

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH, COURT NO. 5**

CUSTOMS APPEAL NO. 85205 OF 2020

SANJAY KACHERIA

C/O. Neo Wheels Ltd.,
R-202, MIDC, Rabale,
P.O. Gansoli,
Navi Mumbai-400 701.

Appellant

Vs.

COMMISSIONER OF CUSTOMS, NHAVA SHEVA-V

JNPT, Customs House,
Nhava Sheva,
Raigad-400 707.

Respondent

WITH

CUSTOMS APPEAL NO. 85206 OF 2020

NEO WHEELS LTD.

R-202, MIDC, Rabale,
P.O. Gansoli,
Navi Mumbai-400 701.

Appellant

Vs.

COMMISSIONER OF CUSTOMS, NHAVA SHEVA-V

JNPT, Customs House,
Nhava Sheva,
Raigad-400 707.

Respondent

AND

CUSTOMS APPEAL NO. 85207 OF 2020

SATYA KACHERIA.

C/o. Neo Wheels Ltd.,
R-202, MIDC, Rabale,
P.O. Gansoli,
Navi Mumbai-400 701.

Appellant

Vs.

COMMISSIONER OF CUSTOMS, NHAVA SHEVA-V

JNPT, Customs House,
Nhava Sheva,
Raigad-400 707.

Respondent

(Arising out of Order-in-Original No. 50/2019-20/Commr./NS-V/CAC/JNCH
dated 04.11.2019 passed by the Commissioner of Customs (NS-V), Nhava
Sheva)

Appearance:

Shri Prakash Shah, Sr. Advocate with Shri Mihir Mehta, Advocate for the
Appellant.

Shri D.S. Maan, Joint Commissioner, Authorized Representative for the
Respondent.

CORAM:

HON'BLE MR. Dr. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 03.07.2025

Date of Decision: 24.07.2025

PER : MR. ANIL G. SHAKKARWAR

FINAL ORDER NO :- A/86137-86139/2025.

Above stated three appeals are taken together for decision since they are arising out of a common impugned Order-In-Original dated 04.11.2019. Neo wheels limited shall be referred to as appellant hereinafter.

2. The Appellant is manufacturer of alloy wheels and clears manufactured goods for home consumption as well as exports. The appellant also imports semi-finished aluminum alloy wheels of different sizes and designs. On 11.04.2014 through notification no. 15/2014-CUS(ABD) anti-dumping duty of USD 2.15 per KG was imposed on aluminum alloy wheels imported from China on provisional basis. The said imposition was for limited period of 6 months. Subsequently, the said anti-dumping duty imposed provisionally was imposed definitively vide notification no. 21/2015-CUS(ABD) dated 22.05.2015 at the rate of USD 2.15 per KG on aluminum alloy wheels imported from China. Prior to 2014, appellant was importing aluminum alloy wheels from China therefore a investigation was initiated against the appellant to examine whether appellant was importing aluminum alloy wheels from China and whether appellant was paying anti-dumping duty. During the course of investigation statement of Shri Sanjay Kacheria, Managing Director of Neo Wheels limited was recorded on 22.11.2017 under section 108 of Customs Act, 1962. Sanjay Kacheria is one of the appellants in the present set of appeals. Further, statement of Shri Satya Kacheria, President of sales and market of Neo Wheels Limited was recorded on 30.11.2017 under section 108 of Customs Act, 1962.

Shri Satya Kacheria is also one of the appellants in the present set of appeals. The imports of the appellant subsequent to the issue of notification of imposing anti-dumping duty were taken up for investigation. The bill of entries filed by the appellant with effect from 05.12.2014 till 05.02.2017 were taken up for investigation. On the basis of investigation, a show cause notice dated 05.11.2018 was issued to appellant. The summary of investigation is stated in paragraph 9 of the said show cause notice. It was alleged in the said show cause notice that appellant had imported aluminum alloy wheels from China by routing them through Taiwan with an intention to evade payment of anti-dumping duty at the rate of USD 2.15 per KG. Therefore, by invoking extended period of limitation under Sub-section (4) of Section 28 of Customs Act, 1962 through the said show cause notice a demand of anti-dumping duty amounting to Rs. 4,62,19,999/- (around Rs. 4.6 Crores) was raised. There were proposals for imposition of penalty on appellant. Further, there were proposals to impose additional penalties on Shri Sanjay Kacheria, Managing Director and Shri Satya Kacheria, President, Sales market. Annexure (A) enclosed to the said show cause notice gave the bill of entry wise details of imports by appellant and their suppliers of the goods. Further, Annexure (R) to the show cause notice was documents relied upon for issue of show cause notice which included commercial invoice of Taiwan Major Industrial Company Limited, commercial invoice of Xiang Zheng Development company limited, commercial invoice of Sian Ling Industry company limited and statements as stated earlier. Subsequently through supplementary notice to the show cause notice dated 05.11.2018 was issued on 24.06.2019 by making certain additions in the earlier show cause notice issued. Through the said communication dated 24.06.2019, Revenue tried to compare the specifications of aluminum alloy wheels imported by some other importers from Kinghwa Toptrue, China being the same as one imported by appellant from Taiwan. The appellant through their letter dated 30.01.2019 while replying to show cause notice denied each and every allegations stated in the

show cause notice. It was stated in the said reply to show cause notice that show cause notice contained allegations regarding matching model numbers in respect of three out of four suppliers of the appellants namely Sian Ling, Xiang Zheng and Taiwan Major and that no evidence was referred to in respect of imports made from Xin Da Li enterprises company limited. Appellant through their letter dated 21.08.2019 filed a written reply to the communication dated 24.06.2019 which is termed as supplementary notice to show cause notice dated 05.11.2018. The Original Authority through impugned Order-In-Original dated 04.11.2019 confirmed that the entire demand of anti-dumping duty alongwith interest and equivalent penalty. Further, penalties were imposed on Shri Sanjay Kacheria and Shri Satya Kacheria under sections 112 (a) and Section 114 AA of the Customs Act, 1962. Aggrieved by the said order, appellant is before this Tribunal.

3. The grounds stated in the appeal are as follows :

(a) In view of ruling by Hon'ble Delhi High Court on 27.03.2015 in the case of Mahindra & Mahindra Limited reported at 2015 (322) E.L.T. 892 (Del.). Anti-dumping duty is not payable on alloy wheels imported from China or originated from China.

(b) Alloy wheels imported by the appellants were neither originated nor exported from China nor were routed through Taiwan. It is admitted fact that except Futek alloy company limited, no other entity has imported aluminum alloy wheels into Taiwan from China and that the impugned demand does not relate to import of alloy wheels from Futek alloy company limited.

(c) Provisionally imposition of duty came to an end on expiry of 6 months on 11.10.2014 and no proceedings thereunder can be taken post its expiry. Therefore, no anti-dumping duty can be

demanded during the period prior to 21.05.2015 from 17.10.2014.

(d) The demand is confirmed under extended period of limitation by holding that the appellant had mis-declared the country of origin in respect of the imported goods where as goods were assessed by the assessing officer and were cleared on the payment of appropriate duty.

(e) The confiscation of the goods was untenable in law.

(f) In view of the above submissions, no penalty was imposable on any of the appellants.

4. Heard the learned counsel for the appellant. Learned counsel for the appellant has made following submissions :

(a) During the relevant period from 05.12.2014 to 05.02.2017, appellant imported diverse consignment of aluminum alloy wheels from Taiwan and filed 30 bills of entry alongwith required documents including certificate of origin and those bills of entry were scrutinized by the proper officer and after final assessment on the basis of certificate of origin submitted out of charge was allowed and goods were cleared for home consumption without any imposition of anti-dumping duty by proper officer who made final assessment of goods to customs duty.

(b) During the relevant time of assessment proper officer accepted certificate of origin produced by the importer at the time of import and none of the certificate of origin indicated that goods were originated or exported from China and therefore anti-dumping duty was not levied by proper officer.

(c) Revenue initiated investigation against the appellant presuming that the goods imported by appellant and cleared through said 30 bills of entry were manufactured in China and appellant had filed certificate of origin indicating that the goods were originated from Taiwan and evaded payment of applicable anti-dumping duty imposable on aluminum alloy wheels originated from China. Statements of other two appellants were recorded and on the basis of said investigations show cause notice dated 05.11.2018 was issued.

(d) Subsequently, a supplementary notice to show cause dated 24.06.2019 was issued.

(e) At page no. 184 of appeal paper book, there is a copy of letter dated 13.03.2019 issued by Consul (Eco) Consulate General of India, Hong Kong addressed to Principal Additional Director General, Directorate of Revenue Intelligence. The said letter is relied upon by Revenue for issue of show cause notice. The said letter states that only one company by name Futek Alloy Company limited in Taiwan has ever imported aluminum alloy wheels from China. The four companies of Taiwan from whom the appellant has imported alloy wheels during the period of show cause notice does not include Futek alloy company limited as supplier of goods and therefore the said letter dated 13.03.2019 is evidence that the appellant has not imported goods from China and except goods at serial no. 30 of table annexed to show cause notice, there was no doubt about the goods that they were not originated or manufactured in China.

(f) A letter issued by Assistant Director DRI to Shri Sanjay Kacheria, one of the appellants on 10.01.2018 at

paragraph marked as (a) stated that the understanding of the appellant that the certificates of origin have been cancelled or invalidated is incorrect. The said letter is sufficient proof to indicate that all the certificates of origin were valid and none of them were indicating any import from China and therefore the impugned order is not sustainable.

5. Learned counsel for the appellant has submitted a written submission during the course of hearing through which following additional submissions were made :

(a) The allegation is that for certain bills of entry similar format has been used in the invoice numbers. They submitted that usage of similar formats and fonts does not necessarily mean that suppliers are related and that despite detailed investigation including correspondence with Taiwanese Authorities, no evidence is brought on record to prove the allegation.

(b) The allegation is that several model numbers in the commercial invoices issued by Taiwanese suppliers matched with the model numbers in the invoices issued by erstwhile Chinese suppliers. For the said allegation, appellant submitted that the model numbers are commonly used industry-wise both by the traders and manufacturers.

(c) There is an allegation that the letter dated 13.03.2019 indicates that the certificate of origin related to bill of entry at serial no. 30 at the list of bill of entries enclosed to show cause notice, is suspected to have been forged. For the said allegation, it was submitted that the said letter further observes the cargo commercial invoice no. 3561610050B corresponding the said certificate of origin instead matches with another transshipment

made by one Fortune rainbow company limited, Taiwan from H.K. Roda International company holding limited, China and there are no allegation in the show cause notice that appellant had imported subject goods from Fortune Rainbow company limited, Taiwan and that the said bill of entry at serial no. 30 indicates the supplier as Taiwan Major Industrial Company limited.

6. Heard the learned AR. Learned AR has argued that Futek alloys of Taiwan got goods from China. When a question was put to show evidence of goods moving from Futek alloys of China to suppliers of appellant, he withdrew his argument.

7. Learned AR submitted a written submission in which he has highlighted the said letter dated 13.03.2019 and the suspected forgery in respect of one certificate of origin for which a written submission of learned counsel for appellant has given reasons for not accepting the same. Further, learned AR has relied on Hon'ble Supreme Court's ruling in the case of Collector of Customs, Madras Vs. Bhoormull but neither gave any citation nor provided a copy of the said judgment.

8. Both sides were allowed to submit additional written submissions. The appellant has submitted additional written submissions which were received on 16.07.2025 by Registry. They made following submissions through additional written submissions :

(a) The communication received from consulate general of India, Hong Kong dated 13.03.2019 confirms that except one company by name Futek alloys company limited, no one else in Taiwan has ever imported aluminum alloy wheels from China. In the present case undisputedly, the appellant has not imported any aluminum alloy wheels from Futek alloys company limited.

(b) Taiwanese customs have claimed that one certificate of origin bearing no. EI7LA00281 is suspected forgery as one transshipment declared by Fortune rainbow company limited correspond to the cargo covered by the said certificate of origin but another transshipment matches the cargo of commercial invoice no. 3561610050B.

(c) The particular certificate of origin is suspected to be forgery. It is mere suspicion. It is settled law that suspicion cannot take place of proof. No investigation was carried out by Revenue further for logical conclusion for such suspicion and no evidence is produced to show that goods covered by the said certificate of origin were of Chinese origin.

(d) The assessment of all the bill of entries including bill of entry dated 05.02.2017 which is at serial no. 30 of bill of entry is completed and has not been challenged by the department by way of review or appeal. Section 17 (1) of Customs Act provides for self assessment of duty by the importer. Sub-section (2) of the said section empowers the proper officer to verify the bill of entry and self assessment of duty done by the importer. Sub-section (4) of the said section empowers the proper officer to re-assess the duty leviable on the goods incase of proper officer is not satisfied with the self assessment and passes speaking order within 15 days from the date of re-assessment of the bill of entry. In the present case, the bill of entry at the serial no. 30 dated 05.02.2017 was assessed and goods were permitted to be cleared for home consumption and no re-assessment of the same was carried out nor any speaking order was passed within 15 days and therefore the said assessment has become final and can be challenged by way of appeal before appellate authority.

9. We have carefully gone through the records of the case and submissions made. We note that during the relevant period, goods such as aluminum alloy wheels imported from China were attracting anti-dumping duty. The investigation started with an intelligence that appellant was mis-declaring the country of origin and evading anti-dumping duty. Therefore, we were looking for evidence that was put forth by the Revenue to establish that in respect of 30 bills of entry in respect of which investigation took place whether there was any mis-declaration of country of origin and whether the goods were imported from China or goods were manufactured or supplied by China and were routed through Taiwan. The list of 30 bills of entry enclosed to the show cause notice indicated that the suppliers of goods in Taiwan were (a) Xin Da li Enterprises Co. Ltd. (b) Sian Ling industry company limited (c) Xiang Zheng Development company (d) Taiwan Major Industrial Co. Ltd. We have also perused that the dates of filing of the said bills of entry to be from 05.12.2014 to 05.02.2017. The letter issued by Assistant Director DRI on 10.01.2018 addressed to Shri Sanjay Kacheria, one of the appellants available at page no. 48 of appeal paper book indicate that none of the certificate of origin has been cancelled or invalidated which means that even on 10.01.2018 all the certificates of country of origin filed between 05.12.2014 and 05.02.2017 were valid. We further note that the said letter dated 13.03.2019 indicates that only Futek alloy company limited of Taiwan have ever imported aluminum alloy wheels from China. We note that the annexure enclosed to the show cause notice in respect of 30 bills of entry and list of commercial invoices relied upon does not indicate that any of the consignment under investigation was imported from Futek alloy company limited, Taiwan. We also note that in respect of one certificate of origin for which a doubt was raised in the said letter dated 13.03.2019. In respect of said certificates of origin, paragraph 3 of the said letter states

"3. Taiwan Customs has found that one transshipment declared by Fortune Rainbow Co. Ltd. corresponds to the cargo of certificate

of Origin No. EI7LA00281, but another transshipment matches the cargo of commercial invoice no. 3561610050B. The transshipped data related to the certificate and invoice provided, is enclosed herewith as ANNEX 1."

Further, Annex 1 indicates that imports from Taiwan by one Fortune Rainbow Co. Ltd. is related to the said certificate of origin. Annexure to show cause notice indicates that supplier for goods at serial no. 30 of table are Taiwan Major of Taiwan whereas the related certificate of origin is stated to be suspected forgery and that the same correspondence states that the said certificate relates to transshipment of import by Fortune Rainbow Co. Ltd, Taiwan. The record does not indicate any import dealt with in this appeal by appellant from Fortune Rainbow Co. Ltd, Taiwan. Therefore, it is clear that though the certificate of origin number of import at serial no. 30 of said table annexed to show cause notice matches with the certificate of origin which is suspected to be forged but the same certificate of origin number matches with another transshipment which relates to Fortune Rainbow company limited, Taiwan from whom the appellants have not imported any of the said 30 consignments. Further, while filing additional written submissions, the appellant has submitted that the assessment of the goods to duty was completed and no re-assessment was done in respect of said bill of entry including at serial no. 30 of list of bills of entry was done by proper officer resorting to Sub-section 4 of Section 17 of Customs Act, 1962 thereby after the period of limitation the assessment has become final. By taking the said evidences and facts available on record, we do not find any evidence to establish that in respect of the said 30 bills of entry there was any evidence to establish that the said goods were either manufactured or supplied from China or were routed through Taiwan after being supplied from China.

10. The facts of the present case are distinguishable from the facts of the case in which Hon'ble Supreme Court has given its ruling in the case of Commissioner Vs. Bhoormull.

11. We, therefore, hold that the goods under consideration did not attract anti-dumping duty. Therefore, we set aside the impugned order and allow all three appeals.

(Order pronounced in open court on 24.07.2025.)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

(Dr. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)

suraj