exchanges such as the London Metal Exchange (LME)."

11.1. On perusal of the relevant contents of the certificate dated 29.10.2008, it transpires that ISRI has not prescribed any specific discount band on the price fixed by the LME for consideration of transaction value of the scrap items in question. Further, the impugned order has also relied upon the Alert Circular No. 14/2005 dated 16.12.2005 issued by Director General of Valuation for re-determination and enhancing the declared value. The said circular only provides for average price difference between the price of prime metal and different grades of scrap as determined on the basis of study of difference in prices of scrap and prime metal. The circular only requires the department staff to check possible under valuation, after ensuring all relevant specifications. However, the said circular cannot have over riding effect on the valuation provisions contained in the customs statute and as such, the transaction/declared value cannot be rejected merely on the basis of specifications provided in the DGOV Circular dated 16.12.2005. By placing reliance on the judgment of Hon'ble Apex Court in the case of South India Television and CBEC letter F. No. 387/W/9/2013-JC dated 25.06.2013, this Tribunal in the case of C.C. (Import), Nhava Sheva Vs. Bharathi Rubber Lining & Allied Services P. Ltd. – 2013 (287) E.L.T. 124 (Tri.–Mumbai) has held as under:-

"5.6 *In view of the above, we do not find any infirmity in the observation of the Commissioner (Appeals) that the DGOV Circular cannot override the provisions of Valuation Rules. The Hon'ble Apex Court in the case of Commissioner of Customs, Calcutta v. South India Television - [2007 \(214\) E.L.T. 3](#) (S.C.) had held that casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value. The invoice price is not sacrosanct but before rejecting the invoice price, the department has to give cogent reasons for such rejection. The assessing authority has to examine each and every case on merits for deciding its validity and he cannot form a view to reject all transaction values on the basis of some general criteria based on DGOV Circular and on that basis load the value of imports uniformly across board. This Tribunal in the case of FSP (India) Pvt. Ltd. (cited supra) held that uniform loading based on general criteria is not permissible."*

11.2. Further, the law is well settled in the case of Vardhaman Sales (supra), Ratan Aluminum (supra), Pushpak Metal Corpn. (supra) that the LME price cannot be adopted as the basis to enhance the declared price, in absence of any contemporaneous value of the imported goods being available on record. We also find that the issues involved in the present appeals have been adequately dealt with by the Ahmedabad Bench of this Tribunal, in the case of M/s Sunland Metal Recycling Industries, vide Final Order No. A/11871-11874/2019 dated 01.10.2019, holding *inter alia* that applying the LME price minus discount band as per ISRI Bulletin or DGIV Circular dated 16.12.2005 cannot be the defensible ground for rejecting the declared value and for re-determination of the same, by taking recourse to the Valuation Rules, 1988.

11.3. We find that Revenue has concluded on the basis of stray third party evidences as above have alleged undervaluation on the basis of the statements of the concerned persons alone, which are not corroborated by any documentary evidence and therefore, their reliability, is not free from doubt. Revenue has relied heavily on the statement of Shri Sushil Agarwal that the negotiations for purchase of aluminium/zinc scrap was always based on the price of metal as declared by London Metal Exchange (LME) checked against the discount band. The discount band vis-à-vis the scrap is taken as follows:

Sl.No.	Description of Aluminium Zinc scrap/Dross	% of LME
1	Score (Srap)	65 to 70%
2	Score (Srap)	70%
3	Scull (Scrap)	60%
4	Saves (Scrap)	60%
5	Zinc skimming	60 to 65%
6	Zinc Ash	25 to 30%
7	Seal (dross)	65%
8	Seam (dross)	65%
9	Scrub (dross)	60%
10	Shelf (dross)	60%
Aluminium		
1	Trump	70%
2	Twitch	68%
3	Taint/Tabor	65%
4	Tense	70%
5	Throb	70%
6	Taldon	65%
7	Telic	65%
8	Talk	90%
9	Talon	85%
10	Tread	75%
11	Twang	65%
12	Tassel	75 to 80%
13	Testy	65%
14	Taste	60%

11.4. We find that the learned counsel for the appellants has produced a copy of the letter dated 17/10/2008 addressed to Shri Raghav Daga of All India Non-ferrous Metal Industries Association wherein it was categorically replied that

Further, many industry players themselves use different systems for pricing scrap around the world. These include bilateral spot price discussions, term (contract pricing), survey based pricing and long term fixed prices. The LME price is well established in the industries it serves for pricing physical contracts and for price risk management purposes around the world. It should also be noted that the physical market itself will then establish the discount or premium to LME price for grade and location. Any such discount or premium pricing to the LME Benchmark reference price used by industry is therefore not published on or by the LME at all.

Furthermore, in some cases, transaction do take place using the aluminium alloy price for scrap feed pricing as well as pricing and hedging of pressure die casting alloys. In the scenario of

scrap pricing, the actual price discount to the LME Aluminum alloy market depends on the grade of scrap and what the client is producing. Once again it must be emphasised that such discounts are all established in the actual physical market. These are neither reported nor ratified by the London Metal Exchange.

It has also been observed in the market that primary aluminium has also been used for pricing scrap and for pricing aluminium and aluminium alloy in the whole aluminium supply chain. In this respect, the LME price is a leading indicator and provides a valuable service to the industry.

The LME has not completed (as an exchange) any formal public study on the linkage of aluminium or zinc metal, LME quotes with that of their respective scrap pricing. As reported earlier, if such linkage exists, it is done on a case to case basis between the buyer-seller based on mutual understanding.

Other price references used to price scrap in the market in addition to the LME include metal bulletin, plats MW transaction premium, Japan Metal Bulletin (Asia) and DGV, WVM, GDM (Germany).

11.5. Further learned counsel for the appellants submits a letter dated 29/10/2008 written by Robin K. Wiener, President of ISRI wherein it is stated that "we have been asked to explain how aluminium scrap prices are determined. Please be advised that ISRI, as a trade association, does not become involved in scrap pricing. However, our understanding of the market is that scrap aluminium prices are determined through negotiations between buyers and sellers, based upon then current market information derived from a variety of sources, including trade press such as the American Metal Market and the Metal Bulletin, as well as futures markets. These information sources are utilized as a general market trend basis for the negotiation. It should be noted that scrap metal is not traded directly on the futures exchanges-rather it is alloy ingots derived from scrap metal that are traded on some of the exchanges such as the London Metal Exchange (LME)."

11.6. In view of the above, we find that the respective authorities have categorically stated that reference to LME and ISRI cannot be made in respect of

aluminium/zinc scrap. Therefore, we find that the price declared by the appellants cannot be rejected on the basis of or with reference to LME prices. We find that Tribunal in the case of Vardhaman Sales Agency vide Order dated 08/04/2019 relying upon the decision in the case of Bharati Rubber Lining and Allied Services Pvt. Ltd. (supra) and CBEC Circular F.No. 387/W/9/2013-JC dated 25/06/2015 held that the LME price cannot be the basis to enhance the declared value. Further, we find that the investigation has made a sweeping generalization on the basis of stray third party evidences and have reworked the prices declared by the appellants with reference to LME prices. In view of the above discussion, we find that such a generalization cannot be held to be a piece of evidence. Moreover, other than vague statements to the effect that the differential amounts were sent to the foreign suppliers, no piece of evidence has been brought in that the appellants have paid money to the foreign suppliers over and above the invoiced price.

12. Coming to the statements of persons we find that none of the statements of the so-called indenters have directly implicated the appellants. We find that only inference has been drawn from the documents recovered from the indenters and the statements recorded thereof. We find that Shri Ehsan Haji Ameen Gadawala in his statement dated 17/01/2007 was categorical that he could not identify the parties by apparently seeing the statements but on comparison of the value with the prevailing LME at the material time and by considering the aluminium metal content (in terms of ISRI specifications) in the aluminium scrap traded/imported by the Indian buyers the aspect of under-invoicing can be worked out. As we found earlier this version is also a bit of generalization and does not deal with specifics. Moreover, we find that learned Commissioner has recorded in the OIO that Shri Sushil Kumar Agarwal has pleaded that Commissioner of Customs (Export) was appointed as common adjudicating authority for M/s. Sunland Alloys but

not for all other noticees. Shri Pravin Ranka and Shri Sanjiv Kumar Agarwal have challenged the validity of the show-cause vide Petition No. 140/2011 before the Supreme Court. Shri Gadawala vide his letter dated 12/11/2012 stated inter alia that there was no corroboration of the allegation and there was no evidence against him; the commission received from M/s. Ala International was towards providing business opportunity in India; he stopped work in 2002 and did not have connection with importers and that the statement was given under pressure.

12.1. Learned counsel for the appellants has also brought to our notice that a show-cause notice dated 25/04/2008, in respect of certain Bills of Entry with regard to the import consignemnts during February to April 2006, was issued to the appellants alleging undervaluation on the basis of LME prices for prime aluminium ingots on the date of Bill of Lading. The same was confirmed by the Assistant Commissioner vide Order dated 18/05/2009. On an appeal preferred by the appellants, the Commissioner (Appeals) had set aside the demands confirmed by the O-I-O vide Order No. 217 to 256 (Group IV)/2010 (JNCH)/IMP-205 to 244 dated 09/09/2010. We were informed during the course of hearing that the department has not preferred any appeal against the said appellate order dated 09.09.2010. Hence, the stand taken in the said order is final and contrary view cannot be placed by the department against the very same appellants. Learned Counsel also brings to our notice that there are inherent contradictions in the statements recorded. She submits that the statements cannot be relied upon for the contradictions; during the course recording his statement dated 29.05.2006, he was shown an alleged abstract of LME price of Aluminium scrap as per which the Aluminium scrap was 80% of the LME price; another statement was recorded on 23.04.2007 that the import price of Aluminium Scrap was negotiated by applying different discount bands ranging from 5% to 35% to the LME price for various

