CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86724 OF 2025

[Arising out of Order-in-Original No: 2/AT/C/CUS/2025 dated 26th May 2025 passed by the Commissioner of Customs, Nagpur.]

Gordon Woodroffe Logistics Ltd
Commissariat Bldg, 5th Floor, Dr Dadabhai Naoroji Road
Fort, Mumbai - 400001 … ***Appellant***

versus

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

WITH

CUSTOMS APPEAL NO: 86809 OF 2025

[Arising out of Order-in-Original No: 2/AT/C/CUS/2025 dated 26th May 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***

AND

CUSTOMS APPEAL NO: 86810 OF 2025

[Arising out of Order-in-Original No: 2/AT/C/CUS/2025 dated 26th May 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***

APPEARANCE:

Shri Vineet Singh, Advocate for the appellants

Shri Deepak Sharma, 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: 85085-85087/2026

DATE OF HEARING: 25/09/2025
DATE OF DECISION: 08/01/2026

PER: C J MATHEW

At stake in this dispute are two consignments of 'draping tubes (window curtain parts/accessories) imported by M/s Ramabors Exim LLP against bills of entry no. 7839978/15.09.2023 and no. 7929711/21.09.2023, that were held in impugned order[1] of Commissioner of Customs, Nagpur to be 'welded stainless steel pipes of circular cross-sections and square or rectangular cross-sections', is the controversy about the generic prevailing over the specific. A

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[1] [order-in-original no. 2/AT/C/CUS/2025 dated 26th May 2025]

drapery or curtain rod is nothing but a circular, square or rectangular pipe cut in length for fitment over windows/doors either of standard width or special width. And yet, the goods were not only reclassified from tariff item 8302 4900 of First Schedule to Customs Tariff Act, 1975 to tariff item 7306 4000/7306 6100 of First Schedule to Customs Tariff Act, 1975 but value of ₹37,68,903 declared by the importer was rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to be re-determined as ₹1,15,97,516 by recourse to rule 9 therein even as the goods were ordered for confiscation under section 111(d), 111(l) and 111(m) of Customs Act, 1962 without option to redeem on payment of fine, and relieved of duty liability of ₹ 84,34,688 along with applicable interest for that reason, and penalty imposed under section 112 and section 114AA on the importer, Shri Rohan Prakash, Managing Director, and the customs broker, M/s Gordon Woodroffee Logistics Ltd. All of these are under challenge before us.

2. Without any danger of pre-judgement, we may safely say that the impugned order is an extraordinary exercise of 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 and 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 of inferior 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 and proceeded to re-asses duties even as the intention was 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. One of the two objectives of the impugned proceedings was, along with determination of prohibition, revision of value which is contingent upon revision of description even though one may well be a derivative of the other by intended use.

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 engineer to the proceedings and with neither the statute nor the relevant rules according such procedural intervention by such third person any sanctity. Even the attempt to seek refuge within the ambit of circular[2] of Central Board of Excise & Customs

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

(CBEC) fails with the impugned goods not being capital goods.

6. The impugned order has confiscated the goods under section 111(l) of Customs Act, 1962 for being in excess of declaration as the weight was ascertained to be 1,04,992 kg against the declared weight of 87,174 kg. Confiscation under section 111(m) of Customs Act, 1962 was founded on erroneous classification of impugned goods against tariff item 8302 4900 of First Schedule to Customs Tariff Act, 1975 instead of against tariff item 7306 4000 and tariff item 7306 6100, according to shape of cross-section, of First Schedule to Customs Act, 1962 with consequence to valuation. Recourse was had to section 111(d) of Customs Act, 1962 owing to prohibition attached to the revised classification for failing to comply with BIS requirements. Thus, other than excess quantity, the detriments are consequence of revised classification.

7. Ms Aishwarya Kantawalla, Learned Counsel for the appellants submitted that the impugned goods were procured for use as ‘draping tubes (window curtain parts and accessories)’ and that the goods could possibly find use thus has not been denied in the impugned order. It was contended that the chartered engineer, on whose opinion the adjudication order has relied heavily, is not qualified to render opinion on composition and classification of goods. According to her, the resort to rule 3 of General Interpretative Rules appended to Customs Tariff

Act, 1975 is cause enough to discard allegation of misclassification.

8. It was further argued by Mr Vineet Singh, Learned Counsel for appellant that value has also been re-determined by relying upon opinion of chartered engineer which is not in consonance with the scheme of customs valuation. He submitted that Steel and Steel Products (Quality Control) Order, 2020, enumerating the products that were required to comply with BIS certification and products that were manufactured by deployment of BIS certified inputs, had not been properly construed and the clarifications thereafter, of Central Board of Excise & Customs (CBEC) as well as that of Ministry of Steel, on mandatory approval of steel products that were not accompanied by BIS certification, are not applicable to the imported goods. She contended that the weighing of the goods and computation of total weight to allege excess imports was not tenable.

9. Learned Authorized Representative drew attention to the Explanatory Notes in the Harmonized System of Nomenclature pertaining to ‘tubes and pipes’ in chapter 73. According to him, the outcome of examination, reporting standard industrial product, puts paid to the claim of the appellant that the impugned goods are ‘drapery rods’ for curtains. He urged us to accept his proposition that articles listed within ‘miscellaneous goods’ lacks specificity that ‘articles of iron or steel’ do. He defended absolute confiscation on the plea that the goods were imported contrary to prohibition imposed under Steel and

Steel Products (Quality Control) Order, 2020 and, therefore, violative of section 17 of Bureau of Indian Standards Act, 2016. He supported reliance on the report of chartered engineer for determining undervaluation as it was based on test report and market survey.

10. It is seen from the impugned order that the adjudicating authority has not denied potential use of the impugned goods as drapery rods for curtains and the revision of classification relies upon better fitment of ‘circular cross-section’ against tariff item 7306 4000 of First Schedule to Customs Tariff Act, 1975 and ‘rectangular/square cross-section’ against tariff item 7306 6100 of First Schedule to Customs Tariff Act, 1975. Thereby, the case of misdeclaration and, on the basis of which, ‘value’ was held as unacceptable, as well as of BIS certification requirement, was adjudged would be jeopardized. It is seen that ‘tubes and pipes’ are segregated as three different headings – seamless, welded or riveted with external diameter exceeding 406.4 mm and open seam, other welded and riveted; while the latter two are mutually exclusive, the cross-over of heading 7304 and heading 7306 manifests substantial difference. Other than assertion by the adjudicating authority that the ‘tubes and pipes’ are welded, there is no finding to conclude so. Reference to report of Central Revenue Control Laboratory (CRCL) are galore in the order but there is no hint that this aspect was covered by the test. Moreover, the report was provided to the chartered engineer who, too, has not paid any attention to this crucial aspect.

11. We have noted above that a plain ‘drapery rod’ is nothing but a tube or pipe which is cut to size at the time of installation with a window. Windows are not of standard size and ‘drapery rods’, marketed in varying lengths, continue to be ‘tubes and pipes’ but the existence of mountings in chapter 83 cannot be ignored. The intent of a separate enumeration, founded on use, undermines the foundation of revision of classification in the impugned order of the form and manner of presentation being the primary criterion for classification. The *Explanatory Notes* offer no assistance for distinction by length or any other measurable characteristic. On the other hand, note 2 in section XV of First Schedule to Customs Tariff Act, 1975 makes it abundantly clear that

> *‘Subject to the preceding paragraph and to Note 1 to Chapter 83, the articles of Chapter 82 or 83 are excluded from Chapters 72 to 76 and 78 to 81.’*

and with the preceding paragraph, setting out

> *‘In Chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined above.’*

which tariff item 8302 4900 of First Schedule to Customs Tariff Act, 1975 does not purport to be, the precedence assigned to chapter 83 excludes applicability of headings in chapter 73. This significant distinguishment appears to have been overlooked by the adjudicating authority, the chartered engineer and the test report. The revision in classification does not sustain.

12. The next issue for consideration, though now of academic significance on the admitted applicability of the goods covered by the revised classification, is non-compliance with BIS certification requirement. 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) 8302 4900 therein. Even more significantly, the said description is not enumerated as input for pipes and tubes in Table 2 therein; the intent and purpose of condition 2(b) in the said Order, viz., that 'stainless steel pipes and tubes' be made from listed goods that are BIS compliant, appears to have been misconstrued by customs authorities. Consequently, the online waiver certification is not applicable policy prescription. 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 impugned order, in revising the value of the impugned goods, has relied upon the evaluation by the chartered engineer. A chartered engineer, and notwithstanding the wisdom of either of the circulars[3] 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 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.

14. Indeed, reliance on a stray paragraph[4] in the first of the two

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

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 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 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.

15. 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. 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 is entitled to be presented for clearance under section 47 of Customs Act, 1962.

16. Appeals are allowed.

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

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*