CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 85635 of 2023

(Arising out of Order-in-Appeal No. 117 (Gr.IIA-B)/2023(JNCH)/Appeals dated 13.02.2023 passed by Commissioner of Customs (Appeals), Mumbai-II.)

Krishang Alloy **.....Appellants**
A 301/302 Ramji House,
30, Jambulwadi, Kalbadevi Road
Mumbai – 400 002.

VERSUS

Commissioner of Customs (NS-I) **.....Respondent**
Mumbai – II Zone,
Jawaharlal Nehru Custom House (JNCH),
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra–400 707.

Appearance:

Shri H.K.Hirani, Consultant for the Appellants
Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85442/2024

Date of Hearing: 21.12.2023
Date of Decision: 22.04.2024

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Krishang Alloy, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. 117 (Gr.IIA-B)/2023(JNCH)/Appeals dated 13.02.2023 (herein after, referred to as 'the impugned order') passed by Commissioner of Customs (Appeals), Mumbai-II Zone, Mumbai.

2. The brief facts of the case are that the appellants had imported 'Silicon Metal 553 Grade' by classifying it under Customs Tariff Item (CTI) 2804 6900 under two Bills of Entry (B/E) No. 8520399 dated 19.10.2018 & B/E No. 8536475 dated 20.10.2018 and self-assessed the

same declaring the value of goods as per invoices No. KA2018SD01 dated 09.09.2018 and No. HS1683 dated 12.10.2018, respectively, in terms of Section 17(1) of the Customs Act, 1962. The proper officer of Customs in the Appraising Group had objected to the declared value of the imported goods and had enhanced the value of imported goods to US$1.76 per Kg. The appellants being aggrieved with such assessment by the proper officer of customs without issue of any speaking order, had filed an appeal against such assessment in the two B/Es before the Commissioner of Customs (Appeals). Since, the order for enhancement of value of imported goods without passing requisite speaking order under Section 17(5) ibid is not legally sustainable, the learned Commissioner of Customs (Appeals) had remanded the matter to make re-assessment of the said B/Es in accordance with the law. Accordingly, the Deputy Commissioner of Customs, Appraising Group (II-A-B), JNCH had issued an Order-in-Original No.39/2020-21/DC/NS-I/CAC/JNCH dated 04.05.2020, in rejection of the declared value of impugned goods by the appellants and re-determined the assessable value of the impugned goods for the unit price of US$1.76 per Kg. on the basis of contemporaneous comparable value of identical goods imported from China. The appellants being aggrieved with the said Order dated 04.05.2020 had appealed before the Commissioner of Customs (Appeals) who had passed the impugned order dated 13.02.2023, in rejecting the appeal filed by the appellants and upholding the Order-in-Original dated 04.05.2020. Feeling aggrieved against such order, the appellants have filed this appeal before the Tribunal.

3.1 The learned Consultant for the appellant submits that in case of enhancement of value, as the appellants had not given any consent at time of re-assessment by proper officer, a speaking order under Section 17(5) of the Customs Act, 1962 is required to be passed within 15 days of the assessment. The re-determination of value in rejecting the declared value is totally arbitrary and without any basis, and thus contrary to Section 14(1) ibid and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR). The impugned order has not taken into consideration the above details and concluded that the enhanced value once settled and duty having been paid accordingly without protest, the importer is stopped from challenging the same subsequently. There is no evidence of any amount having been paid over and above this invoice value, which has been adopted by the appellants as the transaction value. The learned Commissioner (Appeals) had also concluded incorrectly that the enhanced value is uncontested, thus voluntarily accepted and accordingly payment of duty made by appellants discharges the burden of the department to establish declared values. On the above basis, learned Consultant prayed that the impugned order is liable to be set aside.

3.2. In support of their stand, the learned Consultant had relied upon the following decisions of the Tribunal and the judgements of the Hon'ble High Court of Kolkata and Hon'ble Supreme Court, in the respective cases mentioned below:

(i) *Commissioner of Customs, Delhi Vs. Maruti Fabrics Impex* – 2016 (343) E.L.T. 963 (Tri. – Del.)

(ii) Sigma Power Products Pvt. Ltd. Vs. *Commissioner of Customs (Port)* - 2017 (350) E.L.T. 510 (Cal.)