grades such as Trump, Tense, Throb etc. which corresponded to the discount bands provided in the Alert Circular No.14/2005 dated 16.12.2005; discrepancy clearly shows that initially the officers were attempting to apply 80% of the LME but later realizing that DGOV was not recommending 80% of LME, they conveniently abstracted the statement of Shri Sushil Kumar Agarwal to match the discount band, as per the DGPV circular. In view of the above, we find that the statements of various persons as discussed and relied upon in the SCN and the impugned order do not help the case of the department as they are not supported by evidences. On the other hand, department attempts to corroborate, the suspicion that at best one can have on a perusal of computer printouts, emails, High Commission reports, by the statements of various partners and indenters. For the reasons cited above, neither the documentary nor the oral evidence in the instant case supports the allegations even to the extent that is required for the cases of tax evasion, if not criminal prosecution.

13. In addition to the above, we find that the impugned order does not discuss the evidence available so as to lead to the conclusions arrived at. The impugned order consists of 91 pages out of which the first 73 pages covers the brief facts of the case and submissions of the appellants. Actual findings, of the learned Commissioner on the evidence for undervaluation, have been given very briefly to the extent of being cryptic, there too giving reference to the evidence collected by the agency in para No. 116. None of the evidences relied upon are analysed and discussed by the learned Commissioner in detail giving out the reasons for relying upon the same and the conclusions drawn there upon. The analysis of documentary evidence is confined to three small paras (consisting of about 40 lines) without discussing anything in detail and without giving any substantial reasoning for the conclusions. There too Learned Commissioner mentions that the investigating agency on the basis of the

intelligence collected has succeeded in gathering in great detail, the imports made at different ports that were annexed to the show-cause notice. Learned Commissioner, then proceeds to discuss the statements recorded and relies mostly on the statements of the persons which for the reasons discussed above cannot be relied upon in the absence of corroborative evidence. Learned Commissioner does not give any satisfactory reasoning for rejection of the values declared by the appellants. In view of the above, we find that the order lacks conviction and for the reason that the evidence put forth has not been upheld with reasoning, the impugned order required to be set aside.

14. Therefore, we find that the allegation of undervaluation is not sustained. Consequentially, the seizure, demand of differential duty, fine and penalty on M/s. Sunland Alloys do not survive. When the main allegation of undervaluation against the main appellant i.e. Sunland Alloys does not survive, penalties imposed on different persons also do not survive. We find that the appellants have submitted that the role played by them does not warrant imposition of penalties under Section 112 and that the impugned order has traversed beyond the SCN in imposing Penalties under Section 112(a) and 114 A of Customs Act, 1962. As we hold that the seizure and duty demand are not sustainable and as a corollary, the penalties also are liable to be set aside, we are not going in to the merits of submissions on the imposition of penalties.

15. Learned Counsel submits that no CVD is payable on scrap of Aluminium and zinc of various grades; the imported goods are not a branded manufactured product but a waste/by-product generated during the course of manufacturing; it is settled law laid down by the Apex Court that if the article not liable to excise duty since it is not a manufactured product no CVD is liable. We find that applicability of CVD depends on the fact as to whether

or not the impugned goods are liable to pay Central Excise duty as per the Central Excise Tariff Act. It cannot be held that it is not liable to pay CVD only on the basis of the submission that they are not manufactured products. No material has been put forth to show the nature of scrap. Therefore, we cannot come to a conclusion as in the case of M/s Sunland Recycling Industries case decided by the coordinate Bench at Ahmedabad. We find that Learned Commissioner has not given any specific findings on the issue of applicability of CVD to the impugned goods. However, as we hold that impugned order in its entirety is not maintainable and liable to be set aside, we are not inclined to go in to the applicability of CVD.

16. In view of the above, all the appeals, i.e. C/86782/2013(Shri Sushil Kumar Agarwal), C/86783/2013 (Shri Pravin A. Ranka), C/86784/2013 (Sanjiv Kumar Agarwal), C/86785/2013 (M/s Sunland Alloys), C/86846/2013 (ShriMihir Bhat) C/86889/2013 (Shri Tarun Jhingon) and C/87311/2013 (Shri Ehsan A. Gadawala) are allowed with consequential relief, if any, as per the law.

(Order pronounced in the open court on 10/02/2020)

(S.K.Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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