



## सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD

चौथी मंजिल 4th Floor, हड्डों बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road, नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250871MN0000720127

क	फाइल संख्या FILE NO.	S/49-408/CUS/AHD/2023-24
ख	अपीलादेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-164-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
द	दिनांक DATE	07.08.2025
इ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Reassessment of Bill of Entry No. 8810000 dated 17.11.2023 filed with Customs, ICD-Tumb, Valsad (Reassessment without Speaking Order)
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Nico Extrusions Ltd., Survey No. 678/1/3, Plot No. 4, Bhilad Silvassa Main Road, Post Naroli, Silvassa 396235.
1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.	
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.	

	निम्नलिखित सम्बन्धित आदेश/Order relating to :				
(क)	बैगेज के रूप में आयातित कोई माल.				
(a)	any goods imported on baggage.				
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.				
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.				
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.				
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.				
3.	<p>पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :</p> <p>The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :</p> <p>(क) कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.</p> <p>(a) 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order - In - Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-</p> <p>(d) The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.</p>				
4.	<p>मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केंद्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं</p> <p>In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :</p>				
	<table border="1"> <tr> <td>सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2<sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
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5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रुपए</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।</p> <p>(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</p>
6.	<p>उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>



**ORDER-IN-APPEAL**

M/s. Nico Extrusions Ltd., Survey No. 678/1/3, Plot No. 4, Bhilad Silvassa Main Road, Post Naroli, Silvassa 396235 (hereinafter referred to as 'the appellant') has filed the present appeal against Reassessment of Bill of Entry No. 8810000 dated 17.11.2023 filed with Customs, ICD-Tumb, Valsad (hereinafter referred to as 'the impugned Bill of Entry'). The appellant has submitted that no speaking order has been passed towards the reassessment.

2. Facts of the case, in brief, as per the submissions of appellant are that they are engaged in import of various types of nonferrous metal scrap for recycling purpose; that during the month of November, 2023 they have imported/cleared a Consignment of Aluminum Scrap as per ISRI grades "Tense". This import was against individual Sales Invoice/Contract.

3. Under faceless assessment, query was raised by Assessing Officer, which was duly responded by appellant promptly. However, value of consignment was loaded unilaterally and arbitrarily without the consent of appellant. Appellant neither consented for the enhancement nor accepted the same. Since the appellant were in urgent need of the goods for honoring their exports as well as DTA pending sales commitments, after paying the demanded duty cleared the goods to avoid further costs of detention, demurrage and interest etc. Appellant submitted copies of query and reply.

4. According to the appellant, they had been waiting for speaking order in terms of Sec. 17 (5) of the Customs Act, 1962 which clearly mandates that wherever re-assessment is made contrary to self-assessment claimed by the importer and the importer has not consented such reassessment in writing, the proper officer shall pass speaking order within 15 days from the date of such re-assessment. However, no speaking order has been received by them.

5. The Query raised by the assessing officer is as under:

**"HRECZZINSAJ6ZZBHAGVATIIMPEXICES1\_5PCHCAI052569202311201824  
FINSAJ6 8810000 17112023 1 20112023 VALUE APPEARS TO BE LOWER COMPARED  
TO LME RATE. PLEASE JUSTIFY;;  
Query Raised By : 10XXXXXX Group: 4A TREC2569"**

6. The appellant submitted a copy of their reply dated 22.11.2023 to the query dated 20.11.2023, in which they have inter alia mentioned that LME does not publish rates of scrap commodities and prices are of Primary Virgin Metals and therefore cannot be compared with Scraps. Amongst the scraps too there are different types of scraps originating from different sources with different items therein and accordingly, the prices vary from lot to lot. In the matter of **COMMISSIONER OF CUSTOMS, NEW DELHI Vs. PRABHU DAYAL PREM CHAND** reported in the **2010 (253) E.L.T. 353 (S.C.)**, Hon'ble Supreme Court rejected the Department's Appeal for taking LME as the basis for valuation, and upheld the order passed by the Tribunal setting aside the additional demand created against the defendants. Further, CESTAT, Ahmedabad upheld the Appeal in the matter of **Pushpak Metal Corp Versus Commissioner of Customs, Kandla as reported in 2014 (312) E.L.T. 381 (Tri. - Ahmd.)** where Revenue's reliance on LME prices of aluminium prime metal for valuation of Aluminum Scrap was not accepted by Tribunal on the ground that "LME prices do not pertain to metal scrap which are merely indicative of the prime quality metals".

7. Further, to justify the Declared Value, the appellant gave contemporary imports data of the same commodity i.e. Aluminium Scrap Tense as per ISRI under the same Custom Tariff of the same origin, which has been accepted by India Customs as below:

BE NO. & DATE	SUPPLIER	ITEM	DECLARED VALUE \$	ASSESSED PRICE \$
7718249 07.09.2023	AL JULNAR INTERNATIONAL FZE	ALUMINIUM SCRAP TENSE AS PER ISRI	1310	1310

The appellant further submitted that the price of the current BE in question is @ **US \$ 1325/MT** which was in line with the contemporary price & of the same Origin. The importer stated that their Declared Value is the correct Transaction value at "Arm's Length Transaction" and reiterate that the Price of US 1,325.00 /MT since the transaction is between 2 unrelated parties, no transfer pricing is applicable. USD 56,193.25 which is the Invoice Value at the transaction price. This is the only payment they have to make to the supplier. Bank advice against this consignment was also uploaded.

8. **The appellant further mentioned that they cannot give concurrence to increase the A.V. as per the LME referred to in the query and requested for accepting the D.V. (i.e. Declared Value).** The clearance of the consignment was being delayed since the BE in question was filed on 17.11.2023. The appellant needed their raw the materials for



execution of Export Orders of the finished goods. Any delay in clearance shall increase their transaction cost by way of detention demurrage interest, etc. and therefore they requested to assess at the DV and as per the Customs Act, 1962. **However, in case even despite the above justification if the value is loaded, duty would be paid under protest and they will need a Speaking order which should be issued within 15 days as provided under Section 17(5) of the Customs Act to enable them to file Appeal before the higher authorities. Given the urgency of the Raw material, the importer waived their rights of PH.**

9. Despite of the above submissions of the appellant importer, the proper officer has enhanced the assessable value of goods and not passed a Speaking Order within 15 days, as prescribed under Section 17(5) of the Customs Act, 1962. Being aggrieved, the appellant filed the present appeal.

#### **Filing of appeal**

10. The appellant has filed the present appeal on 08.01.2024. As the appeal has been filed against enhancement of value by re-assessment of Bill of Entry No. 8810000 dated 17.11.2023, pre-deposit under the provisions of Section 129E of the Customs Act, 1962, does not require. In the Form C.A.-1, at Sr.No.4, against "The date of communication of the decision or order appeal against, to the appellant" has been shown as "N.A.". In the ICEGATE website, the date of assessment is shown as 22.11.2023, however; the date of communication of assessment is not known. As the appeal has been filed within normal period of 60 days from the date of assessment, as stipulated under Section 128(1) of the Customs Act, 1962, it has been admitted and being taken up for disposal on merits.

#### **Gist of Grounds of Appeal:**

11. The appellant has raised various contentions in the Grounds of Appeal, which are as follows:

- A. The impugned re-assessment of BoE does not rely on any proper enquiry required to be got made by Proper Officer. The record of the case would indicate a clear bias on the part of the Proper Officers assessing the BoE by enhancing the value without applying the settled law. Not only the conduct is exhibiting a gross dereliction of duties cast on a quasi-judicial officer performing the assessment but is in violation of Natural Justice and the re-assessment by enhancing the value cannot stand up to Scrutiny and required to be annulled.

B. We submit that in the present case there is not only a violation of statutory mandate of Section 17 of Customs Act, but also Principles of Natural Justice as the proper officer has re-assessed the Bills of Entry in total disregard to the provisions of law and without affording enough opportunity in case of any further doubts by the assessing officer to enable rebut the evidences based on which he has enhanced the declared transaction values as held by Bombay High Court supra, a binding decision & violating the Article 265 read with 300A of Constitution of India. On this ground itself the re-assessment at loaded value deserves to be set aside.

C. The Proper Officer totally lost sight of the provisions contained in the Customs Act, as well as the valuation rules. The proper officers ought to have observed that Section 14(1) clearly prescribes that the value of imported goods shall be the transaction value of such goods that is to say, the price actually paid or payable for the goods when goods are sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration. There are no remittances over and above the Invoice Value. Bank advice of remittances is attached.

D. The proper officer ought to have observed that in terms of Rule 3 (1) of the Customs Valuation Rules, 2007 subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 and it is only when the import is covered under categories prescribed under proviso to Rule 3(2) & 3(3) of the said Rules, the value can be rejected.

E. It appears, the proper officer has rejected the declared value in terms of Rule 12 of the Customs Valuation Rules, 2007 on mere doubts but the same was required to be determined by going sequentially from Rules 4 to 9 of CVR, 2007. The said rule prescribes that, when proper officer has reason to doubt about the truth or accuracy of the declared value of the imported goods, he may ask the importer to furnish further or other evidence and after receiving such further information, or in the absence of any response from the importer if the proper officer still has reasonable doubt about the truth or accuracy of the declared value, then he may reject the declared value and then proceed sequentially from Rule 4 to 9 of the Customs Valuation Rules, 2007 which should have been followed by the Proper Officers.

F. The Appellants further submit that the proper Officer rejected transaction value on comparison to LME which is not permissible in law. LME/DGOV Circulars cannot override the provisions of Customs Act as well as Valuation Rules as per the decision of this Tribunal in the case of **Commissioner of Customs v. FSP (India) Pvt. Ltd. - 2009 (234) E.L.T. 268** (Tri.-Mum.) and the Hon'ble Apex Court in the case of **Eicher Tractors Ltd. v. Commissioner of Central Excise - 2000 (122) E.L.T. 321** (S.C.), but it appears the proper officer has adopted the valuation method given in the DGOV Circular based on the LME prices of prime metal minus discounts. The respective assessing authority has to examine each and every case on merits for deciding its validity and he cannot form a view to reject all transaction values on the basis of some general criteria based on DGOV Circular. Hon'ble Apex Court in the case of **M/s. Century Metal Recycling Pvt. Ltd. vs UNION OF INDIA on 17.05.2019** & Mumbai Tribunal in the case of **Commissioner of Customs v. FSP (India) Pvt. Ltd. (cited supra)** held that uniform loading based on general criteria is not permissible.

G. CESTAT, Ahmedabad upheld the Appeal in the matter of **Pushpak Metal Corp Versus Commissioner of Customs, Kandla** as reported in 2014 (312) E.L.T. 381 (Tri. - Ahmd.) where even Revenue's reliance on LME prices, (which are the basis for arriving value by DGOV of aluminium scraps of different grades) and the valuation of Aluminum Scrap was not accepted by Tribunal on the ground that "*LME prices do not pertain to metal scrap which are merely indicative of the prime quality metals*".

H. The Appellants further submit that the proper officer did not seek evidence in support of the transaction value and ignored the contemporary imports at lower value of the same commodity as per Valuation Rule 4(3) of the CVR 2007.

I. Even in the absence of any data regarding the values of contemporaneous imports of either identical or similar goods the lower authority ought not to have unilaterally enhanced the declared values in arbitrary manner. In this regard the Appellants rely upon the following judgments:

- i. 2017 (357) ELT 904 (Tri-Chennai) - Haji Sattar & Sons Vs. CC, Chennai reported in.
- ii. 2013 (289) ELT 305 (Tri. Del.) - CC, New Delhi vs. Nath International.

- iii. 2015 (330) ELT 799 (Tri. Chennai) – Topsia Estates Pvt. Limited vs. CC (Import-  
Seaport), Chennai
- iv. 2013 (287) E.L.T. 124 (Tri. - Mumbai) - C.C. (IMPORT), NHAVA SHEVA vs.  
BHARATHI RUBBER LINING & ALLIED SERVICES P. LTD.

J. There are plethora of judgments ruling that the value cannot be enhanced arbitrarily without following the law laid down in the Act and Rules governing the issue. The Appellants rely upon the following judgments:

- i. 2007 (214) ELT 3 (SC) - CC, Calcutta Vs. South India Television.
- ii. 2009 (238) ELT 135 (Tri-Chennai) – Pushpanjali Silk Pvt. Ltd. Vs. C.C., Chennai.
- iii. 2015(318) ELT 649 (Tri-Mum) – PNP Polytex Pvt. Ltd. Vs. Commissioner of  
Customs, Nhava Sheva.

K. The Appellants further submit that **enhancement of declared value deserves to be set aside in the absence of passing speaking order within 15 days of summary assessment as held** by Hon'ble Tribunal in the case of C.C. (Export), Nhava Sheva Vs. Mittal Processors P. Ltd. reported in 2013 (293) ELT 384 (Tri-Mumbai) and Hon'ble Calcutta High Court in the case of Kothari Metals Ltd. Vs. UOI reported in 2011 (274) ELT 488 (Cal.), as well as in the case of Sigma Power Products Pvt. Ltd. VS. Commissioner of Customs (Port) reported in 2017 (350) ELT510 (Cal).

L. Contemporary import of the same grade Aluminum Scrap **Tense** of the same origin is assessed at USD 1310/- under BoE no. 7718249 dated 07.09.2023 whereas **the present import under Appeal is assessed @USD 1533.48 as against declared value @ USD 1325/-.**

M. Unless the Duty is paid, cargo cannot be cleared and to enable meet the export / domestic orders and not to incur unnecessary costs of container detention, interest, demurrage duty was paid on the re-assessed value but without giving consent to value enhancement. Mere payment of duty does not absolve the proper officers from passing speaking order unless the reassessment has been accepted by the importer in writing. In this regard Appellants rely upon judgment of Hon'ble Calcutta High Court in the case of **Gateway and Commodities Pvt. Ltd. Vs. Union of India reported in 2016 (333) ELT 263 (Cal).**

12. Vide letter dated **13.03.2025**, the appellant has submitted following **Additional Submissions:**

12.1 We, M/s. Nico Extrusions Ltd., submit this representation against the reassessment of our Bill of Entry (BoE) No. 8810000 dated 17.11.2023, wherein the declared value was arbitrarily enhanced by the assessing officer. The reassessment was made without providing a speaking order, in contravention of Section 17(5) of the Customs Act, 1962.

12.2 **Background:**

- The subject import pertains to Aluminum Scrap (ISRI Grade: Tense) from the same supplier and origin as our previous import.
- Our declared value was US\$ 1325 per metric ton (PMT), whereas we had cleared a previous consignment (BoE No. 7718249 dated 07.09.2023) at US\$ 1310 PMT under identical conditions.
- The assessing officer raised a query stating that the declared value was lower compared to LME rates and enhanced the assessable value arbitrarily.
- The enhancement was accepted under protest to avoid demurrage and detention charges, and duty was paid accordingly.
- No speaking order was issued within the prescribed time limit.

12.3 **Grounds for Submission:**

Arbitrary Enhancement Without Justification:

- The transaction value declared was based on genuine commercial invoices and bank remittances.
- The assessing officer failed to conduct a proper inquiry or provide valid grounds for rejecting the declared value.
- As held in Aggarwal Industries Ltd. v. CC, Vishakhapatnam (2011 (272) ELT 641 SC), mere suspicion or market price fluctuation does not justify rejection of transaction value.
- South India Television Pvt. Ltd. v. CC, Calcutta (2007 (214) ELT 3 SC) confirms that suspicion alone is not sufficient to reject an invoice price.

Violation of Section 14 of the Customs Act, 1962 and Valuation Rules, 2007:

- Section 14(1) states that the value of imported goods shall be the transaction value, i.e., the price actually paid or payable for the goods when sold for export to India.
- Rule 3(1) of the Customs Valuation Rules, 2007 mandates that the transaction value be accepted unless rejected under Rule 12, which was not done in this case.
- Rules 4 to 9 must be applied sequentially if the declared value is rejected, but the department directly resorted to LME pricing, which is legally impermissible.
- *Century Metal Recycling Pvt. Ltd. v. UOI* (2019 (367) ELT 3 SC) confirms that aluminum scrap is not homogeneous, and its value cannot be determined solely by comparing to LME prices.
- *Pushpanjali Silk Pvt. Ltd. v. CC, Chennai* (2009 (238) ELT 135) holds that transaction value cannot be rejected merely because it is lower than other contemporaneous imports.

No Evidence of Undervaluation, Misdeclaration, or Contemporaneous Imports:

- While the department may have doubts, no substantive evidence has been provided to support allegations of undervaluation or misdeclaration.
- *Aggarwal Industries Ltd. v. CC, Vishakhapatnam* (2011 (272) ELT 641 SC) held that the revenue must provide cogent evidence to justify rejecting the invoice price.
- *South India Television Pvt. Ltd. v. CC, Calcutta* (2007 (214) ELT 3 SC) reaffirmed that the burden of proving undervaluation lies with the department and that mere suspicion is not sufficient.
- The present case lacks any documentary proof or findings supporting the rejection of the transaction value.
- Additionally, the department has failed to provide any evidence of contemporaneous imports at a higher price, as required by Rule 5 of the Customs Valuation Rules, 2007.
- *Case Ravi Dyeware Co. Ltd. v. CC, Mumbai* (2014 (301) ELT 421 Tri-Mumbai) confirms that for the purpose of comparing contemporaneous imports, the value to be adopted must be the declared transaction value and not an enhanced value.
- *Sedna Impex India Pvt. Ltd. v. CC, Faridabad* (2017 (347) ELT 317) establishes that transaction value cannot be enhanced solely based on an assessed value of similar imports, especially when contemporaneous import data is unavailable.

Appeal to be Finalized at This Stage:

- As per Section 17(5) of the Customs Act, a speaking order must be issued within 15 days of reassessment if the importer has not accepted the reassessment in writing.
- Gateway and Commodities Pvt. Ltd. v. UOI, 2016 (333) ELT 263 (Cal.) held that mere payment of duty under protest does not amount to acceptance of reassessment.
- Aggarwal Industries Ltd. v. CC, Vishakhapatnam (2011 (272) ELT 641 SC) mandates that customs authorities must base rejections on contemporaneous evidence rather than assumptions.
- Since the department has already raised a query, there is no requirement for a remand for issuing a speaking order. The appeal should be finalized at this stage based on the facts presented.

Relevant Case Laws Supporting Our Submission:

- Agarwal Metals & Alloys v. CC, Kandla (2021 (378) ELT 155) - Declared value must be upheld if it aligns with contemporaneous import data.
- Bharathi Rubber Lining & Allied Services P. Ltd. (2013 (287) ELT 124)-DGOV Circular cannot override the Customs Valuation Rules.
- Sedna Impex India Pvt. Ltd. v. CC, Faridabad (2017 (347) ELT 317)-Transaction value cannot be enhanced merely based on DRI alerts.
- Sanjivani Non-Ferrous Trading Pvt. Ltd. v. CCE & ST, Noida (2019 (365) ELT 3 SC) - Transaction value must be accepted unless cogent reasons are provided for rejection.
- South India Television Pvt. Ltd. v. CC, Calcutta (2007 (214) ELT 3 SC) - Suspicion alone is not enough to reject declared value; comparable imports must be provided as evidence.
- Aggarwal Industries Ltd. v. CC, Vishakhapatnam (2011 (272) ELT 641 SC)- Invoice price is the primary basis for valuation, and mere suspicion does not justify rejection.
- Century Metal Recycling Pvt. Ltd. v. UOI (2019 (367) ELT 3 SC) - Scrap valuation cannot be determined solely based on LME price fluctuations.
- Case Ravi Dyeware Co. Ltd. v. CC, Mumbai (2014 (301) ELT 421 Tri-Mumbai) - Contemporaneous import price must be the transaction value, not the reassessed value.

13. Vide another **Additional Submissions** dated **27.06.2025**, the appellant has stated that by reassessment of Bill of Entry (BoE) No. 8810000 dated 17.11.2023, the declared value was arbitrarily enhanced by the assessing officer. The reassessment was made without



providing a speaking order, in contravention of Section 17(5) of the Customs Act, 1962. The appellant further submitted that in similar matter where Speaking Order was not issued, and the price was enhanced on the basis of LME / DGOV, the Hon'ble Commissioner of Appeals, Ahmedabad had set aside the enhancement vide order No. AHD-CUSTM-000-APP-126 to 135-24-25 dated 1.7.2024 against 10 BEs. In the present case, a single query based on LME price was raised.

14. In view of the above submissions, the appellant has requested to annul and set aside the reassessment, to restore the declared transaction value and refund the excess duty paid, along with applicable interest and provide consequential relief.

#### **Personal Hearing**

15. Personal Hearing in this matter was held on 13.03.2025, which was attended by Shri Hari Shankar A. Pandey, Manager (Legal) of the appellant company. He reiterated the written submissions made at the time of filing of appeal. He also submitted additional submissions dated 13.03.2025, which is reproduced hereinabove.

16. Due to transfer of my predecessor Commissioner (Appeals), another Personal Hearing was offered to the appellant, which was held in virtual mode, i.e. through video conference, on 25.06.2025. The said PH was attended by Shri Hari Shankar A. Pandey, Manager (Legal) of the appellant company. He reiterated the written submissions made at the time of filing of appeal. Later, vide letter dated 27.06.2025, the appellant has submitted Additional Submissions, as mentioned hereinabove.

#### **Findings:**

17. I have carefully gone through the impugned Bill of Entry and written as well as oral submissions made by or on behalf of the appellant. The issue to be decided in the present appeal is whether the enhancement of value by way of reassessment of the impugned Bill of Entry, without passing Speaking Order towards rejection of declared value and enhancement of value, is legal and proper or not.

18. One set of the appeal memorandum filed by the appellant was forwarded to the Deputy Commissioner of Customs, ICD-Tumb, vide this office letter F.No. S/49-408/CUS/AHD/2023-24/3723 dated 26.02.2024 for his comments on the contentions raised by the appellant. In the said letter, it was also asked to report that whether the appellant has confirmed his acceptance of the re-assessment in writing as per Section 17(5)



of the Customs Act, 1962 and if so, a copy of the same was sought for. No reply thereof has been received from the office of the Deputy Commissioner of Customs, ICD-Tumb. Under this situation, I have to rely upon the submissions made by the appellant.

19. I have seen copies of the Query dated 20.11.2023 raised by the assessing officers and its reply dated 22.11.2023 submitted by the importer appellant. I find that the assessing officer has communicated that the value appeared to be lower as compared to LME Rate and sought justification of value from the importer. The importer has categorically replied that the LME does not publish rate of scrap commodities and the prices were of Primary Virgin Metals and therefore, the LME prices cannot be compared with prices of Scrap. Further, the Scraps are of different types and originated from different sources, and so, their prices vary from lot to lot. The importer has cited various case laws, as mentioned hereinabove. The importer has also provided price of 'Aluminium Scrap Tense as per ISRI' supplied by the same supplier which was assessed to **USD 1310 PMT**. Whereas, in the impugned Bill of Entry the price was declared as **USD 1325 PMT**, which was in line of the contemporary price and of the same country of origin. However, the assessing officer has not considered the same and re-assess the imported goods as **USD 1533.48 PMT** without providing any reason and without issuing any speaking order. I find that proper officer has not discussed anything about the particulars of contemporaneous import provided by the appellant. Without considering the particulars of contemporaneous import provided by the importer and without mentioning particulars of any other Bill of Entry of contemporaneous imports, he has arbitrarily enhanced the import value to USD 1533.48 PMT, which is not proper and legal.

20. The importer had sought speaking order under the provisions of Section 17(5) of the Customs Act, 1962, but it was not provided to them. In this regard, I refer to the statutory provisions of Section 17 of the Customs Act, 1962, which are as follows:

***"Section 17. Assessment of duty.***

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

***(2) The proper officer may verify [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary: [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]***

*[(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]*

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

*(5) Where any reassessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter [\*\*\*] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said reassessment in writing, the proper officer shall pass a speaking order on the reassessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.*

I find that the present case squarely falls within the scope of Sub-Section (5) of Section

17. In the present case the importer has not accepted the reassessment done by the proper officer and so, the proper officer was required to pass a speaking order on the reassessment within 15 days from the reassessment of Bill of Entry. As the reassessment of the impugned Bill of Entry was done on 22.11.2023 and no speaking order has been passed, the reassessment is required to be quashed and set aside.

21. Further, I find that earlier in a similar situation regarding enhancement of value of Aluminium Scarp, **M/s. Metalloys Recycling Ltd.** had filed Appeal Nos. 364 to 373/Cus/Ahd/23-24 with this office against assessment of Bills of Entry, where no Speaking Order had been passed. My predecessor Commissioner (Appeals), Customs, Ahmedabad, vide **Order-In-Appeal No. AHD-CUSTM-000-APP-126 to 135-24-25 dated 01.07.2024** had observed that in absence of any contemporary import data, solely relying upon the LME price or DGoV guidelines, is legally not sustainable. Thus, he set aside the assessments on enhanced assessable value on the basis of LME price or DGoV guidelines and allowed the appeals.

22. I find that the Case law relied upon by the appellant, as mentioned hereinabove are in favour of them and required to be followed.



23. In the query dated 20.11.2023 in the present case, the declared value was found to be low as compared to LME Rate. There is no mention about NIDB data in the query. There is no Speaking Order towards enhancement of value. Assuming that the value has been enhanced on the basis of NIDB data, I refer the following Orders/Judgments:

23.1 Hon'ble CESTAT, Ahmedabad, in the case of **M/s. Sedna Impex India Pvt. Ltd. and Others Vs. Commissioner of Customs, Mundra**, vide Final Order No. A/10397-10407/2023 dated 06.03.2023 in Customs Appeal No. 10726 of 2018 and other appeals, has observed and held, inter alia, as under:

*"4.7 We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. Tribunal in the case of Neha Intercontinental Pvt. Ltd. v. Commissioner of Customs, Goa [2006 (202) E.L.T. 530 (Tri.-Mum.)] has held in the absence of rejection of transaction value, invoice value requires acceptance and when the contemporaneous import of similar goods is not established, value cannot be enhanced. In the case of Commissioner of Customs v. Modern Overseas [2005 (184) E.L.T. 65 (Tri.-Del.)] NIDB data was held to be insufficient, in the absence of clarity about various parameters. List of such decisions is unending and it is sufficient to say that NIDB data has been held to be insufficient for enhancement of value, in the absence of any other independent evidence. Admittedly in the present cases, there is no such evidence produced by the Revenue except reference to the NIDB data. In view of the discussions above, we hold that in the present case, the enhancement of value on the basis of NIDB data cannot be accepted."*

The above-mentioned Final Order dated 06.03.2023 has been accepted by Customs Department. Thus, it is settled that the declared value cannot be enhanced MERELY on the basis of NIDB data without comparing various parameters of contemporaneous imports and without any other independent evidence.

23.2 The Judgment dated 27.11.2024 of **Hon'ble Delhi High Court** in CUSAA 26/2022 and other appeals in the case of **M/s. Niraj Silk Mills, Hanuman Prasad and Sons and Others Vs. Commissioner of Customs (ICD) Patparganj New Delhi**, reported as 2024 (11) TMI 1361 - DELHI HIGH COURT. Extracts from the said Judgment are as under:

*"104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a valuation addition based solely on NIDB data would wholly unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. The legal position so articulated would ensure*

*fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs valuation and a deviation from declared values being founded on tangible and justiciable material. A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the afore-noted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences.*

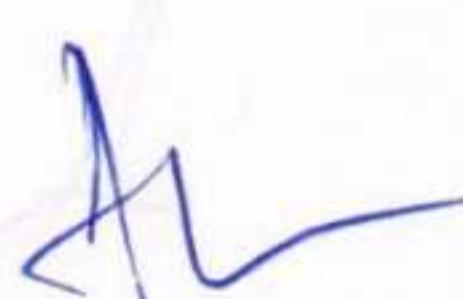
#### V. DISPOSITION

105. Accordingly, and for all the aforesaid reasons, we would answer the question framed in the affirmative and in favour of the importers. The appeals are consequently allowed and the impugned orders of the CESTAT set aside. The order of the Commissioner (Appeals) shall in consequence stand restored."

In view of the above Judgment of Hon'ble Delhi High Court, it is clear that NIDB data alone would be insufficient for value enhancement without corroborative evidence or contemporaneous import comparisons.

23.3 The Final Order Nos. 50332-50334/2025 dated 20.02.2025 passed by Hon'ble CESTAT, New Delhi, in Customs Appeal No. 55404 of 2023-SM and other appeals in the case of **M/s. Seafox Impex Vs. The Commissioner of Customs (Appeals), New Delhi** reported as 2025-TIOL-1127-CESTAT-DEL. Extracts from the said Final Order are as under:

*"24. Reverting to the facts of present case, I observe that in the present case no verification/examination/testing of goods has been done by the proper officer to incur the reasonable doubt about accuracy of the transaction value/the value declared by the appellant in the impugned Bill of Entry. Apparently and admittedly no enquiry as is required under Rule 12 of Valuation Rules has been conducted by the department prior rejecting the said value. Nor any exercise was undertaken as is required under Section 4 of Section 17 of the Customs Act. It is only the NIDB data which was relied upon by the department to reject the value declared in Bills of Entry and to re-assess the value of the goods at a higher price. In such situation the payment by the appellant for the differential amount of duty, irrespective it being voluntary and irrespective that in his statement the appellant has accepted the re-assessed value cannot be held as waiver/abandonment on part of appellant for the speaking order. Since the value was not re-assessed in terms of Section 17(4) of the Customs Act, the acceptance cannot be considered as the one required under Section 17(5) of the Act (as already discussed above elaborately). **In such circumstances, the rejection of the transaction value without passing a speaking order is not permissible.** Delhi High Court vide the said judgement dated 27.11.2024 has held the same. It being the jurisdictional High Court*



*the decision is squarely binding. Confirmation of differential duty is, therefore, held violative of Section 17(4) of Customs Act and of Rule 12 of Customs Valuation Rules and hence is liable to be set aside. Resultantly, we hereby set aside the impugned order. Consequent thereto, three of the appeals stand allowed."*

In view of the above-mentioned Final Order, it is clear that in the facts and circumstances of the present case, enhancement of value without passing a speaking order, as per the provisions of Section 17(5), is not legal and proper.

24. On the basis of the query dated 20.11.2023, it is clear that the value has been enhanced merely on the basis of LME prices. In this regard, I find that following Judgments/Order are squarely applicable to the present case:

24.1 In the case of ***Prabhu Dayal Prem Chand Vs. Commissioner of Customs, New Delhi***, reported as 2003 (156) E.L.T. 922 (Tri.-Del.) [24-09-2002], the assessment was made purely on the basis of LME Bulleting without any corroborative evidence of imports at or near that price, which was not held permissible by the Tribunal. Customs Department had filed Civil Appeal No. 2559 of 2003 with Hon'ble Supreme Court. Vide Order dated 22-04-2010, reported as ***Commissioner of Customs, New Delhi Vs. Prabhu Dayal Prem Chand*** reported as 2010 (253) E.L.T. 353 (S.C.) [22-04-2010], Hon'ble Supreme Court has observed that no details of any contemporaneous imports or any other material indicating the price notified by the LME had either been referred to by the adjudicating officer in the adjudication order or such material was placed before the Tribunal; and under that situation the Supreme Court has upheld the order passed by the Tribunal, which set aside the additional demand created against the assessee. As the Supreme Court has dismissed the Civil Appeal filed by Customs Department against the Order of Tribunal, the Order of Tribunal merged into the Order of Supreme Court as per the 'doctrine of merger' discussed by Hon'ble Supreme Court in the cases of ***Kunhayammed Vs. State of Kerala*** [2001 (129) ELT 11 (SC)] and ***Pernod Ricard India (P) Ltd. Vs. Commr. of Customs, ICD, Tughlakabad*** [2010 (256) ELT 161 (SC)]. In view of the above, I am of the view that the ratio of the case of Prabhu Dayal Prem Chand (supra) becomes binding precedent and requires to be followed. I respectfully follow the same.

24.2 I also rely upon the Final Order dated 24.11.2011 passed by the jurisdictional CESTAT, Ahmedabad, in the case of ***Pushpak Metal Corporn. Vs. Commissioner of Customs, Kandla*** [2014 (312) ELT 381 (Tri.-Ahmd.)], wherein it has been inter alia held that ***LME prices do not pertain to metal scrap which are merely indicative of the prime quality***

**metals.** In the present case, it is undisputed that the goods imported were 'Aluminium Scrap Tense' and they are not of prime quality metals. Therefore, valuation of the same merely based upon LME price is not sustainable.

25. I find that the ratio of the above-mentioned Orders/Judgments pronounced by the higher forums is squarely applicable to the present case. Therefore, enhancement of value by way of reassessment of impugned Bill of Entry without passing speaking order is in gross violation of provisions of Section 17(5) of the Customs Act, 1962 read with Section 14(1) of the Customs Act, 1962; and 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007.

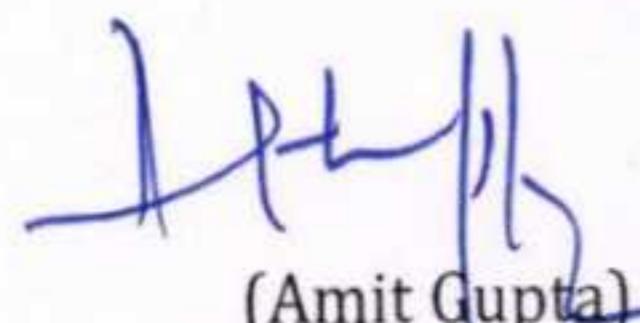
26. In view of the above facts and findings, I pass the following order.

**Order**

26.1 I set aside the re-assessment to the extent it enhances the declared value of the Bill of Entry No. 8810000 dated 17.11.2023 filed by the appellant. I direct the Deputy/Assistant Commissioner of Customs, ICD-Tumb, Valsad, to re-assess the impugned Bill of Entry on the declared transaction value and communicate the same to the appellant within a period of 90 days from the date of receipt of this order.

26.2 The appeal filed by M/s. Nico Extrusions Ltd. is hereby allowed with consequential relief in accordance with law.



  
(Amit Gupta)  
Commissioner (Appeals),  
Customs, Ahmedabad

To

M/s. Nico Extrusions Ltd.,  
Survey No. 678/1/3, Plot No. 4,  
Bhilad Silvassa Main Road, Post Naroli,  
Silvassa 396235.  
(Email: [nico@nicoex.com](mailto:nico@nicoex.com) [vijay@metalloysrecycling.com](mailto:vijay@metalloysrecycling.com) [harish@metalloysrecycling.com](mailto:harish@metalloysrecycling.com) )

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.  
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3. The Deputy/Assistant Commissioner of Customs, ICD-Tumb, Valsad.  
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4. Guard File.

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