CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85742 OF 2024

[Arising out of Order-in-Appeal No: 524 (Gr.4)/4A/2024(JNCH)/Appeals dated 8th April 2024 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Jayant Impex
Shop No.06, Sonarika Apartment,
25C, Chandanwadi Basement, ND.Road
CP Tank, Mumbai – 400 004 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Custom House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400707 ***…Respondent***

APPEARANCE:

Shri CK Chaturvedi, Consultant for the appellant

Shri Deepak Sharma, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85477/2025

DATE OF HEARING: 02/12/2024
DATE OF DECISION: 24/03/2025

PER: C J MATHEW

That

'7. It is well settled in law that the reason is the life of law.

> *It is that filament that injects soul to the judgment. Absence of analysis not only evinces non-application of mind but mummifies the core spirit of the judgment. A Judge has to constantly remind himself that absence of reason in the process of adjudication makes the ultimate decision pregnable. …….'*

as observed by the Hon'ble Supreme Court, in *U Manjunath Rao v. U Chandrashekar & anr [2017 (15) SCC 309,* is, in the facts and circumstances of this dispute, immediately called to mind does not surprise and, as we proceed, will become abundantly clear. Increasingly, we notice, the tendency among tax collectors to lose the wood for the trees. A statute, and more especially, a taxing statute enacted under the authority of the Constitution to levy impost, is, first and foremost, clothed with that objective. A statute must, necessarily, be read as a harmonious construct in pursuit of that objective and customs law, intended to enable assessment of tax leviable by law, comprises attendant provisions and machinery provisions as its elements: assessment of goods intended to be cleared for home consumption to duty is founded on provisioning for rate of duty and for valuation which are supplemented with empowerment to exempt duties, to refund duties and to recover duties. The other elements are intended as procedures for ensuring that all goods, imported or exported, are charged to duty as prescribed through controls over conveyances and goods. Selective resort to some provision, laterally referring to rate or value and only contextually, without appreciation of the construct of the statute and the significance of the provision in the construct – either from lack of knowledge, which is not condonable, or with deliberate intent, which is unforgivable – manifests as perverse application of law.

2. M/s Jayant Impex, with intent of exporting 'stainless steel scrap' valued at ₹73,57,535 procured from abroad, filed bill of entry no. 7652441/02.09.2023, on which liability to duty, at rate corresponding to tariff item 7204 2190 of First Schedule to Customs Tariff Act, 1975, was declared, for warehousing. For reasons best known to the authorities concerned, the goods were taken up for examination, subjected to scrutiny of empaneled Chartered Engineer and proceedings initiated, *vide* show cause notice dated 7th December 2023, for re-determination of value that was to be assessed to duty at rate corresponding to tariff item 8479 8999 of First Schedule to Customs Tariff Act, 1975. The proceedings before the original authority concluded with confirmation of the proposals in the show cause notice and which, upon being carried in appeal and not having elicited modification or alteration, is in challenge before us impugning order[1] of Commissioner of Customs (Appeals), Nhava Sheva, Mumbai – II.

3. According to Learned Counsel for the appellant, the goods were intended for re-export and, accordingly, were warehoused. He

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[1] [order-in-appeal no. 524 (Gr.4)/4A/2024(JNCH)/Appeals dated 8th April 2024]

submitted that, after the import was taken up for investigation, they had sought provisional release to undertake export which was declined. He further submitted that, in the face of their pleading before the first appellate authority to the effect that

> *'8. …….*
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> *(b) Since the goods are going to be exported out of India there is no burden of customs duty to be paid. Since there is no duty payable, the allegation made in the Show Cause Notice that undervaluation has been resorted to in order to defraud the exchequer cannot be held to be sustainable.*
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> *(c) Since the goods are not being imported into India, the provisions of Customs Valuation (Determination of valuation of imported goods) Rules, 2007 would not apply and the Rule 12 of the valuation Rules ibid being sought to be applied would not be applicable for rejection of value and consequent redetermination of value.'*

the proceedings initiated by the original authority should have been declared as lacking sanction of law to allow their appeal.

4. We have heard Learned Authorised Representative who submitted that conformity of the transaction with

> *'(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption'*

as set out in section 2 of Customs Act, 1962 rendering all such, except for goods intended for transit or transshipment, as covered under section 46 of Customs Act, 1962 owing to which re-assessment was empowered. It was also submitted that the inclusion of qualifier, such as 'for export', in the warehousing bill of entry could not erase ambit of section 46 of Customs Act, 1962.

5. Our prefacing of the disposal of this dispute with the observations of Hon'ble Supreme Court, albeit and in unconnected matter, was intended to underline the responsibility that sits upon adjudicating/appellate authorities: to be conscious of law and intent of law. Reason is not a consummation to be found in the sterility of a vacuum; reason adjudges the facts established by applying the law known to arrive at conclusion. Such law does not subsist in isolation, or as 'silos', within a statute. As far as the present proceedings are concerned, we observe that, blindsided by the imperative of chapter XIV of Customs Act, 1962, both the lower authorities appeared not to have given any thought to the essence of 'assessment' in the context of procedural prescription for deferment of levy in chapter IX of Customs Act, 1962. That is irresponsible and unresponsive action on the part of the lower authorities, inasmuch as

> *'18. I find that the appellant in their grounds of appeal stated that as the goods were not being imported into India, the provisions of Customs Valuation (Determination of Valuation of imported goods) Rules, 2007 would not apply and the Rule 12 of the valuation Rules ibid could not be applicable. I find that the*

Original Authority at Para 21 of the impugned, order held that the goods are not scrap, but serviceable second-hand goods which also holds a considerable value. Therefore, declared value, cannot be taken as the true transaction value in terms of Rule 3 of the Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962 and same is liable to be rejected under Rule 12 of the Customs Valuation Rules, 2007.

I have also gone through the Section 14 of the Customs Act, 1962. I find that the Section 14 of the Customs Act, 1962 deals with the valuation of the goods either imported or Export goods. The same is reproduced below for ready reference.

> *Section 14. Valuation of goods. —*
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> *(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law far the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation or as the case may he, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods arc not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf;*
>
> *Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:*
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> *Provided further that the rules made in this behalf may provide for,-*
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> *(i) the circumstances in which the buyer and the seller shall be deemed to be related;*
>
> *(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
>
> *(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the*

proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

(iii) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared, truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

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

Further, in the matter of rejection of the declared value, the actual value needs to be re-determined under the provisions of Rule 3(4) of Customs Valuation Rules, 2007 which provides that the value of import goods is required to be re-determined by proceeding sequentially through Rules 4 to 9 of the Customs Valuation Rules, 2007.

I have also gone through the Circular No. 4/2008-Customs issued vide F. No. 467/34/2006-Cus.V dated 12.02.2008 which prescribed the process of Valuation practice of second hand machinery to be adopted by all Custom Houses. The Para 2 of the same is reproduced below for ready reference.

2. A careful analysis of the Tribunal decisions and an Apex Court judgment on the issue of valuation of second-hand machinery reveal the following views of the judiciary:

i) If other parameters of Section 14 of the Customs Act, 1962 are satisfied, the transaction value method of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 can also be applied to importation of second-hand machinery sold for export i.e. it was imported immediately after sale without any further usage abroad.

ii) However if transaction value of Rule 3 is rejected, valuation of second-hand machinery can be done under Rule 9, on the basis of value of new machine, as certified by the Chartered Engineer, and scaled down by allowing depreciation commensurate with the period of usage. Supreme Court judgement in the case of Gajra Bevel Gears

[2000(115) ELT 612 (SC)] refers in this regard.

The judgment of the GAJRA BEVEL GEARS Versus COLLECTOR OF CUSTOMS, BOMBAY reported as 2000 (115) ELT 612 (SC) is reproduced below for ready reference.

[Order]. - We have heard learned Counsel for the appellant and we do not find any reason to interfere. Learned Counsel for the appellant relied upon the judgment of a learned single judge of the High Court at Calcutta in Debabrata Ghosh v. Assistant Collector of Customs [1993 (68) ELT 551]. That was a case in which the auction price of a car bought in England was not accepted but the valuation was made by ascertaining the- price of the car when new and then allowing depreciation. The learned judge found this impermissible on the facts of that case, as we would have done, because the price of a second-hand car such as that involved in that case could easily have been ascertained by reference to popular magazines and publications relating to cars in England. There are no popular publications that would indicate the prices of machines. Therefore, ascertaining the value of the second-hand machine imported by the appellants, when new, based on the certificate produced by the appellant itself and scaling down that price by giving depreciation does not appear to be an arbitrary method of ascertaining its value.

2, The appeal is dismissed. No order as to costs.

From the above, I find the Original Authority has rightly re-determined the value of the goods as per the Certificate issued by the Customs Empanelled Chartered Engineer who appraised the Value of goods from 87,694.10/USD to 3,70,000/- USD.'

has been recorded in the impugned order without considering the trigger for levy of duty on warehoused goods.

6. The first appellate authority has extracted section 14 of Customs Act, 1962, referred to rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and relied upon circular no. 4/2008-Cus dated 12th February 2008, on the practice to be adopted for valuation of 'second-hand machinery' imported into India, to affirm the finding on value

in order of the original authority. This, effectively, is arrogating of authority to take recourse to section 14 of Customs Act, 1962 on any goods brought into ‘customs jurisdiction’ – an assumption resting on ‘import’ triggering the cue for commencement of jurisdiction. Clearly, the lower authorities appear to have misconstrued ‘proper officer’ to mean ‘officer of customs’ without pausing to ponder on the deliberateness in deployment of the former. It is also tantamount to construing authority for levy of duties of customs as emanating from section 2 of Customs Act, 1962 – a ‘Jane Taylor perspective’ of astrophysics.

