CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86486 of 2019

(Arising out of Order-in-Original No. 113/2018-19/COMMR/NS-I/JNCH dated 13.03.2019 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva)

M/s NICO Extrusions Ltd. .... Appellant
12, Niraj Industrial Estate, Off Mahakali Caves Road,
Andheri (East), Mumbai – 400 093

Versus

Commissioner of Customs (NS-I), Nhava Sheva.... Respondent
JNCH, Uran, Raigad, Maharashtra – 400 707

WITH

Customs Appeal No. 86476 of 2019

(Arising out of Order-in-Original No. 113/2018-19/COMMR/NS-I/JNCH dated 13.03.2019 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva)

Nitul B. Shah .... Appellant
Director of M/s NICO Extrusions Ltd.
12, Niraj Industrial Estate, Off Mahakali Caves Road,
Andheri (East), Mumbai – 400 093

Versus

Commissioner of Customs (NS-I), Nhava Sheva .... Respondent
JNCH, Uran, Raigad, Maharashtra – 400 707

AND

Customs Appeal No. 86477 of 2019

(Arising out of Order-in-Original No. 113/2018-19/COMMR/NS-I/JNCH dated 13.03.2019 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva)

Tushar A Porwal .... Appellant
CEO of M/s NICO Extrusions Ltd.
12, Niraj Industrial Estate, Off Mahakali Caves Road,
Andheri (East), Mumbai – 400 093

Versus

Commissioner of Customs (NS-I), Nhava Sheva .... Respondent
JNCH, Uran, Raigad, Maharashtra – 400 707

Appearance:

Shri J.C. Patel, Advocate 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/85693-85695/2024

Date of Hearing: 05.04.2024
Date of Decision: 16.07.2024

Per: S.K. MOHANTY

Brief facts of the case, leading to these appeals, are summarized herein below:

1.1 The appellant herein M/s. Nico Extrusions Ltd. (for short, referred to as 'M/s NICO') is engaged in the manufacture of Non-Ferrous Alloys such as, Aluminum Ingots, Copper Wire Bars, Rods, Copper Zinc based Alloy and Zinc Ingots. For manufacture of the said goods, the appellant *inter alia*, imports Aluminum scrap and Zinc scrap of various grades as per specification of the Institute of Scrap Recycling Industries (ISRI). During the disputed period from April 2003 to October 2006, the appellant had imported the said scrap items through the ports of Nhava Sheva, Mumbai, Chennai and Kandla.

1.2 With regard to import of the scrap items, the Directorate of Revenue Intelligence (DRI) had received intelligence that M/s. NICO was indulging in undervaluation of aluminium scrap and zinc scarp of various grades imported from overseas suppliers with an intent to evade payment of customs duty. A team of officers of DRI, Surat and Mumbai had conducted simultaneous searches at the factory/office premises of M/s. NICO and recovered incriminating documents relating to import of disputed goods and recorded the statements of various persons. Scrutiny of the records revealed that M/s. NICO had imported various grades of aluminium scrap and zinc scrap as per the ISRI specification from various overseas suppliers during the disputed period. The value declared by M/s. NICO at time of clearance of the respective import consignments does not appear to be the actual and correct transaction value. Scrutiny of the records recovered/ submitted during the investigation also revealed that, M/s. NICO after April 2006 i.e., after initiation of the investigation against other importers of similar goods, started declaring higher invoice value at the time of importation. Apart from direct import of the said goods from foreign supplier, the appellant had also purchased some consignments of the said goods on High Seas basis from the High Seas Sellers.

1.3 On conclusion of the investigation, a detailed show cause notice (SCN) dated 31.03.2008 was issued to M/s. NICO and other appellants, proposing for rejection of the declared value of the goods and re-determine of the same under Section 14 of the Customs Act, 1962 read with Rules 3,6 and 8 of the Customs Valuation (Determination of Price of the Imported goods) Rules, 1988(for short, referred to as CVR, 1988); recovery of duties of customs short paid along with interest; confiscation of the imported goods; and imposition of penalties.

