

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

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 86769 of 2016

(Arising out of Order-in-Appeal No. MUM-CSTM-SMP-57-2016-17 dated 10.06.2016 passed by the Commissioner of Customs (Appeals), Mumbai-I, New Custom House, Mumbai)

Kumar Mahendra Exim

.... Appellant

1001, Dhaalgiri, Papanswadi, Nana Chowk,
Grant Road, Mumbai – 400 036.

Versus

Commissioner of Customs (Imports), Mumbai

.... Respondent

New Custom House,
Ballard Estate, Mumbai – 400 001

APPEARANCE:

Shri Ashwini Kumar, Advocate for the Appellant

Shri L.B. D'coasta, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85318/2026

Date of Hearing: 24.12.2025

Date of Decision: 19.02.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Kumar Mahendra Exim, Mumbai (herein after referred to, for short, as "the appellant") assailing the Order-in-Appeal No. MUM-CSTM-SMP-57-2016-17 dated 10.06.2016 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-I, New Custom House, Mumbai.

2.1 The facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant has filed a Bill of Entry (B/E) No. 9278749 dated 11.02.2013 for clearance of imported goods declared as "Knitted Fabrics" under Customs Tariff Item (CTI) 6006 4200 for a total quantity of 22,113.5

kgs. at Cost and Freight (CNF) value of US\$ 2.80 per kg. As per the import invoice No. NC-667 dated 18.01.2013, the goods were imported from China and total declared value was US\$ 61917.80. At the time of assessment of the said B/E, the Department had enhanced the unit value of the said imported goods from US\$ 2.80 per kg. to US\$ 4.60 per kg., on the basis of DRI Alert Circular dated 09.05.2011, which state that there was under valuation in import of fabrics from China, and to address such menace, the actual rates were ascertained by DRI for circulation to all customs authorities at various ports as guideline in future assessments. Accordingly, the appellant had paid differential duty of Rs.5,75,345/-.

2.3 On being aggrieved against such loading of value, the appellant had filed an appeal before the Commissioner (Appeals), *inter alia*, on the grounds that they have not been issued any show-cause notice, which was mandatory in terms of Section 17(5) of the Customs Act, 1962; that they have not been provided with any relied upon documents or contemporary import evidencing the enhancement of the assessable value and; that they have not been given any notice for personal hearing before rejection of the declared value. The appellant had also stated that the rejection of declared value was contrary to the provisions of Rule 12 of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007. The Commissioner (Appeals) vide Order-in-Appeal No. MUM-CSTM-SMP-396/2013-14 dated 21.11.2013 had rejected the appeal, by holding that mere assessment of Bill of Entry is not a decision or order, therefore, it is not appealable. The Commissioner (Appeals) further directed that the appellant may approach the lower authority, who shall pass a speaking order as per sub-section 5 of Section 17 of the Customs Act, 1962. Being aggrieved with the order of Commissioner (Appeals) dated 21.11.2013, the appellant had preferred an appeal before the Tribunal and vide Order No. A/1602/14/CSTB/C-I//M/1710/CSTB/C-I/14 dated 24.10.2014, the Tribunal had in disposing the case remanded the matter to the original authority, by directing the Department to pass the speaking order as directed by the lower appellate authority, within a period of 30 days from the date of the order.

2.4 In pursuance of the Tribunal's order dated 24.10.2014, the original authority passed the Order-in-Original dated 27.11.2014 in rejecting the transaction value of US\$ 2.80 per kg. declared by the appellant and re-assessed the value as US\$ 4.60 per kg. under Rule 4 of the Rules of 2007, holding that as per NIDB data and Alert Circular issued by DRI vide F. No. 23/13/ 2011-DZU dated 09.05.2011, the unit price in US\$ (CNF) was US\$

4.82 per kg. Further, the adjudicating authority also held that the appellant had imported viscose knitted fabric as confirmed vide Test Report No. 01530313-10301 (Part-I) issued by the Textile Committee, Ministry of Textiles, Govt. of India and the percentage of viscose was found to be 97.1%. Being aggrieved with the order of the original authority dated 27.11.2014, the appellant filed an appeal before the learned Commissioner (Appeals), who in disposing the appeal has upheld the order of the original authority and rejected the appeal filed by the appellant by issue of Order-in-Appeal dated 10.06.2016, which is impugned herein. Feeling aggrieved with the impugned order passed by the Commissioner (Appeals), the appellant has preferred the present appeal before the Tribunal.

3. Learned Advocate appearing for the appellant submits that while doubts were raised by the 'proper officer' regarding truth and accuracy of the declared value under Rule 12 of the Rules of 2007, the appellant was never called upon to justify the value or submit further documents and there is no evidence to support that the value which was declared by the appellant was not the "actual price paid or payable" for the imported goods. He also submitted that for enhancement of declared value, the data of contemporaneous imports were never shared with the appellant and also there is no finding that the enhanced value was the lowest value of the identical goods, which is *sina quan non* for application of Rule 4 *ibid*. He further submitted that in an identical case, enhancement of declared value on the basis of DRI alert has been rejected by the Co-ordinate Benches of the Tribunal in the case of *Sedna Impex Pvt. Ltd. Vs. Commissioner of Customs, Faridabad* – 2017 (347) E.L.T. 317 (Tri-Chan.) and in the case of *M/s Surbhit Impex Pvt. Ltd. Vs. Commissioner of Customs (Import), Nhava Sheva* vide Final Order No. A/86758/2023 dated 13.01.2023. On the above basis, he pleaded that their appeal may be allowed.

4. Learned Authorized Representative appearing for the Revenue reiterated the findings recorded by the lower authorities in the impugned order and prayed that the appeal may not be entertained.

5. The issue for determination by the Tribunal is to decide whether the enhancement of value of imported goods on the basis of DRI alert and contemporaneous imports of identical goods is sustainable or not, in terms of the legal provisions of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after referred to as 'CVR', for short].

6. On careful consideration of the submissions made by both the sides, we find that the appellant has challenged the impugned order mainly on two grounds; firstly, on the ground that enhancement of value is without any basis and the data of import values of contemporary importation that had taken place was not provided to them or considered and therefore such re-determination of value is without following due process of law, and is therefore against the provisions of Section 14(1) of the Customs Act, 1962 and CVR, 2007; and secondly, on the ground that there was no evidence produced by the department to support that the value declared by the appellant was not the 'price actually paid or payable' in order to reject the transaction value. It is also claimed that valuation of goods cannot be done arbitrarily based on any general alert issued for import of fabrics from China.

7. In order to examine the above issues and whether the impugned order has duly followed the provisions of Sections 14 ibid and CVR, 2007, as it existed at the time of import, we would like to refer the relevant legal provisions of the Customs Act, 1962:

"Definitions.

2. *In this Act, unless the context otherwise requires,—*

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(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

Valuation of goods.

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....

Assessment of duty.

17. (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

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

Determination of the method of valuation.

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 rule 4 to 9.

Transaction value of identical goods.

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.

Rejection of declared value.

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).*

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-

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

8.1 On careful consideration of the said provisions, we find that in case of any type of assessment, the assessable value of imported goods is required to be determined in accordance with the provisions of Section 14 of the Customs Act, 1962 and the Customs Tariff Act, 1975.

8.2 In the present case, we find that the appellant had self-assessed the goods in terms of Section 17(1) *ibid*, by declaring the value of the imported goods, as per invoice value of the supplier from China at USD 2.80 per Kg. involving the total value of USD 61,917.80 for total quantity of 22,113.5 kgs. of imported knitted fabrics. The proper officer of Customs in verification of such self-assessment in terms of Section 17(2) and 17(3) *ibid*, had based his findings on DRI alert circular dated 09.05.2011 issued indicating the unit price of viscose knitted fabric at USD 4.82 per kg. in order to check undervaluation of imported goods, keeping in view of the international prices

from China. Further, he had informed the Custom House Agent of the appellant's importer about the contemporary import prices by comparing the imports by M/s SSD Vijay Trading Pvt. Limited in B/E No. 7818759 dated 31.08.2012 and B/E No. 9079491 dated 21.01.2013 at USD 4.75 per kg. and enhanced the assessable value on the basis of such contemporary price data given in the NIDB. Accordingly, the proper officer of customs had re-assessed the value of imported goods, in terms of the exception provided under Section 17(5) *ibid*, as the importer had discharged the duty on enhanced value without any protest. The relevant extract of the said order is quoted below:

"6. In the case of import of fabrics, the DRI vide Alert Circular dated 09.05.2011 issued directions stating that 'in order to curb the menace of under valuation in import of fabrics from China, the actual rates (ascertained by DRI) should be circulated to all ports of import for future assessments'. The DRI ascertained the prices of different varieties of fabrics through investigations of many importers and suppliers of China. I find that the subject 'imported viscose knitted fabric', which is confirmed from the Test Report No. 01530313-10301 (Part-I) issued by Textiles Committee, Ministry of Textiles, Government of India. The Test Report clearly shows that the percentage of viscose in the subject import sample is 97.1%. Accordingly, as per the DRI Alert Circular, the unit price in USD (CNF) of the said imported goods should be of USD 4.82.

7. In addition to the above, at the time of assessment of bill of entry, the authorized representative of the importer i.e. the CHA was informed of the contemporary import prices. The CHA accepted the loading of value at the time of assessment of bill of entry. Neither the CHA nor the importer requested for issuing any speaking order / show cause notice at the time of assessment. Accordingly, the value was enhanced on the basis of contemporary price data given in the NIDB. As per TR No. 01530313-10301(Part-I) issued by Textiles Committee, Ministry of Textiles, Government of India the imported goods are viscose knitted fabrics. The loading of value was done in accordance with the values declared in the Bill of Entries filed by other importers for same goods imported from same country i.e. China during the same period. In the Bill of Entry No. 7818759 dated 31.08.2012 and 9079491 dated 21.01.2013, M/s. SSD Vijay Trading Pvt Ltd had declared value of USD 4.75 per Kg for viscose knitted fabrics imported from China. Many of the importers for the same contemporary period had declared the value around USD 4.80 for the same goods imported from China. Accordingly, the value of the subject goods imported from China is re-ascertained as USD 4.80, which is legal and proper.

8. xxxx xxxx xxxx

9. As per Rule 3 (1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10.

It means the transaction value is to be accepted subject to the satisfaction of conditions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10. In this case, since the assessing officer had raised the doubt about the truth or accuracy of the declared value in comparison with the values of identical goods imported during contemporary period, the importer had accepted the value loading in accordance with the value of identical goods of the contemporary period.

11. xxxx xxxx xxxx

12. As per Rule 3(4) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

As per Rule 4(1)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, 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.

In this case, since the transaction value is rejected under Rule 12, the value is to be determined by proceeding sequentially through Rule 4 to 9. Since the values of identical goods are available in the form of NIDB Data during the same period, the transaction value of the subject goods is taken under Rule 4 to ascertain the transaction value of the subject goods.

ORDER

13. I reject the transaction value of USD 2.80 per Kg declared by the importer of viscose knitted fabrics imported under CTH 60064200 by M/s. Kumar Mahendra Exim vide Bill of Entry No. 9278749 dated 11.02.2013 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-ascertain the value as USD 4.60 per Kg under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007."

8.3 Plain reading of legal provisions clearly brings out that in re-assessment of goods done under Section 17(5) *ibid*, except wherein the re-assessment has been accepted by the assessee importer, the proper officer shall pass a speaking order on the reassessment within 15 days on the date of re-assessment of the bills of entry. Admittedly, in this case, speaking order under Section 17(5) of the Customs Act, 1962 has been passed vide Order-in-Original No.1068/DC/Gr.III/DB/2014-15 dated 27.11.2014. Therefore, we are of the considered view that the legal requirement of re-assessment of imported goods under Section 17(5) *ibid*, has been complied in this case. However, in enhancing the value of imported goods, whether such order was in compliance with the legal provisions of Section 14 *ibid* and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 have been duly followed in this case by the proper officer of Customs, is required to be examined. On perusal of the order of the original authority as at paragraph 8.2 above, it clearly transpires that the requirements of Rule 3

and following sequentially Rule 4 to Rule 9 of CVR, 2007 have not been followed.

8.4 In the identical facts of the case, the Co-ordinate Bench of the Tribunal in the case of *Surbhit Impex Private Limited* vide Final Order No. A/86758/2023 dated 13.01.2023 has held that there was no reasonable cause for discarding the transaction value and set aside the order of the Commissioner (Appeals). The relevant paragraphs of the said order is quoted below:

"Brief facts of the case are that the appellant herein had filed the Bill of Entry No.3800457 dated 15.06.2011 for clearance of 'Knitted Fabrics' at a declared value of USD 2 per kg. The goods were examined on first check basis and samples were drawn and send to the Textile Committee for testing. On examination of the test report dated 20.07.2011 issued by the Textile Committee, the department found that the appellant had suppressed the actual description of fabric and its composition. Further, the department also found that the fabric was made of 97.1% viscose yarn and 2.9% polyurethane yarn. Since, the said parameters have the bearing on the value of the goods and that the appellant had declared the lesser value in respect of the goods imported by it, the department had invoked Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 for rejection of such declared value and proceeded under Rule 9 ibid for re-determination of the value of goods at USD 5.21 per kg.....

3. Heard both sides and examined the case records. We find that the original authority had mainly proceeded against the appellant for rejection of the declared value on the basis of the test report dated 20.07.2011 received from the Textile Committee, wherein it has been certified that the imported goods were made of viscose yarn (97%), which is of higher value than that of polyester. The original order had also referred to the inspection report, confirming that the goods were found to be of 4 way stretch fabric, which is costlier than the 2-way stretch fabric. Such views expressed by the original authority were also endorsed by the learned Commissioner (Appeals) in the impugned order passed by him.

4. It is an admitted fact on record that for enhancement of the declared value, the department had not issued any show cause notice and no personal hearing was granted to the appellant before passing of the adjudication order. Thus, the ex-parte adjudication order passed is incomplete violation of the principles of natural justice. Both the authorities below have stated in their respective orders that various importers in their statements recorded under Section 108 of the Customs Act, 1962 have admitted under-valuation and remittance of money through hawala channel. In the case hand, it is an admitted position that no statements were recorded from the appellant with regard to sourcing of the goods from the overseas supplier. The authorities below though have stated that the composition of the goods in question was different, but the provisions of Section 111(m) ibid were not invoked for alleged mis-declaration of the goods. Further, paragraph 7 in the original order and paragraph 8 in the impugned order have

accepted the fact that the NIDB data regarding identical or similar goods at the same commercial level during the relevant contemporaneous period was not available. Furthermore, reliance placed by the authorities below on 4-way knitted fabrics have not been supported with any evidence and contrary to the test report submitted by the Textile Committee inasmuch as they have refused to give any opinion on 2-way or 4-way stretch of the fabric. Thus, under the circumstances of the case, we are of the considered view that there was no reasonable cause to discard the transaction value and to determine the same by taking recourse to the Valuation Rules, 2007. It is not the case of Revenue that the price paid or payable by the appellant to the overseas supplier is not the proper transaction value. Further, the department has not brought on record any evidence to show that over and above the price paid for the imported goods, the appellant had paid any other amount through the approved banking channel. Therefore, we do not find any justifiable reason to reject the declared value in respect of the goods imported by the appellant."

9. We find that in order to ensure that in re-assessment of imported goods the valuation is required to be done in terms of Section 14 *ibid* and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In the context of 'identical goods' when applying the Rule 4 of CVR of 2007, the following interpretative notes is required to be complied with. The extract of such Note to Rule 4 *ibid* is quoted below:

"Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

- (a) a sale at the same commercial level but in different quantities; or*
- (b) a sale at a different commercial level but in substantially the same quantities; or*
- (c) a sale at a different commercial level and in different quantities.*

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for :

- (a) quantity factors only;*
- (b) commercial level factors only; or*
- (c) both commercial level and quantity factors.*

3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(1)(b) and (c) and rule 4(2) which has already been accepted under rule 3.

4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical

imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate."

On perusal of the order passed by original authority, which was upheld in the impugned order, the value of imported goods vide B/E No. 7818759 dated 31.08.2012 and B/E No. 9079491 dated 21.01.2013 at USD 4.80 per kg. was compared with the imports in the present case having declared value of USD 2.80 per kg. However, the requirement of comparison of values at 'same commercial level' and 'at substantially same quantity' was not examined, as the quantity was never taken into consideration. Therefore, we are of the considered view that the authorities below in re-assessment of impugned goods under Section 17(5) *ibid*, had not followed the requirements of the legal provisions of Section 14 *ibid* and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

10. In view of the foregoing discussions and analysis, we are of the considered view that the impugned order passed by the learned Commissioner of Customs (Appeals) in upholding the order of the original authority to the extent it had confirmed the adjudged demands is not legally sustainable. Therefore, we are of the considered view that the impugned order is liable to be set aside.

11. In the result, by setting aside the impugned order dated 10.06.2016, we allow the appeal filed by the appellant in their favour.

(Order pronounced in the Open Court on 19.02.2026)

(M.M. Parthiban)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)