

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86108 OF 2024

[Arising out of Order-in-Original No. 40/DSR(40)/CC(ADJN.)/MUMBAI/2023-24 dated 4th March 2024 passed by the Commissioner of Customs(Adjudication), Mumbai,]

Ahmed A R Buhari

Coastal Energy P Ltd
5th Floor, Buhari Towers, 4 Moores Road
Chennai-600006

... Appellant

versus

Commissioner of Customs (Adjudication)

New Custom House, Ballard Estate, Mumbai-400 001

...Respondent

APPEARANCE:

Shri Vikram Nankani, Senior Counsel with Shri Jaydeep Patel, Shri Chirag Naik, Ms Vaijayanti Sharma and Ms Prasanna, Advocates for the appellant

Shri Shambhoo Nath, Special Counsel for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85776 /2025

DATE OF HEARING:	16/10/2024
DATE OF DECISION:	15/04/2025

PER: C J MATHEW

It was Quincy Jones who said

‘That’s why I was always maniacal about transforming every

*problem into a puzzle which I can solve. I can solve a puzzle –
a problem just stresses me out.'*

and even if that was merely response to a query about how he handles the problems he currently faced, it is, nonetheless, not an inapt portrayal of the solution crafted by customs authorities in this dispute that, to start with, was not really a problem at all. For that is what the appellant, Shri Ahmed AR Buhari, contends before us; all owing to some problem ignited in the imagination of investigators by M/s Coastal Energy Pvt Ltd¹ importing coal and, of which, he happened to be a Director.

2. What anyone could see was plain enough: coal sourced from Indonesia for delivery at ports in India to be used by thermal energy producers who contracted with M/s Coastal Energy Pvt Ltd either directly or in tripartite agreements involving M/s Minerals and Metals Trading Corporation (MMTC) Ltd as successful bidder in supply tenders. What bewildered investigators was that both the discharge of liability to duties of customs despite availability of exemptions, accorded to goods imported from Indonesia by notification² under Customs Act, 1962 in pursuance of ASEAN India Free Trade Area (AIFTA) agreement and the cascading of costs, attendant upon arranging the supply against bilateral contracts structured through back-to-back agreement involving a 'related person' based outside India or

¹ CEPL

² [notification no. 153/2009-Cus dated 31st December 2009 & 46/2011-Cus dated 1st June 2011]

with the ‘related person’ roped in to fulfill supply against the tripartite agreements, owing to superfluous channel elongation, were so puzzling as to cause the adjudicating authority, vested with unquestionable competence to determine assessment of imported goods to duty and vested with unfettered power to enforce bar on entry of goods that, by domestic law, were prohibited for commercial intercourse, as to pause for calling into question the soundness of commercial prudence in the deals thus

‘5.2.1.....The show cause notice contends that some importers were found to be neglecting to avail duty exemptions under AIFTA (ASEAN- India Free Trade Agreement) despite being eligible. This suggests an unusual departure from ordinary commercial practices and enabled them to circumvent the submission of certain required certificates...’

in the impugned order. And the show cause notice leading to the order³ of Commissioner of Customs (Adjudication), Mumbai, impugned by the appellant herein, had, lo, transformed the problem into a puzzle – with revenue to be gathered as prize for solving – that was touted as pleasing to the eye by tidiness of the resolution. With that reconfiguring, consummation of the proceedings – not by fastening duties of customs on the impugned goods nor by barring as commercial excrescence – was confiscation of the imported goods for alleged breach of machinery provisions in, and not the enabling provisions of,

³ [order-in-original no. 40/DSR/(40)/CC(ADJN.)/MUMBAI/2023-24 dated 4th March 2024]

Customs Act, 1962.

3. M/s Coastal Energy Pvt Ltd is not before us. Only Shri Ahmed AR Buhari, the Director in the importing company, is and impugning the finding by which penalty of ₹ 20,00,00,000 under section 112 (a) of Customs Act, 1962 and ₹ 20,00,00,000 under section 114AA of Customs Act, 1962 was fastened for alleged role in declaring value of imported 'steam coal' as ₹ 1009,75,47,119 only to be rejected by recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007⁴ in 91 bills of entry and re-determined as ₹ 810, 91,99,501 under the authority of rule 3(1) read with rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in the proceedings. The essence of the infringement, viz., misdeclaration of value in entry made under section 46 of Customs Act, 1962 by tagging with mandate of rule 11 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is that the 'steam coal', not in accordance with specifications contracted by the thermal power producers but of lesser 'calorific value', was 'shovelled down' into acceptance by substituting the 'certificate of sampling and analysis (CoSA)' issued at load port with another, at or near the same time, by an 'independent inspection agency (IIA)' other than the one designated in the sole, according to the investigation, valid and genuine contract between Indonesian coal suppliers and the intermediary

⁴ CVR, 2007

entities which, in the present dispute, are M/s Coal and Oil LLC Company, Dubai⁵ and M/s Coal and Oil DMCC Company, Dubai⁶. The ‘certificate of sampling and analysis (CoSA)’ reports the parameters for evaluation of quality of coal - which has the sole saving grace of being endowed with capacity to generate heat for industrial use - with reference to standards that, in the present instance, is of the ‘American Society of Testing and Materials (ASTM)’ for ‘gross calorific value (GCV)’ by proximate analysis.