(iii) C.C.E. & S.T. Noida Vs. *Sanjivani Non-Ferrous Trading Pvt. Ltd.* – 2019 (3659) E.L.T. 3 (S.C.)

(iv) Commissioner of Customs (Imports), Mumbai Vs. Ganpati Overseas – Judgement dated 06.10.2023 in Civil Appel Nos. 4735-4736 of 2009

4.1. On the other hand, learned Authorised Representative for Revenue supports the impugned order and submits that consent for loading of value was given by the appellants in their reply to the query of the proper officer dated 23.10.2018, stating that '*please load value USD 1.76 per Kg. as per LME*' and therefore, the speaking order under Section 17(5) of the Customs Act, 1962 is not required in the first instance. However, on the basis of the directions given by the Commissioner of Customs (Appeals), the Deputy Commissioner of Customs while adjudication of the case, had rejected the transaction value under Rule 12 of CVR and re-determined the value on the basis of the lowest value of identical goods at same commercial level, under Rule 4 of CVR. In view of the above, learned AR submitted that there is no infirmity in the impugned order passed by the Commissioner of Customs (Appeals) in upholding the Order of the Original Authority.

4.2. We also find from the records of the case that Co-ordinate Bench of the Tribunal had referred certain issues concerning questions of law on re-assessment under Section 17(5) ibid on enhancement of value to be decided by the Larger Bench of the Tribunal in Interim Order No. 6-

12/2022 dated 04.05.2022 in the appellants own case, which was appealed before the Tribunal against Orders-in-Appeal No. 254 to 260 (Gr.IV)/2021(JNCH)/Appeals dated 25.03.2021. The Larger Bench upon due consideration of the such issues had decided in its Order dated 03.04.2024, that it is not necessary to answer the reference in the facts and circumstances of the case, which require the Division Bench to firstly decide whether the appellant had given consent in writing to the reassessed value or not. The details of the above order is follows:

> *"A Division Bench of the Tribunal, by order dated 04.05.2022, referred the following three issues to be decided by a Larger Bench of the Tribunal:-*
>
> *(i) Whether the enhanced value as accepted for early clearance or for any reason is equivalent to the declared value on the Bill of Entry;*
>
> *(ii) Whether such an acceptance of the enhanced value is binding on the importer in respect of the import made by him even if he is able to show that enhanced value does not specify the requirements of Section 14 of the Customs Act; and*
>
> *(iii) What is the scope of the Section 17 (5) of the Customs Act, 1962 making it mandatory to pass an speaking order within prescribed period by the concerned authorities in case of any changes made to self assessment made by the importer while filing the bill of entry.*
>
> *2. In paragraph 2.1 of the order, the Division Bench noted that the appellant M/s. Krishang Alloys had filed Bills of Entry for import of aluminium scrap by declaring the transaction value as the assessable value for the purposes of customs duty, but after taking consent of the appellant, the assessable value was enhanced by the Revenue. Accordingly, in paragraph 3.5 of the order, the Division Bench noted:*
>
>> *"3.5 The basic issue for consideration is whether Customs authorities are correct in enhancing the value self-assessed by the importer on the Bill of Entry on the basis of the consent given by the importer without assigning any such reason for such enhancement."*
>
> *3. A Miscellaneous Application was filed by the appellant with a prayer that the reference made to the Larger Bench may be withdrawn for the reason that the order wrongly records that the appellant had given consent and accepted the reassessed value. The appellant categorically stated in the application that the appellant had never given consent for enhancing the value, either in writing or orally, and that the appellant had also not referred to the decision of the Tribunal in M/s. Laxmi Colour Lab vs. Collector of Customs. The appellant, therefore, stated that the reference order may be recalled and the matter may be decided by the Division Bench on merits.*
>
> *4. This Miscellaneous Application was rejected by the Division Bench by order dated 17.10.2022. The Division Bench, in connection with the contention of the appellant that the appellant had never given consent*

to the enhanced value and in fact there was no evidence even to suggest that the appellant had ever agreed to the reassessed value, merely referred to the order passed by the Commissioner (Appeals), wherein reference was made to a Division Bench decision of the Tribunal in Commissioner of Customs vs. M/s. Hanuman Prasad & Sons2. The Division Bench, after reproducing a portion of the order of the Commissioner (Appeals), made the following observations while rejecting the Miscellaneous Application filed by the appellant:

