CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85468 OF 2014

[Arising out of Order-in-Original No: 145/2013/CAC/CC(I)/AB/Gr.V dated 30th December 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Auto World
601 Central Plaza, 166 CST Road, Kalina
Mumbai - 400098 … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85469 OF 2014

[Arising out of Order-in-Original No: 145/2013/CAC/CC(I)/AB/Gr.V dated 30th December 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Mr Jasmeet Singh Sethi
601 Central Plaza, 166 CST Road, Kalina
Mumbai - 400098 … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85470 OF 2014

[Arising out of Order-in-Original No: 145/2013/CAC/CC(I)/AB/Gr.V dated 30th December 2013 passed by the Commissioner of Customs (Import), Mumbai.]

GS Sethi & Sons
601 Central Plaza, 166 CST Road, Kalina
Mumbai - 400098 … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Sujay Kantawala, Ms Aishwarya Kantawala and Mr Jeffrey Cales, Advocates for the appellants

Shri AK Srivastava, Assistant Commissioner (AR) for the respondent

AND

CUSTOMS APPEAL NO: 86100 OF 2014

[Arising out of Order-in-Original No: 145/2013/CAC/CC(I)/AB/Gr.V dated 30th December 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Brijesh Gala
501 New Sai Niketan Bldg, A Wing, 345 Mount Road
Mazgaon, Mumbai - 400010 … ***Appellant***

versus

Commissioner of Customs (Import)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Ms Priyansha Pawar, Advocate for the appellant

Shri AK Srivastava, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86336-86339/2025

DATE OF HEARING: 17/03/2025
DATE OF DECISION: 12/09/2025

PER: C J MATHEW

These appeals arise from a common order[1] of Commissioner of Customs (Import), Mumbai and is one of the several series of imports that were taken up for investigation for mis-declaration of value of 'used cranes' in which, purportedly and in tune with 'standard operating procedure' fro assessment, the declarations of value were computed from the weight thereof and standard unit rate. It is in circumstances of similar dispute that the imports effected by M/s GS Sethi & Sons and M/s Auto World against nine bill of entry filed by former between April 2006 and July 2010 and by the latter on 10th September 2007 were subjected to proceedings stemming from show cause notice issued to the importer and to the several individual appellants herein.

2. The investigation, relying upon value provided by independent chartered engineer, proposed rejection of declared value of ₹ 2,10,72,548 and of ₹ 11,55,161 for re-determination thereof for proposing re-determination as ₹ 4,63,15,577 and ₹ 18,55,200 to recover short-paid duty of ₹ 79,67,035 and ₹ 2,22,846 from M/S GS Sethi & Sons and M/s Auto World respectively. The recourse to relevant Rules notified under section 14 of Customs Act, 1962 for rejection of declared value and consequent re-determination in terms of rule 8 under the erstwhile Customs Valuation (Determination of Price of Imported

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[1] [order-in-original no. 145/2013/CAC/CC(I)/AB/Gr.V dated 30th December 2013]

Goods) Rules, 1988 and rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 respectively for confirming duty liability under section 28 of Customs Act, 1962, along with appropriate interest under section 28AA of Customs Act, 1962, besides imposition of penalties is assailed in these appeals.

3. Learned Counsel for the appellant submitted that the show cause notice issued on 10th September 2012 had wrongly invoked the recovery provision in relation to imports effected by M/s Auto World and barring imports against bill of entry no. 797237/06.10.2007 and bill of entry no. 957512/13.07.2010 of M/s GS Sethi & Sons as these had been effected well before the 'five year' limitation permitted therein. It was also contended that though the re-valuation was based upon the certificate of chartered engineer their plea for cross-examination of the certifying authority was rejected peremptorily.

4. Learned Counsel for the appellants relied upon the decision of the Tribunal in *Karim Jaria and Crown Lifters Pvt Ltd v. Commissioner of Customs (Import-I), Mumbai [2022 (4) TMI 948 – CESTAT MUMBAI]* and of the Hon'ble Supreme Court in *Parle Beverages Pvt Ltd v. Collector of Central Excise, Bombay [1998 (98) ELT 585 (SC)]*.

5. Learned Authorized Representative reiterated the findings in the impugned order.

6. An identical issue on valuation of similar goods had come up before the Tribunal and, while setting aside unsupported appropriation, the re-assessment was called in question on the plea of importer therein that reliance upon statements for the purpose, and that, too, without testing for relevancy under section 138B of Customs Act, 1962, for disturbing the declared value was improper even if the manner of such declaration was questionable. In other words, except by strict compliance with the Rules framed under the authority of section 14 of Customs Act, 1962, re-assessment would not meet the test of soundness to enable which the matter was remanded. Thereafter, the culmination of de novo proceedings was agitated once again before the Tribunal and, in *re Karim Jaria and Crown Lifters Pvt Ltd,* while holding that

> *'8. However, as recovery of differential duty has been proposed for the subsequent imports, M/s Crown Lifters Pvt Ltd is not immune to consequence of evasion of duty liability in the event of undervaluation being established. The sole evidence of misdeclaration of value appears to be the admission in the statement of Shri Karim Jaria and the confessional statement of the illicit fund mover, Shri Brijesh Gala. As in the case of the earlier imports, the actual price of each of the five 'used cranes' has not been ascertained. Reliance on statements alone is too fragile a foundation to build a case of undervaluation; such depositions are reliable only with corroborative support. In the absence of corroboration, test of cross-examination is of essence, as mandated by section 138B of Customs Act, 1962, for relevancy. This was the crux of the direction*
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> *'7.1 We find that the whole case of undervaluation is essentially*

> *based on statements are certain people and the confessional statement of Shri Karim Jaria. However, the statements to not corroborate with each other… We are unable to appreciate these gaps in the proceedings.*
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> *7.2 The Counsel contended that cross-examination of persons whose evidence was relied upon such as Shri Brijesh Gala, was not allowed. In his findings the Commissioner simply brushes aside the request by stating that he does not find any compelling reasons for offering the cross-examination. The Commissioner relies on various judgements to state that cross-examination is not a matter of right. We find that the reliance placed on these judgements is misplaced and misunderstood…. The Commissioner cannot rely on the judgements without first recording specific reasons for not allowing the cross-examination. In our view Shri Brijesh Gala is a crucial link in illegal transfer of money abroad and therefore deny the cross-examination without recording any reasons is violative of the principles of natural justice and must be right….'*

in the remand order of the Tribunal.'

the impugned order was set aside. As, in the present dispute, the value had been similarly determined solely on the basis of statements recorded during the course of investigation, it would be appropriate to set aside the impugned order similarly and remand the matter back to the original authority to determine the value afresh in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988/2007, as applicable.

7. It is seen that the impugned order had appropriated the amount paid during investigation towards alleged dues arising from short-payment of duty on imports effected prior to the period permitted by section 28 of Customs Act, 1962. Clearly, that is not a liability in the absence of empowerment to contemplate recovery. There is no voluntary acceptance of duty liability and willing readiness to accept

that obligation either. Appropriation is a consequence of empowerment to recover and hence not applicable to the disputed imports.

8. Appeals are allowed by way of remand on the above terms.

(Order pronounced in the open court on 12/09/2025)

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

**/as*