4. It was, therefore, posited that the ‘mark up’ of 25% in the aggregate value of imports by charging ‘contracted value’ from thermal power producers for supplying ‘steam coal’ of lesser ‘latent heat capacity’, procured at ‘real cost’ from Indonesian suppliers in ‘back to back’ contracts of the two Dubai entities related to the importer company, was enabled by furnishing contrived documents to customs authorities and to the buyer through the agency of individuals, including the appellant as well as overseas intermediaries, warranting penalties. Oddly, the ‘contracted value’, except for benchmarking of price declared on import, has nothing to do with duty liability under Customs Act, 1962 or in any declaration required thereunder; that just happened to be the price at which the successful bidder, viz., M/s Coastal Energy Pvt Ltd had contracted to supply ‘steam coal’ procured from abroad to

⁵ CNO LL

⁶ CNO DM

the contracting thermal power producers in India and that it may have been near to or the same as ‘declared value’ is just happenstance. The price at which goods are supplied by an importer to any buyer in India is of no significance, just as the parties to the transaction are not, to customs law and procedure. There is also no disputation over the applicable ‘rate of duty’ – one of the two pillars of immediate, or deferred, assessment to duty under section 17, or section 18, of Customs Act, 1962 – but the controversy is over ‘value’, the other pillar, with its ever-evolving design encapsulated in section 14 of Customs Act, 1962.

5. The scheme set out in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, mandating resort to actual transaction value, whether self-declared or appraised by customs officials, and otherwise providing access to ‘surrogate value’ subject to restraining circumstances, is not only not amenable to arbitrary substitution but is also predicated upon prefacing with rejection of ‘declared value’ as transaction value. But with loss of levy to the exchequer at the time of import or subsequently not being a problem, a ‘bedevilling problem’ had not only to be artficed but also thereafter transformed into a puzzle of pieces that the adjudicating authority had merely to arrange as a desired picture. Enablement of confiscation under section 111(m) of Customs Act, 1962 was the problem which, though, and admittedly, being nothing but machinery provision to deter evasion of duty by misdeclaration, was drawn upon by the investigation

as offering access to the valuation scheme even in the absence of circumstances requiring revisit of assessment. A further problem was that, except for consummation by resort to ‘surrogate value’, enablement of recourse to re-determination and, thereby, to enablement of passage to the punitive machinery in the scheme of valuation, was just not possible and, without that, re-appraisal would not serve the purpose. That, in circumstances of recourse to re-assessment, resort to ‘surrogate value’ sufficing for invoking of section 111(m) of Customs Act, 1962 is another controversy which needs dealing with only if ‘surrogate value’ had been adopted in the impugned order but by resort to determination of ‘actual’ transaction value as ‘end game’ after treading that route seems to have been purposed for avoiding that particular pitfall. *Prima facie*, it appears that the three different, and mutually exclusive, aspects of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, each drawing distinct authority from the umbrella composition of section 14 of Customs Act, 1962, have been grafted on to each other. Thus has the problem of restoring jurisdiction vis-à-vis non-prohibited goods cleared on payment of duty been transformed into a puzzle on valuation that ended up assembled, by leveraging relationship between two entities for rejection of declared value and replacement with preceding remittance within the same channel as transaction value untainted by relationship, as the solution which Mr VS Nankani, Learned Senior Counsel, unabashedly

disparaged and was espoused by Learned Special Counsel, Mr Shamboo Nath.

6. We are, in the absence of appeal by importer, tasked with determination of only the legality in imposition of detriment on Shri Buhary. We are, therefore, not tasked with determination of validity of substitution of declared value or of liability to confiscation therefrom. But resolution of cause of grievance in appeal which, owing to the generality of the found charges against the appellant, viz.,

'5.15.2 It is indisputable that the M/s CEPL was the principal/holding company of M/s CNO group, and Mr. Ahmed A.R. Buhari, Director of CEPL, Chennai, also held a directorial position in the subsidiary company. It is challenging to measure how Mr. Buhari, in his capacity as Director of CNO group, and concurrently as Managing Director of the Noticee, was not cognizant of NTPC's requirements. Furthermore, the inquiry extends to understanding how Mr. Buhari, as Director of CNO group, and simultaneously as MD of the Noticee, could be unaware of the coal purchase contracts between the Coal supplier and CNO group, along with the specified parameters outlined in those contracts. While Mr. Ahmed Buhari refused to comment on incriminating documents shown to him, most of the other key personnel admitted that inferior quality Coal was supplied to the actual users in India. Further, Mr. Sivakumar who appeared on behalf of Mr. Ahmed A. R. Buhari on 18/19th July, 2016; admitted artificial inflation of value of Coal and mis-declaration of its quality parameters. A detailed analysis of the evidence of each of the key personnel was covered in para 15 of the Show Cause Notice. In light of these actions, the Noticee