> *"3.3 The basic reliance from the above is on the fact that the applicant/appellant has agreed to the assessable value as determined by the department and the earlier decision of the Tribunal has been relied upon in this regard.*
> *3.4 We have referred this matter to the Hon'ble President for constitution of Larger Bench only to resolve the dispute which is observed in terms of contrary decisions referred to by the Commissioner (Appeals) in paras as above and the other decisions noted by us in the interim order."*

5. Shri H.K. Hirani, learned consultant for the appellant strongly urged that the reference was unnecessarily made by the Division Bench to the Larger Bench for the reason that the appellant had never given consent to the reassessed value either orally or in writing. Learned consultant submitted that the Commissioner (Appeals) had mistakenly assumed that the appellant had given consent and though this fact was specifically asserted by the appellant in the Miscellaneous Application, but it was not decided. He, therefore, submitted that the matter may the sent back to the Division Bench for deciding the appeal on merits.

6. Learned authorised representative appearing for the department, however, submitted that the Commissioner (Appeals) was justified in relying upon the decision of the Tribunal in Hanuman Prasad as the appellant had given consent in writing to the enhanced value.

7. In such circumstances, when there is a serious dispute as to whether the appellant had given consent in writing to the reassessed value or not, this issue has to be first decided by the Division Bench because it is only in such circumstances that the decision of the Tribunal in Hanuman Prasad would apply.

8. It will, therefore, not be appropriate for the Larger Bench to decide the reference when the basis on which the reference was made, namely that the appellant had given consent in writing accepting the reassessed value, is itself in issue.

9. The matter is, therefore, sent back to the Division Bench so that a decision on this core issue is taken because only then reliance can be placed by the revenue on the decision of the Tribunal in Hanuman Prasad.

*10. It is, therefore, **in the facts and circumstances of the case not necessary to answer the reference**. The appeals are sent back to the Division Bench to decide the appeals in the light of the observations made above."*

5. Heard both sides and perused the records of the case.

6. On careful consideration of the submissions made by both the sides, we find that the appellants have challenged the impugned order mainly on two grounds; firstly, on the ground that enhancement of value is without any basis and without following due process of law, and is therefore against the provisions of Section 14(1) of the Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR); and secondly, on the ground that order of re-assessment by the proper officer of Customs without passing of speaking order is liable to be set aside as it is not in compliance with Section 17(5) ibid.

7. In order to examine the above issues and whether the impugned order has duly followed the provisions of Sections 14, 17(5) ibid and CVR, we would like to refer the relevant legal provisions of the Customs Act, 1962:

"Definitions.

2. *In this Act, unless the context otherwise requires,—*

xx xx xx xx xx

(2) assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to—

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

Valuation of goods.

14. (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,—

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section;

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50….

Assessment of duty.

***17.** (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50 shall, save as* *otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:
Provided *that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received…."

*"**Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.***

Determination of the method of valuation.

3. *(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided *that -*

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

- *(i) are imposed or required by law or by the public authorities in India; or*
- *(ii) limit the geographical area in which the goods may be resold; or*
- *(iii) do not substantially affect the value of the goods;*

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3)(a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

***Provided** that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;*

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Transaction value of identical goods.

***4.** (1)(a)Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued :*
***Provided** that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same

quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rejection of declared value.

12. *(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) *The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –*

(a) *the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*

(b) *the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*

(c) *the sale involves special discounts limited to exclusive agents;*

(d) *the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*

(e) *the non-declaration of parameters such as brand, grade, specifications that have relevance to value;*

(f) *the fraudulent or manipulated documents."*

8.1 On careful consideration of the said provisions, we find that in case of any type of assessment, the assessable value of imported goods is required to be determined in accordance with the provisions of Section 14 of the Customs Act, 1962 and the Customs Tariff Act, 1975. In the present case, we find that the appellants had self-assessed the goods in terms of Section 17(1) ibid, by declaring the value of the imported goods, as per invoice of the supplier M/s Sido Metal Imp and Expo Company Limited, Hong Kong at USD 1.63 per Kg. in respect of B/E No. 8520399 dated 19.10.2018 and as per invoice of the supplier M/s Heisen Asia Pacific Resources Co. Ltd. Hong Kong at USD 1.635 per Kg. in respect of B/E No. 8536475 dated 20.10.2018. The proper officer of Customs in verification of such self-assessment in terms of Section 17(2) and 17(3) ibid, and on the basis of instructions of the Risk Management System/Compulsory Compliance Requirement, that 'Silicon Metal' is prone to undervaluation and thus in order to check valuation of imported goods keeping in view of the international prices, had raised a query to submit evidence of declared value. In reply to the above query, the appellants had stated that '*Please Load value USD 1.76 per Kg. as per LME'; they* did not submit any document in support of the declared value such as bank remittance for imports, purchase order, sale contract. Accordingly, the proper officer of customs had re-assessed the value of imported goods, in terms of the exception provided under Section 17(5) ibid, treating the reply of the appellants as confirmation of their acceptance of the enhancement of value.

8.2 Subsequently, in view of the directions for fresh consideration of the issue by Order-in-Appeal dated 17.01.2019, the Deputy Commissioner of Customs, Appraising Group-II(A-B), JNCH had re-examined the issue of determination of assessable value in detail in the Order-in-Original dated 04.05.2020. The Original Authority had given a finding that the declared unit price of the impugned goods was low in comparison to the London Metal Exchange (LME) commodity prices and contemporaneous imports of identical goods and hence proceeded to reject the declared value under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, he ascertained the value of impugned goods as USD 1.7 per Kg. for 'Silicon Metal 553' on the basis of import data on identical goods by applying the rule of lowest value at similar commercial level, in terms of Rule 4 ibid. Further, the original authority gave an opportunity of personal hearing to the appellants on 27.01.2020 and the appellants had attended the same and gave their detailed written submissions, which were duly taken into account by the original authority while deciding the issue.

8.3 Plain reading of legal provisions clearly brings out that in re-assessment of goods done under Section 17(5) ibid, except wherein the re-assessment has been accepted by the assesse importer, the proper officer shall pass a speaking order on the reassessment within 15 days on the date of re-assessment of the bills of entry. Admittedly, in this case, speaking order under Section 17(5) of the Customs Act, 1962 has been passed vide Order-in-Original No.39/2020-21/DC/NS-I/CAC/ JNCH dated 04.05.2020. Therefore, we are of the considered view that the legal requirement of re-assessment of imported goods under Section 17(5) ibid, in enhancing the value of imported goods, in compliance with the legal provisions of Section 14 ibid and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have been duly followed in this case by the proper officer of Customs.

9. It is also revealed from the factual matrix of the case that the appellants though initially were not issued with a speaking order, had filed an appeal against such re-assessment by the proper officer of

Customs and on the directions of Commissioner of Customs (Appeals) a speaking order dated 04.05.2020, in terms of Section 17(5) ibid had been fulfilled by the assessing officer in re-assessment of the impugned goods. Thus, in the present case, the statutory requirement of passing of a speaking order for re-assessment, even by ignoring the reply given by the appellants-importer for loading the value to the query raised by proper officer on 23.10.2018 and taking the ground that the appellants-importer had not accepted the re-assessment proposed by proper officer of Customs for the enhancement of assessable value, has been fulfilled by the order dated 04.05.2020 issued under Section 17(5) of the Customs Act, 1962. Hence, we are of the considered view that the case of re-assessment has been done properly by the original authority in passing a speaking order for re-assessment under Section 17(5) ibid and the same had been communicated to the appellants-importer.

10.1 We are also of the considered view that the authorities below in re-assessment of impugned goods under Section 17(5) ibid, had considered the requirements of the legal provisions of Section 14 ibid and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The imports in the present case have taken place vide two B/Es of 19.10.2018 and 20.10.2018. In arriving at the assessable value of such imports, after rejection of transaction value being low in comparison to the London Metal Exchange (LME) commodity prices under Rule 12 ibid, the authorities below have considered the transaction value of 'Silicon Metal Grade 553' from the same country of origin 'China' imported at or about the same time i.e., during 18.09.2018 to 04.10.18, at the same commercial level and arrived at the lowest of such values as US$ 1.76 per kg., in terms of Rule 4 ibid.

10.2 Further such issue of a 'speaking order' in the present case also fulfill the basic requirements of quasi-judicial process that is to provide reasonable opportunity to present the case by the appellants including opportunity for personal hearing and to record the reasons for arriving at an order, which obviously has been fulfilled by the authorities below. In this regard, we also find that the Hon'ble Supreme Court in the case of *Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan* 2011 (273) E.L.T. 345 (S.C.) had elaborated in detail the various aspects of the speaking order that is required to be followed by a quasi-judicial authority. The said features mentioned in that order such as recording of reasons for arriving at a decision, adherence to the legal provisions of law and rules in arriving at the decision, due consideration of all submissions made by the appellants in the quasi-judicial proceedings including providing reasonable opportunity of personal hearing have been duly followed in the proceedings that was conducted in the present case. Since these pre-requisites have been duly followed by the authorities below in adjudication of the case, we consider it appropriate to uphold the impugned order.

11.1 In the case of Sigma Power Products Pvt. Ltd. (supra), relied upon by learned Advocate, we find that the facts of the case are different as there no such speaking order under Section 17(5) was passed, and hence the re-assessment order was set aside. However, in the present case before us, a proper speaking order under Section 17(5) ibid have been issued as discussed by us in detail in the paragraphs 8.1 to 10.2 above. It is evident from the following paragraph of the relied upon case, that the same is not applicable in the factual matrix of the present case:

> ***"13.*** *The adjudication of the question of law we formulated is to be on consideration of the submissions made by the parties. The order made by the proper officer on the bills of entry in changing the classification and value enhancement is an order of re-assessment attracting the provisions of sub-section (5) of Section 17 of the Act as urged by the appellant which also appears to be the case from the affidavit filed by the Revenue. Hence, the conclusion has to be that the proper officer was required to pass a speaking order on the re-assessment within 15 days of the re-assessment of the bills of entry. No speaking order was passed. In the circumstances, we have no hesitation to set aside the re-assessment."*

11.2 Further, in the other relied upon case of *Sanjivani Non-Ferrous Trading Pvt. Ltd*. (supra), it is evidentially clear that there were no corroborative evidence of imports at or about same time, as evidence for adoption of value of identical goods imported at contemporaneous period. However, in the present case before us, we find that the authorities below have compared the LME prices for coming to a reasonable belief that the declared value is low and proceeded to determine the assessable value as per Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They had given specified seven cases of contemporaneous imports of identical goods and have on the basis of their transactional value in such cases and by adopting the lowest of price at the same commercial level, had determined the assessable value for the imported goods under dispute covered under the two B/Es as per Rule 4 ibid. Thus, the aforesaid case law referred by the Advocate has no application for the present case and is distinguishable in terms of the facts of the present case. The following paragraph of the judgement of Hon'ble Supreme Court in the above case will illustrate the distinguishable facts of this case:

> "***14.*** *In Commissioner of Customs v. Prabhu Dayal Prem Chand, (2010) 13 SCC 535 = 2010 (253) E.L.T. 353 (S.C.), this Court was confronted with almost same kind of fact situation. On the basis of the information received subsequently from the London Metal Exchange (for short, 'LME') to the effect that the price of the two metals, viz., brass scrap and copper scrap, in LME as on the date of import was more than the price declared by the respondent, demanded additional duty amounting to Rs. 90,248/- and Rs. 1,94,035 respectively, from the assessee on the said two Bills of Entry. This order was set aside by the Tribunal and appeals there against by the Customs were dismissed by this Court. The Court noted, while accepting the plea of the assessee, that they were not confronted with any contemporaneous material relied upon by the Revenue for enhancing the price declared by them in the Bills of Entry. It also noted the following remarks of the Tribunal :*
>
> > *"In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy Commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. Therefore, assessment in this case has to be taken as having been made purely on the basis of LME bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allow the appeal."*
>
> *Dismissing the appeals, this Court observed as follows :*
>
> > *"....It is manifest from the afore extracted order of the Tribunal that no details of any contemporaneous imports or any other material indicating the price notified by LME had either been referred to by the adjudicating officer in the adjudication order or such material was placed before the Tribunal at the time of hearing of the appeal. The Learned Counsel for the Revenue has not been able to controvert the said observations by the Tribunal. In that view of the matter no fault can be found with the order passed by the Tribunal setting aside the additional demand created against the assessee."* "

12. In view of the foregoing discussions and analysis, we are of the considered view that the impugned order passed by the learned Commissioner of Customs (Appeals) is sustainable. Therefore, we do not consider it necessary to interfere with the impugned order and accordingly reject the appeal filed by the appellants.

13. In the result, by upholding the impugned order dated 13.02.2023, the appeal filed by the appellants is dismissed.

(Order pronounced in open court on 22.04.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha