CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86365 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Bimal P Shah **.....Appellant**
Proprietor of M/s Raj Traders
108, 10/21, Floax Chamber
Tata Road No.1, Opera House
Mumbai – 400 004.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate, Mumbai–400 001.

Appearance:

Shri B. Venugopal, Advocate for the Appellant
Shri S.K. Mathur, Special Counsel for the Respondent

Customs Appeal No. 86480 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Nimmit K Dhingra **.....Appellant**
1st Floor, Sushila Bhawan, 24 Adi,
Marzban Path, Ballard Estate, Mumbai – 400 001.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate, Mumbai–400 001.

Appearance:

Shri N.D. George, Advocate for the Appellant
Shri S.K. Mathur, Special Counsel for the Respondent

WITH

Customs Appeal No. 86515 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Navabhai Vohtabhai Patel **.....Appellant**
Flat 102, Krishnakunj Building, C-Wing,
Charnipada, Rehnal Gaon, Bhiwandi, Thane – 421 302.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate
Mumbai–400 001.

Appearance:

Ms. Dishya Pandey, Advocate for the Appellant
Shri S.K. Mathur, Special Counsel for the Respondent

WITH

Customs Appeal No. 86682 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Best Roadways Limited **.....Appellant**
C-505 Pramukh Plaza, 5th Floor,
Cardinal Gracious Road Chakla, Andheri (E),
Mumbai – 400 099.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House,
Ballard Estate, Mumbai–400 001.

WITH

Customs Appeal No. 86689 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Prakash Agarwal **.....Appellant**
Best Roadways Ltd, C-505, Pramukh Plaza,
5th Floor, Cardinal Gracious Road, Andheri (E),
Mumbai – 400 099.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate, Mumbai–400 001.

WITH

Customs Appeal No. 86690 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Ajay Kumar Singh **.....Appellant**
Best Roadways Ltd, C-505, Pramukh Plaza,
5th Floor, Cardinal Gracious Road, Andheri (E),
Mumbai – 400 099.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate, Mumbai–400 001.

AND

Customs Appeal No. 86691 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Snehal Ashok Patil **.....Appellant**
Best Roadways Ltd, C-505, Pramukh Plaza,
5th Floor, Cardinal Gracious Road, Andheri (E),
Mumbai – 400 099.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate
Mumbai–400 001.

Appearance:

Shri Riddhi Gada, Advocate for the Appellant
Shri S.K. Mathur, Special Counsel for the Respondent

WITH

Customs Appeal No. 87106 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Jagdish Babulal Purohit **.....Appellant**
Room No.20-21, 1st Floor,
New Muncipal Building, 78/20, Shuklaji Street,
Mumbai – 400 008.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House,
Ballard Estate, Mumbai–400 001.

WITH

Customs Appeal No. 87318 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Gurvinder Singh Kochhar **.....Appellant**
Manager, M/s Raj Traders
D/301 Shanti Apartments, Mathuradas Road,
Opposite Atul Tower Near Dattani Gram,
Kandivali (W), Mumbai – 400 067.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House,
Ballard Estate, Mumbai–400 001.

WITH

Customs Appeal No. 87987 of 2019

(Arising out of Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 passed by Principal Commissioner of Customs (Preventive), Mumbai.)

Navanth H Yewate **.....Appellant**
203, Aashirvad Apartment,
Purneshwar Mandir, Taluka Wada,
Thane – 421303.

VERSUS

Commissioner of Customs (Preventive) **.....Respondent**
2nd Floor, New Custom House
Ballard Estate, Mumbai–400 001.

Appearance:

Shri B.Venugopal, Advocate for the Appellant
Shri S.K. Mathur, Special Counsel for the Respondent

CORAM:

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

FINAL ORDER NO.A/85925-85934/2024

Date of Hearing: 02.05.2024
Date of Decision: 02.09.2024

PER :S.K. MOHANTY

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

2.1 On receipt of specific information of mis-declaration with regard to importation of actual size and quantity wise LED TV panels, the officers of Customs (Preventive), Mumbai Customs Commissionerate had intercepted two containers bearing Nos. TLHU-9404866 and TLHU-8577390 imported under Bills of Entry (B/Es) Nos. 8740810 and 8738425, both dated 02.03.2017. The said B/Es were filed by Shri Bimal P. Shah, Proprietor of M/s. Raj Traders. The said containers were examined under Panchnama dated 06/07.03.2017 in the presence of the panch witnesses, including Shri Bimal P. Shah. On examination, the Container No. TLHU-9404866 was found to contain a total of 781 nos. of Sony brand LED TV Panels, instead of 518 nos. of LED TV panels as declared in the B/Es; thus, there were found to be an excess quantity of 263 nos. LED TV panels. Further, upon examination, Container No. TLHU-8577390 was found to contain the following quantity of goods:

Sl. No.	**Description of goods**	**Qty.**
1	Assorted PCB	2065 set
2	Assorted Speaker	2067 set
3	AC Cord W/Power supply	2057 pcs
4	Back Cover	2120 pcs
5	Empty Box	2065 Pcs
6	Remote control, Screw & Manual	2065 set
7	Plastic stand	1958 pcs*
8	Metal stand	107 pcs*

(*Total quantity of plastic and metal stands was found to be 2065 nos.)

2.2 Owing to the reasons of recovery of excess quantity of LED TV panels and mis-declaration with regard to disassembled Sony LED TVs as LED Panels and parts of TV, the Customs department had interpreted that the said imported goods are liable for confiscation under Section 111 of the Customs Act, 1962 (for short, referred to as 'the Act of 1962'). On the basis of such understanding, the imported goods found in the said two containers were detained by the department under Panchnama dated 06/07.032017, and were handed over to the custody of Bimal P. Shah, Proprietor of Raj Traders, under Detention Memo and a supratnama dated 07.03.2017.

2.3 In addition to the above referred containers, an information was also received by the Customs department on 14.03.2017 that two more containers, being Nos. AMFU-8430256 and TLHU-7316935 were arrived in the same vessel from Singapore, supplied by the same overseas supplier for the Indian importer M/s Raj Traders, which were discharged at JNPT and have already been cleared on 07.03.2017 through ICD, Tarapur vide B/E No. 8795140 dated 07.03.2017. The details of imported goods in the above said containers are as per the table below:

Sr. No.	Description of goods	No. of Pcs.
	Container No. TLHU-7316935	
1	Sony brand LED TV panel 40" size	600
2	Sony brand LED TV panel 55" size	50
3	Sony brand LED TV panel 55" size	2
	Total	**652**
	Container No. AMFU-84330526	
1	Sony brand LED TV panel 40" size	432
2	Sony brand LED TV panel 48" size	100
3	Sony brand LED TV panel 49" size	100
	Total	**632**
	Grand Total	**1284**

2.4 In context with such imported goods, the department had conducted the detailed investigation and recorded statements of various persons. The investigation revealed that the importer had imported 2065 Sony TV sets in disassembled condition in four containers from the same overseas supplier from Singapore, which were arrived by same vessel, and that, in order to evade detection, the importer and his co-conspirators had arranged to get the four containers cleared through two Customs Stations, i.e., JNCH, Nhava Sheva and ICD, Tarapur, by bifurcating them into two consignments of two containers each; and cleared the same as LED TV Panels and parts of LED TVs. The department had alleged that such *modus operandi* was adopted by the importer, with the intent to evade detection with regard to some of the LED TV Panels (518 declared and 263 LED were non-declared), in the consignment cleared vide B/E No. 8740810 dated 02.03.2017 from JNCH, Nhava Sheva. Thus, it was contended by the department that the importer had made mis-declaration by filing three different B/Es, instead of single B/E, for declaring the imported goods as 2065 Sony TV sets, classifying the same under CTH 8528 75 19. It has further been contended that the provisions of Rule 2(a) of the General Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 is applicable to such imports made by the appellant. It was also alleged that the value of the imported goods under the B/Es Nos. 8740810 dated 02.03.2017; 8738425 dated 02.03.2017 and 8795140 dated 07.03.2017 had been mis-declared as the value of the LED TV Panels and parts of TV.

3.1 On the basis of detailed investigation, the department had issued the Show Cause Notice (SCN) dated 28.02.2018, proposing for demand of customs duty of Rs. 1,75,53,028/- under Section 28(4) of the Act of 1962 from the importer-appellant Shri. Bimal P. Shah, along with interest under 28AA of the Act of 1962. Further, it was also proposed for imposition of penalties on the said appellant under Sections 114A, 114AA and 112(a) & (b) and 117 of the Act of 1962. Besides, the SCN had also proposed for imposition of penalties on the other appellants viz., S/Shri Gurvinder Singh Kochhar, Navant H Yewate and Jagdish Babulal Purohit, amongst others. The matter arising out of the SCN dated 28.02.2018 was adjudicated by the learned Commissioner of Customs (Preventive), Mumbai, vide Order-in-Original No. PCCP/ADJ/CCP/NC/2/2019 dated 07.03.2019 (for short, referred to as 'the impugned order'), in confirming the proposals made in the SCN. The adjudged demands were confirmed in the impugned order, in the following manner:

(i) Classified 2065 Sony LED TVs of sizes 32"/40"/43"/48"/49"/55" imported in the disassembled condition covered under three Bills of Entry No.8740810 dated 2.3.2017, 8738425 dated 2.3.2017 and 8795140 dated 7.3.2017 under Customs Tariff Item(CTI) 8528 7219;

(ii) re-determined transaction value of 2065 Sony LED TVs of sizes 32"/40"/43"/48"/49"/55" imported in the disassembled condition at Rs.5,39,00,963/- in terms of Rule 3(4) and Rule 9 of the Customs Valuation (Determination of Value of Imported goods) Rules, 2007;

(iii)confirmed the demand of Customs duty of Rs.1,75,53,028/-and ordered recovery of the same from the importer-appellant, under Section 28(8) of the Act of 1962;

(iv) confirmed recovery of interest on the demand of Custom duty under Section 28AA of the Act of 1962;

(v) ordered for confiscation of 2065 Sony LED TVs of sizes 32"/40"/43"/48"/49"/55" imported in the disassembled condition, covered under three Bills of Entry No.8740810 dated 2.3.2017, 8738425 dated 2.3.2017 and 8795140 dated 7.3.2017 under Section 111(d), 111(f), 111(j) and 111(1) of the Act of 1962;

(vi) imposed redemption fine of Rs.3,00,00,000/-, in lieu of confiscation of the imported goods, under Section 125(1) of the Act of 1962;

(vii) Imposed a penalty of Rs.1,75,53,028/- and payable interest thereon under 114A of the Customs Act, 1962 on the Importer;

(viii) Imposed a penalty of Rs.20,00,00,000/- under 114AA of Customs Act, 1962 on the Importer;

(ix) Appropriated the Customs duty totaling to Rs.48,65,448/- paid under three Bills of Entry No. 8740810 dated 2.3.2017, 8738425 dated 2.3.2017 and 8795140 dated 7.3.2017 against the Customs duty of Rs.1,75,53,028/-;

(x) Ordered encashment and appropriating the amount of Rs.11,00,000/- available in the bank account no.318801010 of Union Bank of India against the demand of Customs duty of Rs.1,75,53,028/-.

3.2 The impugned order has also –

(i) imposed penalty of Rs.5,00,00,000/- under Section 112(a) and (b) and clause (iv) of Section 112 of Customs Act, 1962 on Shri Gurvinder Singh Kochhar, Manager of the Appellant;

(ii) imposed penalty of Rs. 5,00,00,000/- under Section 112(a) and (b) and clause (iv) of Section 112 of Customs Act, 1962 on Shri Ashok Kalange @ Ravi accomplice of Bimal P Shah;

(iii) imposed penalty of Rs.1,00,00,000/- under Section 112(a) and(b) and clause (iv) of Section 112 of Customs Act, 1962 on Shri NimmitKironDhingra;

(iv) imposed penalty of Rs.1,00,00,000/- under Section 112(a) and(b) and clause (iv) of Section 112 of Customs Act, 1962 on Shri Navabhai Vohtabhai Patel;

(v) imposed penalty of Rs.1,00,000/- under Section 112(b) and clause (I) of Section 112 of Customs Act, 1962 on Shri Navnath H. Yewate;

(vi) imposed penalty of Rs.10,00,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on M/s Best Roadways Ltd.;

(vii) imposed penalty of Rs.50,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on Shri Prakash R. Agarwal, Vice President, of M/s Best Roadways Ltd.;

(viii) imposed penalty of Rs.50,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on Shri Snehal Ashok Patil, Senior Executive of M/s Best Roadways Ltd.;

(ix) imposed penalty of Rs.50,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on Shri Ajay Kumar Singh, Junior Assistant of M/s Best Roadways Ltd.;

(x) imposed penalty of Rs.50,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on Shri AvadhootShinde of RBS Logistics;

(xi) imposed penalty of Rs.50,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on Shri Ram VinodJha of RBS Logisticsimposed penalty of Rs.5,00,000/- under Section 112(b) and clause (i) of Section 112 of Customs Act, 1962 on Shri JagdishBabulal Purohit.

4. Being aggrieved with the impugned order dated 07.03.2019, the appellants have preferred these appeals before the Tribunal.

5. Learned Advocate appearing for the appellant-importer submitted a written note of arguments, which is summarized as below:

(i) Copy of panchnama proceedings conducted on 06/07.03.2017 in respect of the imported goods in Container Nos. TLHU-9404866 and TLHU-8577390 was not supplied to the appellant soon after the examination of goods, but was made available only with the SCN, which was issued on 28.02.2018, after a period of more than 11 months from the date of initiation of investigation;

(ii) panchnama proceedings were disputed by the Importer from the very beginning of investigation and several letters were filed with the higher officials of the Customs department, seeking copy of the Panchnama and also sought re-examination of goods under Panchnama. Despite the request made, neither any response was received nor copy of Panchnama was provided by the department;

(iii) cross-examination of the panch witnesses, amongst others, was specifically sought to elicit the truth in the Panchnama proceedings, which was rejected by the adjudicating authority;

(iv) there are no excess LED TV panels of 263 nos. in the imported consignments under Container Nos. TLHU-9404866 and TLHU-8577390 as claimed in the SCN or the impugned order. It is for this reason, the importer had contested the Panchnama proceedings from the very beginning of the investigation. It is a fact on record that the overseas supplier's representative has confirmed vide e-mail dated 20.03.2017 that they had supplied only LED panels to the extent declared in the documents, in response to e-mail sent by the importer. For the reason best known to the department, neither the investigating team nor the adjudicator had conducted any investigation at the end of overseas supplier, in order to ascertain the true and correct position;

(v) the allegation of artificially splitting-up of the consignments imported in one vessel into three shipments to mis-declare the classification of complete LED TVs into LED TV parts, is purely an assumption, without any proof or evidence;

(vi) in a case of mis-declaration or misclassification, the burden to prove is cast upon the department and the conclusions cannot be drawn based on assumptions and presumptions and the facts have to be established by recording evidence to justify the mis-declaration/mis-classification, which has not been done in this case;

(vii) neither the investigation nor the findings in the impugned order have been able to establish that all the parts imported, constituted disassembled LED TVs i.e., it was not identifiable as separate parts but were processed to manufacture LED TVs and subsequently disassembled to avoid classification, as concluded by the adjudicating authority in the impugned order;

(viii) the classification of the imported goods in the impugned order is contrary to the Apex Court judgement in the case of *Commissioner of Customs, New Delhi Vs Sony India Ltd. - 2008 (231)E.L.T.385 (S.C.).* Reliance is also placed on applicability of Rule 2(a) of the General Interpretative Rules to the Customs Tariff Act, 1975.

(ix) the conclusions drawn by the adjudicating authority in the impugned order are merely based on assumptions and presumptions, without ascertainment of the correct facts by making references to the overseas supplier or carrying out detailed examination of the goods seized. The department had also failed to establish,so as to ascertain the individual specification of the parts to establish, whether these parts were attributable to one specific LED TV configuration (size) or for the different sizes as per the LED TV panel size imported;

(x) even the opinion sought from Sony India Pvt. Ltd. on the samples drawn from the imported consignments is inconclusive, since they were not given access to the entire imported consignment in order to give a conclusive opinion as to whether the entire imported consignment would constitute 2065 complete LED TVs;

(xi) the goods in question in the present appeals were allowed clearance for home consumption on payment of duty, on the basis of an assessment order as envisaged in section 2(2) the Act of 1962. That self-assessment is also an assessment order in terms of the customs statute. That the department cannot enhance or re-determine the assessment so done, by issuance of a show cause notice, at a future date, alleging mis-declaration etc., without first challenging the bill of entry assessment in respect of the goods, which have presently ceased to be imported goods as postulated in Section 2(25) of the Act of 1962, in terms of various judgements delivered by the judicial fourms. The bills of entry assessment have not been challenged in the present case;

(xii) it was therefore, submitted that the Department had completely failed to prove that the imported consignments of parts of LED TVs are actually complete LED TV sets and the findings in the impugned order are without any basis/evidence and therefore, the classification of the imported goods as complete TV sets and consequently, the valuation as complete TV sets is not sustainable in law. Accordingly, it is prayed for setting aside the demand of duty, interest, penalties and redemption fine imposed in the impugned order;

6. Learned Advocates appearing for the other appellants have reiterated the stand taken for the main appellant Shri Bimla P Shah, proprietor of M/s Raj Traders, as their submissions, against confirmation of the penalties on them. They have submitted that the provisions of Section 112 of the Act of 1962 are not attracted in the case of the appellants inasmuch as the goods in question were not improperly imported. Further, it was contended by the learned Advocates that even assuming, the goods were imported in contravention of the provisions contained in the Customs statute, but the proceedings initiated against the co-noticees (the other appellants herein) for confirmation of penalties, cannot be sustained, for the reason that they had absolutely not involved in such alleged contravention of the statutory provisions. Hence, they have submitted that, since the co-appellants had not involved or played any active role, in alleged illegal importation of the subject goods, penal consequences do not attract in their cases.

7. On the other hand, Learned A.R. appearing for the Revenue reiterated the findings recorded in the impugned order.

8. Heard both sides and examined the case records, including the written note of submissions filed during the course of hearing, by both sides.

9.1 We find that the root cause for initiation of the present proceedings by Revenue against the importer/appellant, was concerning with the fact of importation of 2065 Sony brand LED TV sets in disassembled condition in four containers, cleared through two Customs Stations i.e., JNCH, Nhava Sheva and ICD, Tarapur. The case of Revenue is that the importer/appellant had bifurcated such imported goods into two consignments, of two containers each, and cleared the same as 'LED TV Panels' and 'parts of TV'. However, the importer/appellant had vehemently denied that there were no excess LED TV panels of 263 nos., which were alleged to have been found by the department. In this regard, the importer/appellant had contested the Panchnama proceedings conducted on 06/07.03.2017 on various counts, which are summarized as under:

(i) Panchnama proceedings were commenced on 06.03.2017 at 23.30 hrs. and concluded at 19.30 hrs., on 07.03.2017; however, due to unavailability of labourers, the destuffing of Container No. TLHU-

9404866 was commenced only in the morning of 07.03.2017, after 10.00 am.; that no specific time however had been mentioned, as to when the destuffing and 100% examination was commenced; further, the details and number of labourers, who had assisted in destuffing the containers were not also mentioned.

(ii) Panchnama records that the Panch witnesses along with the investigating team had examined the contents of Container No. TLHU-9404866 and found to have contained excess of 263 nos. of LED TV panels; that, as per panchnama, the entire container examination was concluded sometime before 14.30 hrs. on 07.03.2017, when the second container was opened around the same time at 14.30 hrs. Since, the second container was shifted to another godown for examination, due to space constraint in the first godown, it can be safely presumed that examination of the first container was concluded around 13.30 hrs. to 14.00 hrs. on 07.03.2017. Thus, the examination of contents of container was done between 10:00 hrs. to 14:00 hrs. on 07.03.2017 i.e., in a time frame of around 4 hours. In the Panchnama, it has been recorded that the officers segregated the boxes according to their sizes, by opening each of the boxes and it was found that the boxes/cartons contained TV panels. For 100% examination of 781 cartons/boxes said to have been found as against the declared 581 nos. of cartons/boxes, the time taken for examination works out to 30 seconds per carton, which *prima facie* practically and logically highly impossible. Thus, the claim in Panchnama that the imported goods were subjected to 100% examination in Container No. TLHU-9404866 is not free from doubt.

(iii) Panchnama records that the imported goods were subjected to 100% examination. However, Panchnama fails to mention the details of examination done by the department, in context with description of the goods on the cartons as well as the serial nos., model nos. etc., of the imported goods. This also cause suspicion on the claim that the goods were subjected to 100% examination.

(iv) The Panchnama revealed that examination of the Container No. TLHU-8577390 was commenced at 14:30 hrs. on 07.03.2017. Here also, segregation of the cartons were done as per the description on the cartons and the same was done in the presence of the panch witnesses along with the investigating team, who had examined and physically verified the contents of the second container and found them to be in order. However, for the reasons best known to the investigating team, they had failed to detail out the exact contents of the goods in the second container. As per the invoice/packing list and B/Es, the imported goods in the said container were:

Sl. No.	**Description of goods**	**Qty.**
1	Assorted PCB	2065 set
2	Assorted Speaker	2067 set
3	AC Cord W/Power supply	2057 pcs
4	Back Cover	2120 pcs
5	Empty Box	2065 Pcs
6	Remote control, Screw & Manual	2065 set

Sl. No.	Description of goods	Qty.
7	Plastic stand	1958 pcs
8	Metal stand	107 pcs

(v) The subject goods were packed in 355 cartons as per the packing list. Panchnama records that the contents in the said cartons were physically counted and subjected to 100% examination. Destuffing of the container commenced at 14.30 hrs., and concluded at 19.30 hrs. (i.e., four to five hours). Such reporting was factually incorrect inasmuch as 355 cartons comprising of around 2065 sets/pcs., which were subjected to 100% examination and drawing of representative samples therefrom, item wise, are not practically feasible within the short duration, as mentioned in the panchnama.

(vi) The Panchnama records that the samples were drawn from every lot for further examination. However, there is no mention about the details of the samples drawn; the manner of packing; presence of the importer/representative of importer, who had signed the documents, as a proof of such examination. Thus, the procedure laid down in the customs statute regarding the manner of drawing the samples for testing were not complied with by the department.

(vii) Most importantly, Panchnama fails to record the examination of contents of Container No. TLHU-8577390 with regard to the details of each of the products found, particularly in the light of the fact that different sizes of LED TV Panels i.e., 32"/40"/43"/48"/49"/55" were imported in Container TLHU-9404866. It has been stated that all parts put together would constitute 2065 nos. of complete LED TV sets. In other words, there is no evidence to suggest that the assorted parts like, PCBs, speakers, back covers, power supply, stands, empty boxes, remote controls, etc., found in Container No. TLHU-8577390 were proportionate to each of the sizes of LED TV panels, in order to substantiate the case of the Department that the complete LED TVs were imported in disassembled form/ condition.

9.2 Contesting the proceedings under Panchnama conducted on 06/07.03.2017, the importer-appellant had referred to the decision of the Larger Bench of this Tribunal in the case of *Kuber Tobacco Products Ltd. v. Commissioner of Central Excise, Delhi – 2013 (290) ELT 545 (Tri-Del*), to state that the Panchnama proceedings are not in accordance with law. Accordingly, the importer-appellant has contested the proceedings under Panchnama conducted on 06/07.03.2017 and also denied the excess LED TV panels of 263 Nos., said to have been found in the imported consignment.

9.3 We have carefully examined the arguments canvassed by the importer-appellant, disputing the proceedings under Panchnama conducted on 06.03.2017/07.03.2017. We find adequate substance in such arguments. The importer-appellant has been disputing the proceedings of Panchnama drawn on 06/07.03.2017 relating to Containers, bearing nos. TLHU-9404866 and TLHU-8577390 and had written several letters to the Customs authorities concerned for providing the copy of the Panchnama and also sought re-examination of the imported consignments. However, no copy of Panchnama was provided to importer-appellant, nor the request for re-examination of the import consignments was acceded to. It is observed from the Panchnama drawn on 06/07.03.2017 that the presence of the importer Shri Bimal P. Shah, though was recorded therein, but he has not been impleaded as a party in the Panchnama proceedings (though the said importer was made to sign the Panchnama). On the basis of panchnama, since the department had alleged that the containers were containing smuggled goods, such allegation is serious in nature, for which no credible evidences were furnished or relied upon by the department to prove that such charges are correct and justified. We fail to appreciate as how and under what circumstances, the investigating officers were prevented to make the importer-appellant a party to the Panchnama proceedings, whose testimony have been heavily relied upon for booking the offence case. We also find that the impugned order has also not produced any credible evidence to such effect. Moreover, when the case of the Revenue is that the importer-appellant had imported complete LED TV sets in disassembled form/condition, it is incumbent on them to prove the same by conducting detailed investigations, especially establishing the fact that all the parts of LED TVs, put together in all the four containers, would constitute 2065 TV sets, as has been claimed and held in the impugned order. It is also observed from the Panchnama that 100% examination of Container no. TLHU-8577390 was conducted from 14:30 hours to 17:30 hours. Surprisingly, the Panchnama fails to mention the details of the assorted PCBs, speakers, power supply, back covers/remote controls, stands, etc., in order to correlate and match the same with the different sizes of the LED TV panels contained in Container no. TLHU-9404866, to conclusively prove that all these parts assembled together with LED TV panels would constitute complete TV sets. The investigation completely failed on this aspect, which is of paramount importance for establishment of the case for the Revenue. This cast shadow on the charge that the importer-appellant has imported complete LED TV sets in the guise of parts of LED TV, in order to avoid payment of duty under the classification of the TV sets. Thus, the Panchnama proceedings drawn on 06/07.03.2017 is faulty and no reliance can be placed on the same. In this context, paragraphs 21 and 22 in the Order passed by the Larger Bench of this Tribunal in *Kuber Tobacco (supra)* are relevant, which are extracted herein below:

> ***"21.*** *A panchnama is a record of the things visually perceived or actually experienced by the panchas in the course of investigation. If it is a search panchnama, obviously, it should record everything that takes place in the course of search. Mere recording that the search officers offered for search of their person is not sufficient. In relation to the seizure of documents, it was necessary not only to record that the documents were recovered from the premises but was also necessary to record a brief description of the exact place where the documents were located in the premises and from where they were seized by the seizing officer. It was necessary to record as to what steps the seizing officer had taken so as to refrain himself and persons accompanying him from causing any damage to the documents as also to avoid any interpolation or inference in any manner with such documents and contents thereof. It was also necessary to record as to what steps were taken to safeguard the documents and to avoid possibility of any stranger's interference with the seized materials. In other words, when any document is seized, it is necessary to enclose the same in a cover and to seal such cover so that no other person gets opportunity to interfere with such document. All these things can of course be recorded briefly, but precisely. This aspect gains more importance once there is objection regarding veracity of the panchnama and the contents of the documents stated to have been seized in the course of such panchnama.*
>
> ***22.*** *As rightly pointed out by the learned Advocate for the appellants, a panchnama should disclose proper description of the premises and the things found in the premises. The information in this regard assumes more importance when there is serious dispute about the articles alleged to have been recovered and seized from such premises and such articles are sought to be linked with the activities of the concerned party. The panchnama and the proceedings in relation thereto should not leave any room to entertain any doubt as such and for the possibility of planting any article and/or document by third person or of the scope for interference by strangers with the documents or contents thereof. Obviously, therefore, any article or document seized from any premises is required to be properly sealed after being packed with necessary wrapper or*

envelop or covering, as the case may be, so as to avoid any possibility of third party interference with such article or document. In the absence of such steps being taken in the course of seizure of the articles or documents, certainly the credibility of not only of the seizure and recovery but of the material seized and recovered can also be doubted. It is also necessary to record not only the description of the premises but also the movement of the officers and the panchas searching the premises and every relevant action of every such person has to be precisely recorded in the panchnama to avoid any doubt about the seizure proceedings. None of such precautions were taken in the cases in hand."

10. Another argument canvassed by the importer-appellant is that, neither the investigation nor the impugned order was able to establish that all the parts imported by the importer-appellant constituted disassembled LED TVs i.e., it was not identifiable as separate parts, but were processed to manufacture LED TVs and subsequently disassembled to avoid classification as LED TVs, as concluded by the adjudicating authority in the impugned order. We find that the impugned order, except for relying upon the investigation detailed out in the SCN, no substantive evidence has been brought on record by the adjudicating authority. Further, the Revenue had also failed to cause investigation at the overseas supplier's end to ascertain as to whether, they had supplied LED TVs in disassembled condition, treating the same as parts, which is vital for establishing the alleged mis-declaration. On the contrary, it is a fact on record that the importer-appellant had sent an e-mail to the overseas supplier to ascertain the quantity of LED TV panels supplied to them in B/E No.8740810 dated 02.03.2017 and the overseas supplier's representative had confirmed vide e-mail dated 20.3.2017 that they had supplied only LED panels to the extent declared in the documents. These correspondences exchanged through e-mail clearly discredit the charge of excess LED panels found during Panchnama proceedings. This further proves the fact that the overseas supplier had only supplied 'LED TV parts' and not 'LED TVs', as held in the impugned order. On this count also, the impugned order has failed to prove the case of the Revenue.

11. Another very important point in this case was brought to our notice by the importer-appellant, i.e., the opinion given by M/s Sony India Pvt. Ltd., based on the reference and samples drawn from Panchnama

proceedings on 06/07.03.2017, which is incidentally relied upon by the adjudicating authority in the impugned order. It is noticed from the records of the case that a reference has been made by the Department to M/s Sony India Pvt. Ltd., by sharing the samples of seized goods and seeking opinion on the classification of the said goods, in order to prove their case that what had been imported by importer-appellant are LED TVs. From the response received from M/s Sony India Pvt. Ltd., it is observed that no conclusive opinion has been given on the query made by the Revenue. The relevant portion of the reply furnished by M/s Sony India Pvt. Ltd., is extracted below-

> *"We understand that these samples and the larger consignment under import is stored at Bhiwandi. To be able to effectively assist in the investigations and provide you a definitive finding we would like to request that access be provided to the location where the detained goods are being held. However, pending such access, prima facie from the items provided for inspection, we are of the view that the inspected items are not parts but LCD TVs in disassembled form. We base our preliminary findings on the following apparent observation-*
>
> *i) Operating instruction manual and Setup Guide material were found in the consignment-this is invariably supplied with finished TVs for the aid of end customers.*
>
> *ii) Twin batteries for use in remote commandeer for the TVs were found-these are ordinarily supplied with finished TV.*
>
> *iii) All key components such as Main board, LCD Panel Assembly, AC Adaptor, Speakers were found in the consignment."*
>
> *Further to a specific query in the reference-*
> *"Q5. Can we make complete TV by assembling the parts?*
> *Answer: Kindly refer to our reply in Paragraph 1. We would be in a position to provide a conclusive response only after being provided access to the full consignment."*

12. In context with the explanation furnished by M/s Sony India Pvt. Ltd., we failed to understand that what had prevented the Department to permit access to the full consignment of imported goods, lying under customs control to M/s Sony India Pvt. Ltd., for obtaining their said opinion. As the imported goods are of 'Sony' brand, they are the competent authority to furnish the opinion with regard to the imported goods, whether those were 'parts of LED TV' or 'complete TV sets' of specific screen sizes. However, in absence of physical examination of the imported goods, no expert in the field can conclusively prove or certify that

the goods imported were parts and not the complete TV sets or otherwise. Though the department had the opportunity to prove the case that the goods imported by the appellant were complete TV sets in disassembled condition, but failed to substantiate the same, inasmuch as no access was provided to M/s Sony India Pvt. Ltd., for even visual inspection of complete consignment of imported goods. Thus, the department had lost the opportunity to prove the case, in the manner, in which they wanted to prove the same. Therefore, we are of the considered view that the conclusions drawn by the adjudicating authority that the imported goods were complete TV sets, are merely based on surmises and conjectures. Since, the department had not investigated the case by making reference to the overseas supplier and did not allow the representatives of M/s Sony India Pvt. Ltd., for carrying out detailed examination of the goods, it cannot be said that the goods imported by the importer-appellant were not 'parts of LED TVs', and the same can be considered as 'complete LED TV sets' by themselves.

13. We find that the impugned order has observed that the importer-appellant had adopted the modus operandi viz., artificially splitting the consignment imported in one vessel into three shipments, to mis-declare the classification, to obviate application of Rule 2(a) of the General Interpretative Rules to the Customs Tariff Act, 1975. Such observation by the original authority, in our considered view, is factually incorrect inasmuch as the importer-appellant had correctly declared the imported goods in the B/Es, based on the import documents received from the overseas supplier. This fact is also confirmed by the overseas supplier in their email reply, addressed to the importer-appellant, which are the part and parcel of the documents, involved in the present proceedings. In contrast to the said findings recorded by the original authority, we find that the importer-appellant has relied upon Rule 2(a) of the General Interpretative Rules to the Customs Tariff Act, 1975 and the decision of the Hon'ble Supreme Court in the case of *Commissioner of Customs New Delhi Vs Sony India Ltd. 2008 (231) E.L.T. 385 (S.C.)* to contend that the imported goods i.e., LED TV parts, as presented before the customs authorities, either in incomplete or unfinished form, did not have the essential characteristics of complete or finished LED TVs. We have perused

the said judgement and found that in paragraphs 16 and 17, the Hon'ble Apex Court have dealt with the subject matter of the dispute vis-à-vis applicability of Rule 2(a) of the General Interpretative Rules to the Customs Tariff Act, 1975. The relevant paragraphs are extracted below:

> ***"16.*** *Our attention was invited to a very interesting decision reported in Modi Xerox Ltd. v. CCE, New Delhi [1998 (103) E.L.T. 619] which was confirmed by this Court in 2001 (133) E.L.T. A91 (it must be noted that the decisions in Woodcraft Products is specifically confirmed in this decision). In this case, the Tribunal had relied on Tara Chand's case as also the CC v. Mitsuny Electronics Works [1987 (30) E.L.T. 345 (Cal. HC)] which we have made reference in the earlier part of this judgment. The Tribunal had held that the fax machine in completely knocked down condition imported by the appellant being not a fax machine but part thereof, the benefit of exemption under Notification No. 59/88/Cus., dated 1-3-1988 would not be available. Very interestingly, it was claimed by the importer that it had imported the fax machine and not the components obviously because the duty payable on the components was more. The Tribunal came to the conclusion that in view of Section Note 2 to Section XVI, Rule 2(a) would not apply and confirmed the import of goods as components. While interpreting Explanatory Note to Rule 2(a), the Tribunal had held that this Rule would apply only when the imported articles presented in unassembled or disassembled can be put together by means of simple fixing device or riveting or welding. It came to the conclusion that fax machines were not the type of goods which were normally traded or transported in knocked down condition and therefore, the imports were that of the components and not of fax machines. Shri Lakshmikumaran also invites our attention to the fact that Chapter 64 dealing with footwear does not have a note similar to Note 2 in Section XVI. Thus, this position would render support to the proposition that Rule 2(a) would apply only when the imported articles presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding. We have already pointed out in the earlier part of our judgment that the complicated process would be required for the user of those parts.*
>
> ***17.*** *Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in Simplex Mills v. Union of India [2005 (181) E.L.T. 345 (S.C.)] wherein this Court had held in para 11 as under :*
>
> > *"11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1*

> *titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant sector or chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-1 gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules."*

Relying on this the further contention of the counsel is that Section Note 2 of Section XVI provides mandate for classification of the parts of machines falling under Section XVI. In terms of Rule 1 of Interpretative Rules, invocation of Rule 2(a) for certain categories of goods covered in Section XVI like the goods of CTVs are prohibited. For this the learned counsel relied on the decision in Modi Xerox (supra). In that view the learned counsel says that Rule 2(a) would not be applicable at all. This question needs no consideration here particularly in view of the interpretation that we have given to Rule 2(a). On facts, we have already found that Rule 2(a) would not be applicable to the present case since there is no question of the goods having the essential character of CTVs. In that view, the question of applicability of Section 2(a) on this account need not be gone into in this judgment."