Shri Ahmed A.R. Buhari have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and hence, he rendered himself liable to penalty, under Section 112(a) read with 112(iii), and 114AA of the Customs Act, 1962.'

we are persuaded leaves us with no alternative but to appraise the circumstances in which responsibility thereof was liable to be fastened on the appellant and, thus, to touch upon pieces of the puzzle and completeness of the picture emanating therefrom.

7. To set the ground for rejection of declared value, it has been suggested that for the goods, of quality lower than contracted, two 'certificate of sampling and analysis (CoSA)' from two different 'independent inspection agencies (IIA) were in existence with one, furnished to customs authorities and the intended user, purporting to conform to contractual specifications for obtaining contractually obligated payment and the other, reporting the actual specifications, for determination of actual purchase price, furnished by Indonesian suppliers to their contracting recipients having been kept below the radar, along with 'certificate of origin' that would have revealed 'export value', to forestall customs scrutiny by disassociating shipping documents from the consignment. On this foundation was erected the discrepancy of the two measures of 'gross calorific value (GCV)', between that in the 'certificate of sampling analysis (CoSA)' presented on import and in 'certificate of sampling analysis (CoSA)' used for

finalization of payment due to Indonesian suppliers, for enunciating that price in invoice issued by the ostensible supplier to the importer did not correspond to the price paid to supplier of the goods and consequently warranting substitution in customs records with the further suggestion that the relationship between the importer and intermediary was not only used to obfuscate the transaction but also, of itself, ground for adoption as ‘actual value’ – an outcome by which goods could be confiscated.

8. The scheme of valuation, even unaffected by transaction between related persons or from non-tenable transaction value, provides for determination of ‘true value’ by recourse to rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and substitution by ‘actual value’, when ascertained, in terms of rule 3(1) therein without recourse to rule 12 therein; ‘surrogate value’, under the authority of rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, may be deployed for assessment, either by rejection of declared value through recourse to rule 12 or from circumstances of relationship, as set out in rule 3(3) therein, holding sway, requiring sequential application of rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Though the impugned order has not appreciated the finer distinctions in the authority drawn upon but appears to have crisscrossed the several aspects and options, it behoves us to examine

if the factual matrix of the case did throw up sanction for re-appraisal of value and amenability thereupon to any one, of ‘true value’, ‘actual value’ or ‘surrogate value’, for substitution. For, it is only upon recourse to ‘surrogate value’ consequent to rejection of ‘declared value’, by reason of refusal of importer to respond or by reason of furnished documents having been found to be unauthentic on the one hand or upon recourse to ascertained ‘actual value’, as set out in rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, on the other, that consequent confiscation may be ground for imposition of penalty on an individual under section 112 or section 114AA of Customs Act, 1962. We, thus, have no option but to examine if re-determination of value was by operation of law or occurred by placing importer on notice, as stipulated in rule 12(1) and rule 12(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, of ‘reasonable doubt’ persisting

9. The notice proposed rejection of declared value as the second ‘certificate of sampling and analysis (CoSA)’, presented before customs authorities and, though, purportedly evidencing the specifications in the contract entered into with thermal power generating companies, represented nothing but ‘gross calorific value (GCV) on ‘air dried basis (ADB)’ in the first ‘certificate of sampling and analysis (CoSA)’ when converted from ‘gross calorific value (GCV)’ on ‘as received basis (ARB)’ using formula approved by

American Society for Testing and Materials (ASTM). With the contracts of the two sellers, M/s Coal and Oil Company, DMCC Dubai and M/s Coal and Oil Company LLC, Dubai, with owner as suppliers of 'steam coal' taken on board from their insertion in the channel, it was sought to be established that the coal sourced by them, and of poorer quality, was the very same goods imported and impugned in the show cause notice. It was further sought to be established that the payment to Indonesian suppliers, after adjustment of base price for 'gross calorific value (GCV)', by the two Dubai entities represented the actual cost of the impugned goods and, for adoption of that as the 'actual value', relationship of importer with the two Dubai entities was posited to suffice for rejection of 'declared value' within the rubric of rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 owing lack of saving permitted in rule 3(3) therein. Here is where the first evident flaw in application of the scheme to the puzzle becomes apparent; relationship does not suffice for rejection and, if it did, recourse would have to be had to rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which has not been. To that, and which was the focus of submissions by both sides, we shall turn presently.

10. The 'jigsaw' pieces of the 'problem-turned-puzzle' crafted in the show cause notice for aesthetic fitment in adjudication were inventorised in the impugned order after recalling the contents of the

notice and observing that the disposal was restricted only to the imports effected by M/s Coastal Energy Pvt Ltd. To start with, it was declared that

‘5.4 I acknowledge the importance of comprehending the profiles of the various companies involved in the present case before proceeding further. It has come to my attention that the show cause notice has already delved into the profiles of these companies.

.....

5.4.1 Consequently, CEPL⁷ and FIL were deemed related persons in accordance with Rule 2(2) of the CVR, 2007.

5.4.2.....In view of the above, Mr. Ahmed Buhari owns, controls or holds 5% or more of the outstanding voting shares of CNO DM⁸, CNO LL⁹, EIEPL, CNO Indonesia and CEPL directly and indirectly and therefore all these entities are related in terms of Rule 2(2) of CVR, 2027¹⁰ ... ’

though only determination of relationship, if any, of the buyer, M/s Coastal Energy Pvt Ltd, with M/s Coal and Oil DMCC, Dubai and with M/s Coal and Oil LLC, Dubai, the sellers, lies within the jurisdiction of the adjudicating authority. Such determination was contingent upon delving into causal aspect of alleged relationship of ‘seller’ and ‘buyer’ – the only two *persona* acknowledged by section 14 of Customs Act, 1962 – on price contracted for transacting sale and that, too, within the

⁷ ibid

⁸ ibid

⁹ ibid

¹⁰ ibid

limited context of deeming them so in situations enumerated in rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. There is no scope for deriving extra-contextual authority to ‘relate’ any, and whichever, at the whims of a ‘proper officer’ from this particular provision which qualifies the ‘deeming’ this

‘(2) For the purposes of these rules, persons shall be deemed to be “related” only if—

xxx’

in rule 2 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, more so, as the absence of ‘transitive relationship’ therein taints any finding that ventures upon setting out to examine the link between anyone other than buyer and seller with lack of jurisdiction. The finding of any relationship of the buyer or seller other than with each other is nothing but unauthoritative determination that has no significance in the impugned proceedings.

11. The next ‘jigsaw’ piece that the adjudicating authority has put mind to is the American Society of Test and Materials (ASTM) and, in particular, to the relationship between ‘gross calorific value (GCV)’ on ‘as received basis (ARB)’ and on ‘air dried basis (ADB)’ as it is only with a tenable mutuality that the foundation of the allegation may have some semblance of being on firm ground. Without that, and in the absence of amenability of equating the two sets of ‘certificate of sampling and analysis (CoSA)’, the enunciation of two tests having

reference to each consignment does not sustain. The impugned order has listed the several parameters that comprise ‘certificate of sampling and analysis (CoSA)’ and noted the primacy of ‘gross calorific value (GCV)’ in determination of heating capacity with impact, thereby, on the price to be crystallized thereto. However, in the absence of any elaboration on the methodology and technology of testing as well as the absence of any authority, other than show cause notice, for concluding that

‘5.5.2 I find that the show cause notice details that the ASTM D-3180 and BS-1016 standards prescribe various conversion formulae (for reporting of the analysed values) facilitating conversion from GCV ADB to GCV ARB and vice versa as under:-

$$GCV\ ADB = GCV\ ARB * \{(100 - IM / 100 - TM)\}$$

$$GCV\ ARB = GVC\ ADB * \{(100 - TM / 100 - IM)\}$$

...

and contradicted by

5.5.3Therefore, Total Moisture is determined always on ARB basis as a percentage of the weight of the sample...Therefore, Inherent Moisture is determined always on ADB basis as a percentage of weight of the sample...’

which, unlike the other factors that influence ‘gross calorific value (GCV)’, viz. ‘volatile matter (VM)’, ‘sulphur content (SC)’ and ‘ash content (AC)’ determinable on either basis, is on one or other basis and

the two distinguished by burnt as it is and burnt after drying. Patently, that the derivation of ‘gross calorific value (GCV)’ – itself a measure of the heat released during complete combustion leaving only ashes of the sample – on both basis requires values for both ‘total moisture (TM)’ and ‘inherent moisture (IM)’ which are obtained from deployment of mutually exclusive samples implies non-amenability to the conversion, that adjudication authority has been convinced by the assertion in the notice as possible, does not seem to have impressed itself. Moreover, as pointed out by Learned Senior Counsel, the fallacy of scope for such conversion had been dealt with thus