1.4 The SCN dated 31.03.2008 was adjudicated by the learned Commissioner of Customs, JNCH, Nhava Sheva vide Order-in-Original No. 113/2018-19/Commr/NS-I/JNCH dated 13.03.2019 (for short, referred to as the 'impugned order'). In the said impugned order, the learned adjudicating authority has rejected the declared value in respect of the consignments of the disputed goods under Section 14 of the of the Act, read with Rules 3,6 and 8 of the CVR, 1988 as applicable; held that the impugned goods are liable for confiscation under Section 111(m) of the Act of 1962;that since the goods were not physically available, refrained from imposing any redemption fine; confirmed the differential Customs duty in terms of Section 28(1) of the Act of 1962 along with interest under Section 28AA *ibid*; imposed penalty on M/s. NICO under Section 114A*ibid*.The impugned order has also imposed personal penalty under Section 112(b) *ibid* on the other appellants Shri Tushar A. Porwal, CEO of M/s. NICO and Shri Nitul B. Shah, Director of M/s. NICO.

1.5 In support of confirmation of the adjudged demands on the appellants, the learned adjudicating authority has mainly relied upon the sales contract No. NGL-2012-05 dated 20.12.2005 entered into between the importer (M/S. NICO) and the overseas supplier M/s New Green Ltd., London and the statements recorded under summon from Shri Tushar Porwal, CEO of M/s. NICO. On the basis of said evidences, the learned adjudicating authority has held that the prices finalized by M/s. NICO were always on the prevailing LME on the date of invoices and that the differential amount (actual price 'minus' the invoice value) was routed by M/s. NICO through non-banking channels to their overseas supplier through supplier's representative in India.

2. Feeling aggrieved with the impugned order, the appellants have preferred these appeals before the Tribunal.

3.1 Shri J.C. Patel, learned Advocate appearing for the appellants submitted that rejection of the transaction value of the imported goods, based on the statements of Shri Tushar Porwal and Shri Nitul B. Shah is clearly untenable in law, since the said two persons had soon after the dates of their respective statements, retracted the same and sent their retractions by post to the DRI; that the learned Commissioner has disregarded the said retractions on complete incorrect premise that the proof of retraction had not been submitted before him; whereas, copies of the retractions along with the postal receipts were duly submitted with the reply dated 01.12.2011 and also this was pointed out in the submissions dated 24.01.2019, again enclosing therewith such letters of retraction. Learned Advocate submitted that the adjudicating authority has completely ignored the appellant's replies/submissions, together with the documents annexed thereto and has passed the impugned order in the most perfunctory manner. He further submitted that the said persons had during their cross examination held in the course of adjudication, had clearly stated that the statements were not their true and voluntary statements. Thus, he submitted that since the statements were retracted and that the deponents had in the cross examination not stood by the statements, the said statements were 'not reliable' piece of evidence. In this context, the learned Advocate has relied upon the judgments delivered by the Hon'ble Supreme Court, in the case of *Mohtesham Mohd. Ismail vs. Spl. Director, Enforcement Directorate -2007 (220) E.L.T. 3 (S.C.)*and by the Hon'ble Delhi High Court, in the case of *Commissioner of Central Excise, Delhi-I vs. Vishnu & Co. Pvt. Ltd. – 2016 (332) E.L.T. 793 (Del.)*.

3.2 Learned Advocate also submitted that in the present case, there is absolutely no evidence to corroborate the statements of S/Shri Tushar Porwal and Nitul B. Shah, who have retracted the same and also denied their correctness in cross examination. He also submitted that there is no corroborative evidence, whatsoever, to show any amount over and above the invoice price was paid to the foreign suppliers or their representatives. He submitted that a bare statement, that too retracted and denied in cross examination and that without substantiation as to the person to whom the amounts over and above the invoice price were paid, Revenue cannot form the basis in law for rejection of the transaction value.

