CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89840 OF 2013

[Arising out of Order-in-Appeal No: 924 to 927 (CFS-MULUND)/2013 (JNCH)/ IMP-709 to 712 dated 24th September passed by the Commissioner of Customs (Appeals), Mumbai – II.]

PNP Polymers Pvt Ltd
A-601-607 Mangal Aarambh, Near McDonald's
Kora Kendra, Borivali –W, Mumbai – 400092 … ***Appellant***

versus

Commissioner of Customs (CFS & General)
New Custom House, Ballard Estate, Mumbai – 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89841 OF 2013

[Arising out of Order-in-Appeal No: 924 to 927 (CFS-MULUND)/2013 (JNCH)/ IMP-709 to 712 dated 24th September passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Aasu Exim Pvt Ltd
A-204/205 Udyog Bhavan, Sonawala Road
Goregaon (E), Mumbai – 400063 … ***Appellant***

versus

Commissioner of Customs (CFS & General)
New Custom House, Ballard Estate, Mumbai – 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 89842 OF 2013

[Arising out of Order-in-Appeal No: 924 to 927 (CFS-MULUND)/2013 (JNCH)/ IMP-709 to 712 dated 24th September passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Raj Kumar Kaushik
Aasu Exim Pvt Ltd
A-204/205 Udyog Bhavan, Sonawala Road
Goregaon (E), Mumbai – 400063 … ***Appellant***

versus

Commissioner of Customs (CFS & General)
New Custom House, Ballard Estate, Mumbai – 400001 …***Respondent***

WITH

CUSTOMS APPEAL NO: 85042 OF 2014

[Arising out of Order-in-Appeal No: 924 to 927 (CFS-MULUND)/2013 (JNCH)/ IMP-709 to 712 dated 24th September passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Pawan Kumar Kaushik
PNP Polymers Pvt Ltd
A-601-607 Mangal Aarambh, Near McDonald's
Kora Kendra, Borivali –W, Mumbai – 400092 … ***Appellant***

versus

Commissioner of Customs (CFS & General)
New Custom House, Ballard Estate, Mumbai – 400001 …***Respondent***

APPEARANCE:

Shri Akhilesh Kangasia and Ms Apoorva Parihar, Advocates for the appellants

Shri Priyesh Bheda, Joint Commissioner (AR) for the respondent

AND

CUSTOMS APPEAL NO: 85075 OF 2014

[Arising out of Order-in-Appeal No: 924 to 927 (CFS-MULUND)/2013 (JNCH)/ IMP-709 to 712 dated 24th September passed by the Commissioner of Customs (Appeals), Mumbai – II.]

Commissioner of Customs (General)
New Custom House, Ballard Estate, Mumbai – 400001 … ***Appellant***

versus

PNP Polymers Pvt Ltd
A-601-607 Mangal Aarambh, Near McDonald's
Kora Kendra, Borivali –W, Mumbai – 400092 …***Respondent***

APPEARANCE:

Priyesh Bheda, Joint Commissioner (AR) for the appellant

Shri Akhilesh Kangasia and Ms Apoorva Parihar, Advocates for the respondent

CORAM:

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

FINAL ORDER NO: 86616-86620/2025

DATE OF HEARING:	16/04/2025
DATE OF DECISION:	09/10/2025

PER: C J MATHEW

These appeals have been filed by M/s PNP Polymers Pvt Ltd, M/s Aasu Exim Pvt Ltd, Shri Raj Kumar Kaushik and Shri Pawan Kumar Kaushik and of Commissioner of Customs (General), Mumbai.

2. Limited issues lie for resolution in these appeals continuing the disputes initiated by show cause notice[1], for recovery of ₹ 29,48,776 as differential duties of customs under section 28 of Customs Act, 1962, along with applicable interest, in relation to import of 150 metric tons each of 'ethylene vinyl acetate (EVA)' *vide* bills of entry no. 332154/29.08.2008, no. 332188/29.08.2008 and no.

[1] [no. DRI/MZU/D/Inv03(4)/08-09 (PNP Polymer)/608 dated 22nd January 2009]

332189/29.08.2008 besides confiscation of goods and imposition of penalties. M/s Aasu Exim Pvt Ltd, as source of goods imported against the latter two bills of entry procured on 'high sea sale' by M/s PNP Polymers Pvt Ltd, and the individuals were proceeded against for imposition of penalties.

3. In the appeals filed against the affirmation of proposals made in the show cause notice, order[2] of Commissioner of Customs (Appeals), Mumbai-II dropped the recovery of ₹ 9,92,158 and ₹ 9,92,158 ordered by the original authority in relation to the 'high sea sale' consignments, while affirming recovery of ₹ 9,83,000 with appropriate reductions in other detriments on the finding that

> *'13. From the above, I find that there areno evidence or supportive documents to substantiate the comments submitted by the Department with regard to the verification of genuineness of the said Proforma Invoice and the L/C. However, the appellant submitted that the range of prices prevailed in March 2008 and the price of US$ 1730 PMT mentioned in the said proforma invoice dated 05.03.2008 is supported with documentswhichmerit consideration. In the absence of any valid reason coupled with the documentary evidences, it is not possible to deny the transaction value effectedby way of the said L/C opened and the proforma invoice issued by the manufacturer supplier, which were prior to the investigation. I, therefore, hold that the transaction value in respect of import of 300 MTs of EVA @ US$ 1730 PMT covered by the said Proforma Invoice No.FPC395 dated*

[2] [order-in-appeal no. 924 to 927 (CFS-Mulund)/2013(JNCH)/IMP-709 dated 24th September 2013]

> *05.03.2008 and L/C No.28870085 dated 027.05.2008 supplied by M/s Formosa Plastics Corporation, Taiwan, can be accepted as true and correct transaction value during the period of March 2008, though the goods were shipped on 02.06.2008. However, in the absence of any documentary evidence such as any L/C in respect of goods of 150 MTs of EVA @ US$ 1810 PMT covered by Invoice No. KPL/8117/08 dated 03.06.2008(as mentioned at (g) above) supplied by M/s KongshiPlastex Ltd., Taiwan, cannot be accepted as true transaction value since the goods were shipped on 03.06.2008 and obviously the value of March, 2008 was not applicable. Therefore, as far as the said goods of 150 MTs are concerned, I agree that the declared value merit rejection and their redetermination of value at Rs. 1,16,67,848/- is justified. The said goods are therefore liable for confiscation under section and 111 (m) of the Customs Act, 1962, and the appellants are liable for penal action under section 112, 114A & 114AA of the Customs Act, 1962.'*

4. While M/s PNP Polymers Pvt Ltd, M/s Aasu Exim Pvt Ltd and the individuals assail the confirmed portion of the original proposals, Commissioner of Customs seeks restoration of the order of the original authority.

5. Learned Counsel for appellant-importer contended that the appeal of Commissioner of Customs does not survive as the disputed amount is well below the threshold under the litigation policy revised by instruction[3] of Central Board of Indirect Taxes & Customs (CBIC)

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[3] [F no. 390/Misc/30/2023-JC dated 2nd November 2023]

to ₹ 50,00,000/-. On verification, we do find this to be so and that the issue in dispute is not covered by any of the permissible exclusions therein. Accordingly, the appeal of Commissioner of Customs is dismissed for this reason alone without going into the merits.

6. The original authority had confirmed the demands, and to the extent not dropped in impugned order, on the ground that declared value of US$ 1810 per metric tome was not consistent with internationally prevailing prices published in ICIS Pricing and by adopting the value of US$ 2395 in bill of entry[4] of M/s Sparkling Traders.

7. According to Learned Counsel, the adoption of this value was not consistent with rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 inasmuch as the imports were not proximate in time or quantity.

8. Learned Authorized Representative pointed out that original authority had adduced elaborate reasons for revision in value for assessment.

9. We find that the recovery ordered by the original authority was dropped to the extent that documentation furnished by the appellant sufficed to establish the genuineness of the transacted price and that the

[4] [no. 814257/05.05.2008]

confirmation rested on non-furnishing of similar documents. It would, therefore, be appropriate for M/s PNP Polymers Pvt Ltd to be afforded with another opportunity to do so before the first appellate authority. Accordingly, and without considering the merit in the legal submissions for either side, we set aside the impugned order and remand the matter to be decided afresh by the first appellate authority.

10. Appeals of M/s PNP Polymers Pvt Ltd, M/s Aasu Exim Pvt Ltd and the individuals are allowed by way of remand.

(Order pronounced in the open court on 09/10/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*