CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

Customs Appeal No: 86309 of 2026

[Arising out of Order-in-Original No. 410/25-26/Pr.Commr./NS-I/CAC/JNCH dated 17/03/2026 passed by the Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva.]

I.G. International Pvt Ltd ... ***Appellant***
802, Akshar Bluechop Building, Thane-Belapur Road
Turbhe, Navi Mumbai 400 705

versus

Principal Commissioner of Customs (NS-I) ***...Respondent***
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

With

Customs Appeal No: 86310 of 2026

[Arising out of Order-in-Original No. 410/25-26/Pr.Commr./NS-I/CAC/JNCH dated 17/03/2026 passed by the Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva.]

Tarun Aurora ... ***Appellant***
M/s I.G. International Pvt Ltd
802, Akshar Bluechop Building, Thane-Belapur Road
Turbhe, Navi Mumbai 400 705

versus

Principal Commissioner of Customs (NS-I) ***...Respondent***
Jawaharlal Nehru Customs House, Nhava Sheva
Tal: Uran, Dist: Raigad - 400707

APPEARANCE:

Shri Rajeev Verma, Advocate for the appellants

Ms S varalakshmi, Additional Commissioner (AR) for the respondent

CORAM:

HON’BLE MR AJAY SHARMA, MEMBER (JUDICIAL)
HON’BLE MR A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER NO: 86099-86100 /2026

DATE OF HEARING: 14/07/2026
DATE OF DECISION: 10/09/2026

PER: AJAY SHARMA

These appeals have been filed by IG International Pvt. Ltd. and its Director Tarun Arora against the impugned Order-in-Original dated 17.03.2026 passed by the Principal Commissioner of Customs (Import), NS-I, JNCH, whereby the declared transaction value of fresh Royal Gala apples imported by the Appellant from Brazil, on CIF terms, under a bona fide commercial contract with M/s Blue Whale SAS, France, has been rejected and re-determined under Rule 3(1) read with Rule 10(2) and Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as 'CVR,2007'), resulting in confirmation of differential customs duty together with interest, confiscation of goods u/s. 111(m) of the Customs Act, 1962 with redemption fine, and penalties u/Ss 112(a), 112(b) and 114A *ibid*.

2. The facts leading to the filing of the instant Appeal are stated in brief as follows. The Appellant, M/s IG International Private Limited is engaged in the business of import, export and trading of fresh fruits and has been a regular importer for

several years. During the period March, 2020 to May, 2023, the Appellant imported fresh apples of the Royal Gala variety originating in Brazil and classifiable under CTH 08081000 of Customs Tariff Act, 1975, under an annual commercial agreement with its overseas supplier, M/s Blue Whale SAS, France, on Cost, Insurance and Freight (hereinafter referred to as 'CIF') terms, destination Nhava Sheva. Under the said agreement, the entire responsibility for arranging and bearing the cost of freight and insurance rested exclusively with Blue Whale, France whereas the Appellant paid the agreed CIF invoice value.

3. Blue Whale, France, in turn sourced the apples from M/s Agropecuaria Schio LTDA, Brazil (hereinafter referred to as 'the Brazilian supplier'), an independent entity with which the Appellant had no contractual privity, no tripartite arrangement, and no direct or indirect dealings whatsoever. Insofar as the Appellant was concerned, there was only one sale transaction i.e. the sale by Blue Whale to the Appellant on CIF terms.

4. Specific intelligence was developed by the Director of Revenue Intelligence (DRI), Mumbai Zonal Unit, Mumbai to the effect that the appellant herein was involved in fraudulent import of fresh apples from Brazil by mis-declaring the assessable value, with intent to evade applicable customs duty. Acting on intelligence, DRI initiated an investigation alleging that the Appellant had mis-declared the assessable value by declaring,

before Indian Customs, the FOB value appearing on the Brazilian supplier's upstream invoice to Blue Whale as the CIF value, *without adding actual freight and insurance*. Searches were conducted at the Appellant's premises, certain documents were seized under Panchnama dated 19/20.05.2023, and statements of 24 persons were recorded u/s. 108 of the Customs Act, 1962. Goods covered under 33 Bills of Entry consisting of fresh apples in 149 containers were seized on 25.05.2023 and 29.05.2023 respectively u/s. 110 ibid and provisionally released on execution of bond after enhancement of the declared value by 21.125%. The Appellant paid Customs duty of Rs.10,94,49,897/- on the enhanced provisional assessment value of Rs.21,88,99,784/- and, additionally, voluntarily deposited Rs.7,00,00,000/- during the investigation, without admission of liability, in order to prevent the apples from spoiling.

5. Show Cause Notice dated 25.03.2025 was issued proposing to re-determine the assessable value of imports covered under non-provisionally assessed Bills of Entry from March, 2020 to May, 2023 from the declared Rs.1,40,14,24,479/- to Rs. 1,72,24,72,392/-, raising a differential duty demand of Rs.16,05,23,957/- under the extended period of limitation under Section 28(4) ibid and, in respect of 33 provisionally assessed Bills of Entry, proposed final assessment at Rs.24,90,93,392/-, resulting in a net demand of Rs.1,50,96,799/-. The Notice also proposed confiscation of the

goods u/s. 111(m), and penalties u/Ss.112(a)/(b) and 114A ibid. The entire period was bifurcated in three parts namely; Period-I (March, 2020 to February, 2021), Period-II (March, 2021 to December, 2022) and Period-III (January, 2023 to May, 2023).

6. The re-determination also proceeded on the premise that the FOB value appearing on *Non-GMO certificates* issued by Brazilian authorities (an ancillary FSSAI-compliance document) was the "true" value, to which actual freight, as per shipping-line invoices, payable by Blue Whale and notional insurance at 1.125% of FOB were required to be added under Rule 10(2) of CVR, 2007.

7. The Appellant filed a detailed reply dated 21.07.2025 and further Additional Written Submissions dated 18.02.2026, denying the allegations and demonstrating that the transactions were bona fide, conducted on CIF terms under a genuine commercial contract, and that the declared transaction value was the correct assessable value in terms of Section 14 ibid. Vide impugned Order-in-Original dated 17.03.2026, the Adjudicating Authority confirmed the proposals in the Show Cause Notice substantially in full, holding, inter alia, that the invoices were "incorrect" within the meaning of Rule 11 of CVR, 2007, and rejected the Appellant's transaction value. Aggrieved, the Appellant filed the instant appeal before this Tribunal.

8. Learned Counsel for the Appellant made, inter alia, the

following submissions:

- The transaction between the Appellant and Blue Whale was an arm's-length CIF contract. Section 14(1) ibid r/w. Rule 3(1) of CVR, 2007 mandates acceptance of the transaction value, i.e., the price actually paid or payable for the goods when sold for export to India, unless one of the specifically enumerated grounds for rejection under Rule 12 of CVR, 2007 is established. However, no such ground has been established by the Department.

- The price actually paid by the Appellant to Blue Whale, evidenced by CIF commercial invoices and remitted through banking channels (SWIFT remittance), has nowhere been shown to fall short of, or be supplemented by, any off-invoice or additional payment. CA-certified payment reconciliations has been placed on record to show that remittances made to the overseas supplier did not, in any period, exceed the declared assessable value if anything, remittances were marginally lower on account of exchange-rate fluctuation. The Adjudicating Authority has not found any evidence of flow-back of funds or additional off-invoice payment.

- Reliance is placed on *Eicher Tractors Ltd. v.*

Commissioner of Customs, Mumbai [2000 (122) ELT 321 (SC)], Commissioner of Customs v. Sanmar Specialty Chemicals Ltd. [(2005)181 ELT 233 (SC)], and Commissioner of Customs, Mumbai v. South India Television (P) Ltd. [(2007) 214 ELT 3 (SC)] to support the proposition that the declared transaction value cannot be rejected in the absence of cogent evidence of extra consideration or flow-back of funds and that the burden of proving under-valuation lies squarely on the Department, and also that mere suspicion or presumption is not sufficient.

- Rule 10(2) of CVR, 2007 permits addition of freight and insurance only "*to the extent not included*" in the price paid or payable. In a genuine CIF contract, the price paid necessarily and by definition includes freight and insurance to the place of importation which is the universally recognised meaning of the Incoterm "CIF". The invoices issued by Blue Whale bore "Destination: Nhava Sheva"; freight was invoiced to, and paid by, Blue Whale, as confirmed independently by the shipping lines themselves in its statements u/s.108 while submitting that the same is *"prepaid abroad by customer Blue Whale SAS France"* and by freight invoices raised by Mediterranean Shipping Company France S.A.S. on

Blue Whale. There is neither any finding nor any evidence, that the Appellant made any payment of freight to any carrier.

- That the issue is squarely covered by an order dated 11.5.2023 of this Tribunal in *CJ Shah And Co. v. Commissioner of Customs, Mumbai (Customs Appeal No. 85789/2022)* and also by Final *Order No. 77872/KOL/2024 dated 18.12.2024* passed by a co-ordinate Bench in *Microgen Hygiene Pvt. Ltd. v. Commissioner of Customs, Kolkata (Final Order No. 77872/KOL/2024 in Appeal No. C/77844/2018, dated 18.12.2024)*, holding that where invoices are issued on CIF terms and freight/insurance are shown to have been arranged and paid by the foreign supplier, no addition under Rule 10 is warranted. Reliance has also been placed on the law laid down by the Hon'ble Supreme Court in *Union of India v. Mohit Minerals P. Ltd. [2022 (61) GSTL 257 (SC)]* for the proposition that where freight and insurance are the responsibility of the foreign supplier, the contract is CIF.

- The Hon'ble Supreme Court in *Wipro Ltd. v. Assistant Collector of Customs [(2015) 319 ELT 177 (SC)]* has laid down that the object of Section 14 ibid is to accept the actual cost paid or payable, and that any fictional cost (like landing changes, insurance, freight etc.) can be added only when the actual cost is not ascertainable. Since the Appellant's CIF contract price is ascertainable and actually paid, no further addition was warranted.

- The Non-GMO certificates, relied upon by the Department, cannot substitute or override the declared transaction value for customs valuation purposes. They are regulatory documents issued by competent Brazilian authorities solely for *Food Safety and Standards Authority of India (*FSSAI) compliance and are neither commercial documents nor documents prescribed u/s. 14 ibid or under customs valuation rules for valuation. The FOB value incidentally appearing thereon reflects an entirely different, upstream transaction between the intermediary *viz*. Brazilian producer and the French intermediary, to which the Appellant is a stranger, and cannot be substituted for the Appellant's own transaction value. Ancillary regulatory or third-party documents cannot override the primary commercial invoice for valuation purposes.

- The methodology of re-determination itself is arbitrary and internally inconsistent. For Periods I and III the FOB value is drawn from the Brazilian supplier's export invoices, a transaction to which the Appellant is not privy and for Period II it is drawn from Non-GMO certificates, to which actual freight charged by shipping-line (payable by Blue Whale, not the Appellant) is added and also a notional 1.125% insurance figure is added. This methodology reconstructs the assessable based on the upstream procurement economics of an intermediary (Blue Whale SAS) rather than from the Appellant's own transaction value, contrary to Rule 3(1) of Rules, 2007.

- Mere numerical proximity between the CIF invoice value charged by Blue Whale and the FOB value at which Blue Whale procured the goods does not, without more, establish suppression. It is entirely consistent with ordinary commercial reality in the international commodity trade for a trading intermediary to sell at prices close to its own procurement cost, absorbing freight and insurance within its margin or as part of a bundled arrangement, value proximity, without positive evidence of collusion or flow-back, cannot found a finding of fraud. In the absence of any finding of excess payment, the declared transaction value cannot be rejected.

- Invocation of the extended period of limitation is also not sustainable as there is no wilful misstatement or suppression of facts. No document has been suppressed from the department. All import documents viz. commercial invoices, Bills of Lading, packing lists, certificates of origin and phytosanitary certificates, were submitted at the time of assessment and nothing was withheld. Mere error or difference of opinion on valuation methodology does not amount to "collusion", "wilful mis-statement" or "suppression of facts", which connote a positive act with deliberate intent to evade duty. There is no positive act of fraud or intentional mis-declaration and the department's own position rests on a contestable valuation theory premised on upstream supply chain comparison. In the absence of the statutory ingredients of Section 28(4), the ordinary two-year period under Section 28(1) alone would apply, rendering the demand for periods beyond two years as time-barred. In support reliance was placed on *Pushpam Pharmaceuticals Co. v. CCE, Bombay [1995 (78) ELT 401 (SC)]* and *Anand Nishikawa Co. Ltd. v. CCE [(2005) 188 ELT 149 (SC)]*.

- Confiscation under Section 111(m) is unwarranted. There is no allegation of mis-declaration of description, classification, quantity or origin and freely importable goods are involved, and the sole dispute is on valuation. Undervaluation, even if established, does not ipso facto render goods liable to confiscation as "prohibited" goods, particularly where the goods have long since been provisionally released and consumed, rendering confiscation an empty formality and the associated redemption fine, in substance, a further penalty amounting to double jeopardy in addition to penalties already imposed u/Ss 112(a) and 114A.

- Penalty u/s.114A, being co-extensive with a duty demand u/s. 28(8), cannot survive if the extended-period demand itself is unsustainable. Penalty u/s. 112(a), similarly premised on the same disputed valuation methodology, is harsh and disproportionate, particularly given the Appellant's demonstrated bona fide conduct, full cooperation during investigation, voluntary deposit of Rs.7 crores, and payment of enhanced duty of Rs.10,94,49,897/- at the stage of provisional assessment, which in fact exceeds the duty payable on the declared value, the excess of Rs. 1,93,62,142/- remaining unrefunded and has not been given full credit.

- Reliance is also placed on *Garden Silk Mills Ltd. v. Union of India; (1999) 113 ELT 358 (SC), D. Bhoormull v. Additional Collector of Customs; (1983) 12 ELT 1586 (SC), and CCE v. Hindustan Lever Ltd.;(2015) 325 ELT 7 (SC),* to support the submission that a transaction value mutually agreed between buyer and seller cannot be re-determined by Customs authorities in the absence of positive, cogent evidence displacing it, and that the standard of proof required is one of a consistent, interlocking chain of evidence, not assumption or conjecture.

9. *Per contra* learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order and submitted that the investigation had disclosed a consistent modus operandi whereby invoices issued by the Brazilian shipper to Blue Whale, France were raised on FOB terms while invoices issued by Blue Whale to the Appellant, for identical goods, quantity and value, were raised on CIF terms without any addition being made for freight and insurance, thereby suppressing the correct assessable value. Reliance was placed on the statements recorded u/s.108 *ibid*, including that of Shri Tarun Arora, Director of the Appellant company and of Shri Yuvraj Chavan, Shipping Manager. Reliance was also placed on the Non-GMO certificates said to disclose the "true" FOB value, and on freight invoices obtained from shipping lines, to contend

that the re-determination under Rule 10(2) of CVR, 2007 was justified and that the extended period of limitation was rightly invoked on account of wilful suppression.

10. We have heard learned Counsel for the Appellant and learned Authorised Representative for the Revenue, and perused the case record including the written submissions/synopsis placed on record. It is well settled that Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007 makes the transaction value, the price actually paid or payable for the goods when sold for export to India, the primary and preferred basis of customs valuation and resort to any other method is permissible only where one of the grounds specifically enumerated in Rule 12 of CVR, 2007 is made out. The law on this point is settled by the Hon'ble Supreme Court in *Eicher Tractors Ltd. (supra)* and has been consistently reiterated thereafter in *Sanmar Specialty Chemicals Ltd.(supra)* and *South India Television (P) Ltd.(supra)*, to the effect that the burden of proving under-valuation lies upon the Department and that the declared value cannot be displaced except upon cogent, positive evidence such as flow-back of funds, extra consideration passing outside the invoice, or a relationship between the parties influencing price. We need to find out which of them has been established in the present case.

11. We did not come across any evidence or any finding in the impugned order to the effect that the Appellant made any

payment to Blue Whale France in excess of the declared CIF invoice value. On the contrary, the CA-certified reconciliation of remittances against declared assessable value, placed on record by the Appellant, demonstrates that remittances did not exceed, and were in fact marginally lower than, the declared value in every period under consideration. In the absence of any finding of excess payment or flow-back, the declared transaction value could not have been rejected.

12. Rule 10(2) of CVR, 2007 permits addition, to the price actually paid or payable, of the cost of transport and insurance only "to the extent not included therein". Where a contract is on CIF terms, the price paid by the buyer already, by definition, embeds the cost of freight and insurance to the place of importation, no further addition is warranted unless it is shown that the invoiced price, though styled CIF, did not in fact include these elements.

13. On the material on record, the invoices issued by Blue Whale France to the Appellant record the destination as Nhava Sheva and are admittedly on CIF terms. Statements recorded from the shipping lines themselves, u/s.108, confirm that freight was prepaid abroad by Blue Whale, and freight invoices placed on record show that Mediterranean Shipping Company France S.A.S. raised its freight invoices on Blue Whale, not on the Appellant. No evidence has been brought on record anywhere by Revenue, of any payment of freight or insurance by the

Appellant to any carrier, insurer, or to Blue Whale over and above the declared CIF value.

14. The factual position which emerges from the record is that the FOB price declared by the Brazilian supplier in its transaction with the French entity is identical to the CIF price declared by the French entity in its invoices to the appellant. The Department's reliance upon the Brazilian FOB document does not advance its case. The said document establishes, at the highest, the price at which the Brazilian supplier sold the goods to the French entity. It does not establish that the appellant paid, or was liable to pay, any amount in addition to the CIF price invoiced by the Blue Whale France. On the contrary, the fact that the CIF price charged by the Blue Whale France is identical to the upstream FOB price makes it impossible to infer, merely from a comparison of the two documents, that any additional amount towards freight or insurance was recovered from the appellant.

15. Rule 10(2) requires inclusion of the cost of transportation and insurance to the place of importation in the value of the imported goods. However, the provision cannot be applied on the basis of a hypothetical or assumed freight and insurance liability. Where the declared transaction value is a CIF price, the Department has to establish, by cogent and objective material, that the freight and insurance attributable to the transportation of the goods to the place of importation were not already

comprehended in the price actually paid or payable or, where applicable, that an amount otherwise liable to be included under Rule 10 had been omitted.

16. In the present case, there is no such evidence that the appellant made any payment over and above the CIF price to the Blue Whale France, towards freight or insurance. There is also no evidence of any reimbursement or flow-back of such expenses by the appellant. The Department has consequently failed to establish the existence of any additional amount which could be brought to charge under Rule 10(2).

17. The mere fact that the goods were originally supplied from Brazil at the same FOB price does not establish that the subsequent CIF transaction between the French entity and the appellant was not genuine. A person purchasing goods from an overseas supplier is not precluded from reselling the same goods to another buyer at the same price. The commercial incidence of freight and insurance incurred in moving the goods to India may, for any reason whatsoever, be borne by the overseas seller as part of its commercial arrangement with the Indian buyer. Unless the Department establishes that such expenses were, in fact, payable by the appellant but were omitted from the declared value, no addition can be made merely on the basis of an inference drawn from the upstream FOB transaction.

18. We also find that the reliance upon statements recorded

under Section 108 of the Customs Act, 1962 does not cure this evidentiary deficiency. Even assuming the statements raise a suspicion regarding the manner in which freight and insurance were arranged, there is no independent documentary or financial evidence establishing that the appellant actually paid or was liable to pay any amount over and above the CIF consideration. The essential fact required for making an addition under Rule 10(2) namely, the existence and quantum of an additional cost attributable to transportation or insurance, has not been established.

19. Rule 10(3) assumes significance in this regard. Any addition to the price actually paid or payable is required to be based upon objective and quantifiable data. In the present case, the Department has not identified any specific amount of freight or insurance paid or payable by the appellant which has escaped inclusion in the declared value. The exercise of determining such amount cannot be undertaken by resorting to conjecture or by treating the Brazilian FOB price as an alternative measure of the value of the goods.

20. We are, therefore, of the considered view that the Brazilian FOB price cannot be employed as a basis for rejecting the CIF transaction value declared by the appellant or for making an addition towards freight and insurance under Rule 10(2), particularly when there is no evidence of any additional payment by the appellant. The Department has failed to establish either

that the declared CIF price was not the price actually paid or payable or that any identifiable freight or insurance amount, otherwise includible under Rule 10(2), was omitted from the declared value. Accordingly, the declared transaction value is liable to be accepted and the consequential enhancement of assessable value cannot be sustained.

21. In a decision on an identical issue by a co-ordinate Bench of this Tribunal in *M/s CJ Shah And Co.(supra)*, where, in similar facts involving CIF/CFR invoices from a trading intermediary, it was held that invoices raised on CIF terms, having freight cost separately embedded therein, do not by themselves warrant invoking Rule 10 except on a finding that freight was payable by the importer to the carrier, no such finding having been recorded here. Similarly, in *Microgen Hygiene Pvt. Ltd. (supra)*, by relying upon the law laid down by the Hon'ble Supreme Court in *Mohit Minerals P. Ltd. (supra)*, it has been held that where freight and insurance are shown to be the contractual responsibility of, and to have been paid by, the foreign supplier, the transaction is CIF and no addition under Rule 10 is called for.

22. We are also in agreement with the submission that the object of Section 14 is to charge duty on the price actually paid or payable, and a fictional addition of cost elements is permissible only where the actual cost is not ascertainable as laid down by the Hon'ble Supreme Court in *Wipro Ltd. (supra)*. In the instant Appeal, the actual CIF price was ascertained,

invoiced, and paid therefore there was no occasion to reconstruct a notional FOB-plus-freight-plus-insurance figure.

23. If the invoices issued by the foreign exporter are on CIF basis and the importer has paid only the CIF invoice amount, there is no evidence of any payment over and above the invoice price, and there is no evidence that the declared freight component is fictitious or understated, then mere suspicion, however strong, regarding the freight component is not sufficient to reject the transaction value.

24. The authorities are mandated to accept the price actually paid or payable for the goods in the particular transaction, unless one of the specified circumstances justifying rejection of transaction value is established. In the absence of evidence of extra payment and also in the absence of cogent contemporaneous evidence demonstrating that the CIF invoice does not represent the actual price payable for the particular transaction, there is no sustainable basis for rejecting the transaction value merely on an assumption concerning freight/insurance.

25. When the goods are invoiced on CIF basis, the appellant has paid the invoice amount to the Blue Whale SAS, France, neither there is evidence of any additional or extra payment towards the goods or freight nor the department has produced any cogent evidence demonstrating that the declared invoice

price is incorrect, the transaction value cannot be rejected merely on the basis of an assumed or notional freight component. The burden lies on the department to establish that the invoice price does not represent the price actually paid or payable for a particular transaction. Had the Department produced any evidence that the appellant was contractually liable to reimburse that freight/ insurance, then Rule 10(2) could have potentially require its inclusion even though the invoice is described as CIF. The Brazilian FOB document is merely an unrelated third-party document which do not establish the price actually paid or payable by the appellant to the Blue Whales, France.

26. The mere availability of an upstream FOB price in a document pertaining to a transaction between third parties cannot, by itself, constitute a valid basis for discarding the CIF transaction value declared by the importer. The transaction value contemplated u/s. 14 ibid r/w Rule 3 of CVR, 2007 is the price actually paid or payable for the goods when sold for export to India. An upstream transaction between the foreign exporter and another foreign supplier is a distinct commercial transaction and cannot automatically be substituted for the price agreed between the Appellant and its overseas seller. More particularly, where the Department has not brought on record any evidence of an additional or indirect payment by the importer, or any material establishing that the declared CIF invoice does not

represent the price actually paid or payable, the mere similarity between an upstream FOB figure and the CIF invoice price cannot constitute sufficient ground for rejection of the declared transaction value under Rule 12 of CVR, 2007. We are conscious that Rule 12 ibid enables rejection of the declared value where the proper officer has reasonable doubt as to its truth or accuracy. However, the existence of a reasonable doubt cannot be equated with proof of undervaluation. Once the declared transaction value is sought to be rejected and replaced by another value, the Department must establish, on the basis of reliable and cogent material, that the declared price does not represent the price actually paid or payable. The valuation exercise cannot proceed merely on the assumption that the difference between an upstream FOB price and the appellant's downstream CIF price represents an undisclosed payment.

27. The distinction between the two transactions assumes significance. The Brazilian FOB figure answers the question as to the consideration involved in the export from Brazil to the French entity. It does not, without more, answer the entirely different question as to what price was actually paid or payable by the Indian appellant to the French supplier for the goods imported into India. For the purposes of Rule 3 of CVR, 2007, it is the latter transaction which constitutes the relevant transaction for determination of the transaction value.

28. We, therefore, find that the Brazilian FOB price, being a

price pertaining to an upstream transaction between two foreign entities, cannot, in the facts of the present case, be substituted for the CIF transaction value declared by the appellant in the absence of evidence establishing that the two transactions were merely different manifestations of the same commercial transaction or that the difference between the two prices represented consideration actually paid or payable by the appellant. The Department has failed to establish such a nexus.

29. The Hon'ble Supreme Court in *South India Television (supra)* cautions against rejecting declared transaction value without establishing the real consideration and held that although the invoice price is not sacrosanct, before rejecting the same the Department is required to give cogent reasons and bring material on record to establish that the declared price does not represent the real transaction value. The burden is thus on the Department to establish that the apparent price is not the real price. The relevant paragraph of the said decision is as under:-

> *"6. …….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."*

30. In the circumstances, the material relied upon by the

Department establishes, at the highest, a suspicion regarding the correctness of the declared CIF price. Suspicion, however strong, cannot take the place of evidence and without any cogent and corroborative evidence establishing additional payment by the appellant, or any flow-back of the differential amount, the declared CIF transaction value could not have been rejected u/r. 12 ibid. Consequently, the enhancement of the assessable value is unsustainable and is liable to be set aside.

31. The impugned order's methodology, in significant part, proceeds on FOB values disclosed in Non-GMO certificates issued by competent Brazilian authorities for compliance with FSSAI's non-GMO advisory. A Non-GMO certificate, by itself, cannot be used as a basis for determining or enhancing the customs value of imported goods. At the highest, it may be relevant to establish the characteristic/ quality of the goods and, in an appropriate case, may assist the department in comparing the goods with identical or similar goods. It is not, however, a valuation document and does not establish the price actually paid or payable, not does it by itself establish the quantum of any price differential. These certificates are regulatory instruments addressed to an entirely different statutory purpose; they are neither commercial invoices exchanged between the Appellant and its seller, nor documents prescribed under Section 14 of the Customs Act, 1962 or CVR, 2007 as constituting or evidencing transaction value. The FOB figure appearing thereon

reflects, at best, the value of an upstream export by the Brazilian supplier to Blue Whale, France, a transaction between two foreign entities to which the Appellant was not a party. Section 14(1) confines the inquiry to the price paid or payable in the transaction when the goods are sold for export to India, i.e., the sale between the foreign exporter and the Appellant. A prior, upstream transaction in the supply chain, between parties other than the importer and its own seller, is not the transaction contemplated by the statute, and cannot be substituted for it absent a specific finding, which is conspicuously absent here, that the upstream price influenced or was reflected in the price actually paid by the Appellant.

32. A Non-GMO certificate establishes, at most, that the particular consignment has been certified as non-genetically modified, however, it does not state:

- the market price of Non-GMO goods;
- the premium attributable to Non-GMO status;
- the price at which comparable Non-GMO goods were sold for export to India;
- the price actually paid or payable by the importer;
- the commercial level or quantity adjustment; or
- any other quantifiable element contemplated by the Valuation Rules.

33. Indeed, the official Non-GMO certification scheme of the

Export Inspection Council itself treats the certificate as a certification document identifying the product, invoice, quantity, shipment etc. It is not prescribed as a valuation document. Elevating an ancillary regulatory compliance document over the primary commercial invoice, and treating incidental figures appearing on it as determinative of assessable value, is not warranted either u/s. 14 ibid or under CVR, 2007.

34. We further note that the methodology adopted for re-determination is itself internally inconsistent and reveals its own infirmity: for two of the three periods in question the FOB base figure has been drawn from the Brazilian supplier's own export invoices, a transaction to which the Appellant is a complete stranger, while for the intervening period it has been drawn from Non-GMO certificates, with actual shipping-line freight (concededly payable by Blue Whale) and a notional insurance figure superimposed thereon. This is not a determination of the Appellant's transaction value under Rule 3(1). It is, in substance, a reconstruction of value from the upstream procurement economics of the Appellant's own seller. Rule 3(1) of CVR, 2007 requires acceptance of the price actually paid or payable in the importer's own transaction.

35. We have considered the statements of Shri Tarun Arora and Shri Yuvraj Chavan relied upon by the Revenue. Shri Arora's observation, on being shown a comparison of invoices, that duty "prima facie" did not appear to have been paid on freight and

insurance is, at its highest, an inference drawn from documentary comparison presented to the deponent during examination; it does not, without independent corroboration by way of proof of actual excess payment or flow-back, establish that the declared CIF price excluded freight and insurance in fact. Similarly, Shri Chavan's evidence regarding the correlation between freight-forwarder bookings and FOB shipments, and Ms. Subha Rawal's detailed and consistent explanation of the commercial and operational factors; free detention periods, shipping-line coordination, container availability; governing the choice of Incoterm on a shipment-to-shipment basis, if anything, corroborate that the Appellant's Incoterm designations followed genuine, shipment-specific commercial logic rather than a blanket or fraudulent practice. Both witnesses, and the Director, Shri Tarun Arora, consistently and categorically denied any tripartite arrangement or direct dealing with the Brazilian supplier, and affirmed that the Appellant's only transaction was its CIF purchase from Blue Whale.

36. The Statements recorded u/s. 108, however material, cannot substitute for the positive, cogent evidence of extra consideration or flow-back of funds that the law requires before a declared transaction value can be rejected. The standard is one enunciated by the Hon'ble Supreme Court in *D. Bhoormull (supra)* proof on a preponderance of probabilities but resting on a consistent, interlocking chain of evidence and not merely on

assumption or conjecture. On the facts before us, the chain is broken at its most critical link as there is no finding supported by evidence, that the Appellant paid, or that Blue Whale received, any sum beyond the declared CIF invoice value.

37. In the present case, the statements relied upon by the Department do not find corroboration from any independent evidence establishing the actual payment or flow of the alleged differential amount. There is no documentary or financial evidence connecting the appellant with any payment over and above the CIF consideration disclosed in the import documents. The statements, therefore, cannot, in the facts of the present case, bridge the fundamental evidentiary gap between the Brazilian upstream transaction and the appellant's downstream import transaction.

38. Section 28(4) of the Customs Act, 1962 can be invoked only upon a positive finding of collusion, wilful mis-statement, or suppression of facts with intent to evade duty. It is not in dispute that all primary import documents; commercial invoices, Bills of Lading, packing lists, certificates of origin and phytosanitary certificates, were furnished to Customs at the time of assessment. The declared Incoterm, CIF, was disclosed on the face of every invoice and nothing was concealed. As held in *Pushpam Pharmaceuticals Co. (supra)* and reiterated in *Anand Nishikawa Co. Ltd. (supra)* that suppression in the context of the extended period connotes a positive, deliberate act with intent to

evade duty, and not a mere omission, nor a difference of opinion on valuation methodology. The present dispute, at its core, is a contested question of valuation methodology whether an upstream FOB figure on a third-party document can override a disclosed CIF transaction value and such a dispute cannot be characterised as wilful mis-statement or suppression. The extended period of limitation u/s. 28(4) ibid was, accordingly, not available to the Department, and the demand for the period beyond the normal period u/s. 28(1) ibid is time-barred.

39. Since we have held that the declared transaction value was not liable to rejection and that the extended period of limitation was not validly invoked, the very foundation for confiscation u/s 111(m) ibid which presupposes a valid finding of mis-declaration of value rendering the import contrary to law, does not survive. We further note that there is no allegation of mis-declaration of description, classification, quantity or country of origin. The goods, freely importable fresh apples, have in any event long since been released and consumed, rendering confiscation and the associated redemption fine an empty formality superimposed upon penalties otherwise confirmed. The confiscation u/s.111(m) ibid and the redemption fine imposed in lieu thereof, are accordingly set aside.

40. The Penalty u/s. 114A ibid being expressly co-extensive with and contingent upon a duty determination u/s. 28(8), itself dependent on valid invocation of Section 28(4), cannot survive

once the extended-period demand is set aside. Penalty either u/s 112(a) or (b), resting on the same premise which we have found unsubstantiated, equally cannot be sustained. We also take into account, without it being determinative, the Appellant's cooperation during investigation, including voluntary deposit of Rs. 7,00,00,000/- and payment of enhanced duty of Rs. 10,94,49,897/- at the stage of provisional assessment, as demonstrative of bona fide conduct inconsistent with a finding of deliberate evasion.

41. In nutshell, a transaction value or Incoterm-based value mutually agreed between buyer and seller, whether FOB, CFR or CIF, is a matter of commercial negotiation between the contracting parties, and Customs authorities have no power to re-determine or rewrite that value in the absence of positive proof, supported by evidence, that the declared value is not the actual transaction value. Full realisation of the declared value through banking channels, as established here through SWIFT and CA-certified reconciliations, reinforces the conclusion that the declared CIF value must be accepted.

42. For the foregoing reasons, we hold that:

(i) The declared CIF transaction value between the Appellant and M/s Blue Whale SAS, France was liable to be accepted under Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007, no ground for its rejection under Rule 12 of CVR, 2007 having been established.

(ii) No addition of freight or insurance was warranted under Rule 10(2) of CVR, 2007, the declared CIF price already including these elements, which were shown to have been arranged and paid for by the foreign supplier.

(iii) The FOB values appearing on Non-GMO certificates and on the Brazilian supplier's upstream invoices could not be treated as the Appellant's transaction value for the purposes of Section 14 of the Customs Act, 1962.

(iv) The extended period of limitation under Section 28(4) of the Customs Act, 1962 was not validly invoked, there being no positive finding of collusion, wilful mis-statement or suppression of facts.

(v) Confiscation under Section 111(m), the redemption fine imposed in lieu thereof, and penalties under Sections 112(a)/(b) and 114A of the Customs Act, 1962, being consequential upon the above findings, cannot be sustained.

43. In view of the above, the impugned Order is set aside and the appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on 10/09/2026)

(AJAY SHARMA)
Member (Judicial)

(A.K. JYOTISHI)
Member (Technical)

**/as*