CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 85057 of 2020

(Arising out of Order-in-Appeal No. MUM-CUSTM-AMP-APP-517/19-20 dated 24.09.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai.)

Nico Extrusions Limited **.... Appellants**
A/54, New Empire Premises CHS Limited,
Kondivita Road, Andheri (East)
Mumbai – 400 059.

VERSUS

Commissioner of Customs (Preventive) **.... Respondent**
Marine & Preventive Wing
New Custom House,
Ballard Estate, Mumbai – 400 001.

WITH

CUSTOMS APPEAL No. 85085 of 2020

(Arising out of Order-in-Appeal No. MUM-CUSTM-PREV-APP-573/19-20 dated 27.09.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai.)

Nico Extrusions Limited **.... Appellants**
A/54, New Empire Premises CHS Limited,
Kondivita Road, Andheri (East)
Mumbai – 400 059.

VERSUS

Commissioner of Customs (Preventive) **.... Respondent**
Marine & Preventive Wing
New Custom House,
Ballard Estate, Mumbai – 400 001.

APPEARANCE:

Shri Mahesh Raichandani, Advocate representing for the Appellants
Shri Jitesh Kumar Jain, Authorized Representatives for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86856-86857/2025

Date of Hearing: 20.02.2025

Date of Decision: 20.02.2025

PER: M.M. PARTHIBAN

These appeals has been filed by M/s Nico Extrusions Limited, Mumbai (herein after, referred to as 'the appellants'), assailing the Order-in-Appeal

No. MUM-CUSTM-AMP-APP-517/19-20 dated 24.09.2019 and Order-in-Appeal No. MUM-CUSTM-PREV-APP-573/19-20 dated 27.09.2019 (herein after, referred together as 'the impugned orders', for short) passed by the Commissioner of Customs (Appeals), Mumbai-III, Mumbai. In both the appeals the issue under dispute being the same, with the consent of both sides, these appeals are taken up together for hearing and disposal.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2 M/s Nico Extrusions Limited, Mumbai, *inter alia* is engaged in import of various types of metal scrap from all over the world, for recycling purpose. During the disputed period, the appellants had imported four consignments through Inland Container Depot (ICD), Tarapur, Mumbai vide Bills of Entry (B/Es) Nos. 6850603 dated 18.06.2018; 6929666 dated 23.06.2018; 7013244 dated 29.06.2018; 7025938 dated 30.06.2018; and two more consignments in July, 2018 vide B/E Nos. 7143202 dated 09.07.2018 & 7155715 dated 10.07.2018, various types of aluminium scrap from different suppliers from various countries. All these imports were made in terms of individual sales contract/sales orders placed with overseas suppliers. The appellants had declared the imported goods and the value of such goods for the purpose of discharge of import duty for these imports as follows:

B/E No. & Date	**Description of goods**	**Quantity in MT**	**Supplier & Country of Origin**	**Declared value in US $**	**Customs assessed Value US$**
6850603 dt. 18.06.2018	Aluminium Scrap – 'Taint/ Tabor'	20.580	The Remet Co. Ltd. London – United Kingdom	1450.00	1676.00
6929666 dt. 23.06.2018	Aluminium Scrap – 'Tense'	20.470	SIMS Metal Management Asia Ltd. Hong Kond - Canada	1550.00	1911.00
7013244 dt. 29.06.2018	Aluminium Scrap –'Tense & Trump'	28.050	Multi Metal Link FZC UAE - Guinea	1545.00	1585.00
7025938 dt. 30.06.2018	Aluminium Scrap – 'Tense'	53.640	Portal Steel Inc. - Philippines	1600.00	1904.00
7143202 dt. 09.07.2018	Aluminium Scrap – 'Tense'	25.920	The Remet Co. Ltd. London – United Kingdom	1500.00	1894.00
7155715 dt. 10.07.2018	Aluminium Scrap – 'Taint/ Tabor'	36.180	One Steel Recycling Hong Kong Ltd.- Australia	1520.00	1857.26

2.3 However, on scrutiny of the B/Es filed by the appellants and on perusal of National Import Data Base (NIDB), the proper officer of Customs have found that the assessable value available in NIDB are higher than the declared value of imported goods by the appellants. On the above basis, and based on the Circular No. BAL/TECH/36/2016 (Al Scrap) dated 01.12.2016 issued by the Directorate General of Valuation (DGoV), Mumbai, by issue of

Order-in-Original dated 21.08.2018 and Order-in-Original dated 05.09.2018, the declared values were rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and redetermined the assessable values for the individual B/E as indicated in the above table, under Section 17(5) of the Customs Act, 1962. Feeling aggrieved by the said orders, the appellants had preferred two separate appeals before the Commissioner of Customs (Appeals), Mumbai-III, who vide impugned orders upheld the original orders as tenable and dismissed the appeals filed by the appellants. Feeling aggrieved with the impugned orders of the learned Commissioner (Appeals), the appellants have filed these appeals before the Tribunal.

3. Heard both sides and perused the records of the case.

4. The short issue for decision before the Tribunal is to determine, whether the impugned orders passed by the learned Commissioner (Appeals), in upholding the re-assessment made by the proper office of customs, in enhancing the value of import goods, is legally sustainable or not, in terms of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007?

5. In order to address the issue, we would like to refer to the relevant legal provisions relating to valuation of imported goods under the Customs Act, 1962 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the extracted of which is given below:

The Customs Act, 1962

"Valuation of goods.

Section 14. *(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,—
(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section;

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value."

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Definitions

Rule 2. *(1) In these rules, unless the context otherwise requires, -*

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(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(d) "identical goods" means imported goods-

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods,

(ii) produced in the country in which the goods being valued were produced, and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(f) "similar goods" means imported goods-

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

(iv) but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in

India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;

Determination of the method of valuation

Rule 3. *(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) Value of imported goods under sub-rule (1) shall be accepted :
Provided that –

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-
(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
(ii) the deductive value for identical goods or similar goods;
(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9.

Transaction value of identical goods *—*
Rule 4. *(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued :*

Provided *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Transaction value of similar goods
Rule 5. *(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued :*

Provided *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.
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Rejection of declared value
Rule 12 *(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)….”

6. On perusal of the Original orders dated 21.08.2018 and 05.09.2018, more specifically at paragraphs 6 & 7 of the respective order, it is evident

that the appellants importer did not want show cause notice or personal hearing, but vide their letters dated 03.08.2018, 09.08.2018 submitted to the adjudicating authority, it is indicated that they desired speaking order(s) to be issued for such enhancement of transaction value, as clearly stated therein, that they do not agree to enhancement of transaction value by Customs. Therefore, it clearly establishes that the basic requirement of Rule 12 of the Rules of 2007 for rejection of value declared by the appellants-importer, by intimating the basis or grounds for doubting the truth or accuracy of the declared value has not been fulfilled in the present cases. This is so because, it is only when the Orders-in-Original dated 21.08.2018 and 05.09.2018 were issued to the appellants-importer, the details of Bills of Entry and the declared values as per NIDB data, specified in paragraph 1 of the respective order, was made known to the appellants-importer; whereas in terms of Rules of 2007, it shall be mandatory first legal requirement for rejecting the transaction value and for proceeding further in determination of assessable value, as provided therein, when the customs authorities do not accept the transaction value.

7. Further, while determining the assessable value in terms of Section 14 ibid read with Rules 3, 4, 5 of the Rules of 2007, the value of the goods shall be the transaction value, unless the same is rejected in terms of Rule 12 ibid and thereafter to proceed with Rules 4 to 9 sequentially. In the present case, these have not been followed. Furthermore, the principles of comparison with the goods which are alike in all respects for determining the value under Rule 5 on the basis of 'similar goods' i.e., export from the same country of exportation/ country of origin; manufactured by the same person or different person in the same country of export; sale at the same commercial level and in substantially the same quantities as the goods being valued, are required to be established. However, we find that none of these aspects have been complied with by the authorities below in undertaking the revision in enhancing the values under the Rules of 2007. These legal requirements cannot be substituted by the DGoV Circular dated 01.02.2016, as it states that these are only guidelines for determining the pricing based on discount offered to LME prices for prime metal. Therefore, we find that the impugned orders upholding the original orders dated 21.08.2018 and 05.09.2018 does not stand the legal scrutiny in terms of the legal provisions under Section 14 of the Customs Act, 1962 read with the Rules 2, 3, 4, 5, 12 of the Rules of 2007.

8.1 The appellants had relied upon the decision of the Co-ordinate Benches of the Tribunal in the case of *Shri Sushil Kumar Agarwal Vs. Commissioner of Customs (Export), Nhava Sheva* in Final Order No. A/85177 -85183/2020 dated 10.02.2020; and in the case of *Guru Rajendra Metalloys India Pvt. Ltd. Vs. Commissioner of Customs, Ahmedabad* in Final Order No.12146-12153/2024 dated 24.09.2024.

8.2 We also find that in the above orders, the Tribunal have examined the enhancement of value of aluminum scrap on the basis of DGoV Circular dated 01.12.2016 and found that there is no material evidence or proper basis for enhancement of the assessable value. The relevant paragraphs of the said orders are extracted and given below:

Shri Sushil Kumar Agarwal (supra):

> *"11.1. On perusal of the relevant contents of the certificate dated 29.10.2008, it transpires that ISRI has not prescribed any specific discount band on the price fixed by the LME for consideration of transaction value of the scrap items in question. Further, the impugned order has also relied upon the Alert Circular No. 14/2005 dated 16.12.2005 issued by Director General of Valuation for re-determination and enhancing the declared value. The said circular only provides for average price difference between the price of prime metal and different grades of scrap as determined on the basis of study of difference in prices of scrap and prime metal. The circular only requires the department staff to check possible under valuation, after ensuring all relevant specifications. However, the said circular cannot have over riding effect on the valuation provisions contained in the customs statute and as such, the transaction/declared value cannot be rejected merely on the basis of specifications provided in the DGOV Circular dated 16.12.2005. By placing reliance on the judgment of Hon'ble Apex Court in the case of South India Television and CBEC letter F. No. 387/W/9/2013 JC dated 25.06.2013, this Tribunal in the case of C.C. (Import), Nhava Sheva Vs. Bharathi Rubber Lining & Allied Services P. Ltd. – 2013 (287) E.L.T. 124 (Tri.– Mumbai) has held as under:-*
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>> *"5.6 In view of the above, we do not find any infirmity in the observation of the Commissioner (Appeals) that the DGOV Circular cannot override the provisions of Valuation Rules. The Hon'ble Apex Court in the case of Commissioner of Customs, Calcutta v. South India Television - 2007 (214) E.L.T. 3 (S.C.) had held that casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value. The invoice price is not sacrosanct but before rejecting the invoice price, the department has to give cogent reasons for such rejection. The assessing authority has to examine each and every case on merits for deciding its validity and he cannot form a view to reject all transaction values on the basis of some general criteria based on DGOV Circular and on that basis load the value of imports uniformly across board. This Tribunal in the case of FSP (India) Pvt. Ltd. (cited supra) held that uniform loading based on general criteria is not permissible."*
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> *11.2. Further, the law is well settled in the case of Vardhaman Sales (supra), Ratan Aluminum (supra), Pushpak Metal Corpn. (supra) that the LME price cannot be adopted as the basis to enhance the declared price, in absence of any contemporaneous value of the imported goods being available on record. We also find that the issues involved in the present appeals have been*

adequately dealt with by the Ahmedabad Bench of this Tribunal, in the case of M/s Sunland Metal Recycling Industries, vide Final Order No. A/11871-11874/2019 dated 01.10.2019, holding inter alia that applying the LME price minus discount band as per ISRI Bulletin or DGIV Circular dated 16.12.2005 cannot be the defensible ground for rejecting the declared value and for re-determination of the same, by taking recourse to the Valuation Rules, 1988.

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14. Therefore, we find that the allegation of undervaluation is not sustained. Consequentially, the seizure, demand of differential duty, fine and penalty on M/s. Sunland Alloys do not survive. When the main allegation of undervaluation against the main appellant i.e. Sunland Alloys does not survive, penalties imposed on different persons also do not survive. We find that the appellants have submitted that the role played by them does not warrant imposition of penalties under Section 112 and that the impugned order has traversed beyond the SCN in imposing Penalties under Section 112(a) and 114 A of Customs Act, 1962. As we hold that the seizure and duty demand are not sustainable and as a corollary, the penalties also are liable to be set aside, we are not going in to the merits of submissions on the imposition of penalties."

Guru Rajendra Metalloys India Pvt. Ltd. (supra):

"4. We have carefully considered the submission made by both the sides and perused the records. We find that in these matters whether the value enhanced is correct or otherwise has not been gone into as the entire issue was revolved around the concent given by the appellant, on that basis the value was enhanced on the basis of DGOV circular. We find that the price in any case cannot be enhanced merely on the basis of DGOV circular unless until some strong material is found to support the price which was fetched from DGOV circular. However, this exercise has not been carried out."

9. In view of the foregoing discussions and analysis, and on the basis of the orders of the Tribunal as discussed above, we are of the considered opinion that the impugned orders in upholding the enhancement of value is not consistent with the legal provisions of the Customs statute in respect of valuation of imported goods. Accordingly, we find that the impugned orders do not stand the scrutiny of law and therefore these are not legally sustainable.

10. In the result, by setting aside the impugned orders, the appeals are allowed in favour of the appellants.

(Operative portion of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha