CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85681 OF 2024

[Arising out of Order-in-Original No: 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Principal Commissioner of Customs (Import – II)
New Customs House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Vaibhav Agarwal
Sr Vice President, M/s Reliance Power Ltd. Mumbai ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85682 OF 2024

[Arising out of Order-in-Original No: 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Commissioner of Customs (Import – II)
New Customs House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Mahesh Chand
601 Sun Villa, Plot 83, Sector 29
Vashi, Navi Mumbai - 400703 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85685 OF 2024

[Arising out of Order-in-Original No: 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Commissioner of Customs (Import – II)
New Customs House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Reliance Infrastructure Ltd
Dhirubhai Ambani Knowledge City, Koparkhairane
Thane – Belapur Road, Navi Mumbai - 400710 ***…Respondent***

AND

CUSTOMS APPEAL NO: 85686 OF 2024

[Arising out of Order-in-Original No: 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023 passed by the Principal Commissioner of Customs (Adjudication), Mumbai.]

Commissioner of Customs (Import – II)
New Customs House, Ballard Estate, Mumbai - 400001 … ***Appellant***

versus

Rosa Power Supply Co Ltd
Dhirubhai Ambani Knowledge City, Koparkhairane
Thane – Belapur Road, Navi Mumbai - 400710 ***…Respondent***

APPEARANCE:

Shri Shambhoo Nath, Special Counsel for the appellant

Shri Suyog Bhave, Advocate for the respondents

CORAM:

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

FINAL ORDER NO: 85815-85818/2025

DATE OF HEARING: 26/09/2024
DATE OF DECISION: 25/03/2025

PER: C J MATHEW

There is no travesty more horrendous and mortifying than that of an instrument of governance, chartered by empowering, and thereby particular and circumscribing, statute enacted also as earnest of sovereignty, and tempered, by its very purpose, through shared experiences of comity of nations made manifest as enablement, and thereby also particular and circumscribing, in the statute, deploying appendant machinery provisions to validate ways and means for evaluating the swathe of business transaction though overlap of mutual concern is merely peripheral. A framework that was embedded with a deeming fiction merely for integrating one of the enabling provisions within the construct of the law and to which a machinery provision has been tethered as contextual necessity to make it work has been stretched to breaking point, and, that too, by appropriation at subaltern level, beyond the design of intent in legislated enactment or even contemplated for policy formulation. And all by disaggregation and re-aggregation of the several, and mutually exclusive, elements of a valuation scheme, conceived for giving effect to the caveats in the statutory provision enabling valuation of goods, by casting doubts on contractual engagements spanning transnational jurisdictions. This, though not said so in as many words, is, nonetheless, the sum and substance of the outcome in adjudication by Principal Commissioner of Customs (Adjudication), Mumbai that is cause for cavil of the Committee of Chief Commissioners of Customs at whose instance appeals against the said order[1] have been filed with two importers of 'steam coal', M/s Reliance Infrastructure Ltd and M/s Rosa Power Supply Co Ltd, and two individuals, Shri Vaibhav Aggarwal and Shri Mahesh Chand, as respondents.

2. In dropping the proposal contained in show cause notice[2] for discard and re-appraisal of 'transaction value' while avoiding recourse to the alternatives mandated as consequence of resort to the exception governing acceptance of 'declared value', the adjudicating authority arrived at the outcome on 'first principle' appreciation of the provisions sought to be invoked and in disfavouring the proposals to confiscate imported goods for obtaining access to penal detriments, reliance was placed on the decisions of the Tribunal in *Knowledge Infrastructure Systems Private Limited v. Additional Director General [2018 (6) TMI 1164 – CESTAT MUMBAI]*, which examined the scope for confiscation of goods on which discharge of duty liability was not disputed nor evinced as prohibited for import, and in *Commissioner of Customs (Import), NS-III, JNCH, Raigad v. Adani Power*

[1] [order-in-original no. 24/SJ/(24)/PCC(ADJN)/MUMBAI/2023-24 dated 29th November 2023]
[2] [f no. DRI/MZU/F/INT-154/2014 dated 31st August 2016]

Maharashtra Ltd [(2023) 3 Centax 169 (Tri-Bom)], as well as in *Commissioner of Customs (Import) v. Maharashtra Eastern Grid Power Transmission Company Ltd (MEGPTCL) [2022 Taxscan (CESTAT) 452]*, on adequacy of untested evidence for establishing misdeclaration of value. The appeals before us dispute the propriety of relying on law, legislatively enacted and judicially determined, as sufficing to drop the impugned proposals which are, therefore, sought to restored and affirmed even as those decisions do survive as, in the first of the three *supra*, the appeal of Revenue before the Hon'ble Supreme Court was withdrawn and as, in the other two, the appeals of Revenue before the Hon'ble Supreme Court failed.

3. From the submissions of the Committee of Chief Commissioners of Customs, respondents opined that on trial is the larger issue of subordinating business transactions, and subjecting contractual assignation of outsourcing, of the commercial world to the constraining straitjacket of scheme for valuation designed, and replete with deeming fiction and presumptive discard, only to excise some minor portion of consideration as duties of customs and, in the present dispute, not even that. And merely from such commercial goods having had to pass the barriers erected for garnering the exchequer's legislatively sanctioned share and, that too, notwithstanding toll paid in full, by stretching of limbs of the law beyond that barrier. Moreover, that the notice sought to be restored on the grounds of appeal preferred here appears to have been unencumbered by appreciation of business in general or comprehension of the energy industry in particular is evident from the insight of hindsight apparently resting only on familiarity with government procurement and, such as it is, upon instructions which do not even pretend to signify that

acceptance of 'lowest bid' in tender for works or for supply, beyond excluding exercise of discretion by public servants, also factors in risk elimination in much the same way as a commercial organization would and whether deliberately so or from total ignorance is not immediately apparent. An extremely narrow understanding of energy economics appears to pervade the notice, as well as the review, with focus on 'tariff pass through' without 'aspecting' either regulatory autonomy purposed with elimination of cross-subsidy requiring in-depth scrutiny by the tariff authority or consumer participation in the three stages of 'aggregate revenue requirement', 'provisional trueing up' and 'final trueing up' for tariff implementation. A markup, admitted in the notice to be not more than 20% over provisioned supply price of coal producer, is sought to be 'trashed as sham' on such narrow appreciation of an industry characterized by risk of investing in long gestation projects attended upon with longer payback period on actual use by from consumers and more commonly perceived only as switches and sockets at homes. Also on issue here is the insinuation, by executive review of adjudication statutorily vested in subordinate customs authority, of entitlement to revisit judicial determination by the Tribunal by discrediting settled law through modes unknown to law for escaping the gravitational pull of binding precedent; in other words, furtherance of agenda of dissemination of reckless and perverse interpretation of law, and solely on specious proposition of finality not having been accorded by Hon'ble Supreme Court. It, therefore, devolves on us to subject the factual mass in the controversy to the anvil of legislative intendment in the enacted framework of valuation. A review, by jurisdiction conferred only for testing adjudication for being legal and proper, with relief of confirming, modifying or annulling of impugned order or remand back for fresh adjudication sought thereby, is no authority to seek rescinding of settled law. These appeals, beyond challenge to the finding on valuation and proximate consequences, leading from the review may, at best, be restricted to distinguishment of factual circumstances of the impugned imports from that in the decisions relied upon by the adjudicating authority. And our evaluation of the grounds must rest upon the integration of aggregated facts with the framework of valuation scheme to which we now turn.

4. M/s Rosa Power Supply Co Ltd and M/s Reliance Infrastructure Ltd, companies of Reliance ADAG group engaged in generation of thermal energy, at Rosa Power Plant (RPP) for Uttar Pradesh Power Corporation Ltd (UPPCL) and at Dahanu Thermal Power Plant (DTPP) supplying electricity in Mumbai for which an internal centralized system of of procurement had been established, indented coal of aggregated declared value of ₹ 8,60,46,25,154 and ₹ 14,45,70,49,073 respectively from Indonesia that, between 1st April 2010 and 31st March 2015, were cleared against 38 and 37 bills of entry respectively on payment of duties of customs at the standard rate corresponding to tariff item 2701 1920 in the First Schedule to Customs Tariff Act, 1975. The goods, tested for quality and contractual compliance at 'load port' in Indonesia, were shipped on vessels, chartered on behalf of 'intermediaries' for which marine insurance was arranged by the importers, to be discharged at ports in India. There is no record of any test at destination and, therefore, no controversy on impact of parameters on value. Of the 37 consignments of M/s Reliance Infrastructure Ltd, three, till its merger in October 2010 with M/s Reliance Power Co Ltd, were routed through M/s

Reliance Natural Resources Ltd, 11 through M/s Larimar Holdings Ltd, Jersey till May 2011, one through M/s Epic Alloy Steel Pvt Ltd, Raigarh and 22 through M/s Century Exports Ltd, Hong Kong while all 38 of M/s Rosa Power Supply Co Ltd were routed through M/s Century Exports Ltd, Hong Kong. The numbers are not relevant and just that were is.

5. The four invoicing entities above were designated in the notice as 'intermediaries' between 'first stage traders' - assigned by the investigation to describe those who sourced the coal from 'second stage traders', or the Indonesian suppliers – and the two importers. Of this channel of supply, the invoices of the contractors, issued with indent for supply, is on record as 'declared price' but those issued by 'first stage traders', *viz*., M/s Shah Coal, M/s Glencore, M/s Aggarwal Coal, M/s Trammo, M/s Virtuous, M/s Noble, M/s Global Trade Well Pte Ltd and M/s Glints Global General Trading LLC, for payment made by these four and obtained from scrutiny of electronic communication, were benchmarked as the actual price of coal upon 'shamming' of the 'last stage documentation' in the former for being superfluous as well as not germane to 'export to India' which the price negotiated by the centralized team with 'first stage traders', recognized as connected to shipment conforming with 'export to India' in section 14 of Customs Act, 1962, purportedly was. The *minutiae* of negotiations were garnered by interfacing with one Surendra Agarwal and one Priyavardhan Kanoria who, through M/s Utkal Intrude Pvt Ltd and M/s Durga Iron and Steel Co Ltd and through M/s Saksham Minmet Resources Pvt Ltd controlled respectively by them, arranged for supplies from Indonesia connected with four consignments – one for M/s Rosa Power Supply Co Ltd

and three for M/s Reliance Infrastructure Ltd - that were sought to be imported against invoices issued by M/s Century Exports Ltd secured against 'back-to-back' contracts of the latter with M/s Glints Global General Trading LLC, Dubai and M/s Global Trade Well Pte Ltd, Singapore who opened 'letters of credit' favouring Indonesian suppliers at the instance of the procurement team. For earlier consignments, the depositions of the two individual respondents herein and their elaboration, akin to that revealed by Mr Surendra Agarwal and Mr Priyavardhan Kanoria, were integrated into the contours of the controversy.

6. Before proceeding, it is necessary for us to delve into two particular deficits in the review undertaken by the Committee of Chief Commissioners of Customs. The impugned order has been considered as not legal and proper for finding that the notice had inappropriately taken recourse to rule 12 owing to lack of competence to resume jurisdiction after clearance for home consumption which was not sought to be reversed in the light of judicial ruling, for finding that there was no scope for imposition of penalty under section 112 of Customs Act, 1962 except as predicating on confiscability of goods, for finding that section 114AA of Customs Act, 1962 could not be invoked in the light of discard of evidence, governed by the decision of the Tribunal on validity of like documentation, offered in the notice as justification for re-opening of appraised value. As spelt in the grounds of appeal disputing three of these, there is challenge, even if not directly but dubiously so, to appellate hierarchy by questioning the propriety of reliance placed by the adjudicating authority on decisions in *re Knowledge Infrastructure Systems Private Limited* as well as that of the Tribunal in *re*

Adani Power Maharashtra Ltd and in *re Maharashtra Eastern Grid Power Transmission Company Ltd (MEGPTCL).* It has been summated by the Committee of Chief Commissioners of Customs that the first, having been dismissed as withdrawn with the issue of law left undecided, was no precedent owing to ratio of the decision of the Tribunal not having been approved by the Hon'ble Supreme Court and that, by not endorsing the refuge therein sought by respondents in appeal of jurisdictional Commissioner of Customs, the decision of the in re *Adani Power Maharashtra Ltd* to approve dropping of proceedings in adjudication on grounds of evidence lacking validation, the law in *re Knowledge Infrastructure Systems Private Limited* was without any support from even a coordinate bench. It was also suggested that the Hon'ble Supreme Court, by not foraying into the issue of applicability of section 138C of Customs Act, 1962 in re *Adani Power Maharashtra Ltd,* has ruled out its value as binding precedent. To us, it appears that the Committee of Chief Commissioners of Customs, in preferring such propositions in the grounds of appeal, held out for discard of the decisions of the Tribunal in a manner alien to known law by reviewing orders of the Tribunal which are neither in the jurisdiction of statutory review by Committee of Chief Commissioners of Customs nor validly open for revisit in departmental appeals in the light of voluntary retraction of appeal mounted by Revenue and of dismissal of appeal of Revenue by the Hon'ble Supreme Court respectively. The scope of review is limited to examining an order for not being legal and proper and to be exercised over original authority that does not stretch to review of not only any order of the Tribunal let alone those in which appeals of Revenue had been dismissed, one way or another, by the Hon'ble Supreme Court. Declaration of law left open does not exclude all the findings in a decision of the Tribunal from the *catena* of binding judicial precedent, and not just in adjudicating proceedings, merely from affirmation of outcome only in the limited context of facts for it only implies that the other findings were not under consideration by the Hon'ble Supreme Court; all other executive authorities, and not excepting the reviewing authority, are bound, too. It may safely be hammered at this stage itself, and with authority drawn from the conventions of appellate determination, that irresponsible assail by Committee of Chief Commissioners of Customs does not call for revisit of any law settled by the Tribunal even in the absence of affirmation by the Hon'ble Supreme Court. We may also state here that the references to judicial determination by the Tribunal, as relied upon in the impugned order, are to be presumed, at least till now, as having attained finality and may be disputed by the Committee of Chief Commissioners of Customs for applicability to the impugned order, except on the facts of the present dispute, only at risk of drawing, upon the appeal, the stigma, as it were, of the observations of the Hon'ble Supreme Court in *Union of India v. Kamalakshi Finance Corporation Ltd [AIR 1992 SC 711]*; we are inclined to say so as an appeal, not preferred under section 129A of Customs Act, 1962 and not stemming from grievance about outcome in impugned order, but, on review for being legal and proper, is deemed under section 129D of Customs Act, 1962 to be so for procedure of filing and stands on a different footing than aggrieved person; by not being a court superior to the Tribunal, they are no less bound by binding decisions of the Tribunal. Turning to the other, the show cause notice had, in addition to re-determining the value, proposed confiscation of the impugned goods under section 111(m) of Customs Act, 1962 while, owing to non-availability thereof, stopped short of proposing that these be vested in the Central Government or offered for redemption under section 125 of Customs Act, 1962. The notice does not particularize the penalty to be imposed under section 112 and section 114AA of Customs Act, 1962 on the importers and individuals leaving that to determination by the adjudicating authority. Stemming from the conclusion that the value was not misdeclared, the adjudicating authority was precluded from invoking the penal provisions. The appeal has not proposed that any specific penalty be the outcome of proceedings before us and, unlike proceedings before Commissioner of Customs (Appeals), the Tribunal is not empowered to enhance penalty and, more especially, in the absence of an enabling provision to place respondents on notice as pre-requisite. As the consummation sought for by the notice was imposition of penalties, that would have to be determined, if warranted, by the original authority only and such eventuality would arise on adjudging the goods, on factual evidence, as having been overvalued by reference to the scope and substance of scheme of valuation in section 14 of Customs Act, 1962 and on adjudging that section 111(m) of Customs Act, 1962 was liable to invoked in circumstances of overvaluation that are distinguishable from those in the settled decisions *supra*. Those are the only aspects of the appeal that needs looking into and in that order.

7. It is clear that neither does the proceedings touch upon any assessed duties of customs for having been short-paid or not paid nor upon any

proposal for return of assessed duties as excess paid; the latter, in any case, is not provisioned under Customs Act, 1962 and the former was, in the absence of any proposal for recovery under section 28 of Customs Act, 1962, never contemplated at any stage. Flowing from the constitutional mandate in Article 265 for levy of tax is the vestment by

> *'**47 Clearance of goods for home consumption.** – (1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of goods for home exportation:*
> *Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*
>
> *xxxxx'*

and

> *'**51 Clearance of goods for exportation.** – (1) Where the proper officer is satisfied that any goods entered for home export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:*
> *Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:*
>
> *xxxxx'*

in Customs Act, 1962 to confer authority of law and upon which is the stage set for birthing and extinguishment of 'imported goods' and 'export goods' respectively as set out in section 2(26) and section 2 (19) of Customs Act, 1962 beyond which jurisdiction to enforce any or all of Customs Act, 1962 ceases. Thus, only any one of the two contingencies, intended by law for erasure of jurisdiction, may be invoked for resumption thereof and, with one not having been contemplated, only on establishing of the goods, for having been prohibited under Customs Act, 1962 or any other law, as not entitled to have been cleared in the first instance may cause of action lie. Of such, there is neither whiff or whisper. And yet, a jurisdiction was proposed for appropriation, even though not from any of several others envisaged in section 111 of Customs Act, 1962 but that earmarked for misdeclaration by section 111 (m) of Customs Act, 1962 and, that too, of 'value' without erasing clearance for home consumption which, by law, was tantamount to affirmation of both 'value' and 'rate of duty' deployed in assessment as legal and proper. In a complicated reclaim of jurisdiction, it has been held out that empowerment to confiscate by section 111 (m) of Customs Act, 1962 enables recourse to section 14 of Customs Act, 1962 for ascertaining the extent of difference and for that re-appraisal to suffice as cause for confiscation – classical example of circular reasoning pivoted on meaning assigned to 'value' in section 2 of Customs Act, 1962. This proposition had been disapproved by the Tribunal in *re Knowledge Infrastructure Systems Private Limited* and, as set out above, continues to hold the field as far as disputation of appellant-Commissioner is concerned.

8. The consummation as intended by the investigation in the present dispute was, thus, impossible to be pressed without discard of the declared price on fact and circumstance other than assessment which remained unmolested in the notice. A thesis was put forth that 'value' lacking in credibility, even if irrelevant to the legislated purpose of customs law, could not be retained in the records and, therefore, warranted re-valuation. Oddly, it did not strike the investigation that the mandate of statutory empowerment to enforce stems only *qua* machinery provision which invariably specifies 'proper officer' as authority. *Per contra*, absence of such empowerment, let

alone vesting thereto, marks such provision as enabling for the purpose of the statute, *viz*., clearance under section 47 or section 51 of Customs Act, 1962, as the case may be, and, therefore, 'value' remains contextual to enablement of confiscation. Leaving that enunciation aside for the nonce, the appeal focuses on the manner in which the adjudicating authority concluded that the allegation of misdeclared value did not survive. The notice had, under the authority of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, proposed rejection of declared value on a set of facts, said to be evidenced by statements and documentation from 'third party sources', suggesting existence of prices negotiated in advance and below that furnished in invoices raised by M/s Reliance Natural Resources Ltd, M/s Larimar Holdings Ltd, Jersey, M/s Epic Alloy Steel Pvt Ltd, Raigarh and M/s Century Exports Ltd, Hong Kong, on varying occasions, allegedly at the instance of the importer, for the consignments shipped to India from Indonesia. This was found by the adjudicating authority to be repugnant to the scheme of the said Rules as sequential resort to rule 4 to rule 9 therein was indispensable valid conclusion of venturing upon the governing stipulation in rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and adoption of another value, pertaining to another sub-transaction of the very same goods, was not consistent with the cause and consequence therein as such eventuality was beyond contemplation.

9. The Committee of Chief Commissioners of Customs devoted substantial verbiage to demonstrated indifference to commercial prudence that should have motivated the impugned transactions and considerable

attention to rule 11 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 that was projected in the notice as the *coup de grace* to obtain the finality of confiscation. Repeated references to 'siphoning off' of, presumably, the funds at the disposal of the importers and at cost, presumably, only to themselves, in the grounds of appeal appeared to imply that sufficient prompt for confiscation and penalty had, incorrectly, been given the 'go by' in the impugned order and towards which end the abstracting of another price from within the 'invoice trail' could not be faulted in the larger interests of detriment to be visited on importers though, admittedly, not guilty of having neither evaded any duty of customs nor any prohibition on import. Thus, 'value judgements' in the review have no place in proceedings under section 129D of Customs Act, 1962 and is, doubtlessly, beyond our jurisdiction which, transitively, places it beyond the pale of competence of both review and adjudication under Customs Act, 1962. We decline to sit in judgement on those projections even if fairness of proceedings requires us to place those on record. Suffice it to say, that our determination shall be limited to the correctness of application of the instrument for discard of declared value and substitution with price, admittedly paid by 'intermediaries', to suppliers of coal. Learned Special Counsel drew attention to the extent of transgression, including possible breach of several laws as set out in the notice, involved in the overvaluation which, doubtlessly, relate to laws and offences beyond the adjudicatory competence of an authority empowered by section 124 of Customs Act, 1962 and which may not be statutorily dependent even on assessment under Customs Act, 1962 let alone any other determination by officers of customs.

It is suggestive of a narrative far too complex for a simple proposal, from re-determination of value for assessment - pre-clearance or post-clearance - to duties of customs, to impose detriment for false declaration of value under the scheme and enlargement of adjudicatory jurisdiction beyond the scope permissible under section 125 of Customs Act, 1962. We, and as did the adjudicating authority, find ourselves lacking jurisdiction to determine these aspects.

10. The proposed re-determination of value of coal at ₹ 12,04,59,95,127 and ₹ 7,15,44,68,198 for M/s Rosa Power Ltd and M/s Reliance Infrastructure Ltd respectively, representing mark-up of 20.0% and 20.27% respectively which does not appear unreasonably high and, save for the further inference that

> *'34.09 …….. An amount of ₹ 386,12,10,902/- thus appears to have been siphoned off by overvaluation by the two said entities i.e. R-Infra and Rosa'*

in the show cause notice as justification for invoking of section 111(m) of Customs Act, 1962 for confiscation of the goods and which, of course, is cause for pause inasmuch as, while overvaluation may well be within the ambit of procedural stipulations in Customs Act, 1962, the alleged purpose, *viz.*, siphoning off of, moreover, their money, sourced either from returns of risk or at risk to return, is not contemplated for determination under Customs Act, 1962 as being legal and proper. The degree of mischievous consequence that affirmation of this proposition could engender in their own administrative spheres does not appear to have occurred to the Committee of Chief Commissioners: that the lack of acknowledgement of this purported activity by, as well as lack of definition in, the empowering statute which was the very same authority vesting power to review, lends itself to morphing without limit and without direction for criminalizing every business transaction. Consistency in customs clearance of, and certainty of ever meriting national treatment to, 'imported goods' would, then, be contingent upon rule of men and not rule of law. Further, it was alleged in the notice that the respondents herein

> *'34.11.....as the importers of the overvalued Coal, have preferred to pay more Customs duty inasmuch as they have not claimed the exemption under AIFTA3 for many imports. This eagerness to pay taxes when none of less were payable was apparently for the reason that the taxes formed a part of the landed cost of the Coal which is being factored in for power tariff accrued to the power generators. Thus, the non-payable taxes paid by the power generators did not affect their profitability and was revenue neutral.'*

which not only is leap of logic, as 'power generators' either enter into 'power purchase agreements' for contracted period with 'distributors' or transmit on 'spot auction' purchase by 'distributors', but also transcends the legislatively chartered boundaries of customs jurisdiction which is limited to oversight of evasion of duties or smuggling of goods that are subject to prohibition by law. And, in the process, casting a more sinister shadow over the transaction than as deserving of confiscation on the limited, and factual, grounding of the declared price being in excess of the actual price to which speculative commentary on not only of higher amount of duty having been fastened thereby but also compounded further by avoiding availment of exemption, annotated thus

> *'1.3 ……(which is rather unusual and contrary to ordinary commercial sense)'*

in the notice by an agency of the state unexposed, and far from empowered,

[3] [ASEAN India Free Trade Agreement of 13th August 2009 incl. Indonesia from October 2010]

to concern itself with the normative of commercial imperative. It would appear that, more than the outcome of adjudication which, admittedly, rests entirely on settled judicial precedent, and has no consequence for the exchequer, it is such portrayal of overvaluation, for reasons unknown and unimaginable, that the appeal intends to be restored to grace. And it would appear to us that the appellate recourse for obtain stamp of judicial approval to that proposition lies beyond the pale of customs authority.

11. Learned Special Counsel for the appellant-Commissioner contended that the buyer and seller are related and that this relationship permitted obfuscation of actual value of the coal to contrive ‘over-invoiced’ price for remittance. He submitted that it was evident from the contract between buyer and seller that the latter were mere ‘intermediaries’ with no worthwhile contribution to the supply chain in direct movement of coal from Indonesia to India. He argued that the routing of documents through related persons was intended for inflating the price of coal and that confiscation was justified in the context of declared value not being in conformity with transaction value and that, with consequences of detriments under Customs Act, 1962 being attached to the mandate of declaration in rule 11 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, there was no scope for discarding the proposals in the show cause notice. He took us through the elaborate narration of commercial engagement between the ‘first stage suppliers’ and the centralized procurement system, the purported supply by the ostensible seller being only on paper and of which one, M/s Reliance Natural Resources Limited, was related to M/s Reliance Infrastructure Ltd though such ‘related person sale’ was not attributed to the

others. Drawing attention to the binding precedent relied upon in the grounds of appeal, he contended that the decision of the Hon'ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs, Mumbai [2000 (122) ELT 321 (SC)]* validated adoption of actual price subject to conformity with the qualifiers in section 14 of Customs Act, 1962. He further relied upon the decision of the Tribunal in *Karnataka Soaps & Detergents Ltd v. Commissioner of Customs (Seaport-Imports), Chennai [2017 (357) ELT 1272 (Tri-Chennai)]*.

12. Learned Counsel clarified that the procurement of 1,000,000 MT of coal for Rosa Power Plant in 2012-13, prompted by satisfactory performance in other stream of supply, through M/s Century Exports Ltd had the approval of the Uttar Pradesh Power Corporation Ltd (UPPCL) as also in succeeding years. With reference to the particulars in the contracts of each year, he compared the specification desired, the index value that was benchmarked and the freight as evolving in refinement which the grounds of appeal had conveniently overlooked. All of these, according to him, indicated that quality if coal was never called into question by the principals on whose behalf power generation was undertaken by the respondents. Furthermore, he contended that the respondents were compelled, by domestic short-supply, to procure coal from abroad and for optimizing of the commercial gains, had established a centralized system with the involvement of M/s Century Exports Ltd, identified initially by bidding process for 2011-12, and, owing to lack of capacity of fresh bidders to conform with specification of requirements, continued in 2012-13 and later. He pointed out that computation of value at 'load part' - by deduction of freight of US$ 24 PMT

or by application of reference index value – was not much different for either method. These facts, he contended, did effectively counter not only allegation of supply by related person but also of sale price having been contrived from the coziness of relationship.

13. Learned Counsel for the respondents contended that the importers were only concerned with suppliers that they had contracted for procuring coal from Indonesia. It was submitted that commercial risk mitigation favoured the structuring of procurement through long term contract pricing for tiding over dependence on 'spot' market operators and that the negotiations of the centralized team was more in the nature of price discovery. He qualified this contention with the submission that the respondents were not privy to the negotiations. He pointed out that the grounds of appeal were unable to draw upon the authority of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to legitimize the substitution of declared value, reflecting the contracted price, with a derived price that had no buyer or seller within the referential context of section 14 of Customs Act, 1962. Learned Counsel for the respondents pointed out that appeal was bereft of any factual undermining of the findings in the impugned order to establish that rule 4 and rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as the case may be, offered valid 'surrogate value' for concluding that goods were overvalued. In the absence thereof, the decisions of the Tribunal excluded any further scope for speculation that Customs Act, 1962 did afford jurisdiction to venture into re-visit of value where duty was not an outcome and of lack of credible evidence, certified through section 138C of Customs

Act, 1962, to suggest that the declared value was liable to be re-determined. He further contended that acknowledgement of two different ‘values’ – one for assessment which remained untouched and the other for computation of value of confiscated goods to benchmark proposal to impose penalties – was contrary to known law and practice. He submitted that the impugned order had also delved into the facts borne in the notice to conclude that, even in the three transactions said to have been entered into with related person, there was no evidence of the relationship having influenced the price and that forswearing of recourse to acceptable ‘surrogate value’, emanating from sequential application of rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is not proper exercise of authority envisaged in rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 when recourse was had to rule 12 therein or upon the exceptions in rule 3(2) and rule 3(3) of the Rules failing to kick in.

14. The review by Committee of Chief Commissioners of Customs appears to have got hold of the wrong end of the stick insofar as case law is concerned. The dispute that was resolved by of the Hon’ble Supreme Court in *Eicher Tractors Ltd v. Commissioner of Customs, Mumbai [2000 (122) ELT 321 (SC)]* emanated during the currency of the erstwhile Rules of 1988 and the decision emphasized price actually paid and, in circumstances of rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 not being available, the alternatives liable to deployed only rarely and pinned to facts of each transaction. Doubtlessly, the appeal has failed to take note of the stage, and manner, of incorporating the enabling of

belief to subject declared value to the rigour of rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 thereafter as well as the more stringent context in which the corresponding rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2008 was emplaced. The deployment of 'Price' and 'Value' respectively in the title of the said Rules is also telling intent of the statute. In *re Karnataka Soaps & Detergents Ltd*, which too pertained to the erstwhile regime of valuation, the plea for ignoring the existence of higher value in transaction preceding delivery in India was not only lacking in credulity but also against grain of sense in the light of such transaction not having been denied. The progressive cascading of value in the present dispute is not only logical but commercially tenable and legally permissible.

15. The declared value, representing the price in transaction, was proposed to be rejected by recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and, in its stead, an alternative transaction value of the imported goods, which was nothing but the ascertained price at an earlier stage in the 'invoice trail', was proposed as legally tenable following which the injunction in rule 11 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was proposed as sufficing for confiscation and other detriments. The substituted value was assigned credibility coefficient from the impugned consignments having been 'exported to India' directly from Indonesia and, therefore, comparatively more in conformity with section 14 of Customs Act, 1962. In so doing, it would appear that rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 was denuded of its true

significance without care for its relevance stemming from the totality of section 14 of Customs Act, 1962 affording inclusion of value of services as well as administration of the antidote for transaction between related persons in which the influence of relationship ‘toxified’ contracted price.

16. In the scheme of valuation after the re-enactment of section 14 of Customs Act, 1962, the primary provision in the Rules notified thereunder is, unlike in the earlier regime, not only a reflection of the normal envisaged in the parent statute but acknowledges that ‘gold standard’ for ‘transaction value’ hitherto, *viz*. ‘price’ had been elevated to mandated normal necessitating inclusion in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 only to enable adjustment for services and to specify constraints in rejection of price in transactions between related persons. Hence, the alternatives in the scheme may be perceived as ‘actual value’, ‘true value’ and ‘surrogate value’ with the last to be ascertained by recourse to sequential resort to rule 4 through rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for assessment and contingent upon non-compliance with rule 12 therein or by ‘price’ determined as having been influenced by relationship between ‘related persons’ as set out in rule 3(4) read with rule 3(2) and rule 3(3) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which, patently, are intended for mutually exclusive implementation convenienced by objection either on account of relationship or on account of belief. The ‘true value’, not relevant in the present dispute, is the combined consequence of rule 3(1) and rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The present controversy starts by positing

belief that the transactional engagement was no reflection of the qualifiers for acceptability in rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 mandating not only recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 but also discard of 'declared value' which should have had, in terms of rule 3(4) therein, consequence of recourse to one of the 'surrogate values' which is absent. Instead, a truncation of the declared price, or 'actual value', by reason of non-conformity with description in section 14 of Customs Act, 1962 for 'transaction value', was arrived at and by matching the physical movement of impugned goods with invoice representing dispatch from Indonesia by seller in Indonesia as preferable over invoice representing dispatch from Indonesia by seller in Hong Kong. Neither the notice nor the grounds of appeal demonstrate any part of the valuation scheme which accords acceptance of this thesis for 'substitution' of invoice.

17. Any invoice is only a reflection of price agreed between buyer and seller as payable for goods and is not a field in which the State can insert itself under any circumstance; an invoice submitted as evidence of price for assessment to duties of customs may conceivably be rejected by the tax administration but should have the consequence of alternative stipulated in the valuation mechanism, *viz*., 'surrogate value', because the section 14 of Customs Act, 1962 is intended to fit a transaction between seller outside India and buyer in India for goods intended to be delivered in India at the time of place of importation. Nowhere does

'14. Valuation of goods.

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or

any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,--

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

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

xxxxx'

of Customs Act, 1962 visualize, or suggest, that event and seller outside India should be geographically congruent; that would be a new diktat governing imports in India and one not only not enacted into law but also beyond the competence of investigators as officers of customs to propose in a notice and of the reviewing authority to implead in appeal. That which the law has not envisaged is not enforceable by executive writ for reasons unknown and unimaginable. Though the expression deployed therein, and latched into by the notice, is ‘export to India’, its context is a description of the normality at which ‘price’, as declared, is, invariably and unopposedly, to be accepted as ‘transaction value’ for assessment; the valuation enablement *supra* does not refer to the place of export, as far as imported goods are concerned, and the insinuation of such, without any assistance offered by the meaning of ‘export’ in section 2 of Customs Act, 1962, is without authority of law and, therefore, lacking in legality for being contrived in pursuit of reasons unknown and unimaginable. Clearly, an invoice raised on a buyer, shamed as ‘sham’ inclusion in the notice, outside India, even if concerning the impugned goods which has not been established by provenanced documentation, is not evidence of price between seller and buyer in India and, hence, not conforming either to section 14 of Customs Act, 1962 or to rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

18. It is only by evidenced additional consideration, either directly and surreptitiously or by indirect benefit, to seller that may recast the ‘price’ for enhancement to such extent or upon evidenced flowback, yielding return to the buyer directly and surreptitiously or as indirect benefit, for depressing the assessable value that the ambit of rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provisions for. The impugned notice has made no such 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 adjudicating authority has put it conversely, *viz*, recourse, as mandated in rule 3(4) upon discard of declared price in circumstances envisaged in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, was not had to '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. The finding in the impugned order that the failure, thereby, to carry through the consequence of discard under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 does not discredit the discard cannot be faulted.

19. *Per contra*, arbitrary truncating of 'price' has no place in the contemporary scheme of valuation. This was cause of our adumbrating of the precis of the findings in the impugned order in the opening paragraph *supra*; that, with valuation scheme, having evolved as an international distillation of national experiences in assessment over the years, it is not be allowed to regress to those days of unfettered discretion holding sway. That the present exercise in the show cause notice was, indeed, such throwback to the prototype preceding the Brussels Definition of Value (BDV) and General Agreement in Trade and Tariffs (GATT) valuation 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'*

as at the time of enactment of Customs Act, 1962, and before some form of resemblance to the extant scheme of valuation was brought about by Customs (Amendment) Act, 1988 to substitute with

> *'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'*

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

20. In the meanwhile, 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 grounds of appeal was available. Not too regretfully, that has been consigned to the archives to be recalled for reflecting on what once was, maybe nostalgically by customs authorities of an ilk and probably by others in celebration of advances 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 time travel in reverse.

21. While the investigation may, and painstakingly so, have come up with secondary and tertiary transactions, there is nothing illegal in them. It certainly does not lie in the domain of a government agency, let alone tax investigators, to direct that business be carried out in a particular way or that commercial intercourse must take the most direct route. We do not credit them with sufficient knowledge of the subject, adequate experience of contract finalization or capacity to invest in such ventures as to allow our judgement of what business should be permitted to be clouded by the inferences of the investigation into what they believe to be public interest. To even suggest that public interest should prevail over private business that is not at the receiving end of any exemptions or privileges is perverse. We have not been informed of any valid or logical reason to discredit the details of price determination narrated by Learned Counsel or that the employment of M/s Century Exports Ltd, and other intermediaries for a time, justified by reasons was not acceptable as explanation. An observation about commercial prudence, emanating from an investigation agency of the State, is not of adequate credence to be adjudged otherwise. Likewise, the critique of adoption of index value of ‘Richards Bay’ or of ‘Newcastle’, merely for not adopting the Indonesian index, is nowhere near

oracular as to permit tax intrusion into business expediency. We may conclude that the price negotiation leading to 'letters of award' in favour of the intermediaries have not been evidenced as contrived except through unconnected dots that, like the constellations, have to be imagined as much as sighted.

22. The grounds of appeal, to the extent concerned with justifying non-applicability of the leading judgements of disputes before the Tribunal, are not to be dignified by being even taken into consideration. To do so would be at the cost of judicial discipline and the obligation devolving on the Tribunal, especially on valuation and classification, in the appellate hierarchy of national jurisdiction. The attempt to have the findings therein re-considered, after the Central Government withdrew its appeal in one and lost its appeal in the other, by a subordinate executive authority is not in keeping with respect owed to judicial determination. Both in the normative of business operations as well as in interpretation of laws, individuals may have, and are entitled to, their own opinion but to graft that viewpoint as institutional thinking is disservice to the institution of which they are custodians for a time as well as unacceptable from a tax administrator created by, and bound within, a taxing statute.

23. The scheme of valuation does not stand in support of the manner in which the value has been sought to be substituted in the notice. The facts evinced are not sufficient to tear down the weave of commercial engagement and for recourse, thereby, to discard of declared value. The mark-up is not of unreasonable magnitude as to suggest that transaction

should be penalized. Even without pressing into service the law, as judicially determined, on jurisdictional competence and on evidentiary value of documents for visiting penalties on the respondents under Customs Act, 1962, and as found in the impugned order too, the facts suffice to erase the proposals in the notice.

24. In the facts and circumstances, as set out *supra*, we find no merit in these appeals, seeking the impugned order to be set aside, and are, accordingly, dismissed.

(Order pronounced in the open court on 25/03/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*