7. It does not take rocket science to decipher the ‘junctioning’ of ‘bill of entry’ procedure and ‘assessment’ procedure. Goods landed from a conveyance – under customs control from arrival – are entrusted to approved custodians who are accountable to the customs jurisdiction for retention of goods till clearance has been permitted by customs authorities. The ‘proper officer’ under, and in accordance with, section 47 of Customs Act, 1962 permits clearance on ascertainment that duties of customs, as assessed, have been discharged by the importer and that goods are not prohibited, either under Customs Act, 1962 or any other law in force, for import into India. Such clearance is ‘tentative’ with any short-payment or non-payment conferring authority for resorting to recovery under section 28 of Customs Act, 1962. Failure to file bill of entry, an obligation imposed under section 46 of Customs Act, 1962 for all imported goods – and affording no role therein to customs authorities – upon importers, within

the period stipulated under section 48 of Customs Act, 1962 permits custodian to proceed with disposal of goods.

8. A bill of entry is *sine qua non* for all imported goods to avoid alienation of possession of importer but further processing of the 'entry' is restricted only to goods that are intended to be cleared for 'home consumption' upon which, in terms of section 2(25) of Customs Act, 1962, these cease, save for potential re-assumption, to be within the ambit of customs jurisdiction. The alternative, of warehousing for which another variant of bill of entry is filed, defers assessment, while preempting 'custodian sale', till bill of entry for 'home consumption' substitutes for the 'warehousing' variant.

9. The first appellate authority failed to take cognizance that the original authority should have read section 46 of Customs Act, 1962 as only the first of two 'stepping stones' by which the goods could legally be cleared for home consumption in terms of section 47 of Customs Act, 1962 and that assessment, either under section 17 of Customs Act, 1962 or under section 18 of Customs Act, 1962, must necessarily precede clearance for home consumption for the 'proper officer' to permit extinguishment of customs jurisdiction as envisaged in section 47 of Customs Act, 1962 Mere filing of bill of entry, under section 46 of Customs Act, 1962 and of essence to build in contingencies of 'relevant date' for rate of duty and tariff valuation, does not trigger empowerment of levy and assessment to duty in

section 17 of Customs Act, 1962 which is the only stage for recourse to section 12 and section 14 of Customs Act, 1962 by 'proper officer' therein. These – the 'charging' and 'valuation' provisions – are stipulative and, like the definitional provision, to be referred to when embarking upon the machinery provisions in Customs Act, 1962.

10. Otherwise, in terms of section 46 of Customs Act, 1962 and chapter IX of Customs Act, 1962, the 'imported goods' are to be deposited, in a public warehouse or private warehouse, as the case may be, until clearance is to be effected either for home consumption under section 68 or for export under section 69 of Customs Act, 1962. A comparison of section 47 of Customs Act, 1962 and section 68 of Customs Act, 1962 makes it abundantly clear that these are mutually exclusive and that, once goods are warehoused, section 47 of Customs Act, 1962 ceases to be of relevance. The 'trigger happy' adjudication was, thus, upheld in appellate proceedings without application of mind. It was incorrect on the part of the lower authorities to only consider entry under section 46 of Customs Act, 1962 as sufficing to empower determination of 'rate of duty' and 'valuation' to substitute the declaration, on both these aspects and for purposes specified elsewhere, of the importer for

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

of Customs Act, 1962, empowering recourse to the stipulations on both, is limited only to bill of entry for home consumption, or shipping bills, and neither of which had been entered by the importer as well as subject to intervention only upon self-assessment by the importer. The consequent findings, of classification being erroneous and of the declared value being unacceptable, are, owing to goods not intended for home consumption and the absence of self-assessment, without sanction of law.

11. It appears to us that the original authority and the first appellate authority are in need of refreshing their approach to assessment procedure; the fault may, probably, not be limited to this lack of appreciation but also in oversight – supervisory and statutory. Empowerment to review, as prescribed in chapter XV of Customs Act, 1962, appears to have been observed in its breach. The malaise is, thus, systemic. The hazard, in consequence, may be oblivion. A copy of this order may be placed before the Chairman, Central Board of Indirect Taxes & Customs (CBIC) for appropriate remediation if 'ease of doing business' is to have a chance.

12. In view of our findings above, we set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 24/03/2025)

(AJAY SHARMA)	**(C J MATHEW)**
Member (Judicial)	***Member (Technical)***

**/as*