

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

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 87328 OF 2025

[Arising out of Order-in-Original No: 3/AT/C/CUS/2025 dated 3rd June 2025
passed by the Commissioner of Customs, Nagpur.]

Al Udai Exim LLP

92 50 CC Gautam Budh Marg
Lucknow – 226 018

... Appellant

versus

Commissioner of Customs

GST Bhavan,,Telangkhedi Road,,Civil Lines
Nagpur – 440001

...Respondent

WITH

CUSTOMS APPEAL NO: 87329 OF 2025

[Arising out of Order-in-Original No: 3/AT/C/CUS/2025 dated 3rd June 2025
passed by the Commissioner of Customs, Nagpur.]

Ramabors Exim LLP

92 50 CC Gautam Budh Marg
Lucknow – 226 018

... Appellant

versus

Commissioner of Customs

GST Bhavan,,Telangkhedi Road,,Civil Lines
Nagpur – 440001

...Respondent

WITH

CUSTOMS APPEAL NO: 87330 OF 2025

[Arising out of Order-in-Original No: 3/AT/C/CUS/2025 dated 3rd June 2025
passed by the Commissioner of Customs, Nagpur.]

Rohan Prakash

92 50 CC Gautam Budh Marg
Lucknow – 226 018

... Appellant

versus

Commissioner of Customs
GST Bhavan,,Telangkhedi Road,,Civil Lines
Nagpur – 440001

...Respondent

AND

CUSTOMS APPEAL NO: 87331 OF 2025

[Arising out of Order-in-Original No: 3/AT/C/CUS/2025 dated 3rd June 2025
passed by the Commissioner of Customs, Nagpur.]

Manju Agarwal
92 50 CC Gautam Budh Marg
Lucknow – 226 018

... Appellant

versus

Commissioner of Customs
GST Bhavan,,Telangkhedi Road,,Civil Lines
Nagpur – 440001

...Respondent

APPEARANCE:

Shri Vineet K Singh and Shri Abhishek Jaju, Advocates for the appellants
Shri Mahesh Yashwant Patil, Additional Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 85081-85084/2026

DATE OF HEARING:	16/09/2025
DATE OF DECISION:	08/01/2026

PER: C J MATHEW

On the back of import of 21 consignmemnts of ‘end cut rejected
CR strips in coil form of width less than 600 mm and thickness less than

1.2 mm’ and one of the same description imported by M/s Al Udai Exim LLP between July 2023 and August 2023 and M/s Ramabors Exim LLP in July 2023 that was held to be ‘stainless steel strips in coil form of different width’ the goods were subjected to re-valuation and proceeded against for having been sought for clearance in breach of restrictions on import without BIS¹ certification. Order² of Commissioner of Customs, Nagpur ordered re-description in the respective bills of entry though the rate of duty remained the same, viz., corresponding to tariff item 7220 2029 of First Schedule to Customs Tariff Act, 1975 besides re-quantifying the goods imported by M/s Al Udai Exim LLP as 1184114 kg instead of 1052090 kg and of M/s Ramabors Exim LLP as 50775 kg instead of 44773 kg. The value was, and not just by revision of quantity, enhanced from ₹3,65,99,133 to ₹12,40,72,260, on bills of M/s Udai Exim LLP and from ₹ 31,34,549 to ₹42,32,929 in the bill filed by M/s Ramabors Exim LLP, under rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 before confiscating the goods absolutely. Penalties under section 112 and section 114AA of Customs Act, 1962 were imposed on the importers as well as on Smt Manju Agrawal, Shri Rohan Parakash and M/s Gordon Woodroffee Logistics Ltd. Appeals preferred by the importers, the agent and the individuals is before us.

2. Without any danger of pre-judgement, we may safely say that the

¹ [Bureau of Indian Standards]

² [order-in-original no. 3/AT/C/CUS/2025 dated 3rd June 2025]

impugned order is not ‘run of the mill’ adjudication; the adjudicating authority has taken over the function entrusted on ‘proper officer’ under section 17 (2), 17 (3) and 17 (4) of Customs Act, 1962 to re-assess the duty and also undertook that entrusted to ‘proper officer’ by section 47 (1) of Customs Act, 1962 forbearing from permission to clear goods, that were not presented for that purpose yet, for not being backed by BIS certification. Doubtlessly, section 5(2) of Customs Act, 1962 does enable so but it is moot if such assumption of authority is attachable to the substantive level in the hierarchy or is tantamount to lowering to subordinate level; this has implication in conferment of appellate jurisdiction correspondingly. It could well be argued that, as the authority has been assumed by Commissioner, no substantive harm occurs with disposal in first appeal by the Tribunal instead of Commissioner of Customs (Appeals) and, while that may well be so for the instant, there is inherent error in allowing that proposition to survive; should a Chief Commissioner/Principal Chief Commissioner, as undoubtedly fitting within the hierarchy in section 3 of Customs Act, 1962 not barred in section 5 of Customs Act, 1962, choose so to do, the same premise would exclude appellate remedies *in toto*. The proposition that the superior officer appropriates authority to the office of incumbency is clearly not tenable. However, there is no reason to deny appellate recourse to the appellants who may have been misdirected by the preamble to the order.

3. The adjudicating authority re-valued the goods even as he intended

to confiscate the goods under section 111(d), 111(l) and 111 (m) of Customs Act, 1962 without offering option to redeem under section 125 of Customs Act, 1962. From the circumscribing of penalties, envisaged for distinct alternatives and combinations thereof, in section 112 of Customs Act, 1962 and from section 111 (l) and section 111 (m) of Customs Act, 1962, there is no scope for goods to be dutiable and prohibited at the same time and, owing to mutual exclusivity, not amenable to confiscation under all three options forayed into in the impugned order. More so, as re-valuation of the goods has been resorted to by recourse to rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 erected upon the presumption of non-satisfaction through rule 12 thereof.

4. It is odd to observe that the description of the goods is sought to be altered when that is intended to reflect the description in the invoice and, particularly so, as the description corresponding to the claimed tariff item remains unchanged with the revised description. One of the two objectives of the impugned proceedings was, along with determination of prohibition, revision of value which is not contingent upon revision of description but solely attributable to goods being 'prime' instead of 'rejects' that does not have anything to do with description.

5. The customs authorities also sought intervention of a chartered engineer for determination of characteristic of the impugned goods and its

value. The impugned order has been less than forthcoming on the contribution of chartered accountant to the proceedings and with neither the statute nor the relevant rules according such procedural intervention by a third person any sanctity. Even the attempt to seek refuge within the ambit of circular³ of Central Board of Excise & Customs (CBEC) fails with the impugned goods not being capital goods.

6. It is common ground that the impugned goods are

‘flat-rolled products of stainless steel, of a width less than 600 mm’

corresponding to heading 7220 of First Schedule to Customs Tariff Act, 1975 that is

‘not further worked than cold-rolled (cold-reduced)’

corresponding to sub-heading 7220 20 of First Schedule to Customs Tariff Act, 1975 sub-classified as ‘strips for pipes and tubes (other than skelp)’ that, not being either ‘chromium type’ or ‘nickel chromium austentic type’, fell within

‘others’

corresponding to tariff item 7220 2029 of First Schedule to Customs Tariff Act, 1975. Whether the impugned goods were either of differing width or not or end cut rejects or not is irrelevant to the classification. It would

³ [circular no.4/2008-Customs dated 12th February 2008]

appear that the tinkering of description had only one purpose, viz., to indicate that these were not 'rejects', which may have merely sufficed as a finding to justify re-look at declared value or to render liable to confiscation under section 111(m) of Customs Act, 1962. Of more relevance is the quantity which was found, on physical examination, to be in excess of declaration.

7. Learned Counsel for appellants submitted that the description entered in the bills of entry was not incorrect and, while the goods may appear to conform to description corresponding to, unquestioned, tariff item, that these were not 'end cut reject' has not been established. According to him, the report of Central Revenue Control Laboratory (CRCL) has merely reported that these were stainless steel strips with differing width and that the confirmation by the Chartered Engineer engaged by the customs authorities was devoid of any further expertise except for observing lack of rust or decay. He contended that the customs authorities were pointedly selective in assigning weightage to one chartered engineer over the one engaged initially and that the later one, by specialization in electronics, lacked appropriate domain expertise to venture on the opinion accorded by him. According to him, their contention that the impugned goods could not be used for production of pipes and tubes owing to uneven thickness had not been controverted in the impugned order.

8. He further submitted that the declaration was made in accordance with extant instructions of Ministry of Steel on the distinction between ‘prime steel’ and ‘defective’ and that the decision of the Tribunal⁴, in *Suncity Strips & Tubes P Ltd v. Commissioner of Customs, Ahmedabad*, had acknowledged so. While conceding that the correct quantity had not been reflected in the bills, he also submitted that the appellant had undertaken to discharge the duty assessed thereof even if no further payment was to be made to the supplier.

9. Contesting the requirement to be ‘BIS compliant’, he submitted that steel, in coil form, was not required to be, considering that the goods were to undergo further processing. He further submitted that 135 imports, effected between April 2020 and July 2023, of theirs were not considered for such treatment as now forced on the goods in the impugned order. These, according to him, should be taken as benchmarks for valuation of the impugned goods. He contended that the imports predate the mandate of furnishing ‘BIS certificate’ in Steel and Steel Products (Quality Control) Order dated 22nd December 2020 made effective by circular⁵. Relying upon the decision of the Hon’ble Supreme Court in *JK Spinning & Weaving Mills Ltd v. Union of India [1988 SCR (1) 700]*, he urged that shipments effected during transition be subject to the erstwhile regime.

10. Learned Authorized Representative contended that, with appellant

⁴ [final order no. A/11470/2019 dated 5th August 2019 in customs appeal no. 13559 of 2014]

⁵ [circular issued from F no. S-20011/14/2021-Tech dated 20th October 2023]

having consented to obtaining of opinion of chartered engineer, it was too late to have second thoughts. According to him, the voluntary acceptance of misdeclaration foreclosed challenge subsequently. With this, he submitted that the declared value did not represent the true transaction value. He relied upon the report of Central Revenue Control Laboratory (CRCL) to urge that the goods were established as stainless steel of primary grade that, notwithstanding uneven width, did not suffice for conformity with defective goods.

11. According to him, the reliance placed by appellants on the instruction relating to practice at Nhava Sheva was not tenable as it did not bind Nagpur and that clarification issued by Ministry of Steel stipulates certification of BIS for all steel products.

12. The first issue for consideration is the applicability of BIS certification to the impugned goods. Conventionally, only final products and articles that go into deployment in production for consumers were required to be so compliant. It is, however, clear from policy developments in the Ministry of Steel, Government of India that controls over imported steel products were being tightened. In addition to the issue of a comprehensive list in the Steel and Steel Products (Quality Control) Order, 2020, an online system of confirmation of exemption was made mandatory where such certification was not furnished with imported goods; apparently, all steel products do not merit BIS certification at the

time of import. On perusal of the list in the two tables appended to the Order *supra*, we find absence of ITC(HS) 7220 2029. Even more significantly, the said description is not enumerated as input for pipes and tubes in Table 2 therein. Consequently, the online waiver certification becomes necessary as a policy prescription; however, as pointed out by Learned Counsel, the last bill of entry pre-dates the circular of Ministry of Steel. In sum, the impugned goods cannot be charged with not being compliant with BIS certification requirement in the absence of any finding with reference to the tables in the Order of Ministry of Steel. The impugned circular requiring waiver determination, in the absence of BIS certification, does not apply to the impugned goods. Fastening of section 111(d) of Customs Act, 1962 on the impugned goods for having been imported without BIS certification does not have sanction of law.

13. The goods were declared as ‘end cut rejects’ which does not prompt re-classification as the goods, either way, are covered by the description in tariff item 7220 2029 of First Schedule to Customs Tariff Act, 1975. However, customs authorities opined that the declaration as ‘rejects’ is not correct. It has been established by the test report that the impugned ‘stainless steel articles’ are not of even surface and vary in thickness; they are, thus, bound by the distinguishment offered by the Ministry of Steel and, on facts, meriting the consequence of ‘defective’ with the values being subjected to scrutiny. The finding that the impugned goods were misdeclared is not borne by the facts on record; even if the said declaration

was considered a bit stretched, the reliance placed on the enlargement of trade terms planting the impugned goods among 'defective', and not controverted in the impugned order, preclude confiscation and penalty for misdeclaration with intent to evade duties of customs. Furthermore, the reliance placed in the impugned order on the domain expertise of the chartered engineer undermines the consequential finding with the revelation that, as an electronics engineer, proper evaluation of the physical and chemical characteristics of the impugned goods was beyond his competence. That, in all probability, is explanation for considering rust to be qualifier for not being prime; a very pedestrian approach to a complex resolution. Surely, the investigators could have pursued a more credible source for the dénouement. Consequently, there is no ground for charging the appellants with misdescription.

14. The impugned order, in revising the value of the impugned goods, has relied upon the evaluation by the chartered engineer. We have already consigned the report of the said chartered engineer to its rightful place and can hardly be recalled as credible opinion for re-valuation. A chartered engineer, and notwithstanding the wisdom of either of the circulars⁶ of Central Board of Excise & Customs (CBEC), has neither role assigned in, nor professionally be source within, the scheme of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; strictly speaking, a legacy of the Customs Valuation Rules, 1963 with scope for

⁶ [circular no. 4/2008-Cus dated 12th February 2008 and circular no. 25/2015-Cus dated 15th October 2015]

wide ‘best judgement’ that continued in the context of insertion of ‘unpolished’ rule 10A in the regime governed by Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, reliance on the mechanism of chartered engineer is an anachronism. The first of the circulars, barely a year into the current valuation scheme, was guided, in most part, by judicial determination of disputes in the erstwhile regime and could hardly be considered as seminal.

15. Indeed, reliance on a stray paragraph⁷ in the first of the two circulars is misplaced inasmuch it merely reflects the apparent universality of the proposition in the preceding paragraph for deployment of value of new machinery to be adjusted for depreciation to enable comparison for the purpose of rule 12 of Custom Valuation (Determination of Value of Imported Goods) Rules, 2007. It affords credibility assured by recourse to chartered engineer for obtaining depreciated value and only for comparison; that is not the situation obtaining here. Nor does rule 12 of the Rules provide the same source as acceptable for determining rejection as well as revision. Here, the chartered engineer, and an electronic engineer, to boot, has merely recorded that the goods are not ‘defective’ and, therefore, to be assessed as ‘prime’ unlike the contingency in the circulars that pertain to, admittedly, used capital goods with value merely to be ascertained. In the absence of benchmarked rejection by recourse to rule 12 of Customs

⁷ [para 6 of circular no. 4/2008-Cus dated 12th February 2008]

Valuation (Determination of Value of Imported Goods) Rules, 2007 followed by recourse to sequential application mandated by rule 3(4) therein, the re-determined value does not survive the test of law.

16. The impugned order, arrogating disposal of bills of entry under section 17(5) of Customs Act, 1962, does not survive for the above reasons. Penalties are set aside. The impugned goods have not been imported contrary to any prohibition under Customs Act, 1962 or any other law for the time being in force. There is no change in rate of duty and the claim of goods being 'defective' has not been displaced. The value declared has not been established as not being 'transaction value' for assessment. Hence, the impugned order is set aside and the bills of entry as self-assessed entitled to be presented for clearance under section 47 of Customs Act, 1962.

17. Appeals are allowed.

(Order pronounced in the open court on 08/01/2026)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)