14. We find that in the present case, neither the investigation nor the impugned order have established the fact that all the parts imported by the importer-appellant had constituted disassembled LED TVs i.e., the imported goods were complete LED TVs, which were subsequently disassembled to avoid classification, as complete TVs, and brought in different consignments. We have also noted that the impugned order has not brought out the facts that all the imported goods, when put together, could make complete LED TVs of specific screen sizes. This is also evident from the findings in the impugned order at paragraph 125, wherein the learned Commissioner had only given the details of nine items/parts such as (A) assorted TV panels, (B) assorted TV parts:- assorted PCBs, assorted speakers, AC cord/power supply, back cover, empty boxes, remote controls, screws, manual and plastic/metal stands, to conclude that the goods imported by the appellant-importer should constitute 2065 pieces of LED TV sets. However, we are not in agreement with such observations made by the original authority inasmuch as there is no parameter (nine in

numbers, as discussed), being prescribed anywhere to qualify the 'parts of TV sets' to be considered as complete LED TV. Thus, we find that the impugned order, has failed to establish that the complete inventory of the goods was examined by the customs investigating officers. Even assuming that the overseas supplier had disassembled the Sony LED TVs and cleared those goods, as parts from their establishment, then in such an eventuality, the investigation should have been able to establish from the said supplier's end that they had in fact supplied LED TVs. Since, this corroboration is of paramount importance for establishing the alleged mis-declaration, which admittedly the department had failed to carry out in this case, we are of the opinion that without proper substantiation, the charges of mis-declaration, which is very serious in nature, cannot be levelled against the appellant-importer. On the contrary, we find that it is a fact on record that the importer-appellant had sent an e-mail to the overseas supplier to ascertain the quantity of LED TV panels supplied to them, for which the B/E No.8740810 dated 02.03.2017 was filed. The overseas supplier's representative has confirmed vide e-mail dated 20.03.2017 that they had supplied only LED panels to the extent declared in the documents. The documentary evidences placed on record proves the facts, without any shadow of doubt, that the overseas supplier had only supplied 'LED TV parts' and not 'LED TVs', as confirmed in the impugned order. Applying the ratio of the judgement of the Hon'ble Supreme Court in Sony India (supra), to the facts of the present case, it is found that the same is squarely applicable and therefore, it can be safely concluded that the imported goods are required to be classified in the form, in which they are presented for assessment i.e., 'parts of LED TV'.

15.1 The importer-appellant has placed the argument that in case of self-assessment of the Bill of Entry, the only recourse available to the department for contesting the said assessment, is by way of filing of appeal under Section 128 of the Act of 1962, before the Commissioner (Appeals), which aspect, admittedly has not been complied with by the department in this case. Thus, it has been submitted that the assessment complete in all respects, cannot be re-opened by the department for confirmation of the duty demand on the importer. In this context, the importer-appellant has relied upon the judgement delivered by the Hon'ble Supreme Court, in the case of *ITC Ltd., Vs. CCE,* 2019 (368) E.L.T. 216 (SC). We have examined the statutory provision contained in Section 17 of the Act of 1962. Sub-section (1) in said Section 17 has provided for self-assessment of the duty leviable on the imported goods. The self-assessment so made by the importer, can be verified by the department under sub-section (2) and/or sub-section (3). If on verification, the proper officer found that the self-assessment has not been done correctly by the importer, then he may re-assess the duty leviable on such goods and for such purpose, he should pass a speaking order, as contemplated under sub-section (5). We find that in the present case, the department has not taken recourse to the provisions contained in sub-section (2), (3) and (4) of said Section 17. Thus, the assessment done by the importer under sub-section (1) has attained finality and cannot be re-opened by the department. For re-opening the self-assessed bill of entry, the only recourse left to the department is for filing an appeal against such self-assessment, which apparently has not been done in the present case. Thus, the department has precluded from re-opening the already assessed bill of entry for confirming the additional duty demand, on the ground that the goods imported by the importer-appellant were not 'the parts of LED TVs', but 'LED TVs' themselves. The law with regard to filing of appeal against the self-assessed bill of entry is no more *res integra*, in view of the judgement delivered by the Hon'ble Supreme Court in the case of ITC Limited (supra). The relevant paragraphs in the said judgement are quoted herein below:

> *"18. It was also urged that Section 27 is a remedy available to the assessee for the refund of duty paid and Section 28 is a remedy available to the Department on the recovery of duty not levied and short levied or erroneously levied. Both the remedies can be availed without filing appeals. It was further urged that no appeal can be filed under Section 128 of the Customs Act against the bill of entry. As the scheme of assessment under Section 17 of the Customs Act is that of self-assessment and only when such a self-assessment is disputed by the proper officer, an order of assessment is passed then he may appeal to the relevant appellate authority within 60 days of the communication of the order. It is only in a situation where speaking order is passed then the assessee is required to file an appeal. Unless a speaking order of assessment is passed, no appeal can lie and the only option for refund of duty paid is to file a refund claim. The bill of entry is merely stamped to allow clearance of the goods. No reasons are provided in the bill of entry on account of which it can be regarded as an order which can be subjected to appeal under Section 128 of the Customs Act."*
>
> *……………………..*
>
> *41. It is apparent from provisions of refund that it is more or less in the nature of execution proceedings. It is not open to the authority which*

processes the refund to make a fresh assessment on merits and to correct assessment on the basis of mistake or otherwise.

42. It was contended that no appeal lies against the order of self-assessment. The provisions of Section 128 deal with appeals to the Commissioner (Appeals). Any person aggrieved by any decision or order may appeal to the Commissioner (Appeals) within 60 days. There is a provision for condonation of delay for another 30 days. The provisions of Section 128 are extracted hereunder:

> *"128. Appeals to Commissioner (Appeals). (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order:*
> *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.*
> *(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*
> *Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*
> *(2) Every appeal under this section shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf."*

43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, *re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3)(4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. v. Union of India - 2009 (240) E.L.T. 490 (Bom.) = 2009-TIQL-317-HC-MUM-CUS though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra).*

45. ………

46. ……….

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act."

15.2 We also find that by adopting the judgement delivered by the Hon'ble Supreme Court in the case of *ITC Ltd. (supra)*, the Hon'ble Punjab and Haryana High Court, in the case of *Jairath International Vs. UOI, 2019 (370) E.L.T. 116 (P & H)* have held as under:

"16. *We on examination of the scheme of the 1962 Act and in view of the judgment of Hon'ble Supreme Court in case of ITC v. CCE (supra) find that Rule 16 of Drawback Rules, 1995 is also in the nature of execution proceedings thus an officer even higher in rank than proper officer, who framed assessment at the time of export, cannot modify a shipping bill qua value and consequent entitlement of duty drawback while issuing notice or passing order under Rule 16 of the Drawback Rules, 1995. The contention of the counsel for Respondents that as per Valuation Rules, 2007 proper officer has power to re-assess value of goods even though already exported is untenable. As noted in Famina Knit Fab (supra) and hereinabove, Valuation Rules are applicable to 'export goods' and these Rules are not enabling provisions to frame re-assessment. Section 14 empowers to frame Rule to reject declared value and re-determine value of export goods. The Valuation Rules, 2007 are framed in exercise of power conferred by Section 14 of 1962 Act. Rule 1(3) and 8 of Valuation Rules permit to reject value of 'export goods'. As per definition of export goods, the goods which stand exported are not 'export goods' so Valuation Rules, 2007 are not applicable to goods already exported. Valuation Rules, 2007 would come into play as soon as the proper officer gets power to reassess already assessed shipping bill. Prior to 8-4-2011, it was proper officer who used to frame assessment and w.e.f. 8-4-2011 he gets first opportunity to doubt the self-assessed value at the time of export and, secondly, he may prefer an appeal before Appellate*

Authority. A team of Customs officers at the time of export of goods verify different particulars including value declared by an exporter. The declared value may be accepted or re-assessed and in case re-assessed value is not accepted by exporter, proper officer has to pass speaking order. Thus, as per scheme of the 1962 Act, department is not remediless and Courts are bound to interpret law as such. Courts while interpreting law can neither add nor subtract any word from the plain language irrespective of consequences. It is the legislature who has to rectify, repair or amend the law in case any judgment interpreting law is not acceptable or is contrary to intent and purport of enactment.

17. *On plain reading of Sections 17, 50 and 51 with Valuation Rules, 2007, we find that Respondent is neither vested with power of re-assessment of goods already exported under Rule 16 of Drawback Rules, 1995 nor Valuation Rules, 2007. The goods which stand exported do not fall within ambit of 'export goods' as defined under Section 2(19) of 1962 Act, thus Respondent cannot invoke Rules 6 & 8 of Valuation Rules, 2007. In view of judgment of Hon'ble Supreme Court in the case of ITC v. CCE (supra), we find that shipping bill either self-assessed or assessed by proper officer is amenable to appeal by both sides. Respondent by way of show cause notice under Rule 16 of the Drawback Rules, 1995 cannot modify assessed shipping bill.*

18. *Therefore, we hold that Respondent in terms of Rule 16 of Drawback Rules, 1995 as well Valuation Rules, 2007 has no power to reassess a shipping bill which was duly assessed by proper officer at the time of export of goods. In the present case, goods in question stood exported thus impugned order is not sustainable in view of our afore stated findings as well."*

15.3 Further, this Tribunal has also considered the similar aspect of filing of appeal against the assessed bill of entry and by relying upon both the above referred judgements, has held in the case of *M.K. Shah and Co. Vs. Commissioner of Customs (Airport &Acc), Kolkata* - (2023) 2 Centax 34 (Tri.-Cal), as under:

*"**8.** We find that this case against the Customs Broker emanated from a case booked by DRI against the exporter. It forms the basis for this case according to the impugned order as well as both the appeals. Thus, the case booked by DRI provides the context and background to this case. In this case, the Shipping Bills were filed which were provisionally assessed after drawing samples and goods were allowed to be shipped by the proper officer. Thus, the assessment of the Shipping Bill was not yet complete and would have been completed after tests, enquiries, etc. by the proper officer and finalization of assessment. Evidently, the proper officer himself had doubts about the consignments and drew samples and assessed goods provisionally. Before the goods could he shipped, DRI intervened and again looked into those very goods and concluded that the goods were overvalued to claim fraudulent export benefits. Assessment of Bills of Entry or Shipping Bills, including provisional assessment is a quasi-judicial process by the proper officer and the quasi-judicial order, though not a final assessment order and though not even a speaking order must be respected. Every assessment, including provisional assessment, is appealable by both the Revenue and the exporter to the appellate authority. Assessment of a Shipping Bill or Bill of Entry need not necessarily result in payment of duty. Where the proper officer needs further information or enquiries, he can resort to provisional assessment*

> *and thereafter finalise the assessment. In this case, nothing is presented before us to show that the provisional assessment order has been appealed against or modified by the Commissioner (Appeals). Therefore, the provisional assessment order of the proper officer is still valid. We do not find any provision of the Customs Act under which either a provisional assessment or final assessment can be modified by officers of DRI and a different decision taken. In the case of Jairath International v. Union of India 2019 (370) ELT 116 (P&H) this legal position was clarified by the High Court of Punjab and Haryana. In that case, goods were exported on claim for drawback. Thereafter, DRI received intelligence that the exported goods were overvalued to claim ineligible drawback. Accordingly, an SCN was issued proposing to revise the value downwards and recover the excess drawback. Relying on the judgment of the larger bench of the Supreme Court in the case of ITC Ltd. v. CCE 2019 (368) ELT 2016, the Hon'ble High Court of Punjab and Haryana held that once an assessment of a Shipping Bill is done by the proper officer, the value therein cannot be modified even by a higher officer. Relevant extract of paragraph 15 of the judgment is as follows:*
>
> > *"We on examination of the scheme of the 1962 Act and in view of the judgment of Hon'ble Supreme Court in case of ITC Ltd. (supra) find that Rule 16 of Drawback Rules, 1995 is also in the nature of execution proceedings thus an officer even higher in rank than proper officer, who framed assessment at the time of export, cannot modify a shipping bill qua value and consequent entitlement of duty drawback while issuing notice or passing order under Rule 16 of the Drawback Rules, 1995."*
>
> *In this case, assessment was provisional and not final but provisional assessment is also an assessment and provisional assessment orders are often appealed against. If either the exporter or the Revenue was aggrieved by the Provisional Assessment order, the proper course would have been to file an appeal to the Commissioner (Appeals). Based on the DRI's investigation, action was taken against the appellant Customs Broker by the impugned order which are the subject matter of these two appeals."*

16. In view of the foregoing discussions and analysis, supported with well laid principles of law, we do not find any merits in the impugned order passed by the learned Principal Commissioner of Customs (Preventive), in confirming the adjudged demands on the appellants. Therefore, by setting aside the impugned order, the appeals are allowed in favour of the appellants.

(Order pronounced in open court on 02.09.2024)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM