CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87388 OF 2024

[Arising out of Order-in-Appeal No: 899 (Gr.VB)/2024 (JNCH)/Appeals dated 09th July 2024 passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Amit Kumar Garg
9/37, Raj Nagar, Ghaziabad, Uttar Pradesh - 201001 … ***Appellant***

versus

Commissioner of Customs (NS-V)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707 ***…Respondent***

APPEARANCE:

Shri N D George, Advocate for the appellant

Shri Rajiv Ranjan, 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: 86369/2025

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

PER: C J MATHEW

In this appeal, against order[1] of Commissioner of Customs

[1] [order-in-appeal no. 899 (Gr.VB)/2024 (JNCH)/Appeals dated 09th July 2024]

(Appeals), Mumbai – II, the dispute is over valuation of 'Rolls-Royce' car, bearing chassis no. GSF61,engine no. S2E, manufactured in 1935 and imported, *vide* bill of entry no. 6172142/09.11.202 after restoration, from M/s Sapp Trading, UK. Allegedly, the declared value of US $ 6500 (₹ 6,09,924) was held as unacceptable by the original authority and, relying on certification dated 27th December 2021 of Chartered Engineer indicating fair price of US $ 50,000, was re-determined at ₹ 37,77,500 by invoking rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; in addition, the original authority, while imposing penalty of ₹ 6,46,000 on the importer, confiscated the car under section 111(m) of Customs Act, 1962 but permitted redemption on payment of fine of ₹ 37,70,000.

2. On appeal, the first appellate authority dismissed the appeal owing to which the dispute is now before us.

3. According to Learned Counsel for the appellant, the lower authorities had erred in relying upon the value of the goods in the market of exporting country, as reported in the certificate of Chartered Engineer, which was expressly prohibited insofar as rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is concerned. It was also submitted that the price had been obtained through research on the internet which, according to him, had been held by the Tribunal in *Aggarwal Distributors (P) Ltd v. Commissioner of*

Customs, New Delhi [2000 (117) ELT 49 (Tribunal)] to be unacceptable. It is also further submitted that, particularly in the context of differing opinion of two Chartered Engineers, their request for cross-examination of the second Chartered Engineer should have been allowed. He relied upon the decision of the Tribunal in *DR Soneta & Sons v. Commissioner of Customs (General & SFC Mulund), Mumbai [2023 (385) ELT 234 (Tri.-Mumbai)]*.

4. Learned Authorized Representative submitted that the vehicle is a vintage car restored commanding a high price and that the appellant herein had not furnished any evidence of the said transaction being in compliance with the parameters set out in section 14 of Customs Act, 1962 by which alone a declared value was rendered acceptable. It was also pointed out that it was abundantly clear from

> *'6.8 Further, the appellant has raised the issue of cross examination of the Chartered Engineer M.s Gattini & Co., however, he has failed to justify reasons and circumstances for cross examination of the concerned C.E. The appellant has been given enough opportunity to produce documents in support of their declared value such as agreement or copy of insurance for the said car, however, they have failed to produce the same. Therefore, the Ld. Original Authority has rightly rejected and re-assessed the value as per the provisions laid down under section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Import Goods) Rules, 2007. Further, there is no absolute right of cross examination of any witness in the adjudication proceedings. The same has to be considered in the facts and circumstances*

> *of each case. I place reliance on the order of the Hon'ble CESTAT South Zonal Bench, Bangalore, in the case of M/s Bharti Airtel Ltd. Vs. Commissioner of Customs, Bangalore [2012(286)ELT 270 (Tri-Bang)]wherein the Hon'ble CESTAT has ordered that "there is no absolute right for* cross-*examination of any witness in the adjudication proceedings. The same has to be considered in the facts and circumstances of each case. "In the present case, the CE Report was based on the inspection of the said Vintage Car and considering each and every aspects of valuation including present state condition of the vehicle, demand, recent values of similar vehicles condition approximately sold and auctioned internationally. Therefore, the Ld Original Authority in absence of the sufficient grounds has not considered the request of cross examination. Therefore, I don't find any violation of principles of natural justice in the subject case.'*

in the impugned order that rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 had been correctly invoked.

5. It is not in dispute that the assessable value was determined on the basis of recommendation of one of the Chartered Engineer who himself had relied upon internet research to ascertain probable price. The Tribunal, in *re DR Soneta & Sons,* has held that

> *'16. It would appear from*
>
> > *'9. Residual method.-*
> >
> > *(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;*
> >
> > *Provided that the value so determined shall not exceed the*

> *price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.*
>
> *(2) No value shall be determined under the provisions of this rule on the basis of -*
>
> *(i) the selling price in India of the goods produced in India;*
>
> *(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;*
>
> *(iii) the price of the goods on the domestic market of the country of exportation;*
>
> *(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;*
>
> *(v) the price of the goods for the export to a country other than India;*
>
> *(vi) minimum customs values; or*
>
> *(vii) arbitrary or fictitious values.'*

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 that the impugned order, akin to so many others, have drawn upon the perceived scope of title therein to adopt an over generalised interpretation of the empowerment. The computation has, unabashedly, drawn upon a market enquiry as the basis for determination but it certainly did not occur to the adjudicating authority that the necessity of reflecting market prices proximate to the imports has compromised the conclusion. It is, again, unambiguously clear that the market price in India shall not be the basis for determination of value under rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The re-determined value in the impugned order is, therefore, not consistent with law and must be set aside. The appropriateness of invoking rule 12 of the said Rules is, thus, relegated to an academic exercise.'

On the acceptability of internet as a reliable guide for valuation, it has been held, in *re Aggarwal Distributors (P) Ltd,* that

> *'4. We have carefully considered the pleas advanced from both sides. We agree with the submission of the learned Advocate that department's reliance on the document displayed on the internet is totally misplaced for the reasons advanced by the learned Advocate, as mentioned above, namely :-*
>
> *(1) The document is unsigned.*
>
> *(2) It is not known as to who has introduced the said document on the internet, and*
>
> *(3) What is the nature of price indicated in the said document, whether it is a retail price or a wholesale price.*
>
> *In short, the document displayed on the internet is not worthy of reliance. It is doubtful whether this document can at all be taken as the "computer print out" fulfilling the conditions of sub-section (2) of Section 138C of the Customs Act. It cannot be considered to be "computer print out" merely because it has been displayed on internet. Similarly, the baggage price relied on in the show cause notice has no evidentiary value for import of goods in the course of international trade. Further, as is rightly pointed out by the learned Advocate, these prices are merely the assertion of the customs authorities in the show cause notice without any documentary evidence in support of that assertion.'*

6. Furthermore, it is seen that there was a substantial variance in the reported recommendations of two Chartered Engineers and there can

be no doubt that the reliance placed on the second of these should have been contingent upon proper opportunity having been afforded for controverting the content therein. It is admitted that opportunity for cross-examination was not granted. Even though the documents called for from noticee, as narrated in the impugned order, had not been furnished, the consequence thereof would have been applicability of rule 3(4) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which, as held by us *supra*, has not been complied with. In these circumstances, the impugned order deserve does not warrant affirmation.

7. The Hon'ble High Court of Bombay, in *Gyan Chand Sant Lal Jain v. Union of India [2001 (136) ELT 9 (Bom)]*, has held that

> *'9. On the other aspect as to whether the right of cross-examination forms part of natural justice or not it is not possible to accept Mr. Manjrekar's bald submission that such right does not form part of natural justice. Formal cross-examination may be a part of procedural justice but that does not mean that the content of natural justice excludes the right of cross-examination. As stated earlier, the rules of natural justice do cast an obligation on the Tribunals that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain or comment on it and what is fair opportunity must depend upon the facts and circumstances of each case. Mere assertion that the information received by the Tribunal is false or that the informant is a liar and an unreliable person may not satisfy the Tribunal about the truth*

or veracity of the assertion and it must be open to such party to demonstrate the truth or veraciy of his assertion by cross-examining the informant. In fact the party against whom such information or material is intended to be used may adopt cross-examination as the only mode of explaining or commenting or demolishing the information or material collected against him. That the right of cross-examination is a part of natural justice will be clear from the following statement of law which is to be found in para 76 of Halsbury's Laws of England (4th Edition) Vol. I which runs as under :-

> *"Rejection of a request to be permitted to cross examine witnesses who appear at a hearing for the other side will normally be construed as a breach of natural justice; but it is not a necessary ingredient of natural justice that one who has submitted relevant evidence in writing or ex parte must be produced for cross-examination, provided that the evidence is disclosed and an adequate opportunity is given to reply to it."*

In other words, if cross-examination is sought and the same is refused, it will normally amount to breach of natural justice and as such the right of cross-examination must be regarded as forming part of natural justice. The aforesaid passage is based on two decisions viz. Osgood v. Nelson reported in (1872) L.R.5H. L, 636 and University of Ceylon v. Fernando reported in 1960 All E. R. 631. The former case dealt with dismissal of Osgood from a Corporate office and the question that arose of defending himself and the Court came to the conclusion that every possible opportunity that could be given to any man was given to Osgood in this matter; that he was allowed to cross examine witnesses and was permitted also to call as many witnesses as he pleased. The observations of House of Lords in this case clearly suggest that the right of cross-examination is a requirement of natural justice, apart from special and exceptional cases. In the latter case (University of Ceylon v. Fernando) the Privy Council held that the persons conducting disciplinary enquiry could interview *witnesses separately and were not obliged to offer to the accused an opportunity of confronting or cross-examining the hostile witnesses provided he was given proper indication of the case which he had to meet, but it might have been a breach of natural justice to reject a positive request by the accused to be permitted to confront and cross-examine them. The facts were that plaintiff Fernando on being found guilty of an examination offence and on being suspended indefinitely from all University Examinations brought an action against the University declaring that the decision was null and void on the ground that the enquiry was not conducted in accordance with the principles of natural justice and the graveman of the charge of breach of natural justice rested entirely on the admitted fact that one Miss Balasingham and other witnesses were not questioned in his presence and within his hearing and consequently he was not able to question them on the statements they made. The Court was however satisfied that the plaintiff had been adequately informed of what Miss Balasingham and others had stated and that the Plaintiff was adequately informed of the case which he had to meet and was given an opportunity of meeting it. On the question as to whether the procedure followed by the Vice-Chancellor and the Commissioner of Inquiry fell short of the requirement of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss Balasingham the Privy Council observed thus :*

> *"But it remains to consider whether, in the course they took, the interviews must be held to have fallen short of the requirements of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss Balasingham. She was the one essential witness against the plaintiff and the charge in the end resolved itself into a matter of her word against his. In their Lordships' view, this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss Balasingham and his request had been refused. But he never made any such request, although he had ample time to consider his position in the period of ten days or so between the two interviews. There is no ground for*

> *supposing that, if the plaintiff had made such a request, it would not have been granted. It, therefore, appears to their Lordships that the only complaint which could be made against the commission on this score was that they failed to volunteer the suggestion that the plaintiff might wish to question Miss Balasingham or in other words to tender her unasked for cross-examination by the plaintiff. Their Lordships cannot regard this omission, or a fortiori the like omission with respect to other witnesses, as sufficient to invalidate the proceedings of the commission as failing to comply with the requirements of natural justice in the circumstances of the present case."*

The position that emerges very clearly from the aforesaid statement .of law which is to be found in Halsbury and the aforesaid two English decisions is that no obligation is cast upon any Tribunal exercising quasi-judicial function to keep witnesses present and offer them for cross-examination unasked, provided, of course, their statements already recorded behind the back of the party against whom they are to be used are made available to such party and it would be for the party against whom they are intended to be used to make a specific request to call those witnesses for cross-examination. In the absence of such specific request being made it would not be possible for such party to make a grievance that the principles of natural justice have been committed breach of.'

8. The Hon'ble High Court of Andhra Pradesh, in *Sunder Ispat Limited v. Commissioner of Customs & Central Excise, Hyderabad [2002 (141) ELT 24 (AP)],* has held that

'6. Keeping in view the decision of the Calcutta High Court as also of this Court, we dispose of this writ petition by directing the respondents to supply the aforementioned documents to the petitioner at an early date and the witnesses who have been examined on behalf of the Department be produced for cross-examination. Such documents should be supplied to the petitioner at an early date and preferably within

a period of two weeks from the date of communication of a copy of this order and the witnesses who have already been examined may be produced on a day as specified by the respondents for cross-examination by the petitioner. However, it is made clear that on no ground, the petitioner shall seek an adjournment. There shall be no order as to costs.'

9. It is clear that the impugned order needs to be set aside for want of tenable conclusion and the notice re-visited with fresh adjudication. During the impugned adjudication, opportunity was not extended to the appellant herein to cross-examine the Chartered Engineer. While taking up the show cause notice for completion of the process of adjudication afresh, the original authority is also directed to ensure that the author of any report relied upon for valuation should be offered for cross-examination in accordance with section 138B of Customs Act, 1962.

10. Accordingly, the appeal is allowed by way of remand.

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

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*