’46. The adjudicating authority, in his voluminous order, found it convenient thereby to adopt the price purportedly contracted, and paid over with appropriate adjustment, by M/s Knowledge International Strategic Systems Pte Ltd to M/s International Metallurgical Resource AG for the coal said to have been supplied for eventual consumption in India and enhanced by what he considered to be a reasonable return by industry standards. This computation presumes that the coal was indeed procured through these parallel transactions, that credence should be placed on the internationally acclaimed renown of M/s IMR Metallurgical Resource AG and that there exists a verifiable average industry. Our findings on the contravention of the mandates of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 that discredits the adoption of the base price for computation is on record. We find no justification for the deployment of return of 3.5% as the enhancement factor in the absence of any verifiable source of that revelation; a revelation that suffers from the ignominy of mendacity that the same industry has

been tarred with for discarding value of contemporaneous imports. The base price and margin of profit fail the test of law and veracity. The conversion of the 'gross calorific value' undertaken in the adjudication order is claimed to be nothing other than the loading of mineral content and moisture content on the 'mineral moisture free' results of the sampling tested by the Deputy Chief Chemist. The logic, as Learned Special Counsel avers, presents a perfect fit. However, what we have here is not an arithmetical computation but an algebraic operation. In algebra, with all variables, save one, being known, the unknown variable in the equation is derived by conversion. In the context of a chemical formula, the conversion will work if one calorific value is convertible to another standard from the same test. There the adjudicating authority faced an obstacle of Himalayan proportion: the absence of values of total moisture content and mineral content in the test result of the Deputy Chief Chemist. Here too we see a leap, not of faith but over scientific reason, in the deployment of those two values from another test said to have been conducted at load port. This a classical example of circular reasoning – the premise of inferior coal having been supplied can be evinced with test results and the only unquestioned test is that of the Deputy Chief Chemist which required conversion to 'as received basis' but could not in the absence of two values which were providentially made available in the very 'certificate of sampling and analysis' that was the basis of the premise. The conversion is faulty and the conclusion flawed. '

by the Tribunal in *Knowledge Infrastructure Systems P Ltd & ors v. Addl DG & Anr* [2018 SCC Online CESTAT 5216]. The referred formulae for conversion enable comparison of values derived by American standard and British standard with the latter used to

determine data and expressed using the formula in the former. A careful scrutiny of the conversion algorithms would reveal the ‘sleight of hand’ by which the notice suggested use in deriving one value of ‘heat released’ from the other value which persuaded the Tribunal to conclude as *supra*. Thus, the correlation of the two certificates as pertaining to the same result for the same consignment is a ‘leap of chance’ with no scientific authority or practical evidence backing the proposition. In the absence of any test at port of discharge, the values in the ‘certificate of sampling and analysis (CoSA) furnished for clearance is not susceptible to discarding. Consequently, the proposition that far lesser amounts than charged by seller from buyer had been paid, basis values in the other ‘certificate of sampling and analysis (CoSA)’, to Indonesian supplier is a leap off a cliff and not a leap over one lip of a chasm of the other.

12. The questions that bedevilled the adjudicating authority thus

‘5.6.3 Given the observed escalation in calorific value and the subsequent increase in the value of coal, several unanswered questions linger in my mind during the data analysis. The most immediate queries include: -

- Which of the two sets of Certificates of Sampling & Analysis of Coal (COSA) are authentic and true?*
- If either one of the Certificates of Sampling & Analysis of Coal (COSA) is incorrect, what was the reason they have been used in the present deal?*

- *If the Certificates of Sampling & Analysis of Coal (COSA) relied on by Coal supplier is assumed to be incorrect, why would an internationally reputed company underwrite the Gross Calorific Value of its coal and consequently also undervalue its price?*
- *When CNO group purchased the said coal from Coal supplier at a much lesser value, why did it not sell the coal directly to its own holding company M/s Coastal Energy Pvt. Ltd., Chennai, at the lower price?*
- *Why did Shri Buhari, Director of M/s Coastal Energy Pvt. Ltd., Chennai, not intervene in the matter when there was so much price escalation when M/s Coastal Energy Pvt. Ltd., Chennai imported the goods?’*

as set out in the impugned order are, to a large extent, revealed as purely speculative and the others as purely existential – both having no place in tax adjudicatory exercise. The proposition in the impugned order that

‘5.7.9 *The documented evidence includes copies of contracts, Bill of Lading, Certificates of Analysis of Coal (COSA), Commercial invoices issued by the coal supplier in the name of the CNO group, and copies of Form AI for the coal consignments. Notably, the CNO group, the entity purchasing coal from the coal suppliers, is a 100% subsidiary of the Noticee. The Noticee had the option to easily obtain the purportedly authentic documents for each consignment/contract from the CNO group. However, it is observed that the Noticee chose not to procure such documents and instead raised counter allegations without providing valid evidence, potentially to divert the adjudication process. In the absence of any substantiated evidence supporting the counter-allegations, I am inclined to reject the Noticee's claims.’*

is as repulsive to principles of natural justice as the implied assertion that any allegation, such as it is, suffices to shift the onus onto a noticee to come forth with all documents available for rebuttal failing which adverse presumption would hold sway. This has been affirmed thus

'5.7.10 It is difficult to understand as why Coal supplier would indulge in downgrading the quality of its coal and then sell it to CNO group, particularly when the price of coal is solely dependent on the G.C.V, and other parameters. There is no reason for coal supplier to suffer such financial loss, why would it indulge in such business transactions which would hurt its profile and also its finances. I don't see any reason. I find that the Noticee have also not been able to prove the said 1st COSAs as bogus and have not been able to establish their allegation that the said 1st COSA's were doctored. The Noticees had various modes available with them, as discussed in relevant paras hereinabove, to prove that the 1st COSAs were doctored which they failed to do so. Therefore, I am convinced that the 1st COSAs are true and correct. The said documents were details of the transaction carried out by the intermediaries with the CEPL and 1st stage traders.'

in the impugned order. We do not wish to dignify the remarks of judicially subordinate authorities masquerading as reasons adduced for discard of binding precedent in decisions of the Tribunal save to observe that the finding of

'5.7.11 The Noticees has stated that the Hon'ble Tribunal in the cases of (a) Knowledge Infrastructure Systems Private Limited vs Additional Director General (b) Commissioner Customs (Import), NS-III, JNCH,

Raigad Versus Adani Power Maharashtra Ltd and (c) Commissioner of Customs (Import) V/s M/s Maharashtra Eastern Grid Power Transmission Company Ltd. (MEGPTCL) had very clearly held that such documents cannot be accepted as evidence in absence of required certification under 138C (4) of Customs Act 1962 and accordingly such evidences were not admissible in the present case as well. Since the existence of 1st/2nd stage dealers, coal producers, intermediaries and transaction between them are Undeniable facts accepted by the Noticees, the issue of non-admissibility of evidence will not affect the charges against Noticees on this account alone.

*In this regard it is pertinent to mention, that as far the case of **Knowledge Infrastructure Systems Private Limited** is concerned, the issue of certification under-138C (4) of Customs Act 1962 has not been dealt with by the Hon'ble Tribunal. Further, though the appeals filed before the Hon'ble Supreme Court against the orders passed by the Hon'ble Tribunal in **Commissioner Customs (Import), NS-III, JNCH, Raigad Versus Adani Power Maharashtra Ltd and Commissioner of Customs (Import) V/s M/s Maharashtra Eastern Grid Power Transmission Company Ltd. (MEGPTCL)** had been dismissed vide order dated 27.03.2023, therefore, the issue pertaining to certification under 138C(4) of Customs Act 1962 has not been examined on merits by the Hon'ble Court.*

xxxx

5.11.1 *In this regard I find that the order of the Hon'ble Tribunal in Knowledge Infrastructure Systems Private Limited Vs Additional Director General, DRI, Mumbai had been appealed against in the Hon'ble Supreme Court and that vide*

order dated 24.01.2023 the Apex Court had dismissed the matter as withdrawn leaving the question of law open. It is thus apparent that the ratio of the challenged order has not been confirmed by the Hon'ble Supreme Court.,

in the impugned order is a telling reflection of perspective of senior customs officials on rule of law vis-à-vis rule of men.

13. It is also clear from a perusal of the discussions and findings in the impugned order that the adjudicating authority has not taken up any facts or records for scrutiny and has satisfied itself with a rousing round of acclaim for the investigators for conceiving the contents of the show cause notice which were taken as authenticated and unalloyed truth and, yet, has presumed to conclude that value must be substituted for the purposes of declaration in the bill of entry as proposed by the investigation, viz., the price paid by the Dubai entities to suppliers in Indonesia thus

'5.9.10 I find that the declared value is not the transaction value. The actual value appearing on the invoices issued by the 1st stage traders for the export of the coal to India in the ordinary course of international trade. It is the fact that it was not possible to disprove the status of 1st stage traders as the shipper for the said consignments, as the Bills of Lading submitted by the importer themselves had confirmed the fact of 1st stage traders being the shipper. The invoices issued by 1st stage traders and the corresponding contracts with intermediaries confirmed that the invoices for the coal shipped by the 1st stage traders, for export to India had been routed through the intermediaries.

5.9.11 In the overall context the enhancement of value by the intermediary does not appear to be on account of any bona fide value addition activity on their part, neither does it appear to be commercially prudent or justified or in the course of ordinary commerce. The artificial inflation of value at the hands of the intermediary firms is apparently a mechanism to siphon off money out of India, under the guise of import remittance and price does not appear to be the sole consideration for the sale.'

in the impugned order.

14. Learned Senior Counsel contended that penalty has been imposed on the appellant under section 112 of Customs Act, 1962 and section 114AA of Customs Act, 1962 on a finding which is mere indulgence in calumny and without any regard for the stipulations in the provisions invoked for fastening the detriments. It was submitted by him, and by comparison of aspects that the issues in dispute, as well as the foundations for fastening penalties on the appellant, had been decided by the Tribunal in *Knowledge Infrastructure Systems P Ltd & ors v. Addl DG & Anr [2018 SCC Online CESTAT 5216]* and that discard of the binding precedent demonstrated nothing but obduracy and improper appreciation of judicial convention. It was further contended that undue reliance has been placed on a finding of the Tribunal in *S Muthusami v. Additional Director General (Adj), DRI, Mumbai [2020 (372) ELT 849 (Tri-Mumbai)]*. Likewise, it was pointed out that reliance placed on the decision of the Hon'ble High

Court of Bombay in *Bussa Overseas & Properties P Ltd v. CL Mahar, Asst Collector* [2004 (163) ELT 304 (Bom)] on imposition of penalty was misplaced. Reliance was placed by him on the decision of the Tribunal in *Commissioner of Customs (Import), Maharashtra v. Maharashtra Eastern Grid Power Transmission Company Ltd* [2023 6 Centax 6 (Tri-Mumbai)] on validation of evidence that may be deployed for determination of overvaluation. In the light of the legal framework within which the remaining pieces of the ‘jigsaw’ may be assembled, other submissions are merely taken on record.

15. Learned Special Counsel reiterated the findings, *vis-à-vis* the appellant, while elaborating upon the trail of evidence – documentary and testatory – establishing overvaluation of poor-quality coal transmitted through a channel insinuated for just that purpose. He contended that the appellant had vested interest in the entire overinvoicing strategy sufficing for confirmation of the penalties imposed. He submitted that the contract as the foundation of the proceedings being common ground, it was for the appellant, as noticee, to establish its *bona fides* with appropriate evidence. He contended that there was no finality on recourse to section 138C of Customs Act, 1962 for authentication of evidence gathered from electronic sources. He drew attention to the several decisions cited by the adjudicating authority in the impugned order which we merely taken on record for the same reasons as *supra*.

16. It is moot if the evidence that convinced the adjudicating authority of the legal imperative for substituting the declared value with price paid by the supplier to the providers of coal in Indonesia would, of itself, suffice for the imposition of penalties on the appellant merely from being a beneficiary as both section 112 of Customs Act, 1962 and section 114AA of Customs Act, 1962 stipulate circumstances of real contribution. That conclusion rests upon the finding that overvaluation stands proven by adoption of prices at which goods had been procured by the supplier from the producers with the adoption itself justified on the ground that price charged to the buyer was higher than price paid for the coal which is logic in permanent circular loop. The penalties are justifiable only to the extent that some act of omission or commission on the part of the appellant gave rise to circumstances in which the goods were held as liable for confiscation. Goods were held to have been imported in breach of section 111(m) of Customs Act, 1962 from re-determination of value by relying upon Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It is not on record that the appellant was associated with the minutiae of negotiation and structuring of the contracts with power producers, intermediary agents and coal producers. Nor is there any allegation that he was connected with filing of impugned bills of entry.

17. *Per contra*, with discard of one set of ‘certificate of sampling

and analysis (CoSA)’ for lack of applicability of conversion formula to determine correlation with each impugned consignment, the charge of having suppressed ‘real documents’ and furnished ‘unauthentic documents’ in their stead is no longer tenable thus erasing any role thereto of the appellant. Going a step further, the foundational supposition of overvaluation, and all consequences attendant thereto, is jeopardized by value adopted in the impugned order inasmuch as the said value is nothing but that obligated on the seller in Dubai to the supplier in Indonesia. Indonesia is place of export of one leg of the commercial engagement and Dubai is the place at which the recipient of that leg is situated. In other words, that is the price payable were the goods to have been delivered in Dubai which may be controverted only on finding that the importer is not the buyer both of which are anathemized by section 14 with effect from 2007.

18. The scheme of valuation, as set out in the extant Rules, is for the price to be the transaction value and, thereby, the value for assessment where duties of customs are to be charged on the basis of value. The optimal description of acceptable price, in rule 3 of Customs Valuation (Determination of Value of Imported Goods Rules), 2007, is also considered to be the default, save for any additions pertaining to costs and services related to the imported goods warranted by rule 10 of Customs Valuation (Determination of

Value of Imported Goods Rules), 2007, except in two specified and mutually exclusive circumstances, viz., transaction between related parties with the relationship having influenced price or upon discard by recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, permitting substitution with 'surrogate value' by sequential application of rule 4 to rule 9 therein, as the 'gold standard' of 'transaction value', as the governing concept, had been elevated to the substance itself in, with amendment of 2007 to, section 14 of Customs Act, 1962. Therefore, just as additional consideration transmitted to seller permits recast of 'price' as enhanced substitute so would the amount, to the extent of evidenced flowback yielding returns to the buyer directly and surreptitiously or as indirect benefit, depress the assessable value clearly within the ambit of rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Beyond that, recourse to rule 3 therein is not tenable for arriving at assessable value.

19. The impugned notice has made no suggestion, let alone offered evidence, of flowback to the importers to warrant reduction in declared value. Nor is there a suggestion in the grounds of appeal that crucial evidence of such flowback has been overlooked by the adjudicating authority. Recourse to rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, in the

absence of evidence suggesting flowback, to depress the price is not sustainable. The recourse, by adjudicating authority without compliance of mandate, in rule 3(4) after discard of declared price in circumstances envisaged in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, of ascertaining 'transaction value' of 'identical' or 'similar' goods, of which there is no whisper in the show cause notice, let alone of 'computed' value or 'deductive' value set out in rule 7 and rule 8 therein, and failure, thereby, to carry through the consequence of discard under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, discredits the discard itself and rescinds cause for substitution.

20. *Per contra*, the re-determination, by adoption of price, truncated to the extent of 'unacceptable value addition' in the 'document chain', is tantamount to freezing the 'consideration chain' at a stage prior to the last in the billing for the very goods under assessment; it is neither in accord with 'surrogate value' drawn from other legitimate transactions permitted to be appropriated for re-assessment by recourse to rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 nor 'depressed'/ 'enhanced' consideration for the goods under assessment permitted by rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The 'transaction value' in

rule 4 therein is intended to be drawn from consignment of ‘identical goods’ which ‘goods under assessment’ is not and the ‘price’ of ‘goods under assessment’ is alterable only in the manner permitted in rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Synthesis of the two has neither approval in law nor precedent of judicial determination. Arbitrary curtailment of ‘price’ of ‘goods under assessment’ has no place in the contemporary scheme of valuation and, with valuation scheme having evolved as universal distillate of national experiences in assessment over the years, may be affirmed only at cost of regressing to those days when unfettered discretion held sway.

21. That the present exercise in the impugned order was, indeed, such throwback to the ‘neanderthal’ prototype preceding the General Agreement in Trade and Tariffs (GATT) valuation, and even the Brussels Definition of Value (BDV), is evident from

‘14(1) For the purposes of the Indian Tariff Act, 1934, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be-

(a) the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the buyer and seller have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale;

(b) where such price is not ascertainable, the nearest ascertainable equivalent thereof determined in accordance with rules made in this behalf

XXXXXXX'

in section 14, as at the time of enactment of Customs Act, 1962, and before some form of semblance to the extant scheme of valuation was brought about by Customs (Amendment) Act, 1988 with substitution by

'14(1) For the purposes of the Indian Tariff Act, 1934, or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such 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 or exportation, as the case may be, in the course of international trade, where the buyer and seller have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale;

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

XXXXXXX'

and under which authority, the detailed, and comprehensive, Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 came to be notified for the beginning of structured valuation regime that eventually evolved into what we have today.

22. In those tentative days, and to give effect to original concept of

‘value’, Customs Valuation Rules, 1963 were notified and it was in

‘.....

(b) If the value cannot be determined under Cl. (b), it may be based on the value at which such goods or comparable goods produced or manufactured by the person who has produced or manufactured the goods to be assessed are ordinarily sold or offered for sale under competitive conditions to buyers in countries outside India... ‘

of rule 3 therein that authority for methodology adopted in the notice and espoused in the impugned order may be found to exist. Not too regretfully, that has been consigned to the archives only to be occasionally recalled, and though maybe nostalgically by customs authorities of an ilk, by others for reflection on what once was while measuring advances in seamless international trade made since then. Be that as it may, such enlarged authority does not exist anymore and that the said Rules have been overhauled, not once but twice, during the last six or so decades should be caution enough to preclude such adventurism of regressive time travel. Moreover, that most elastic of prescriptions for ‘surrogate value’ does, with the express bar of

‘(2) No value shall be determined under the provisions of this rule on the basis of

.....

(v) the price of the goods for export to a country other than India;

.....’

in rule 9 of Customs Valuation (Determination of Value of Imported

Goods) Rules, 2007 precludes resort to the price payable or paid by M/s Coal and Oil DMCC Company and M/s Coal and Oil LLC Company to Indonesian coal suppliers and, who being based in another country, renders that price to be for export to those very entities.

23. With such doubts about the correctness of the value adopted in the impugned order, even suggestion of misdeclaration of value is questionable and, thereby, precluding even any act of the appellant as having contributed to confiscability and, likewise, that any document had been incorrectly filed.

24. In view of the circumstances set out above, there is no scope for concluding that alleged acts of omission and commission on the part of the appellant had rendered the goods liable to confiscation under section 111(m) of Customs Act, 1962 or that any of the documents and declarations, knowingly made, used or caused to be made or used for clearance by presentation to customs authorities, were false or incorrect has not been established, the penalties do not survive. Appeal is allowed to set aside the penalties.

(Order pronounced in the open court on 15/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)