

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

WEST ZONAL BENCH

**CUSTOMS APPEAL NO: 85424 OF 2024
WITH
CUSTOMS APPLICATION (MISC) NO: 86184 OF 2024
(on behalf of appellant)**

[Arising out of Order-in-Original No: 186/2023-24/Commr/NS-III/CAC/JNCH dated 01st December 2023 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Mukand Ltd
Thane-Belapur Road, Dighe, PO: Kalwe, Thane-400605 *... Appellant*

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, DIst: Raigad - 400707 *...Respondent*

APPEARANCE:

Shri Mihir Mehta, Advocate and Mr Ananta Khandait, Advocate for the appellant
Shri A K Singh, Special Counsel for the respondent

**WITH
CUSTOMS APPEAL NO: 85157 OF 2024**

[Arising out of Order-in- Original No: 186/2023-24/Commr/NS-III/CAC/JNCH dated 01st December 2023 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Alok Kumar
Sandeep Garg & Co, H No 132, VPO-Rampura
Dist: Rewari, Haryana – 123 401 *... Appellant*

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, DIst: Raigad - 400707 *...Respondent*

**WITH
CUSTOMS APPEAL NO: 85158 OF 2024**

[Arising out of Order-in- Original No: 186/2023-24/Commr/NS-III/CAC/JNCH dated 01st December 2023 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Sandeep Garg & Co
H No 584, Sector – 15, Part-1, Gurgaon
Haryana – 123 401 *... Appellant*

versus

Commissioner of Customs (NS-III)

Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, DIst: Raigad - 400707

...Respondent

APPEARANCE:

Shri Hans Raj Garg, Consultant for the appellants
Shri A K Singh, Special Counsel for the respondent

WITH

CUSTOMS APPEAL NO: 85278 OF 2024

[Arising out of Order-in- Original No: 186/2023-24/Commr/NS-III/CAC/JNCH dated 01st December 2023 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Tristar Oceanic Services Private Limited
333 3rd Floor, Nav Vyapar Bhavan, 49 P D'Mello Road
Masjid (E), Mumba - 400009

... Appellant

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, DIst: Raigad - 400707

...Respondent

APPEARANCE:

Shri C K Chaturvedi, Consultant for the appellant
Shri A K Singh, Special Counsel for the respondent

WITH

CUSTOMS APPEAL NO: 85556 OF 2024

[Arising out of Order-in- Original No: 186/2023-24/Commr/NS-III/CAC/JNCH dated 01st December 2023 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

CIM Shipping Inc
Hub & Links Ligistics (I) Pvt Ltd
Shelton Sapphire, 901 & 902, Near Croma Showroom
Sector – 15, CBD Belapur, Navi Mumbai - 400614

... Appellant

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, DIst: Raigad - 400707

...Respondent

APPEARANCE:

None for the appellant
Shri A K Singh, Special Counsel for the respondent

AND

CUSTOMS APPEAL NO: 85608 OF 2024

[Arising out of Order-in- Original No: 186/2023-24/Commr/NS-III/CAC/JNCH dated 01st December 2023 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Goodrich Maritime Private Ltd
7th & 8th Floor, Meraki Arena, Sion-Trombay Road

... Appellant

Ghatla, Chembur, Mumbai - 400071

versus

Commissioner of Customs (NS-III)

Jawaharlal Nehru Customs House, Nhava Sheva,
Tal: Uran, Dist: Raigad - 400707

...Respondent

APPEARANCE:

Ms Bhoomika Markam, Advocate for the appellant

Shri A K Singh, Special Counsel for the respondent

CORAM:

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

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85809-85814/2025

DATE OF HEARING:	22/10/2024
DATE OF DECISION:	16/04/2025

PER: C J MATHEW

This is not a dispute over assessment to duties of customs of a sort usually agitated before the Tribunal in which technical aspects of imported goods is in controversy or resort to 'surrogate' value is assailed. Neither does it purport to be about eligibility for concessional rates of duty accorded by notification issued under section 25 of Customs Act, 1962 that has brought the appellants before us and nor are we called upon to validate entitlement to preferential rate of duty riding on bilateral or multilateral trade agreement with other nations. And yet, elements of each of these, other than that of valuation – of itself, conspicuously astounding for not having been invoked in the peculiar circumstances of allegedly longer and circuitous passage to India – of imported goods, do make appearances in this rather melodramatic saga that was, for a refreshing change, less about

the levy than the optics though impugned order¹ of Commissioner of Customs (NS-III), Jawaharlal Nehru Customs House (JNCH), Nhava Sheva did confirm liability to differential duty along with consequential detriment of confiscation under section 111 of Customs Act, 1962 attended upon by penalties imposed under section 112 and section 114A of Customs Act, 1962.

2. There is, moreover, a story to it: a story of recrimination for having allowed profit to overwhelm patriotism and a story of reproach for traducing of hard-won respectability. Neither Learned Special Counsel appearing for respondent nor Learned Counsel for appellants were abashed in appeal to emotions which appeared to have much to do with commencement, and prosecution, of proceedings herein impugned. So much so that Commissioner of Customs (NS-III), Nhava Sheva saw it fit to narrate contents of the show cause notice which, *inter alia*, observed that

'M/s. Mukand Limited entered into conspiracy with Pakistan suppliers like M/s. Ghousia Metal Co., Karachi, Upright Trading, Karachi, W S Metal Trading, Gujranwala and Fareed Trade, Karachi interfacing with Dubai based companies in Free Trade zones like Al-Ajunar International FZE, Zurich Metal Scrap Trading LLC (M1J International DMC CC), Stainless Metai General Trading FZE, Narco NICRO Metals PTE Ltd , P M Steel & Alloys Industries SDN.BHD and their subsidiary Mukand International FZE (which has been shut down since the detection of the subject case). M/s. Mukand has all along stated during the course of investigation that they were not aware of the Pakistani origin of the material cleared by them, however, it is pertinent to mention that M/s. Mukand through their subsidiary Mukand International were based in Dubai. Furthermore, M/s. Mukand International FZE is a company incorporated under the Free Trade Zone. Further, as per law no.13 of 2011, the department of

¹ [order-in-original no. 186/2023-24/Commr/NS-III/CAC/JNCH dated 1st December 2023]

economic development in Dubai is the only agency authorised to issue Trade licences for Dubai. In accordance with this law no business is permitted to conduct economic activities in Dubai outside the Free Zones. From the data tabulated above, it can be seen most of the interface used by M/s. Mukand Limited to mask the Pakistani origin of its imports are through companies which are incorporated in Free Trade Zones and as such are not allowed to trade with any mainland entities. It is surprising that M/s. Mukand Limited has pleaded ignorance of Pakistani origin of their imported goods especially when they themselves had a subsidiary incorporated in the FTZ. They in order to disassociate with their Pakistani suppliers have submitted documents from a Chartered Accountant M/s N R Sanghrajka & Co certifying that M/s Mukand Ltd., have not imported any steel scrap from the Pakistani companies mentioned as suppliers in the first leg bills of lading stated in the preceding para during the period from F.Y 2017-18 to F/Y 2021-22.'

before proceeding to adjudicate the consequences of. And all of this in as mundane a dispute as fitment within description corresponding to tariff item 9806 0000 in First Schedule to Customs Tariff Act, 1975 for levy of duty by the enabling provision in section 12 of Customs Act, 1962. That the impugned description happened to be

'All goods originating in or exported from the Islamic Republic of Pakistan'

is, understandably, the essence of this saga needs no further imagination even as the burdening with 'outlier' rate of duty of 200% *ad valorem* is crippling enough. That goods alleged to be in conformity thereto, though arguably claimed to be unbeknownst to the importer, were attempted to be passed off as having originated in United Arab Emirates (UAE) has layered this dispute with burden of scandalous odium and baggage of sentimental emotion rarely borne in tax disputes.

3. The principal appellant, M/s Mukand Ltd, is one among several others in the steel industry procuring 'metal scrap' in huge quantities and for long from suppliers outside India. That the impugned 'stainless steel scrap' had arrived in India, like for several others, from the United Arab Emirates (UAE) is common ground just as they, like several others, were also alleged to be complicit in sourcing from Pakistan only to try passing them as not. It was not as if import of goods from Pakistan was prohibited for they were not but that the attempt to obfuscate origins was prompted not by the laudable purpose of appearing to have joined in sanctioning that country for egregiousness but the base desire to evade duty which drew such animosity towards the importer and their colluding partners. And, not unnaturally, not only of stout denial in response but also with remarkable alacrity in sending back such of the 'tainted' goods to the shipper and remorseful deposit of differential duty on the most recent of consignments already consumed.

4. It commenced with recent arrival of goods from those who had been contracted for supply which happened to have been loaded in containers whose distinctive registration identity showed up in the web-site of the Pakistan International Container Terminal (PICT) at Karachi in chronological proximity to despatch from Jebel Ali in the United Arab Emirates (UAE). That, however, was in conflict with the shipping documents issued in the United Arab Emirates (UAE), particulars of shippers who were located in Singapore and Malaysia, the declarations claiming origin as United Arab Emirates (UAE) and the 'pre-shipment

inspection certificate (PSIC)' issued by agency authorized by the Directorate General of Foreign Trade (DGFT). Moreover, it was suspicioned that several other consignments may have also landed earlier prompting wider search that elicited, by reverse matching, details of similar reported presence at Karachi. The sum of these constituted the entirety of goods impugned in these proceedings. Of the two 'pre-shipment inspection agency (PSIA)' involved, one based in Gurgaon, M/s Sandip Garg & Co, after ascertaining from their correspondents in Pakistan and in the United Arab Emirates (UAE), admitted that the goods had been inspected at Karachi and that, with mere verification of seals evincing securing of contents, inspection certificates had been issued in the United Arab Emirates (UAE) without demur owing to which reliance on those as evidence of origin was now disavowable. M/s Goodrich Maritime, one of the two line agents for the principal, M/s Baltic Shipping Pvt Ltd, was able to persuade M/s Goodrich Asia Pacific SDN BHD, their Malaysian counterpart acting for shipper, as well as M/s Vasco Global Maritime LLC, the Dubai agent acting for the shipping line, to obtain and make available relevant 'transshipment manifests' which not only enabled chronological correlation of container arrival at, and departure from, Jebel Ali but also the corresponding seal numbers which, allegedly, remained, and even untouched, all the way from Pakistan to India via Jebel Ali. The other, M/s Hub & Links Logistics (I) Pvt Ltd, as agent for their principals, M/s CIM Shipping Inc, and four 'pre-shipment inspection certificates (PSIC)' issued by remained unresponsive and, likewise, the other agencies, M/s NQAQSR North America and M/s Asia Inspection Agency Company Ltd, Thailand,

for ‘pre-shipment inspection’ that was mandated for all scrap imported into India owing to which the available evidence had to be projected for impugning the other consignments. The documents furnished and statements recorded formed the sum of primary evidence of the containers having been loaded in Pakistan with ‘stainless steel scrap’ and transported all the way to India by concealment of origin to evade the crippling duty liability in the impugned proceedings. In addition, secondary evidence was insinuated into the investigation in the form of admission, through shipping agent in India, that bills of lading had been switched, and sometimes twice or more, in the United Arab Emirates (UAE) at the instance of a related entity of the importer, M/s Mukand International FZE, in the Jebel Ali Free Zone (JAFZ) which brought other colluding entities in several other Free Zones of the United Arab Emirates (UAE) out of the woodwork as ‘suppliers’ of the ostensible suppliers against back-to-back engagement with sellers in Pakistan. Yet another secondary evidence, that of Free Zone entities being precluded from commercial transactions with local traders by decree was also made available to reinforce discard of United Arab Emirates (UAE) as origin of the impugned goods. Thus was the narrative, the interludes and the dotted continuity collated as the show cause notice confirmed in adjudicating and is now impugned before us in these several appeals. And now to the details.

5. Two consignments, comprising 54.53 MTs of ‘stainless steel melting scrap’ valued at ₹ 1,20,00,045 and 43.35 MTs of ‘stainless steel melting scrap’ valued at ₹ 95,37,76, imported by M/s Mukand Ltd from

M/s PM Steel and Alloys Industries SDN BHD, Malaysia and, against bills of entry no. 6411126/26.11.2021 and no. 6411296/26.11.2021, were self-assessed to duties of customs at the rate corresponding to tariff item 7204 2190 of First Schedule to Customs Tariff Act, 1975, which being 'nil rate' for levy of basic customs duty owing to availability of notification no. 50/2017- Cus dated 30th June 2017 (at serial no. 369), limited the liability to ₹ 21,69,008 and ₹ 17,16,798 towards 'integrated tax' chargeable under section 3(7) of Customs Tariff Act, 1975. Examination of the consignment and scrutiny of accompanying documents did evince accord with declaration on weight, description and grade of the goods as well as the identification particulars of, and seals on, the five containers which, however, were also found to conform with the information available through, admittedly, 'open source data', viz., website providing for tracking of traffic through Pakistan International Container Terminal (PICT) on loading of those very containers, with those very seal details, on two vessels bound for Jebel Ali on 2nd November 2021 and 9th November 2021. Statements of shipping agents, brokers and purchase officials of importers, corroborating montage of the cargo having been transported from Karachi on two vessels which, after discharge at Jebel Ali on 6th November 2021 and 11th November 2021, were loaded on one vessel there on 19th November 2021 only to be discharged at Nhava Sheva on 27th November 2021, was considered as sufficing to conclude origin as being from Islamic Republic of Pakistan for recovery of 'country specific' rate of duty, corresponding to tariff item 9806 0000, incorporated on 16th February 2019 in First Schedule to Customs Tariff Act, 1975, at 200 % and for the goods

to be held liable to confiscation under section 111 of Customs Act, 1962 with consequential detriments to penalties under section 112 and section 114AA of Customs Act, 1962. Those were seized on 6th December 2021 and, at early stage investigation, representative of the importer intimated that another recently received consignment, cleared against bill of entry no. 6076366/31.10.2021, sourced from the same supplier was yet lying at their premises. The customs broker and representative of importer, who furnished sales contract dated 26th August 2021 with, and supporting purchase order of 26th August 2021 on, M/s PM Steel and Alloys Industries SDN BHD, Malaysia, confirmed that the entry under section 46 of Customs Act, 1962 declared the origin of the goods as United Arab Emirates (UAE) from the 'country of origin' certificate and 'pre-shipment inspection certificate (PSIC)' obtained from supplier and to be in conformity with contract.

6. Through M/s Goodrich Maritime Pvt Ltd, it was ascertained from their principal, M/s Baltic Shipping Pvt Ltd, and the Malaysian agent of the principal, M/s Goodrich Asia Pacific SDN BHD as well as the Dubai agent, M/s Vasco Global Maritime LLC, that the vessel manifest filed by relying on the bills of lading were, in fact, switched twice – once from the supplier to importer and, prior to that, from M/s Zurich Metal Scrap Trading LLC to supplier after that of M/s Crescent Metals Trading DMCC, UAE to the other company in Dubai. The retracing of these, based on the consonance of container and seal numbers with the details in the bills of lading as well as corresponding details in the web-site of Pakistan International Container

Terminal (PICT) about the shipment thereof from M/s Bilal & Co, Karachi with M/s White Crescent Metals Waste Trading LLC. The representative of M/s Sandeep Garg & Company, notified 'pre-shipment inspection agency (PSIA)', intimated that, on request of sellers to their associates in the respective location of shipment, inspection is carried out for security and radiation threats following which certificates are issued and admitted that their representative at Karachi had inspected the containers there with the associate at Dubai, having checked the seals, choosing not subject it to the same examination owing to which fresh certificate came to be issued for the next leg of international carriage.

7. Scrutiny of earlier bills and details thereof subjected to matching with the web-site of Pakistan International Container Terminal (PICT) threw up another eleven bills of entry for clearance of MTs valued at ₹ 9,42,10,132 between February 2019 and February 2021, of which four consignments, viz. goods covered by bill of entry no. 3589072/ 10.06.2019, bill of entry no. 6530285/ 18.01.2020, bill of entry no. 6552959/20.01.2020 and bill of entry no. 6842270/ 11.02.2020 were handled through principal of M/s Goodrich Maritime Pvt Ltd while those cleared against bill of entry no. 2159546/22.02.2019, bill of entry no. 2160195/22.02.2019, bill of entry no. 5239975/10.10.2019, bill of entry no. 5241758/10.10.2019, bill of entry no. 9265029/21.10.2020, bill of entry no. 2721080/11.02.2021, bill of entry no. 2864991/ 22.02.2021 comprised those handled by M/s Hub & Links Logistics (I) Pvt Ltd for their principals, M/s CIM Shipping Inc, and four 'pre-shipment inspection certificates (PSIC)' issued by M/s NQAQSR

North America and seven by M/s Asia Inspection Agency Company Ltd, Thailand. Details of twelve consignments of 'stainless steel melting scrap', comprising MTs valued imported between February 2019 and October 2021, by M/s Mukand Ltd from M/s Al Julnar International FZE, M/s Zurich Metal Scrap Trading LLC and M/s Stainless Metal General Trading FZE in the Jebel Ali Free Zone as well as M/s NICRO Metals Pte Ltd, Singapore and M/s PM Steel & Alloys Industries SDN BHD, Malaysia and entered for clearance on payment of ₹ 23,87,86,805, at rate of duty corresponding to tariff item 7204 2190 of First Schedule to Customs Tariff Act, 1975 which, owing to effective rate in notification no. 50/2017-Cus dated 30th June 2017 (at serial no. 369), at 2.5% upto 31st January 2021 and 'nil rate' thereafter, and cess thereon along with 'integrated tax', chargeable under section 3(7) of Customs Tariff Act, 1975, was limited to ₹ 1,93,75,133

8. On the finding that the importer had arranged the transactions, through their presence in the Jebel Ali Free Zone, under the name and style of M/s Mukand International FZE, with ostensible suppliers purporting to be shippers even as the goods were sourced from M/s Ghousia Metal Co., M/s Upright Trading, M/s WS Metal Trading and M/s Fareed Trade in Pakistan only to be landed in containers at Dubai through M/s Baltic Lines and M/s CIM Shipping Inc, acting in India through M/s Goodrich Maritime Pvt Ltd and M/s Hubs and Links Logistics Pvt Ltd, who were persuaded to issue switched bills of lading as cargo from UAE and enabled by 'pre-shipment inspection agencies (PSIA)', such as M/s Sandeep Garg & Co,

M/s NAQSAR, North America and M/s Asia Inspection Agency Co Ltd, who certified inspection as having taken place in UAE, the duty liability was enhanced to ₹ 23,87,86,805 and with the goods, not available, held liable to confiscation under section 111 of Customs Act, 1962 for imposition of penalties under several provisions of Customs Act, 1962 on the appellant, agents and others connected with the imports.

9. During investigation, the importer deposited ₹ 8,33,14,548 as differential duty liability on four of the imports of which ₹2,24,31,529 was towards the single import available at their premises after clearance and the remaining pertained to the shipments effected by M/s Nicro Metals, Pte in Singapore and M/s PM Steel and Alloy Industries, Sdn Bhd in Malaysia. Adducing this to be admission of allegations being true, Learned Special Counsel for respondent-Commissioner of Customs summarized the facts and circumstances in which confiscation of seized goods and liability to confiscation of earlier imports of 'stainless steel melting scrap' under section 111 of Customs Act, 1962, recovery of entire and partial basic customs duty as well as cess and partial integrated tax on earlier imports under section 28 of Customs Act, 1962 and appropriate penalties under section 112, section 114A and section 114AA of Customs Act, 1962 was proposed in the show cause notice. He submitted that the identification numbers of, and of seals affixed on, containers comprising the seized containers corresponded to that in the bills of lading issued by Malaysian agent of shipping line engaged by M/s PM Steel and Alloys Industries SDN BHD, Malaysia and the 'post shipment inspection certificate (PSIC)' issued

by M/s Sandeep Garg and Company Ltd upon confirmation from their associate as having been physically carried out. He further submitted that investigation resorted to 'open source' data, viz., website of Pakistan International Container Terminal (PICT), to correlate shipment of the same containers with the same seals from Karachi on two vessels a few days before these were loaded, as they were, from Jebel Ali. According to him, the 'post shipment inspection agency (PSIA)' confirmed that only seal inspection of containers had been carried out for issue of certificate produced in India while the goods had been examined only by the associate in Karachi. The vessel agent ascertained from their Dubai counterpart that the goods were covered by a transshipment manifest involving switch of bills of lading twice in the United Arab Emirates and, further, that the first bill of lading was issued on shipment by M/s Bilal & Co, Karachi.

10. He submitted that the other goods, having been cleared earlier, could not be tracked in like manner as a consequence of physical availability of container and seal for verification but that one consignment, available with importer, could be similarly correlated from the documents available with customs broker for similar ascertainment of correspondence with same 'open source data' and from statements and document submissions of the shipping agents traced to the same supplier in Karachi through the ostensible supplier in Malaysia. It was submitted that, thereafter, sufficient cause existed to subject bills of lading covering all imports of the importer after February 2019 for match with web-site of Pakistan International Container Terminal (PICT) from which investigation was enabled to cull the numbers

of seals and containers as well as first bills of lading issued by shipping agents, on assumption of custody of cargo, which, through the agents in India were ascertained to have been issued in favour of entrusted by in favour of M/s Al Julnar International FZE, M/s Zurich Metal Scrap Trading LLC and M/s Stainless Metal General Trading FZE in the Jebel Ali Free Zone as well as M/s NICRO Metals Pte Ltd, Singapore and M/s PM Steel & Alloys Industries SDN BHD, Malaysia as consignees of M/s Ghousia Metal Co., M/s Upright Trading, M/s WS Metal Trading and M/s Fareed Trade in Pakistan.

11. Learned Counsel for appellants contends that the entirety of the notice, and the impugned order, stems from inferences and surmises with not an iota of evidence that the impugned goods conformed to the description corresponding to tariff item 9806 0000 of First Schedule to Customs Tariff Act, 1975. He contended that the movement of containers, as set out in the notice, was of no concern to the appellants and that, surprisingly, in the face of the circumstances in which the tariff item was incorporated in the First Schedule to Customs Tariff Act, 1975, the customs authorities had no compunction in conferring oracular authenticity to details available in the electronic domain for governance of that country. He pointed out that, with 'stainless steel melting scrap', freely available elsewhere the importer had no motive in attempting imports from a country whose products were burdened with a crippling tariff of 200% ad valorem except in circumstances of being paid for its removal which is not the case of the customs investigation. He submitted that there is not even a whiff of

suggestion, let alone allegation that the declared value, which was at par with the prices prevailing at the relevant time in the international market, was not the transaction value. He contended that, with such duty burden, it did not make commercial sense for shippers in Pakistan to underprice the impugned goods merely for incentivizing Indian users. He, effectively, put forth the proposition that ‘scrap’, having reached another country, loses its national identity from the nature of the product despite which the impugned order has contrived, through inadmissible documentation and unacceptable deposition, to retrace the origin merely from the irresistibility and the allure of differential duty from a peculiar construct in the chapter 98 of First Schedule to Customs Tariff Act, 1975 and some optics as dividends.

12. Learned Counsel highlighted that the goods arrived from Jebel Ali and the transaction with the several suppliers, from United Arab Emirates (UAE), Singapore and Malaysia, was accompanied by documents such as invoice, packing lists and mandatory pre-shipment inspection certificate – all issued in the United Arab Emirates (UAE) – and, as far as they were concerned, the bills of lading were of no concern to the procedure of assessment set out in section 17 of Customs Act, 1962; he found it ironical that each of the these documents, with their particular contribution to assessment and clearance, were accorded a clean chit as far that particular role was concerned but were drawn upon for drawing inferences beyond that which could be culled from the particular document. According to him, it was no less bemusing that surrogates for ‘certificate of origin’ were elevated to the pedestal of unavoidable necessity when neither preferential

rate or exemption/concession for geographical consideration engaged the dispute. He contended that the web-site accessed by the investigation was not acceptable at face value inasmuch as credibility was accorded by the adjudicating authority to a source whose very national identity itself carried the burden of crippling deterrent rates of duty calculatedly imposed for acts unacceptable to the comity of nations united by civilizational legacy and in commercial intercourse.

13. He was critical of the reasons for concluding that the goods shipped from Karachi arrived at Nhava Sheva when all that could be inferred had been founded on the purported bills of lading issued at Karachi and congruity of information therein – container number, weight and description – with declarations on import into India and the admission by the ‘pre-shipment inspection agency (PSIA)’ of goods having been inspected only in Pakistan and of only the seals having been checked at Dubai on the basis of which, and at request of Malaysian supplier, ‘pre-shipment inspection certificate (PSIC)’ was issued. He cast doubts about this assertion in the light of absence of any documentation to that effect. Learned Counsel relied upon the terms of agency function assigned by the Foreign Trade Policy (FTP) to ‘pre-shipment inspection agency (PSIA)’ and contended that the other two, who had issued certificates for the remaining consignments, were not authorized to inspect goods in Pakistan and the one permitted to do so was not able to substantiate the genuineness of the submission by having dispatched its inspector to Pakistan or, as warranted in relevant instructions, by uploaded photographic evidence of

the inspection. According to him, the purported original bills of lading, though furnished, were, but for want of direct routing, from the custodian thereof, viz., M/s Baltic Shipping Pvt Ltd or M/s CIM Shipping Inc, of the said documents, not acceptable as authentic for imposition of such detriments on them. He also assailed the reliance placed upon statements of persons connected for want of credibility and for deposing on facts solely on hearsay.

14. According to Learned Counsel, there was an unacceptable illogic insofar as reliance was placed on the assertion of representative of M/s Sandeep Garg and Company was concerned. On the one hand is the acceptance of their 'voluntary statement' of inspection carried out in Pakistan to conform to requirements of Foreign Trade Policy (FTP) in India when, if fraudulently intended, could well have been carried out in the United Arab Emirates (UAE) with no questions asked and that it is not the case of customs authorities that the regulatory framework in Pakistan required such inspection as pre-condition for import. He contended that the entire proceedings were misdirected on both fact and law to seek setting aside of the impugned order.

15. Learned Special Counsel contended that, in the facts and circumstances, evidence beyond doubt was neither feasible nor required and that preponderance of probability suffices. For this proposition, he placed reliance on the decision of the Hon'ble Supreme Court in *Commissioner of Customs, Madras v. Bhoormul* [1974 AIR 859] and in *SP Chengalvaraya Naidu v. Jaganath* [1994 AIR 853] which, though in the

context of a civil dispute, was followed in a number tax appeals. He urged that, in view of the conspiracy arraigned in the impugned order, hasty re-export of the intercepted consignments and eager deposit of differential duty of goods imported during the normal period of limitation, it may reasonably be inferred as admission of deliberated action with intent to evade duties of customs and overcome the tariff barriers erected in public interest. As the facts of investigation have been elaborately noted supra, we abjure the tedium in repeating the background explained by Learned Special Counsel.

16. Several factors were concatenated to arrive at the conclusion of duty having been evaded by misdeclaration of the appropriate tariff item, *i.e.*, by taking recourse to the heading that matched visual and physical characteristics of the impugned goods instead of that flowing from origin of the goods which, owing to specificity was the apt classification. Needless to say, the said tariff item did cut across the entire spectrum of goods and, though assignable elsewhere in the First Schedule to Customs Tariff Act, 1975 by characteristics and distinguishment, the test of appropriateness is either declaration of origin as Pakistan or the evidence in the notice to establish the source as Pakistan. Consequently, it is antithetical to preferential rate, made available by notification under section 25 of Customs Act, 1962 upon discharge of onus by importers staking claim for such privilege, and rendered feasible by geographical restrictiveness on the back of certificate of origin and which, on lack of declaration and it being unfeasible to insist that onus rests on importer by production of

exclusionary documentation, requires customs authorities to establish provenance and consequent duty burden. The fundamental rules of engagement on classification for the purpose of section 12 of Customs Act, 1962, having been set out by the Hon'ble Supreme Court in *Hindustan Ferodo Ltd v. Collector of Central Excise* [1997 (89) ELT 16 (SC)] thus

'It is not in dispute before us as it cannot be, that onus of establishing that the said rings fell within Item No. 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed.'

and, in *HPL Chemicals Ltd v. Commissioner of Central; Excise, Chandigarh* [2006 (197) ELT 324 (SC)] that

'28. This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub- heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue.....'

brooks no course of action but to ascertain compliance with that onus in the impugned order. There is no finding of fitment within tariff item 9806 0000 of First Schedule to Customs Tariff Act, 1975 except through some documented and deposed narrative about the impugned goods which we shall turn to presently.

17. Classification is intended to fulfill the enabling provisions in section 12 of Customs Act, 1962 for assessment to duty under section 17 of Customs Act, 1962 and clearance for home consumption under section 47

of Customs Act, 1962. Nothing turns on fitment in the appropriate tariff line except rate of duty and it is normally, and motivated by cheaper tariff, that a dispute arises and is settled in terms of the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975. Here, there is no doubt that one line certainly conforms to the declaration except if imported from Pakistan and the alternative line is apt, and to the exclusion of every other characteristic of the impugned goods, solely if the goods have originated from Pakistan. This presents an unusual conundrum: tariff lines are intended to be based on declaration and physical examination in conjunction with description and notes in the relevant chapter of First Schedule to Customs Tariff Act, 1975. The tariff line sought to be fastened by customs authorities can be assured of certainty only upon declaration of origin as Pakistan. With such crippling rates, any legitimate import from that source is nothing short of foolhardy and any surreptitious import requires negation of all and every declaration made by the import. It is not a tariff line for normal imports by normal importers. Being an issue of classification, the imperatives of Customs Tariff Act, 1975 in the General Rules for Interpretation of the Tariff and judicial determination of onus cannot be diluted. The decisions in *re Bhoormul* and in *re SP Chengalvaraya Naidu* are contextual and the test by preponderance of probability cannot be grafted here except by dilution of statute and judicial determination noted by us. The consequences for any other import is too horrific to conjecture and we must tread with caution here.

18. The appellants have protested their innocence about the source of the

goods and resisted the evidence presented for being mere speculative inference that does not survive the test of law as established fact. On behalf of the respondent, it was enunciated that the goods were from Pakistan and hence chargeable to the prescribed rate of duty with penalties to follow. Admittedly, the goods did not cross the land borders, was not carried through the airspace or had not been laden on vessel for carriage directly to India. Nor are the goods of themselves, by uniqueness of characteristics, from markings thereof or upon commercial familiarity, amenable to such geographical identification. On the other hand, the appellants do not assert that the goods are from some specific part of the world; as buyers of a waste product generated in most parts of the world, their stand is that they are not required to know the source and, being called upon to prove the negative, is to foist onus that was not theirs to discharge and on flimsy evidence that a departmental adjudication adopted as unshakeable proof which would only prompt whimsical impediments to international trade not contemplated in law or by policy.

19. The foundational bedrock of the dispute is the appropriate rate of duty which, in accordance with section 12 of Customs Act, 1962, was to be charged on 'stainless steel melting scrap' imported by M/s Mukand Ltd after February 2019. Though the adjudication order and submissions of Learned Special Counsel are liberally sprinkled with references to notification no. 05/2019-Cus dated 16th February 2019, whether with deliberate intent or for ease of convenience, that such notification was not issued under section 25 of Customs Act, 1962 eliminates the onus

devolving on importer to establish fitment at the rate so notified. There was also no prohibition, either under the Foreign Trade Policy or in any other law, on goods imported from Pakistan. The enhanced rate was emplaced by resort to emergency powers vested in the Central Government under Customs Tariff Act, 1975 and, so enabled, the impugned insertion of

‘All goods originating in or exported from the Islamic Republic of Pakistan’

as tariff item 9806 0000 in First Schedule to Customs Tariff Act, 1975 and chargeable to duty at 200% with no precedent ever. The very same goods would find fitment in some other description in the First Schedule to Customs Tariff Act, 1975 and, thus, the distinction turns only in the geographical sourcing attending on the goods; thus, while having to conform to rule 1 of General Rules for Interpretation of the Schedule appended to Customs Tariff Act, 1975, elimination in comparison with the readily available alternative in terms of rule 3 therein is also implicit from the peculiarity of its construct.

20. Its novelty must, doubtlessly, have fazed the trade as well as the customs administration in its enforcement for a tariff item is precisely what it purports to be and, given the expression contained therein, intended for application to goods declared as such. That, however, made no commercial sense save for such goods as must inevitably be imported from, by solely being available in, Pakistan. It is also axiomatic that high tariffs are the motive for arbitrage through the grey market but the industrial utility of the goods, and in large consignments, increases the risk with the added

necessity of having to legitimize the goods at some stage. Such undertaking would have to take into consideration conniving port authorities, lax customs enforcement, banking networks and logistics providers which, as pointed out by Learned Counsel, makes no commercial sense unless priced so much below the international market prices as to mitigate the risk and balance the cost. There is neither evidence of such, and indeed has not been attempted to be established, nor allegation that large part of the consideration was not made over to the purported suppliers in Pakistan. It makes no sense for such suppliers to enable supply to India at below market prices. It is said that truth is stranger than fiction but for fastening of tax levy such truth must be established in the manner dictated by legislated enablement and mechanized by judicial interpretation.

21. It has not escaped our attention too that inhering in such ‘territory specific’ rate of duty, which though normally is about grant of concession from bilateral or multi-lateral trade negotiations, are ‘origin’ and, invariably, appended with rules for eliciting such origin to be certified in manner mutually acknowledged. Rules, in particular, also provide for wherewithal to ascertain veracity and authenticity of suspected certification. Before us is not a concessional rate dispute that may be settled with mandatory certification as the touchstone. As no conditional claim for concession is at stake, the origin is not material to the declaration under section 46 of Customs Act, 1962 and for recovery to turn on the paucity, or reality, of certification is to place a burden on all importers across the board which is counterproductive to the intent of the insertion of the impugned

tariff item. To place such burden on select importers after import is neither founded in law and procedure nor anything but discriminatory treatment. The only tariff item in the First Schedule to Customs Tariff Act, 1975 that is contingent upon geographical territory does not come appended with Rules for determining the origin and despite incorporating that very expression in the description. Moreover, the alternative for fastening the crippling duty liability, *i.e.* 'exported from', is bereft of any definition that may serve for fair administration of the tax. Learned Special Counsel submitted that common parlance offers the solution and that, otherwise, Customs Act, 1962 would do as well. We find that proposition to be contradictory for, if common parlance did suffice, such definition was superfluous in Customs Act, 1962 which, in any case, being geographical specific, is not applicable to the impugned tariff item. We are aware of 'export' being defined differently in different laws enforceable in India. Suffice it to say, that ascertaining 'exported from'. except when so documented, is not 'machinery enabled' just as 'originating in' is also not. Thus, a classification exercise, one of the two vital, and even 'sacred', aspects of assessment to duty, is reduced to refutation and disputation that marks 'illicit landing' cases on the customs side and 'clandestine removal' on the erstwhile central excise side. Our apprehension lies in the hazards of a precedent in which such evidence as overseas reports and statement inform resolution of classification disputes when it is the General Rules for Interpretation of the Tariff appended to Customs Tariff Act, 1975 that alone must govern. We are handicapped, just as the adjudicating authority was, in subjecting the goods to classification in the absence of appropriate

machinery provision but, unlike an adjudicating authority concerned with disposal of notice, our responsibility to preservation of law and integrity of the assessment system does not permit us the luxury of assigning a meaning to the expressions; especially as interpretation of statutes permits foray into legislative intent but, as a articulation of executive intent, we are unable to find ourselves required to. To pursue such a path would be affirm a vast discretionary scope to 'proper officer' beyond that contemplated in Customs Act, 1962.

22. The root of the case of customs authorities is the presence of identifying particulars of the containers that arrived in India on the website of Pakistan International Container Terminal (PICT) at Karachi. Admittedly, this is 'open source' material and, coincidentally, without any provenance too. It is not the case of the adjudicating authority that the evidence led thereby has been certified in the manner set out in section 138C of Customs Act, 1962. The source itself is purportedly official website of an authority operating in country whose exports to India were determined, in public interest, as warranting imposition of such crippling tariff. And yet that source has been accorded a credibility beyond the credibility to be accorded to Islamic Republic of Pakistan. There is something that is not exactly aromatic in adopting such contrarian stands on credibility. Moreover, in this era of hacking and 'electronic warfare', all it takes to throw the entire trade system into jittery is the targeting of legitimate cargo through such means or, for that matter, for 'dark web masters' to clone such a site for nefarious ends. We do not adjudge the

information so obtained to be incorrect but balance of convenience leads us to question its use without authentication in a classification exercise; the inferences to be drawn therefrom would need further corroboration to be accepted as a viable proposition.

23. That these containers were not stuffed in United Arab Emirates (UAE) is allegation founded, in addition, on transshipment manifest and bills of lading pertaining to the said containers purporting to be for carriage from Karachi. These were furnished by M/s Goodrich Maritime Pvt Ltd and M/s Hubs and Links Logistics Pvt Ltd who, in turn, obtained these from agents of their principles M/s Baltic Shipping and M/s CIM Shipping Ltd at Dubai. The agents in India are not the custodians of the documents for recovery from them to suffice as adequate evidence of authenticity. Nor were the issuers or filers of the bills of lading or manifest subjected to deposing that may have accorded preliminary relevance and, especially, from critical conclusions - of goods having been transported from Pakistan - hanging thereto. Admittedly, the bills presented with manifest on arrival in India were switched which, of itself, is not unusual international practice for 'cut outs' in the trade channels for preservation of trade secrecy; the proper course of action would have been to have the authenticity ascertained from those who assumed responsibility for cargo by issue of bills of lading at each. Again, there has been no verification of authenticity which may not have been necessary had the first link in the chain *supra* been authenticated. The lack of authenticity in both invalidates the document trail set out in the notice and impugned order.

24. Attending upon these as subordinate evidence of goods having been

transshipped through, and not originated from, United Arab Emirates (UAE) are submissions on mandate of law prohibiting entities in the 'free zone' from transacting with businesses outside which, through M/s Mukand International FZE, the importer could not have been oblivious of and confirmation by 'pre-shipment inspection agency (PSIA)' that the cargo had been checked at Karachi only. That such trading activities between entities in the 'free zone' and outside was prohibited has been sought to be persuaded by placing reliance on law no. 11 of 2013 of the United Arab Emirates (UAE); that such prohibition exist is a consequence of a foreign law which, by no stretch, is within the competence of customs officials functioning under Customs Act, 1962 to be well-versed in or enabled to apply as law in proceedings under Customs Act, 1962. The proper course of action, with enablement of acceptability as evidence thereto, would have been to ascertain the mores for implementation of such law from the administration of the Jebel Ali Free Zone Authority (JAFZA) and especially as severe consequences to importers hinge upon such findings.

25. The response from 'pre-shipment inspection agency (PSIA)' was restricted only to M/s Sandeep Garg and Company with the findings thereto grafted onto consignments purportedly inspected by M/s NQAQSR North America and M/s Asia Inspection Agency Company Limited, the other two 'pre-shipment inspection agency (PSIA)' who had certified some of the consignments which does have appearances of error inasmuch as the first did confirm that its associate in Pakistan, one Fahad bin Sajjad, had undertaken the examination there and that the other two were not designated for such inspections in Pakistan. And yet, it was held in the impugned order that all consignments were similarly tainted. Furthermore,

such 'pre-shipment inspection agency (PSIA)' were assigned with a limited role in relation to import of scrap and to leverage conclusions about origin from the manner in which examination was carried out appears to be long stretch of law to assign statutory standing to such routine examination. It is on record that the reporting of inspections carried out by M/s Sandeep Garg and Company were not in conformity with procedures, including upload of photographs, prescribed for verification of actual physical examination and, yet, it was concluded that a mere statement of the authorized person in India would suffice to alter the classification of goods. Furthermore, that examination was carried out in Karachi would premise that, at that stage itself, the said cargo was earmarked for India as the coincidence of examination by the same 'pre-shipment inspection agency (PSIA)' for cargo intended for other countries stretches the limits of credibility and had that been so, there was no reason to undertake the examination in Karachi when the goods admittedly were to be moved through United Arab Emirates (UAE) where their associates were stationed. It is said that there is a method in madness but a method in alleged covert transaction is not only superfluity but additionally expensive and fraught with risks too. In these circumstances, mere deposition of furnishing of information by one of the three 'pre-shipment inspection agency (PSIA)' not validated for discard of the 'pre-shipment inspection certificate (PSIC)' issued by them let alone attributable similarly to the other two who were not authorized for Pakistan by the Director General of Foreign Trade (DGFT).

26. The exercise of classification in accordance with settled judicial precedent applied to enacted law warranting conformity of imported goods with substituting description has not been undertaken. Even the supporting evidence to demonstrate that the goods were shipped from Karachi to

eliminate the classification claimed in the bill of entry, viz., data from website in Pakistan, purported originals of bills of lading that were presented in India and 'pre-shipment inspection certificates (PSIC)' having been erroneously issued, do suffer from lack of validation prescribed by law for electronic evidence and custody trail as well as lack of credibility in statements of personnel of one 'pre-shipment inspection agency (PSIA)' which made itself available for investigation. Above all, it was not demonstrated that it made commercial sense to import 'stainless steel melting scrap' from Pakistan. Thus, there is no indirect evidence that could be pieced together to conclude that the claim of goods having originated from United Arab Emirates (UAE) and, thereby, classifiable under tariff item 9806 0000 of First Schedule to Customs Tariff Act, 1975.

27. The importer has, from the circumstances of origin of the goods having been suspect, re-exported the goods available with them. Their claim of having filed documents made available to them by shippers for clearance of the past consignments has not been countered with clear and acceptable evidence to the contrary. Invoking of extended period of limitation under section 28(4) of Customs Act, 1962 is without the support of essential ingredients which are equally required for invoking section 114A of Customs Act, 1962. By continuation of proceedings after compliance with section 28(2) of Customs Act, 1962, in pursuit of extending period of limitation without availability of necessary ingredients, as seen from the invalidation of relied upon documents and information, retention of the amount deposited thereto is jeopardized. Classification disputes turn entirely upon onus of displacement of claimed classification resting upon customs officials

and by reference solely to General Rules for Interpretation of the Import Schedule appended to Customs Tariff Act, 1975 with no scope for any interpretation beyond the enumerations in the First Schedule. In the peculiar facts and circumstances of the adjudication order, which has deviated far from the framework of assessment of goods and relied instead upon untested facts, unproven documents and uncorroborated statements, the findings in the impugned order are jeopardized.

28. In the light of above facts and circumstances, the provisions of law not complied with and the re-export of available cargo, we find that the impugned order has not discharged the onus devolving on the ‘proper officer’ in arriving at the most appropriate classification. Consequently, the impugned order is set aside to allow the appeals.

(Order pronounced in the open court on 16/04/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)