

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85467 OF 2014

[Arising out of Order-in-Original No: 143/2013/CAC/CC(I)/AB/Gr.CC dated 26th December 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Harvinder & Co

D-11 Mayapuri, Phase – II, New Delhi - 110064

... *Appellant*

versus

Commissioner of Customs (Import)

New Customs House, Ballard Estate, Mumbai - 400001

...*Respondent*

APPEARANCE:

Shri Sujay Kantawal and Ms Aishwarya Kantawala, Advocates for the appellant

Shri Ram, Kumar, 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: 86368/2025

DATE OF HEARING:

26/03/2025

DATE OF DECISION:

25/09/2025

PER: C J MATHEW

This appeal arises from proceedings culminating in order¹ of

¹ [order-in-original no. 143/2013/CAC/CC(I)/AB/Gr.V dated 26th December 2013]

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' for 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 of 26 cranes effected by M/s Harvinder & Co directly and four on 'high sea sales' original procured by M/s Auto World against 16 bills of entry between May 2006 and March 2007 and 14 bills of entry between April 2007 and January 2008 were subjected to proceedings that are impugned here.

2. The investigation, relying upon value provided by independent chartered engineer, proposed rejection of declared value of ₹ 3,30,27,101 in the 30 consignment for re-determination as ₹ 7,00,84,564 and confiscation under section 111(m) of Customs Act, 1962 along with recovery of short-paid duty of ₹ 48,22,659 from M/s Harvinder & Co without touching upon recovery of ₹ 75,71,549 for the period prior to April 2012. 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 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 30th May 2012 had wrongly invoked the recovery provision in relation to imports effected by them without any justification offered for inclusion of the extended period of limitation. It was also contended that, though 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 *Sun Electronics Technologies Ltd v. Commissioner of Customs, Bangalore* [2008 (231) ELT 334 (Tri.-Bang)], of Hon'ble High Court of Gujarat in *Shivam Casting v. Commissioner of Central Excise* [2018 (359) ELT 16 (Guj.)] 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 and submitted that the importer had admitted to undervaluation besides which evidence had established payment in cash to supplier. It was argued that reliance could not be placed on the certificates produced at the time of import. As far as valuation was

concerned, he submitted that recourse was had to the only available provision.

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 *Karim Jaria and Crown Lifters Pvt Ltd v. Commissioner of Customs (Import-I), Mumbai [2022 (4) TMI 948 – CESTAT MUMBAI]*, 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

‘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.

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.

7. In *Thilagarathinam Match Works v. Commissioner of Central Excise, Tirunelveli* [2013 (295) ELT 195 (Mad.)], it was held by the Hon'ble High Court of Madras that

‘12. The learned Standing Counsel also contended that under the guise of cross-examination, the petitioners cannot protract the proceedings and cannot summon all sundry. I do not think that this could happen. It is only those persons whose statements are taken on record in the enquiry and relied upon

by the department, who can be summoned, for cross-examination. There is no necessity to cross-examine persons, who recorded such statements. Persons who gave statements and who are witnesses, alone are liable to be cross-examined by the petitioners. Similarly, the report of the Energy Auditor is also of a vital significance. Hence, he should be made available for cross-examination.'

8. In *Mahek Glazes Pvt Ltd v. Union of India* [2014 (300) ELT 25 (Guj.)] it was held by the Hon'ble High Court of Gujarat that

'6. Having heard learned counsel for the parties, we are inclined to interfere on the short ground of serious breach of principles of natural justice in the process of passing final order of adjudication. We say so because the adjudicating authority, though categorically informed by the representative of the petitioners that the petitioners are serious about exercise of their right to cross-examination and further that any meaningful participation in the adjudicating proceedings can take place only after such cross-examination is granted, the authority proceeded to decide such request only along with the final order of adjudication. Whether the petitioners had a right to seek cross-examination in the facts of the present case, is not our brief at the moment. We, therefore, refuse to comment on the petitioners' insistence for cross-examination or authority's reluctance to grant it. What we, however, find is that the petitioners had atleast a right to be told whether such application is being granted or refused before final order was passed. When the petitioners prayed for cross-examination and reasonably expected that the same would be granted, they cannot be expected to participate in the adjudicating proceedings up to the final stage. In other words, without dealing with and disposing of the petitioners' application for

cross-examination, the adjudicating authority could not have finally adjudicated the issues. If he was of the opinion that the request for cross-examination was not tenable, by giving reasons, he could have rejected it. We wonder what would have happened, if he was inclined to accept such a request. In such a situation, he himself could not have finally disposed of the show cause notice proceedings. In either case, the petitioners had a right to know the outcome of their application.

7. Merely because the Commissioner was of the opinion that the petitioners had made such a request somewhat belatedly, would not permit him to, in the facts of the present case, deal with such an application only in the final order itself. Sum total of this discussion is that we are inclined to set-aside the impugned order and request the adjudicating authority to pass a separate order on the petitioners' application/request letter for granting cross-examination of the named witnesses. We are conscious that the Commissioner has already decided such an issue, however, since we are quashing the order, this part of the order would also not survive and hence, the requirement of a fresh order. We are informed that the same officer continues to hold the office of the Commissioner of Customs & Central Excise, Surat-II. It would therefore, be not necessary to separately hear the petition once again before passing any such order. This would, however, not preclude the Commissioner from requiring the petitioners to show relevance for seeking cross-examination of the witnesses.'

9. In view of the above, fastening liability to duty and other detriments by relying only certificate of Chartered Engineer without subjecting the said person to cross-examination is blatant violation of principle of natural justice. Accordingly, the impugned order is set

aside and the proceedings restored before the original authority for fresh decision after compliance with the statutory requirement.

10. Appeals is allowed by way of remand on the above terms.

(Order pronounced in the open court on 25/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*