

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

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 89472 of 2018

[Arising out of Order-in-Appeal No. MUM-CUSTOM-AMP-APP-955/17-18 dated 19.01.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai.]

Flipkart India Private Limited

Embassy Tech Village Campus
Deverabeesinahallim Bellandur
Bengaluru – 560 103.

.... Appellants

Versus

Commissioner of Customs (Import)

Mumbai Air Cargo Complex, Sahar
Andheri (East), Mumbai – 400 099.

.... Respondent

APPEARANCE:

Shri Kishore Kunal, Advocate for the Appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE S.K. MOHANTY, MEMBER (JUDICIAL)

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

FINAL ORDER NO. A/85398/2026

Date of Hearing: 07.11.2025

Date of Decision: 09.03.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Flipkart India Private Limited, Bengaluru (herein after referred to, for short, as "the appellants") assailing the Order-in-Appeal No. MUM-CUSTOM-AMP-APP-955/17-18 dated 19.01.2018 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai Zone-III, Mumbai.

2.1 The issue involved in this appeal relates to alleged undervaluation of "Power Bank 5200mAH" having part number VXN4062IN imported by the appellants from M/s Xiaomi Singapore PTE Limited, Singapore and consequent enhancement, re-determination of assessable value by original

authority based on contemporaneous import data from same supplier under Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after referred to as "CVR", for short]; confiscation of goods under Section 111(m) of the Customs Act, 1962; imposition of redemption fine and penalty on the appellants under Sections 125(1) and 112(a) *ibid*, respectively; and upholding confirmation of the adjudged demands by the first appellate authority. Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant had filed Bill of Entry (B/E) No. 7318932 dated 30.10.2014 and B/E No. 7250469 dated 03.11.2014 with Air Cargo Customs Commissionerate, Sahar, for clearance of total 28,600 nos. of "Power Bank 5200mAH" having part number VXN4062IN, which were imported from Singapore and supplied by M/s Xiaomi Singapore PTE Limited, Singapore. In the said B/Es, the unit value of the impugned goods was declared by the appellants at US \$ 3.64. The said imported goods were subjected to physical examination on first check appraisalment basis, with specific examination directions given by the proper officer of Customs Appraising group. Upon examination of the imported goods, the Customs examination officers reported that they had inspected the imported goods, checked the marks and numbers, description of the goods and it was in compliance with DGFT Notification No.44 (RE-2001/1997-2002) dated 24.11.2000 for labelling of mandatory details and forwarded representative samples to the appraising group for further action. On such basis, the original authority vide order-in-original dated 15.01.2025 had enhanced the assessable value at Rs. 454.50/-, based on contemporaneous import data of similar goods indicating the price therein, varying from Rs.347.51/- to Rs.513.55/- per piece; and similar goods supplied to M/s Beetel Teletech Limited at Rs. 454.50/- per piece vide B/E No. 7776209 dated 12.12.2014 from same supplier under Rule 5 of the CVR. It was interpreted by the department that there was certain variation in International Commercial (INCO) terms between proforma invoice and final invoice in the appellant's case and thus there was undervaluation of import consignment by mis-declaration. Therefore, in adjudication of the case, the imported goods were also confiscated for violation of sub-section (m) of Section 111 of the Customs Act, 1962; and redemption fine, penalty was imposed on the appellants under Sections 125(1) and 112(a) *ibid*. Being aggrieved with the order of the original authority, the appellants had preferred an appeal

before the Commissioner (Appeals), which was disposed of by him by confirming the order of the original authority and by dismissing the appeal filed by the appellant vide Order-in-Appeal dated 19.01.2018. Feeling aggrieved with the impugned order dated 19.01.2018, the appellants had preferred the present appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellants submitted that the learned Commissioner (Appeals) had failed to consider the fact that the appellants-importer is a wholesale dealer purchasing the imported goods at wholesale level from foreign suppliers, and supplying various electronic items and consumables to several retailers registered on e-commerce websites; and that the supply of impugned goods is part of the larger purchase order for 2,00,000 units of "Power Bank 5200mAH" placed with the supplier M/s Xiaomi Singapore PTE Limited, Singapore. In this regard, by referring to the purchase agreement dated 25.07.2014, he stated that the present consignments cover 28,600 units of impugned goods; the rest of 1,71,400 units of same goods, had also been imported at the very same value during 23.09.2014 to 02.05.2015, in several imports; and these have also been cleared by the same Customs Commissionerate, without any dispute on the basis of declared value. The entire consignments were imported by the appellants pursuant to a 'Supply Agreement' dated 25.07.2014 entered with the Foreign supplier, which *inter alia* covers agreement to import several electronic items against purchase orders issued by the appellants from time to time. Therefore, he pleaded that they had properly declared the assessable value and the customs authorities should have accepted the transaction value under Rule 3 of CVR. In support of the same, he provided the details of their total imports as follows:

Purchase Order No. and date	Proforma Invoice and date	Quantity with unit price	Total amount paid by the appellants
FINVDW529608 dated 16.09.2014	IN-2002 dated 16.09.2014	1,50,000 Rs.220/-	₹ 3,30,00,000/-
FINVMB529609 dated 16.09.2014	IN-2001 dated 16.09.2014	50,000 Rs.220/-	₹ 1,10,00,000/-

3.2 Learned Advocate further stated that even if the value of impugned goods were to be determined in terms of CVR by rejecting transaction value, since value of 'identical goods' were available in respect of valuation of 1,71,400 units of same goods at US\$3.64, the same fact cannot be brushed aside by avoiding such price and decide the assessable value differently on the basis of 'similar goods' as the said price of those

remaining units being 'identical goods' should have been applied, in following the CVR sequentially in terms of Rule 3(4) *ibid*. Furthermore, he stated in adopting the value of 'similar goods', the department had failed to rely on the 'sale at the same commercial level' and in 'substantially the same quantity'. Therefore, he pleaded that such re-determination of value by the original authority, which was upheld by the first appellate authority has no force of law.

3.3 He further claimed that the imported goods have been declared by the appellants importer as per the description and value finally given as per supplier's invoice; and the mistake of INCO terms mentioned as "EXW" (ex-works) in the proforma invoice instead of "CIP" (Cost Insurance Freight Paid) has been properly explained by the supplier vide letter dated 09.03.2015. The transaction value adopted on the basis of agreement, for a higher quantity of 2,00,000 units at the wholesaler level cannot be compared to prices of similar goods sold at commercially different level and those purchased by a retailer. Hence, he claimed that there is no ground for deliberate mis-declaration of value or INCO terms, on the part of the appellants for treating the goods liable to confiscation, imposition of fine and penalty.

3.4 In support their stand on the following pointsS (i) transaction value cannot be rejected on the basis of proforma invoice; (ii) NIDB data of retail importers importing small quantities cannot be relied upon for re-valuation; (iii) NIDB data cannot be the sole basis for enhancing the value; (iv) in the absence of proof of flowback of additional consideration, transaction value cannot be rejected; (v) the onus for proving that the invoice price is incorrect lies with the department, he had relied upon the following judgements of the various judicial forums:

(i) *Suyog Extrusions Vs. Commissioner of Customs (Import), Mumbai* – 2007 (213) E.L.T. 524 (Tri. – Mumbai) upheld by Hon'ble Supreme Court – 2008 (228) E.L.T. A29 (S.C.)

(ii) *Saro Electro Equipments Pvt. Ltd. Vs. Commissioner of Customs (Import), ACC, Mumbai* – 2018 (360) E.L.T. A192 (Tri. Bom.) upheld by Hon'ble Supreme Court – 2020 (371) E.L.T. A249 (S.C.)

(iii) *Agarwal Foundries (P) Ltd. Vs. Commissioner of Customs* - 2020 (371) E.L.T. 859 (Tri. – Hyd.) upheld by Hon'ble Supreme Court – 2020 (371) E.L.T. A295 (S.C.)

(iv) *Impex Steel & Bearing Co. Vs. Commissioner of Customs, Delhi-IV* - 2014 (302) E.L.T. 464 (Tri. – Del.)

(v) *Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd.* - 2007 (214) E.L.T. 3 (S.C.)

(vi) *Radhey Shyam Ratanlal & Anr. Vs. Commissioner of Customs, (Adjudication), Mumbai* - 2009 (238) E.L.T. 14 (S.C.)

4. Learned Authorized Representative appearing for the Revenue reiterated the findings recorded by the lower authorities and justified the impugned order, on the ground that contemporaneous value of similar goods have been adopted and in view of the mis-declaration, consequential fine and penalty has been imposed. Therefore, he stated that the appeal filed by appellants-importer may not be entertained.

5. We have heard both sides and carefully gone through the records of the case, including the additional submissions made in the form of paper book.

6. The issue for determination by the Tribunal is to decide the following:

(i) whether the enhancement of value of imported goods, on the basis of value of similar 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.

(ii) whether consequential action in confiscation of goods, imposition of redemption fine and penalty on the appellants are sustainable or not, under the provisions of the Customs Act, 1962?

6.1 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 no data of import values of contemporary importation of identical goods have been considered before proceeding to adopt the value of similar goods, and further such value at the same commercial level and in substantially the same quantity had not been considered by the authorities below in terms of NIDB data for being in conformity with Rule 5 of CVR; and thus, 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 the allegation of mis-declaration of value as declared by the appellant, in order to reject the transaction value, and for imposition of fine and penalty on them.

6.2 Learned Commissioner (Appeals) in the impugned order had given his findings for upholding the order of original authority in re-determination of assessable value; and had come to the conclusion that the appellants are liable for imposition of penalty, redemption fine on imported goods for violation of various legal provisions, as follows:

"DISCUSSION AND FINDINGS"

5. I have gone through the facts of the case and submissions made by the appellant. I find that valuation of goods is governed by section 14 of Customs Act, 1962 and rules framed therein. I find that section 14 of the Customs Act, 1962 provides that the value shall be transaction value i.e. the price actually paid or payable where the buyer and seller are not related and the price is the sole consideration:

SECTION 14. Valuation of goods. (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 the cante 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

Further, Rule 12 of Customs Valuation Rules, 2007 provides that if the proper Officer has reasons to doubt the truth and accuracy of the declared value, he may reject it.

*6. In the case at hand, the documents submitted by the appellant before the Assessing Officer revealed that the price declared in the invoice was in CIF terms which included cost of the goods along with freight from the supplying country to the destination country and insurance charges. Whereas the other documents collected during scrutiny of the case revealed that the goods were supplied on Ex Works basis which means that the price reflected in the invoice was actually the factory price without local transport charges in the country of supply and freight and insurance component till the destination. This was apparently accepted by the appellant and no convincing explanation was submitted for the omission. Such an act on part of the importer which led to mis-declaration of value definitely empowers the proper officer to doubt the truth and accuracy of the declared value and its rejection under Rule 12 of CVR, 2007. The mis-declaration of price terms and value also make the goods liable for confiscation under section 111 (m) of Customs Act, 1962 read with section 46(4) *ibid* and Bill of Entry (Electronic declaration) rules 2011.*

7. I find that the appellant was provided details of consignment imported by M/s Beetel Teletech Ltd. which was of almost same quantity vide B/E. No 7776209 dated 12.12.2014 where the declared value was Rs.454.50/- per piece which was much higher in comparison to the declared value of Rs. 225.86/- per piece. I also find that the appellant had submitted an

explanation of the lower price that the supplier of the goods was exclusive to them and they had an agreement according to which they were required to supply the imported goods to the authorized buyer in India by the supplier only. Besides, the appellant has not demonstrated as to why the lower price was offered to them and whether the supplier was offering similar values to other buyers of same commercial levels. Contrary to submissions of the importer for acceptance of transaction value, I find that almost at the same commercial level and for comparable quantity higher values were being offered by the same supplier to other importers. Such an arrangement makes the declared value special value exclusively offered to the appellant and it cannot be considered as a transaction value which is at arm's length not influenced by special relationship and conditions attached to the sale of the goods. I also find that the NIDB sheet attached with the Appeal memorandum which was shown to the appellant by the department during personal hearing reflects that M/s Flipkart had imported 7005 pcs of Power bank (5200 mAH) at the price of Rs. 222 per piece whereas 10000 pcs of same goods were imported by M/s Betel Teletech Lul from the same supplier at Rs. 454 per piece which could not be justified. Under the circumstances I am of the considered view that the adjudicating authority had rightly rejected the declared value. I also find that the case laws cited by the appellant are distinguishable in the facts and circumstances of the case at hand.

8. As far as the redetermination of value is concerned I find that the adjudicating authority has observed that the prices of identical goods were ranging from Rs. 347.51/- to Rs.513.55/- per piece during the relevant period. I find that the adjudicating authority has adopted price of Rs.454.50/- per piece on the basis of goods imported by M/s. Beetel Teletech Ltd. vide B/E. No. 7776209 dated 12.12.2014 under rule 5 of CVR 2007 which was comparable in nature. I do not find any infirmity in redetermination of value under Section 14 read with rule 5 of Customs valuation rules 2007 for the purpose of charging Customs duty.

9. In view of the above, I do not find any reason to interfere with the impugned order and the order is upheld as legal and proper."

6.3 On careful perusal of the order passed by the original authority and the impugned order passed by the learned Commissioner (Appeals), it transpires that there is a mention that the value of the goods has to be re-determined on the basis of mandate provided under Rules 4 to 8 of CVR sequentially; however, on the pretext of no value of 'identical goods' being transacted at the same level, considering the quantity, time of import and type of goods, it was held by them that Rule 4 of CVR cannot be invoked. However, under Rule 5 of CVR, considering the import value of 'same or close quantity' (10,000 pieces) at the relevant time under B/E No.7776209 dated 12.12.2014 imported by M/s Beetel Teletech Limited at Rs. 454.50/- per unit, the same was taken into consideration by the adjudicating authority for arriving at the re-determined value of the impugned goods, and it has been solely done on the basis of single import transaction. Though the exact quantity of the similar goods, whose value was adopted was not elaborated by the original authority, the said point was elaborated by the Commissioner (Appeals) in the impugned order, stating that import

of 10000 pieces of power bank 5200 mAH at the price of Rs.454/- by M/s Beetel Teletech Limited is the contemporaneous value for adopting the price of similar goods under Rule 5 of CVR.

7.1 In terms of the legal provisions of Sections 14 of the Customs Act, 1962 and CVR, 2007, where the value of imported goods, sold for export to India, are to be determined for assessment of customs duty, then the price paid or payable for such goods is to be used as the basis considering the concept of 'transaction value'. However, since the appraising group viewed that the price declared was low and involved mis-declaration by the appellants, the declared price was rejected and the assessable value was re-determined by the department. In terms of legal provisions of Customs statute, if the requirements of Rule 3 of CVR, 2007 are not met inasmuch as there were certain situations as detailed in sub-rule (2) & (3) such as existence of certain restrictions in disposition or use of imported goods or some conditions were there which could not be quantified for addition to the declared value or certain part of sale proceeds accrued to the buyer subsequently or sale between related persons etc., which have not been captured in the transaction value, in which case, the value for imposition of duty must be determined under one of the subsequent methods of valuation applied in sequential order from Rule 4 to Rule 9 *ibid*. Further, from perusal of aforesaid basis of determining the value based on the price of similar goods imported by M/s Beetel Teletech Limited at Rs. 454.50/- per unit, from same supplier, it is clear that the value of 'identical goods' was either not available in the NIDB data base or it has not been considered and therefore the authorities have adopted the value of 'similar goods'. However, on perusal of the documents placed on record viz., supply agreement between the appellants and foreign supplier Xiaomi Singapore PTE Ltd. that the arrangement is at the wholesale level, where the appellants are operating at B2B E-commerce level, and the prices are fixed as per territory pricing schedule, for a number of products with large quantity, and hence the price for sale/supply of 28,600 nos. of impugned goods under dispute, can very well could have been determined on the basis of price of 'identical goods' sold/supplied for rest of 1,71,400 nos. of impugned goods during September, 2014 to May, 2015, which have also been cleared in the same Customs Commissionerate, and therefore such value should also be available in NIDB data base. Further, the price contracted by the appellants for supply of impugned goods viz., 'power

bank 5200 mAH' of 2,00,000 pieces is at Rs.220/- at wholesale level, and the same cannot be compared with the price for import of 10000 pieces at Rs.454/- imported by M/s Beetel Teletech Limited., without making necessary adjustments, for being not at the same 'commercial level' and in 'substantially of same quantity'. There is no discussion in the impugned order as to why the value of 'identical goods' imported from the same foreign supplier for a total quantity of 1,71,400 units of same goods at US \$ 3.64, having been treated as different 'sale' thus the sale of impugned goods, was not considered or ignored or left out, though the same had been imported at the very same Customs Commissionerate during the period around September, 2014 to May, 2015. Furthermore, under Note to Rule 4, 5 of the 'Interpretative Notes' specified in the Schedule to CVR vide Rule 13 *ibid*, have not at all been considered in arriving such value re-determined by the department either in the order of the original adjudicating authority or by the learned Commissioner (Appeals). Therefore, for these reasons alone the value determined under Rule 5 of CVR in the original order is liable to set aside inasmuch as it is not in conformity with the legal provisions of Rule 4, 5 *ibid*, which mandates that the goods being appraised are to be valued on the basis of transaction value of identical or similar goods. We also find that the value of price of import by M/s Beetel Teletech Limited., is not comparable with the price of the appellants who operate at different 'commercial level' and hence are not considered as "sale at substantially at the same quantity" for the following reasons:

Particulars	Appellants-importer	Beetel Teletech
Nature of business	Wholesaler (B2B)	Retailer
Nature of contract	Existing contract/supply agreement pursuant to which several electronic items are imported which were in existence for at least 4 months prior to subject import.	Not available. In fact, a solitary instance of import is the sole basis for treating it as value of similar goods.
Quantity	2,00,000 units (28,600 units are disputed in the present case and remaining 1,71,400 is undisputed cleared at transaction value)	10,000 units
Method of business	Ultimate sale is to e-commerce retailers	Sale is to End customers

7.2 From the careful perusal of the orders passed by the authorities below, viz., the order of the original authority, which was upheld by the learned Commissioner (Appeals) in the impugned order, as detailed at

paragraph 6.2 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, as it was found by them that the National Import Data Base (NIDB) data does not have such prices of identical or similar goods. Further, the authorities below had re-determined the assessable value solely on the basis of single transaction of import of 10,000 pieces, ignoring other 1,71,400 pieces imported, without applying the legal provisions of various rules provided under the CVR, 2007, sequentially. Therefore, the whole process of arriving at the re-determined value on the basis of NIDB data regarding the price of similar goods, and based on such value, the assessable value of the impugned goods having been re-determined is contrary to the law and factually incorrect.

8.1 Further, the authorities below had concluded that the value of imported consignment of 'power bank 5200 mAH' have been undervalued due to certain variation in the INCO terms and the mis-match of details as available in the proforma invoice and final invoice. However, on perusal of the 'Supply Agreement' dated 25.07.2014 entered between the foreign supplier; and the appellants and the letter of foreign supplier dated 09.03.2015, it is clear that the terms of sale/supply to the appellants-importer is only "CIP" basis. Therefore, there is no mis-declaration from such angle, particularly where the department had not produced any other evidence to prove that transaction value is to be added with elements of transportation cost in the country of export or other valuable consideration, that had been ignored which are required to be added to the final sale price.

8.2 We further find that even during the examination of the goods, on first check appraisal basis, the customs officers who had examined goods had not reported any mis-declaration with respect to the imported goods and on the contrary reported that the mandatory requirements of DGFT Notification No.44 (RE-2001/1997-2002) dated 24.11.2000 for labelling of mandatory details, in terms of Legal Metrology (Packaged Commodities) Rules, 2011, have been complied with by the appellants importer. Therefore, we find that there is no ground for confiscation of goods under Section 111(m) of the Customs Act, 1962, even with respect to valuation, inasmuch as the goods have been firstly examined before assessment of customs duty and during the relevant time, identical goods

of 1,71,400 pieces have been cleared at the transaction value which have been declared by the appellants in the same Commissionerate.

8.3 We find that in the case of *M/s Suyog Extrusions* (supra), the Coordinate Bench of the Tribunal have held that the transaction value cannot be ignored in the absence of contemporaneous price of identical or similar goods. The relevant paragraph of the said order is quoted below:

"3. We have heard both sides. We find that the value of the goods had been loaded on the basis of quotation of November, 1999 issued to M/s. Tech Fab Extrusion, New Delhi for machine with 120 mm extruder even though no import of the goods on the basis of the quotation has been shown to have actually taken place. In the case of Eicher Tractors Ltd. v. CC, Mumbai [2000 (122) E.L.T. 321 (S.C.)], Adani Exports Ltd. v. CC, Visakhapatnam [2000 (116) EL.T. 715] and Karan Vir Mehta [1998 (97) E.L.T. 42 (Ker.)], it has been laid down that the quotation/Proforma invoice being a tentative statement of the seller for sale of goods at the price mentioned therein, is not relevant evidence of sale price in the absence of actual import in pursuance of such a quotation. In the case of Eicher Tractors Ltd. cited supra, the Apex Court has clearly laid down the principles and the situation where the transaction value can be doubted by the Revenue. In the present case, the Revenue has not produced/brought on record any evidence to discard the value declared by the importers. On the other hand, the importers have produced the certificate issued by the foreign supplier certifying that the value declared to Taiwan Customs was also US\$ 3,55,000 which has been wrongly rejected by the Commissioner on the ground that it has not been authenticated by the Indian Embassy. There is no evidence of any contemporaneous import of identical or similar goods at the price adopted by the department and even if the department was contemplating to adopt the price of similar goods imported by M/s. CIMMCO, the same cannot be considered since the import had taken place about 4 years back of the import of the goods in question and therefore cannot be regarded as the contemporaneous import. In these circumstances, the transaction value is required to be accepted, in the light of the above discussion, we set aside the enhancement of the value of the imported goods together with duty demand and penalties and allow the appeals."

8.4 Further, in the case of *Sarto Electro Equipment Ltd.*, (supra) it has also been held by the Tribunal that the NIDB data of the price of identical/similar goods can be adopted for relying upon it, only if such imports of goods are comparable at the same commercial level. In other words, the Tribunal had held that the price of imported goods at the wholesale level cannot be compared to the price of imported goods at the retail level. The relevant paragraphs of the said order is extracted and given below:

"3. NIDB data can only be relied if imports are at same commercial level. Instant case, a perusal of the NIDB data shows that relied upon imports are retail imports by actual users importing small quantities."

The appellants herein are traders and not at same level of imports compared in instant case. The price difference can only raise suspicion but is not an evidence of undervaluation.

4. Local sale price of imported goods is not a primary evidence of undervaluation. Market enquiries conducted by department only show that appellants are selling goods at higher prices and are recovering some amount in cash. In other words it only goes on to show that goods can be sold at higher price. By no stretch of imagination, it can be concluded that they were undervalued at the time of import.

5. No evidence brought on record by the Revenue that appellant has paid amount over and above invoice price shown for clearance of goods. [Sarto Electro Equipments Pvt. Ltd. v. Commissioner - 2018 (360) E.L.T. A192 (CESTAT-Mumbai)]"

8.5 We also find that in the case of *Agarwal Foundries (P) Ltd.* (supra), the Tribunal has held that the invoice value cannot be rejected without any evidence to prove that it does not reflect the real transaction value duly supported by evidence. The relevant paragraphs of the said order is quoted below:

"2. *The appellant imported pig iron from various overseas traders for use in manufacture of billets. The declared value of pig iron varied from USD 229 per MT to USD 300 per MT. These values were rejected by the assessing officer who enhanced the value to USD 500 per MT based on the data available with the NIDB. NIDB is the data of the Customs Department which gives values of various commodities based on various transaction values of different goods. The question which falls for consideration is whether the invoice value can be rejected and the duty can be charged as per NIDB data without any specific evidence that the invoice values do not reflect actual transaction value. This issue was decided in respect of the same assessee vide Final Order No. A/30143-30156/2018, dated 29-1-2018. It has been held that the NIDB data can be a guideline for the customs to arrive at the value of the goods but the NIDB data cannot be applied directly unless the value given therein falls within the parameters of identical goods or similar goods. Relying on the decisions in the cases of *Topsia Estates Pvt Ltd v. CC (Import-Seaport) Chennai* [[2015 \(330\) E.L.T. 799](#) (Tri. - Chennai)], *CC New Delhi v. Nath International* [[2013 \(289\) E.L.T. 305](#) (Tri. - Del.)], *Impex Steel & Bearing Co. v. CC Delhi-IV* [[2014 \(302\) E.L.T. 464](#) (Tri. - Del.)] and *Eicher Tractors Ltd v. CC Mumbai* [[2000 \(122\) E.L.T. 321 \(S.C.\)](#)] it has been decided that the department cannot reject the declared value and assess the goods as per the NIDB data.*

3. *We find that the issue in the present three appeals is identical to the aforesaid decision of this Bench and we find no reason to deviate from the same. Accordingly we set aside the impugned orders and allow the appeals of the appellant. Appeals are allowed and the impugned orders are set aside with consequential relief, if any."*

8.6 We further find that in the case of *South India Television (P) Ltd.*, the Hon'ble Supreme Court has held that the department should properly conduct investigation, collect evidence and prove the fact that the value declared by an importer is not reflecting the truthful value of the imported goods, when they claim undervaluation of goods, in rejecting the appeal filed by the department against the decision in favour of the importer therein.

"4. At the outset, we quote hereinbelow Section 2(41), Section 14(1) and Section 14(1A) of the Customs Act, 1962, as it stood at the relevant time :

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

xxx

14. Valuation of goods for purposes of assessment. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale :

Provided 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 or bill of export, as the case may be, is presented under Section 50.

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf."

5. We also quote herein below Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, as it stood at the relevant time :

"4. Transaction value. - (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above 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 same 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 9 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 9 of these rules 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."

6. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms

the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

7. *Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s. Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19-9-1996. In the present case, the importer has alleged that the original declarations were with the Department. That certain portions of the originals were not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present*

civil appeal, an application was moved by the importer calling upon the Department to produce the original declaration in the Court. No reply has been filed to the said I.A. till date. In the circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22-7-1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. For the afore stated reasons, we find no infirmity in the impugned judgment of the Tribunal.

8. *Before concluding, we may point out that in the present case at the stage of show cause notice, the Department invoked Rule 8 on the ground that the invoice submitted by the importer was incorrect. In Eicher Tractors (supra) this Court observed that Rule 4(1) of the Customs Valuation Rules refers to the transaction value. Utilization of the word 'the' as definite article indicated that what should be accepted as the transaction value for the purpose of assessment under the Customs Act is the price actually paid by the importer for the particular transaction, unless it is unacceptable for the reasons set out in Rule 4(2). In the said judgment, it has been further held that, the word 'payable' in Rule 4(1) also refers to the "transaction value" and payability in respect of the transaction envisaged a situation where payment of price stood deferred. Therefore, this decision of the Supreme Court directs the Revenue to decide the validity of the particular value instead of rejecting the transaction value. We wish, however, to clarify that it is still open to the Department based on evidence, to show that the declared price is not the price at which like goods are sold or offered for sale ordinarily, which words occur in Section 14(1). Lastly, it is important to note that in the above decision of this Court in Eicher Tractors (supra) this Court has held that the Department has to proceed sequentially under Rules 5, 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is to be rejected under Rule 4. In the present case, the show cause notice indicates that the Department had invoked Rule 8 without complying with the earlier rules.*

9. *For the afore stated reasons, we find no infirmity in the impugned judgment of the Tribunal and accordingly Civil Appeal No. 1137/2002 is dismissed with no order as to costs."*

9. In view of the foregoing discussions and analysis, and on the basis of the decisions given by aforesaid appellate forum, we are of the considered view that the impugned order dated 19.01.2018 passed by the

learned Commissioner of Customs (Appeals) in upholding the confirmation of adjudged demands by the original authority does not stand the scrutiny of law and therefore it is liable to be dismissed. Accordingly, we set aside the impugned order dated 19.01.2018 to the extent it had confirmed the adjudged demands on the basis of revised/enhanced valuation of goods and the also upheld confiscation, imposition of redemption fine and penalty on the appellants.

10. In the result, by setting aside the impugned order, we allow the appeal filed by the appellant-importer in their favour.

(Order pronounced in the open court on 09.03.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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