CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87654 OF 2024

[Arising out of Order-in-Original No: 151/2023-24/Commr/NS-III/Gr.IV/CAC/JNCH dated 19th September 2024 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Amglo Resources Pvt Ltd
01 Elphinstone House, 17 Murzban Road
Fort, Mumbai - 400 001 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 87655 OF 2024

[Arising out of Order-in-Original No: 151/2023-24/Commr/NS-III/Gr.IV/CAC/JNCH dated 19th September 2024 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Satish Amlani
Amglo Resources Pvt Ltd
01 Elphinstone House, 17 Murzban Road
Fort, Mumbai - 400 001 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

AND

CUSTOMS APPEAL NO: 87656 OF 2024

[Arising out of Order-in-Original No: 151/2023-24/Commr/NS-III/Gr.IV/CAC/JNCH dated 19th September 2024 passed by the Commissioner of Customs (NS-III), Nhava Sheva.]

Vishal Amlani
Amglo Resources Pvt Ltd
01 Elphinstone House, 17 Murzban Road
Fort, Mumbai - 400 001 … ***Appellant***

versus

Commissioner of Customs (NS-III)
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad – 400 707 ***…Respondent***

APPEARANCE:

Shri Jitendra Motwani and Ms Shilpi Jain, Advocates for the appellants

Shri DS Maan, Deputy Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: __86981-86983/2025

DATE OF HEARING: 07/05/2025
DATE OF DECISION: 04/11/2025

PER: C J MATHEW

The proceedings, culminating in order[1] of Commissioner of Customs (NS-III), Jawaharlal Nehru Customs House (JNCH), Nhava Sheva, impugned by the importer, M/s Amglo Resources Private Ltd, and two individuals, S/Shri Satish Amlani and Vishal Amlani, in these appeals taken up together for disposal, had its genesis in tracking of movement of 20 nos. containers of 'copper cathode conforming to LME

---

[1] [order-in-original no. 151/2023-24/Commr/NS-III/Gr.IV/CAC/JNCH dated 19th September 2024]

Grade A' sought to be cleared for home consumption against bill of entry no. 7043797/11.01.2022 that was thereafter enlarged to cover eight other imports effected by the same entity between 24th July 2019 to 31st January 2021. The essence of the allegations stemming from investigation was that goods, originating in 'Iran', had been wrongly declared as from 'Zambia' purportedly to bypass purported sanctions purportedly imposed by executive order[2] of the government of United States of America, owing to which the freight was not accurately included in the declared value and, having to be re-determined, validated invoking of rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for re-determination of assessable value and, ironically, adding on default enhancement to 'surrogate value' ascertained by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. We adopt the qualifying 'purported' and deploy 'ironically' with deliberate intent; while the latter has a bearing on the outcome of the appeal, the former draws attention to the lack of narrated authority for insinuating an infraction that is unknown to the laws of the Republic of India. In consequence, the goods covered by the bill of entry under assessment was revalued at ₹ 44,31,60,219 with differential duty liability of ₹ 1,81,52,662 and that covered by the earlier eight bills of entry were revalued at ₹ 215,52,61,609 with differential duty liability

[2] [executive order no. 13871 dated 8th May 2019]

of ₹ 10,11,87,571 ordered for recovery, along with applicable interest, under section 17(4) and section 28(4) of Customs Act, 1962 respectively, besides confiscating those under section 111(d), 111(l) and 111(m) of Customs Act, 1962 though permitted to be redeemed under section 125 of Customs Act, 1962 on payment of fine of ₹ 3,00,00,000 and ₹ 16,00,00,000 respectively. In addition, penalties imposed under section 112, section 114A and section 114AA of Customs Act, 1962 are under challenge here.

2. It would appear that alleged discrepancy in country of origin offered a window for access to misdeclaration with its own consequence of action on goods under section 111 of Customs Act, 1962 and with auxiliary consequence of rejection of declared value leading to fastening of differential duty to be charged on goods yet to be cleared, and to be recovered on goods cleared in the past. Though importers are required to furnish particulars of import, including country of origin, the significance, as well as that of attendant certification, comes to the fore only upon claim for preferential rate of duty. Such is not so in the impugned imports and transports ‘origin’ of the impugned goods to peripheral irrelevance from the projected centre-stage. This is amply evident from resort to the several Rules of Origin appended to specific bilateral and multilateral trade agreements entered into by the Republic of India which offer scope for, and method of, verification of the certificate of origin to deny eligibility for preferential

rate of duty; in the absence of applicability of the said Rules to imports from other countries, the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 is the appropriate mechanism. The lack of recourse thereto for attendant empowerment and access to authentication compels scrutiny of determination of a different origin and the reason – logical and legal – assigned for supplanting the declared origin even if for academic appreciation of the gain attained thereby. The impugned order, being bereft of such explanation, brings us to a blind alley. Thereby, and inhering from the technical nature and consequence of declaration of country of origin, it is the recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on the back of this discrepancy that hails our attention for a closer examination in the context of empowerment therein.

3. According to Learned Counsel for the appellant, proceedings were launched on two fronts, pertaining to sixty containers imported through Inland Container Depot (ICD), Tumb and twenty containers at Nhava Sheva, and with the former having been set aside by the Tribunal, commonality of investigation precludes validation of the order impugned here. It was contended by him that the series of evidences upon which the conclusions in the impugned order rested had already been addressed in order[3] of the Tribunal, in *Amglo Resources Private Ltd v. Commissioner of Customs, Ahmedabad,* on

---

[3] [final order no. 10449-10451/2024 dated 21st February 2024]

appeal[4] of theirs against similar order[5] fastening duty liability and penalties. It was also contended that the alleged origin of the impugned goods was established on some incidental document which, even if authentic, does not derogate from the origin declared in the bill of entry and that, for the earlier consignments, it was even less tenable for being third party information sought to be sanctified contrary to every premise upon which the evidentiary value of section 108 of Customs Act, 1962 has been endorsed by judicial determination. He further pleaded that doubts about freight, if any, are to be remedied only within the framework of rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. He argued that all elements of the declaration are based on information furnished by the seller and that appellant is privy only to transaction with seller in the United Arab Emirates (UAE).

4. Learned Authorized Representative contended that origin of goods is a necessary inclusion in declarations prescribed for import for affording recourse to rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to curb misuse of the scheme of valuation. According to him, the facts bear out the goods to be from Iran but misdeclared as Zambia for the seller to escape cost of sanctions which appellant was complicit in and warranting confiscation. He

[4] [customs appeal no. 10770 to 10772 of 2023]
[5] [order-in-original no. 70/ADC/MA/O8rA/2023-24 dated 12th June 2023]

further contended that revaluation of goods was in accordance with law and could not be faulted.

5. It is common ground that the copper article had been declared as of ‘Zambia’ origin – one of the big producers of the ore in the world – and it was alleged that the importer had passed off past consignments, and attempted to pass the live consignment, sourced from Iran thus to obfuscate record of having breached sanctions imposed on supplies from Iran by the Government of the United States of America. We, however, do not propose to delve into the manner in which an agency of the sovereign Republic of India was conscripted into enforcing sanctions imposed by a foreign government on another country. There is no finding of concurrent violation of any law of the Republic of India on procurement of goods from such objects of political sanction by a foreign power. It is also common ground that proximate place outside India, for conformity with meaning of ‘import’, in section 2 of Customs Act, 1962 is Dubai as there is no disputation over unloading and loading there.

6. This is not a case of import of goods contrary to notification under section 11 of Customs Act, 1962. It is not a case of breach of any prohibition or restriction on import from any of the possible countries under the Foreign Trade Policy (FTP) notified under the Foreign Trade (Development & Regulation) Act, 1992 either. Even the reference in

the Foreign Trade (Development & Regulation) Act, 1992 to correctness of details in the bills of entry and value is, like all derived statutory mandate, contextual to the objective of the borrowing statute. Value is relevant to ‘quantitative barriers’ and ‘trade promotion schemes’ in the policy and are not intended to be drawn upon by officers created and empowered under the borrowed statute; a superfluous crutch, if that. So, too, with ‘origin’ of goods. Procedural infirmities, if these be so, do not make for ‘contrary to prohibition’ intended by section 111 (d) of Customs Act, 1962 because procedure commences with declaration and confiscation is mandated only upon goods being prohibited for entry into India. An explicit prohibition, under laws empowering prohibition, of a product or from a source or by reference to value as threshold or ceiling, is *sine qua non* for confiscation under section 111(d) of Customs Act, 1962 and that is visibly absent.

7. This is not case of reassigning applicable ‘rate of duty’ either from ‘vertical’ alteration of applicable tariff line in First Schedule to Customs Tariff Act, 1975 or from ‘lateral’ shift of applicable column in declared tariff line from ineligibility to preferential rate. Indeed, there was no claim to, nor option of claiming, preferential rate for the impugned goods. Nor is this a case of reassigning a different heading in First Schedule to Customs Tariff Act, 1975 dwelling, not on a description but across all descriptions, upon geographical source of the

goods. Hence, for the purposes of section 111 of Customs Act, 1962, it is only the other leg of assessment, *viz*., valuation, that may give cause for confiscation. Our assessment of the operational portion of the impugned order is, thus, restricted to the correctness of the re-determination of value upon which the other detriments of confiscation and penalty in the order are appended as consequence.

8. The declared value has been re-determined by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 – the residual among those enumerated from rule 4 therein – drawing upon metal price reported in 'London Metal Exchange (LME)' for the relevant period to which 'cost of service' in safe delivery of the goods to India was loaded by deploying the default computation applicable - on non-availability of actuals – by deploying rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to arrive at the impugned liability to duties of customs. Before proceeding to ascertain conformity of the re-determination of value with the special provisions so notified under the authority of section 14 of Customs Act, 1962, an overview of those may be useful guide.

9. The evolution of empowerment to re-determine value is the history of transnational engagement of about half a century to confer consistency, to the extent possible, to a concept – 'value' - for

assessment which, in ideal circumstances, should mirror the contracted price. The pulls of legislated levy and profit – traditionally viewed as adversarial – lose grounding in the time and space between customs jurisdictions and the bridging of views is the saga from as far back as Brussels Definition of Value (BDV) through General Agreement on Trade & Tariffs (GATT) to the World Trade Organization (WTO) deliberations and the crafting of the mechanism as it exists today. In the course of this development, the 'gold standard' – 'contracted price' conforming to the parameters that, together, endorse it as 'transaction value' for assessment in the Rules of 1988 – for the concept has, since, been normalized as the concept. The abnormal is remedied by recourse to the extant Rules and the design of section 14 of Customs Act, 1962 is structured as three mutually exclusive, and entirely circumstantial, alternatives which, for convenience in distinguishment, may be designated as 'substitute', 'surrogate' and 'supplemental' values. The first is derived, and by application of rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, from evidenced existence of 'contracted price' other than that declared and does not concern this dispute.

10. The second has its genesis from one of two deviations, *viz*., relationship[6] between buyer and seller influenced 'contracted price' and from not fitting the template, for one reason or another, specified as

---

[6] [rule 3(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007]

trigger in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, stemming from the *non obstante* qualification governing acceptance of declared value. This dispute is not concerned with the former and we shall turn to the latter in due course after examining the factual matrix justifying statutory competence to load costs upon a determined 'surrogate' value for fastening duty liability.

11. There is no dispute that the declared value purports to be the 'price for delivery at time and place of import' and, thereby, 'cost insurance freight' inclusive. There is no dispute that the goods were shipped from Dubai by the seller in Dubai. However, the transaction is overarched by dispute over origin – between Zambia as claimed and Iran as held in the impugned order - and, owing to which, the 'costs' were held as indeterminate. We may not be wrong in approaching the issue of 'valuation' strictly in accordance with section 14 of Customs Act, 1962 which assigns a key role to the seller. The price charged from the buyer by the seller, normally 'free on board (FOB)', and the costs charged on the buyer on being incurred by the seller for safe delivery, are the distinct components of the invoice by which competence to invoke rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 arise. Hence, unless the 'proper officer' evidences absence of such inclusion in the contracted price together with lack of plausible evidence from the importer, rule 10 of Customs

Valuation (Determination of Value of Imported Goods) Rules, 2007 may not be invoked to supplement ‘declared price’ or ‘surrogate value’ for enhancing assessable value. There is no doubt that ‘LME adjusted’ value may not include freight and insurance but, in the light of costs towards undisputed shipment from Dubai being available in the invoice and undisputed for its authenticity, such loading in excess is not under authority of law. The dispute over origin bears no consequence to this cost as any transaction *vis-à-vis* the imported goods preceding the final shipment is inclusive of all costs, price and delivery services, unless shown to the contrary. The impugned order is deficient thereto. Moreover, there is no case for presumption over cost of shipment prior to arrival in Dubai as Zambia, accessed by ports on the east African seaboard, is much further off from Dubai than Iran. Factually, there is no valid cause for re-determination of the costs under rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

12. Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is possessed of sufficient latitude, together with primacy accorded by rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to be triggered by alleged discrepancy in origin. Even if such discrepancy stands established, either by non-controverting on the part of importer of by non-acceptability of controverting, it is clear from

'Explanation.- (1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

.....'

below rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 that even a purported value adopted for comparability may not be the 'surrogate' value except by sequential processing through rule 4 to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The absence of 'identical' and 'similar' goods may be acceptable even if on the presumption that appellant herein is the sole 'sanction buster' in India but no explanation is forthcoming on absence of recourse to rule 7 and rule 8 of Customs Valuation (Determination of Value of Imported

Goods) Rules, 2007. After all, if details of purported handling of goods in Iran was within the realm of investigative capacity there was no reason to accept corresponding scope for expansion of investigation of the other 'surrogate values' preceding the 'residual' adopted by the adjudicating authority.

13. Even leaving that aside, the deployment of 'London Metal Exchange (LME) bulletin' for price ascertainment is not in conformity with

> ***'(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;*
>
> ***(iv) the price of the goods for the export to a country other than India;***
>
> *(vi) minimum customs values; or*
>
> *(vii) arbitrary or fictitious values.'* ***(emphasis supplied)***

in rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It would appear that the adjudicating authority was guided by probable familiarity with rule 10A of erstwhile Customs Valuation (Determination of Value of Imported Goods) Rules, 1988 which was incorporated therein, as afterthought, and without the benefit of consensus that has crafted a restricted scope for 'residual method' which, being inapplicable, has the consequence of retention of 'declared value' as the 'transaction value' to be the 'assessable value' for section 17 of Customs Act, 1962.

14. In the facts and circumstances *supra*, the fastening of revised value does not find sanction of law and, owing to which, section 111(m) and 111(n) are rendered as not to be invoked. The impugned order is set aside to allow the appeals.

(Order pronounced in the open court on 04/11/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*