3.3 The Learned Advocate further submitted that enhancement of value under Rule 6 of the CVR, 1988 is completely baseless, as no particulars of alleged contemporary imports of similar goods have been specified in the SCN and in the impugned order. That the learned Commissioner has completely ignored the specific submission of the Appellant that no details of the Bills of Entry (B/Es) and the values of the alleged imports of similar goods are disclosed either in the body of the SCN or in the *annexure* attached therewith and no copies of B/Es of alleged imports of similar goods have been provided to the appellant. He also submitted that the learned Commissioner has completely ignored the particulars of the B/Es of contemporary imports of similar goods furnished by the appellant, which were at or about the same price as the imports of the appellant. He further submitted that even assuming, whilst denying, that the appellant's transaction value cannot be accepted under Rule 3(i)*ibid* and the value has to be re-determined under Rule 3(ii) *ibid*, by proceeding sequentially through Rules 5 to 8 *ibid* as contended in the SCN, the value ought to have been determined under Rule 6 *ibid*, based on the prices of contemporary imports of similar goods, details of which were provided in annexure to the appellant's reply dated 17.6.2014 and in the submissions dated 24.01.2019. He submitted that prices of contemporary imports of similar goods are the same as the prices at which the appellant had made the imports and consequently, these ought to be adopted under Rule 6*ibid*, and accordingly, there was no differential duty payable by the appellant.

3.4 He also submitted that in a similar case investigated by the same investigating agency viz., DRI, Ahmedabad, in respect of import of goods made by Baheti Metals & Ferro Alloys, Pushpak Metal Corporation and Maliwal Impex P. Ltd and ors., Show Cause Notice F.No. DRI/ AZU/ INV-7/2006 dated 30.9.2008 for the same period i.e., 2003 to 2006, proposing enhancement of value was issued by DRI; that the said Notice was confirmed by the Commissioner of Customs, Kandla by Order-in-Original No.KDL/COMMR/33/09-10 dated 31-3-2010**;** that the enhancement of value was done on the basis of the same Circular No.14/2005 dated 16-12-2005 of Directorate of Valuation, which is relied upon in the present case. He submitted that the said Order-in-Original dated 31.03.2010 has been set aside by the Tribunal, in the order, reported as *Pushpak Metal Corpn.Vs. Commissioner of Customs, Kandla – 2014 (312) ELT 381(Tri.-Ahmd.)*. Thus, he contended that the transaction value at which the importers in the said case had imported goods, similar to the goods imported by the appellant, stand accepted by the Tribunal. He also contended that the Tribunal's Order (supra) has been accepted by the department, and no appeal was preferred against the same. Therefore, the prices at which the importers in the said case imported the various grades of Aluminium Scrap, stand accepted and are thus, available as price of contemporary imports of similar goods for the purpose of Rule 6*ibid*. The learned Advocate therefore, submitted that even if the declared value of the appellant are to be rejected, then it was incumbent on the part of the learned Commissioner to adopt the said prices of contemporary imports of similar goods under Rule 6 *ibid* for re-determination of the transaction value of appellant's imports. The said prices of contemporary imports are the same as the prices at which the appellant had made the imports and consequently, when these are adopted under Rule 6 *ibid*, then there is no differential duty payable by the appellant.

3.5 He further submitted that the re-determination of the value of the appellant's goods by taking the LME price as the base and applying the discounts to the LME price as given in Circular no.14/2005 dated 16-12-2005 of Directorate of Valuation is entirely untenable in law. In this context, he has relied upon the following judgments:

(i) *Pushpak Metal Corpn. v. Commissioner of Customs, Kandla – 2014 (312) ELT 381*
(ii) *Bothra Metals & Alloys Ltd and The Associated Aluminium Industries Ltd. v. Commissioner of Customs (Import), Nhava Sheva/Kandla - 2013 (9) TMI 546-CESTAT MUMBAI*
(iii) *C.C. (Import), Nhava Sheva. Bharati Rubber Lining & Allied Services P. Ltd. – 2013(287)E.L.T. 124 (Tri.-Mumbai)*
(iv) *Sanjivani Non Ferrous Trading Pvt. Ltd. v. C.C.E & S.T., Noida – 2017(7)G.S.T.L. 82 (Tri. –All.)*
(v) *Commissioner of Customs, New Delhi v. Prabhu Dayal Prem Chand – 2010(253)E.L.T. 353 (S.C.)*

3.6 As regards the reliance placed in the SCN on evidence gathered from the premises of another importer viz., Associated Aluminium Industries Pvt. Ltd., learned Advocate submitted that the said evidence cannot be relied upon for enhancing the value of imports made by the appellant. He submitted that when the enhancement of value in the case of Associated Aluminium Industries Pvt. Ltd., itself has been set aside by the Tribunal, the question of relying on the evidence found against that importer to enhance the value in case of the appellant, does not arise.

3.7 He also submitted that the findings of Commissioner of manipulation of documents based on two Contracts dated 20-12-2005 are totally untenable in law. The Commissioner has arrived at the said erroneous finding, because he has not considered and has not taken into account the appellant's reply dated 17-6-2014, which clearly contains the explanation in respect of the said two contracts. The Commissioner has completely ignored the explanation given by the appellants in their reply, explaining the facts and circumstances, justifying the two different prices of the contracts entered on the same day. He also submitted that the two contracts of the same date are not in respect of the one and the same consignment but are two different contracts for two different consignments. The Commissioner has seriously erred in presuming and proceeding on the basis, as if, there were two contracts for the same consignment, which had two different prices, one higher and the other lower and that the appellant had concealed the contract with the higher price and shown the lower price. The Commissioner has erred in proceeding on the totally baseless presumption that the two contracts were for the very same goods of the same quantity. The two contracts were for two different consignments of different quantities and different country of origin. The difference in the prices of the goods covered by the said two contracts was on account of the difference in the density of the goods covered by the two contracts. The goods with the higher density are costlier on account of the higher metal content.

3.8 Learned Advocate further submitted that in any event, since at the time of import and assessment of the B/Es, the value had already been enhanced based on contemporary imports, the proposal to enhance the value further, was not sustainable in law. In this context, he has relied upon the decision of this Tribunal, in the case of *Rico Gems Corporation & Others v. Commissioner of Customs (Import), Mumbai – 2016 (1) TMI 551-CESTAT MUMBAI.*

3.9 He further submitted that the SCN dated 31.03.2008, demanding duty in respect of goods cleared during the period April 2003 to October 2006, is clearly barred by time, having been issued beyond the limitation period of 6 months provided under Section 28 (1) *ibid*. He submitted that the larger period of limitation can have no application, when the issue of valuation was gone into at the time of import and enhancement was done based on contemporary imports. Further, when the prices at which the appellant imported the goods have been accepted in the case of other importers, no *mala fides* can be attributed, justifying invocation of the larger period of limitation.

4. On the other hand, Shri Ram Kumar, learned Authorized Representative (AR), appearing for the Revenue, reiterated the findings recorded in the impugned order in support of confirmation of the adjudged demands on the appellants.

5. Heard both sides and examined the case records.

6. We find that in the present case, proceedings were initiated by the department against M/s. NICO, on the premise that they had resorted to undervaluation of zinc scrap and aluminium scrap imported by them during the period April 2023 to October 2006, 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 CVR, 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 ISRI and parameters of valuation of aluminium scrap fixed by the Director General of Valuation (DGOV) in the Alert Circular No. 14/2005 dated16.12.2005, 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 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 illegal channels. We find that the 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. NICO 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 B/Es 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. There is no evidence on record in this context. Further, Revenue has also not alleged that the appellant had any interest in the business of the overseas suppliers and vice-versa.

7. We also find that the learned counsel for the appellants has challenged the statements of Shri Tushar Porwal and Shri Nitul B. Shah recorded by the department during the investigation and produced the retractions; however, the learned adjudicating authority has completely ignored their retractions. In the present matter, we noticed that there is absolutely no evidence to corroborate the statements of the above persons, who have retracted the same and also denied their

correctness in cross examination conducted during the course of adjudication. There is no corroborative evidence whatever, to show that any amount over and above the invoice price, was paid to the foreign supplier or their representatives in India. Therefore, we find that the department has not placed on record any credible evidence, for rejection of the declared transaction value. It is on record that the appellant has objected to such reliance, as the statements were retracted immediately and the same are contradictory to documentary evidence *i.e.,* contemporaneous import price produced by the appellant. The appellant has pleaded that retracted statements cannot be accepted as evidence for confirmation of demand and the said retraction was immediately sent through postal department for delivery in the office of DRI. The adjudicating authority in the impugned order has chosen for not to consider the retraction letter on the ground that looking at the same, it cannot be inferred that the same were received by the DRI. We are of the view that the said approach of the adjudicating authority is incorrect as the reason for not considering the retraction appears to be presumptive in nature as no evidence has been produced to show that the DRI was not in receipt of the said letters. Further, we also find that the appellants in their reply to the SCN and subsequent letters addressed to the department, had specifically stated about the retraction with the supporting evidence. However, in the impugned order, the learned adjudicating authority has not recorded any observations with regard to such submissions made by the appellant. Be that as it may, we note that statements cannot be the sole reason to confirm the charge of undervaluation and the same has to be corroborated with documentary evidence. In the present case, the documentary evidence in the form of contemporaneous import data, produced by the Appellant, is contrary to the oral statements. It is a settled position of law that in case of difference between documentary evidence and oral evidence, the former should be given precedence and later should be ignored. This view has been considered by the Tribunal in the case of *Philip Fernandes* v. *Commissioner* - 2002 (146) E.L.T. 180, *R.P. Industries* v. *Collector* - 1996 (82) E.L.T. 129 and *Commissioner* v. *Latex Chemicals* - 2005 (181) E.L.T. 138 (Tri. - Del.). Therefore, we are of the considered view that the statements of co-appellants and other witnesses cannot be relied upon or the same cannot be the considered as the sole basis to confirm the charge of undervaluation, as the same is contrary to documentary evidence, which is in the form of contemporaneous import price declared in the case of Pushpak Metal Corpn. (supra). We also note that the allegation of payment of the excess amount over and above the invoice price paid through illegal channel, is equally unjustified and there is no evidence of any hawala transaction to prove the said allegation. There is neither any evidence brought on record to show as to how the appellant came into possession of the cash, which was alleged to be the differential amount towards import of scrap; nor, there is any evidence of any cash being handed over to any person, representing suppliers in India.Thus, the charges framed by the department that the appellant had paid excess amount, over and above the invoice price, is uncorroborated.

8. We also note that the learned adjudicating authority has proceeded to re-determine the value of imported scrap, on the basis of the DGOV circular, without considering and overlooking the contemporaneous data available before him on record. It is a settled position of law that if the declared value is to be rejected, then in that case, for re-determination of the value, the proper officer has to proceed sequentially through Rule 5 to Rule 8 of the CVR, 1988. If the value of contemporaneous imports are available, the same shall be the basis for re-determination of value, as held by the Hon'ble Apex Court in the case of *Commissioner of Customs, Calcutta* v. *South India Television (P) Ltd.*, reported in 2007 (214) E.L.T. 3 (S.C.). We find that the appellant before the learned adjudicating authority as well as before us has submitted a comparison chart, reflecting the prices of goods imported by them vis-à-vis *Baheti Metal* (supra) and *Pushpak Metal Corpn. (supra)*. By relying upon such chart, it was contended that the prices declared for the impugned goods by the appellant are either higher or at par, with the prices of the said contemporaneous imports made by the said importers, and hence, is comparable. Ongoing through the comparison chart, we are in agreement with the submissions made by the appellant that the import prices declared by them are indeed comparable, with the prices declared by the above named contemporaneous importers. We note that in the case of M/s Baheti Metal (supra), prices declared by them were found identical to prices declared by other importers. The Final Order dated 24.11.2011 passed by the Tribunal in the case of *Baheti Metal& Others*, reported as

Pushpak Metal Corporation (supra), on the identical issue of import of the same goods, in allowing the appeals in favour of the appellants therein was accepted by the Central Board of Excise & Custom (CBEC) which is evident from the letter dated 25.06.2013, addressed by OSD of the Judicial Cell, CBEC to the Commissioner of Customs, Kandla. Acceptance of the order passed by the Tribunal in the case of *Pushpak Metal Corporation*(supra), clearly depicts that the price declared by the appellant herein should be considered as the transaction value for the purpose of payment of customs duty inasmuch as the imports made by those contemporaneous importers are at the same commercial level at which the appellant had imported the impugned goods. Hence, we have no hesitation in holding that the impugned order, re-determining the value of imported scrap on the basis of DGOV circular and by overlooking the contemporaneous data, is liable to be set aside.

9. LME prices cannot be the sacrosanct evidence to substantiate the charge of undervaluation, especially when contemporaneous import of almost same price was available during the material time. The law is well settled in the following cases, that transaction value cannot be rejected, unless there is contemporaneous evidence to reject the invoice value.

(i) *Commissioner of Customs, New Delhi* v. *M/s. Prabhu Dayal Prem Chand* reported in 2010 (253) E.L.T. 353 (S.C.)

(ii) *Commissioner of Customs, Kolkata* v. *M/s. South India Television (P) Ltd.* reported in 2007 (214) E.L.T. 3 (S.C.)

(iii) *Commissioner of Customs, Mumbai* v. *H.D. Orgochem Ltd.* reported in 2008 (226) E.L.T. 9 (S.C.).

In view of the settled position of law, we are of the considered opinion that the impugned order, re-determining the value of imported scrap on the basis of DGOV Circular cannot be upheld and the value declared by the M/s NICO, cannot be rejected.

10. Further, we also find that in respect of the B/Es, the value has already been enhanced at the time of assessment and hence, further proposal to re-enhance the value, when the earlier assessment order has attained finality, cannot be insisted upon. It is an undisputed fact that the order finalizing the assessment has not been appealed against by the Revenue, meaning thereby that the said order has attained finality and cannot be further acted upon in enhancing the value. Such

view is supported from the decisions rendered by the judicial forum in the case of *Commissioner of Customs(Imports), Mumbai* v. *Lord Shiva Overseas* - 2005 (181) E.L.T. 213;*Malhotra Impex* v. *Commissioner of Customs*, Ahmedabad- 2006 (203) E.L.T. 561; and *Commissioner of* Customs*(Preventive), Mumbai*v. *Paras Electronics* - 2009 (246) E.L.T. 231.

11. We have also gone through the SCN, wherein the evidence of import in the case Associate Aluminium Industries Pvt. Ltd. has been relied upon to enhance the value of goods imported by the appellant. We find that the Tribunal in the said case, reported in 2013(9)TMI 546 –CESTAT Mumbai had set aside the enhancement of value. We agree with the arguments placed by the learned Advocate that when the enhancement of value in the case of the Associated Aluminium Industries(supra) has been set aside, the question of relying on such evidence found against such importer to enhance the value of the present disputed goods cannot be sustained.

12. In line with the foregoing discussions and analysis, we are of the considered view that the adjudged demands confirmed against the appellant M/s. NICO are not sustainable. For the same reason, the penalty imposed upon the co-appellants namely, Shri Nitul B. Shah and Shri Tushar A. Porwal is also not sustainable. Therefore, we set aside the impugned order dated 13.03.2019 and allow all the appeals filed by the appellants, with consequential relief, as per law.

(Order pronounced in open court on 16.07.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha