सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250871MN0000164688

क	फ़ाइल संख्या FILE NO.	(1) S/49-80/CUS/MUN/2024-25 (2) S/49-79/CUS/MUN/2024-25 (3) S/49-49/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-165 to 167-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. MCH/ADC/AK/12/2024-25 dated 16.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) M/s Medinnova Solutions Pvt. Ltd. E-114, GIDC Savli, ManjusarSavli Road, Tal. Savli, Dist. Vadodara 391775. (2) Shri Kaushal Buharilal Parikh, Director of M/s Medinnova Solutions Pvt. Ltd. E-114, GIDC Savli, ManjusarSavli Road, Tal. Savli, Dist. Vadodara 391775

		(3) M/s Tulsidas Khimji Pvt. Ltd. 313-314, DevNandan Mega Mall, Opp. Sanyas Ashram, Nr MJ Library, Ashram Road, Ahmedabad-380009

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 है.
	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)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(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.	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 :
	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 :
(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.
(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.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, 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/-**
(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/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध 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, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	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 :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	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-	
	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 -	
(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 हज़ार रुपए.	
(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;	
(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 हज़ार रुपए	
(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 ;	
(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 हज़ार रुपए.	
(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	
(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 ।	
(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.	
6.	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.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

M/s Medinnova Solutions Pvt. Ltd., E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Dist. Vadodara 391775 (hereinafter referred to as 'the **appellant No. 1**), **Shri Kaushal Buharilal Parikh, Director of M/s Medinnova Solutions Pvt. Ltd.** E-114, GIDC Savli, Manjusar Savli Road, Tal. Savli, Dist. Vadodara 391775 (hereinafter referred to as 'the **appellant No. 2** 'and **M/s Tulsidas Khimji Pvt. Ltd.** 313-314, DevNandan Mega Mall, Opp. Sanyas Ashram, Nr MJ Library, Ashram Road, Ahmedabad-380009, (hereinafter referred to as 'the **appellant No. 3'**) have filed the present appeals challenging Order-in-Original No. MCH/ADC/AK/12/2024-25 dated 16.04.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Custom House, Mundra (hereinafter referred to as 'the adjudicating authority'). The appellants are collectively referred as 'the appellants' for the sake of brevity.

2. Facts of the case, in brief, are that the appellant No. 1 had imported goods with description 'Used and Old Medical Equipments Anaesthesia Workstations', declared under CTH 90189099, for which they had filed Bill of Entry No. 3102798 dated 31.10.2022 at Mundra Port. The officers of DRI conducted an investigation of the said import consignment and on completion of investigation , Show Cause Notice No. GEN/ADJ/ADC/853/2023-Adjn-O/o Pr. Commissioner of Customs dated 26.4.2023 was issued to the appellant No. 1 ,2 and 3 by the Additional Commissioner, Mundra Port, Mundra wherein the following actions were proposed as to why :

a. The imported goods declared as 'Used and Old Medical Equipments Anaesthesia Workstations' having market value (as per CE report) of Rs. 83,62,511/- should not be confiscated under Section 111(d) and 111(m) of the Customs Act.
b. The declared classification under CTH 90189099 should not be rejected and re-classified under CTH 90192010.
c. The declared value of the goods i.e. Rs. 18,41,185/- imported vide Bill of Entry No. 3102798 dated 31.10.2022 should not be rejected and value should not be re-determined as Rs. 83,62,511/- in terms of Customs Valuation Rules.
d. Penalties under Sections 112(a), 112(b), 114AA and 117 of the Customs Act should not be imposed on the appellant No.1.

Penalties under Section 112(a), 112(b), 114AA and 117 of the Customs Act, 1962 were also proposed on Appellant No. 2 & 3.

3. The aforesaid Show Cause Notice was adjudicated by the Additional Commissioner, Customs House, Mundra vide Order-in-Original No. MCH/ADC/AK/12/2024-25 dated 16.4.2024 wherein she ordered as under :-

- The declared classification i.e. 90189099 of imported goods i.e. 'Old and used ventilators' imported vide Bill of Entry No. 3102798 dated 31.10.2022 was rejected and ordered to be re-classified under CTH 90192010

- The declared assessable value of Rs. 18,41,185/- of the goods imported vide Bill of Entry No. 3102798 dated 31.10.2022 was rejected under Rule 12 of CVR, 2007 and ordered to be re-determined at Rs. 83,62,511/- in terms of Rule 9 of CVR, 2007 read with Section 14 of Customs Act,1962

- Absolute confiscation of the goods i.e. 'Old and used ventilators' imported vide Bill of Entry No. 3102798 dated 31.10.2022 was ordered under Section 111(d) and 111(m) of Customs Act, 1962.

- Penalty of Rs. 5,00,000/- and Rs. 2,00,000/- was imposed on Appellant No. 1 under Section 112(a)(i) and Section 114AA of the Customs Act respectively

- Penalty of Rs. 3,00,000/-, Rs. 50,000/- and Rs. 1,00,000/- was imposed on Appellant No. 2 under Section 112(a)(i), 112(b) and 114AA of the Customs Act respectively

- Penalty of Rs. 50,000/- and Rs. 1,00,000/- was imposed on Appellant No. 3 under Section 112(b) and 114AA of the Customs Act respectively

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellants have filed the present appeals . The appellant no. 1 and 2 have , *inter-alia*, raised various contentions and filed detailed submissions in support of their claims which are summarised as under:

- The imported goods have incorrectly been considered as Ventilators and classified under CTH 90192010

- The Chartered Engineer's (CE) report which has been relied upon in the case in itself establishes that the goods imported are Anaesthesia

Workstations in as much as the CE has certified is that the cargo is Anesthetic Workstation and 'Ventilator' is integrated in the Anesthesia Workstation itself

- The CE has arrived at the value of the imported goods on the basis of comparison of price of brand-new Anesthesia Machine which is evident from the report and the same is a part of the panchnama which bears the sign of DRI officers, party and the panch witnesses.

- The Chartered Engineer report contains the finding "*Thus, the anesthetic workstations can also be used as ventilators if required by the operator.*" The words 'also' and 'if required' clearly indicates that the goods are anesthetic workstations having primary function of administering anesthesia but can be doubled up for use as Ventilator if required. In other words, it has been certified that primarily the goods are not ventilators but anesthesia workstations.

- The classification and categorization of the goods are to be based on the primary function/ objective of the goods which happens to be that of administering anesthesia to the patient and as such the same cannot be categorized as a Ventilator.

- The Ministry of Environment, Forest and Climate Change (HSM Division) has specified an exhaustive list of critical care medical equipment vide Office Memorandum dated 19.5.2023 issued from F. No. 23/104/2022-HSMD which does not specify Anesthesia Machine as a critical care medical equipment.

- Anesthesia Workstation is a composite machine comprising of five components viz. Gas Delivery and Scavenging System, Vaporizers, Electronic Flow Meters, Ventilator and Monitors. Thus, Anesthesia Workstation is a set and Ventilator is a sub-set. That a composite machine cannot be equated to its single component for the purpose of classification.

- During the times of Covid-19, there was an acute shortage of ventilators and all the available resources were put into gear to administer to the patient's needs. During such difficult times, the probability of using Anesthesia Workstation as a Ventilator was discussed in the said article penned by Robert Loeb, MD and Martin J London, MD, FASE. The said

article clearly indicates that Anesthesia Workstation and Ventilators are two distinct commodities and several modifications are required to use the inbuilt Ventilator of the Anesthesia Workstation as a ICU Ventilator.

- Rejection of declared value based on legal permissible ground as indicated in the valuation Rules is a pre-requisite for enhancement of value. Reliance was placed on the case laws of M/s Sanjivani Non-Ferrous Trading P Ltd. reported at 2019 (365) ELT 3 (SC)and M/s Lucky Steel Industries reported at (2023) 9 Centax 409 (T).

- The value is sought to be rejected on the sole ground that the description of the product has been manipulated in the Bill of Entry and therefore, the declared value is liable to be rejected under Rule 12. However, this is not a case of mis-declaration of the description of goods and as such the sole ground for rejection of declared value falls flat.

- Where the ground for rejection of declared value in itself is not sustainable, the transaction value cannot be rejected. Reliance was placed on the case law of M/s Lucky Steel Industries reported at (2023) 9 Centax 409 (T)

- The valuation arrived at by the CE is arbitrary in as much as the value has been adopted based on the value of a brand-new make of the machine which is evident from the text of the report. However, the same are second-hand and the value of a brand-new machine cannot be adopted for the purpose of valuation of such second-hand goods.

- The parameters such as depreciation, cost of repairs/ refurnishing and the profit margin have not been considered by the Chartered Engineer while arriving at the value of the goods. Reliance was placed on Circular No. 25/2015-Cus dated 15.10.2015.

- Where the report of the Chartered Engineer is not sustainable in the eyes of law there is no option for the department to set aside the same and resort to gathering other evidence beyond the Show Cause Notice after the same has been subjected to the process of adjudication.

- It is a settled principle of law that adjudication cannot travel beyond the scope of the Show Cause Notice and if it is found that the evidence relied upon in the Show Cause Notice is not sustainable, the matter cannot be

opened up for re-investigation so as to gather other evidence which was not a part of the Show Cause Notice.

- Once it is on record that the value adopted by the CE is not arrived at as per the law, the same cannot be considered as evidence and as a natural corollary, the enhancement of value fails the test of merit.

- The judicial principles require that the onus to prove an allegation lies on the alleging party and the department had not adduced any evidence to reject the value of the goods. Reliance was placed on the case laws of M/s Sanjivani Non-Ferrous Trading P Ltd. reported at 2019 (365) ELT 3 (SC), M/s Viraj Impex P Ltd reported at 2022 (382) ELT 375 (T), M/s Kisco Casting Ltd. reported at 2018 (364) ELT 1084 (T), M/s Peekay Steel Castings P Ltd. reported at 2016 (340) ELT 389 (T) and M/s Divine International reported at 2016 (338) ELT 142 (T)

- Enhancement of value on the sole basis of the estimate of the Chartered Engineer is bad in law. Reliance was placed on the case laws of M/s Champion Photostat Industrial Corporation reported at 2021 (376) ELT 394 (T), M/s Best Mega International reported at 2013 (293) ELT 243 (T), M/s Neeldhara Transfers reported at 2012 (284) ELT 673 (T) and M/s Al Riyaz Implex reported at 2011 (267) ELT 543 (T).

- Transaction value cannot be rejected in absence of any contrary evidence. Reliance was placed on the case of M/s Pallav Enterprises reported at 2009 (237) ELT 298 (T) and M/s New Copier Syndicate reported at 2015 (320) ELT 620 (T) as affirmed by the Hon'ble Supreme Court as reported at 2015 (320) ELT A256 (SC)

- Neither the impugned order nor the Show Cause Notice brings on record any sort of evidence that the price has been influence due to relationship if any.

- Penalty under Section 112(a), 112 (b) and 114AA is not imposable in as much as there was no mis-declaration

- Clause (i) of Section 112 of the Customs Act would be applicable only in cases where the goods are prohibited. In the instant case, the goods are not prohibited or restricted.

4.1 Appellant No. 2 and 3 have submitted that they had not indulged in mis-declaration and as such no penalty would be imposable under Section 112 and 114AA of the Customs Act.

4.2 **Appellant No. 3** has interalia raised the following contentions in appeal:-

- The impugned order passed by the Additional Commissioner is gross violation of the principles of natural justice inasmuch as even when the appellant submitted a detailed written submission along with a compilation of case laws during the PH held on 17.08.2023 and such compilation was subsequently also referred to during the PH conducted by the new adjudicating authority the Additional Commissioner did not address any of the contentions raised in such submission as well as did not give any findings as to why the binding precedents of the Hon'ble Tribunal and the Hon'ble Madras High Court were not followed.

- In written submission, the appellant categorically addressed all the issues raised in the show cause notice and also relied upon various case laws which hold that penalty on the customs house agent cannot be imposed until and unless there is positive evidence to show that the CHA willingly mis-declared the goods or mis-declared the value in connivance with the original importer. The case laws also held that a CHA is not supposed to verify the truthfulness of each and every detail mentioned in the documents provided by the importer. Therefore, in absence of any evidence of direct involvement of the CHA with knowledge and any connivance with the importer the CHA cannot be penalized. However, these case laws were not considered or even mentioned in the findings portion of the impugned order and hence the impugned is in gross violation of the principles of natural justice and not in consonance with the legal condition and hence is liable to be set aside on this ground alone.

- The Additional Commissioner has heavily relied upon the point that the goods which were imported under Bill of Entry No.3102798 dated 31.10.2022 were the same goods which were covered under the Bill of Entry No.6240729 dated 13.11.2021 which was filed by the Mumbai branch of the appellant That because the same goods were imported at Mundra Port and the appellant acted as the CHA again, the appellant has abetted the mis-declaration made by M/s.Medinnova Solutions Pvt.

Ltd.and hence liable for penal action. In this regard, it is submitted that, there is no evidence on record to show that the appellant was completely aware that the goods which were earlier imported at Nhavasheva Port were the same goods which were covered under the bill of entry filed on behalf of M/s.Medinnova Solutions Pvt. Ltd.at Mundra. As a matter of fact, the statement of ShriChandran Nair reproduced in Para 3.2 of the impugned order categorically states that the check list and documents were prepared by Ms. Gopika Patel on the basis of the documents provided by the importer and that the appellant has filed documents on behalf of M/s.Medinnova Solutions Pvt. Ltd. on several occasions in the past. Shri Nair also stated that the check list was prepared by the appellant and sent to the importer for approval and the importer did not inform them regarding the correct description of the imported goods and neither have informed that the name of the supplier and country of the supplier were changed and the same goods were being imported at Mundra Port. It is also stated that the importer kept them in dark and did not reveal all the facts regarding the consignment imported vide Bill of Entry No.3102798 dated 31 10.2022. As a matter of fact, the statement of Shri Vanpariya Trupesh Odhavjibhai, Chief operating Officer of M/s.Medinnova Solutions Pvt Ltd.recorded on 13.02.2023 is also in favour of the appellant inasmuch as Shri Vanapriya Trupesh has admitted that the appellant was never informed about the fact that the same consignment imported earlier in the name of M/s. Soma Tech Pvt Ltd. at NhavaSheva Customs House by filing Bill of Entry No.6240729 dated 13.11.2021 was now being imported in the name of M/s.Medinnova Solutions Pvt Ltd. at Mundra. Therefore, from the statement of ShriChandran Nair and ShriVanpariya Trupesh Odhavjibhai, it is clear that the appellant was never informed of the crucial facts regarding the nature of the goods and also the fact that the same goods were earlier imported atNhavaSheva Customs House. These facts have been ignored by the Additional Commissioner while passing the impugned order while as such facts and statements are completely relevant for the purpose of analysing whether the appellant wilfully assisted M/s.Medinnova Solutions Pvt. Ltd. to import the goods which were prohibited in nature. Furthermore, the Additional Commissioner has also ignored the fact that the appellant company is a pan India Custorns House Agent having more than 12 offices across the country at various ports and that the operations and staff at each place would not be aware about the activities being undertaken by the other branches. Therefore, there was no

occasion for the appellant to presume that goods imported in the name of M/s. Soma Tech Pvt. Ltd. at NhavaSheva back in 2021 where after one year being imported in the name of M/s.Medinnova Solutions Pvt. Ltd. after all the details like port of shipment. supplier, country of supplier etc. were changed by M/s.Medinnova Solutions Pvt. Ltd. and M/s.Medinnova Solutions Pvt. Ltd.did not supply such information to the appellant while keeping the appellant in dark about all these facts. Therefore, no case of penalty could have been made out against the appellant while completely ignoring the statements given by the original importer and ShriChandran Nair. There is no statement taken by the department of any other person which shows that the appellant has deliberately acted in a manner to support M/s.Medinnova Solutions Pvt. Ltd. to import prohibited goods. Therefore, the impugned order which does not consider statements and evidence suffers from non application of mind and hence is liable to be set aside in the interest of justice.

- The OIO is based on assumptions and presumptions. The impugned order has rendered a finding that the appellant has assisted and abetted the mis-declaration and illegal import of goods in violation of the Policy provisions and that the appellant has assisted M/s. Medinnova Solutions Pvt. Ltd to clear these prohibited goods based upon mis-declaration. However these findings are not based or supported by any cogent evidence. The goods which were earlier imported were imported vide Bill of Entry No.6240729 dated 13.11.2021, filed at NhavaSheva Port by the appellants Mumbai branch. The said BOE was filed in the name of M/s. Soma Tech Private Limited which was earlier the name of M/s. Medinnova Solutions Pvt. Ltd. The appellant did not doubtthe declared description of the goods as the appellant was doing clearance work for this importer on regular basis. There is no evidence on record which suggests that the appellant knew that the subject goods are appropriately classifiable under CTH No. 90192010 and that the importer had mis-classified the goods under CTH No. 90189099 Without there being any cogent evidence to suggest that the appellant had knowledge that the imported goods were being cleared under the aid ofmis-declaration and mis-classification, the impugned order has wrongly implicated the appellant so as to impose penalties under Section 112(a) and 114AA of the customs Act, 1962.

- It is a settled legal position that penalty cannot be imposed based upon assumptions and presumptions and that for penalty to be imposed, cogent evidence of the fact that there was knowledge to the effect that the goods were liable for confiscation is to be demonstrated. For there to be penal action of any nature, the department has to positively show that there was mens-rea on the part of the person engaging in such transaction and that such person having knowledge that the imported goods were liable for confiscation, still participated. Merely by giving findings that the appellant had indulged in mis-declaration and mis-classification of goods to facilitate clearance of the goods does not by any stretch of imagination prove that the appellant had undertaken the clearance of such goods on behalf of M/s. Medinnova Solutions Pvt Ltd. with knowledge that the declaration and classification of the goods were wrong and that the goods were correctly classifiable under CTH no. 90192010. The appellant had received documents for Bill of Entry no. 3102798 dated 31 10.2022 filed at the Mundra Port from M/s. Medinnova Solutions Pvt. Ltd. whereas the bill of lading was clearly showing that the goods were 'Used and Old Medical Equipments Anesthesia work stations under CTH 90189099' accordingly a checklist was prepared by the appellant and sent to M/s. Medinnova Solutions Pvt. Ltd. Thus, the appellant could have never imagined that the goods were mis-declared in the documents provided by the importer M/s. Medinnova Solutions Pvt. Ltd. As a CHA the appellant is responsible for the clearance of the goods based upon the documents provided by the importer and even with due indulgence the appellan would never have known that goods were mis-declared and mis-classified in the documents provided to the appellant for the purpose of customs clearance. Therefore, even if the appellant helped M/s. Medinnova Solutions Pvt. Ltd. as a CHA to clear the imported goods, the appellant has not undertaken any transaction while having knowledge that the imported goods were liable for confiscation, as the goods were mis-declared and the goods were ventilators. Therefore, since the appellant has not acted to facilitate the clearance with knowledge that such goods were liable for confiscation, the appellant cannot be penalized merely for acting as a bona-fide customs house agent. Therefore, the impugned order imposing penalty under Section 112(a) and 114AA of the Customs Act, 1962 is liable to be set aside.

- The law about imposition of penalty on a CHA and under what circumstances penalty under Section 112 and 114AA can be imposed has come up for consideration before the Hon ble Tribunal and various High Courts on many occasions. The Hon'ble Tribunal, Mumbai in the case of M/s. Savithri Jewellers Pvt Ltd reported at 2020 (374) ELT 754 has held that when the department has not produced any evidence to establish that the CHA had any knowledge about mis-declaration, and when the CHA has prepared documents in a bona-fide manner based upon the declaration made by the exporter the CHA cannot be penalized under Sections 114(ii) and 114AA of the Customs Act. 1962. In another case of M/s. Apson Enterprises reported at 2017 (358) ELT 817, the Hon'ble Tribunal, Mumbai has again held that when the department has nothing to show that the CHA was concerned with or aware about the valuation of goods, the CHA cannot be penalized under Section 114(iii) of the Customs, Act, 1962. In the case of Nirmal Kumar Agarwal reported at 2013 (298) ELT 133 the Hon'ble Tribunal has again held that until and unless it is proven that the CHA was aware of the mis-declaration and the ingredients of Section 114(iii) are complete, no penalty can be imposed on the CHA. The Hon'ble Tribunal, Chennai in the case of M/s. Moriks Shipping and Trading Pvt. Ltd. reported at 2008 (227) ELT 577 has categorically held that the customs house agent is not required to go into the authenticity of the declaration made by the exporter in the export documents and in absence of any evidence to show that the CHA not only participated in mis-declaration, penalty under Section 114(iii) cannot be imposed. The department went in appeal against the decision of the Hon'ble CESTAT and the Madras High Court in its decision reported at 2015 (317) ELT 3 has vide a detailed order confirmed the findings given by the Hon'ble Tribunal and has held that in absence of any positive evidence that the CHA was actually involved in mis-declaration, penalty under Section 114 of the Customs Act, 1962 cannot be imposed. Thus the law about imposition of penalty on the CHA is very clear that only when the CHA was well aware and actually participated in facilitating the mis-declaration of goods or value. can the CHA be held accountable. Furthermore, it is also clear that the CHA is not supposed to go into and verify each and every detail provided by the exporter about description and value of goods, and therefore, the findings in the impugner order are not sustainable in the eyes of law

- The penalty under section 114AA is also unjustified and unwarranted in the facts of the present case. It is nowhere stated in the show cause notice and the impugned order that the appellant had any knowledge that the goods were not declared correctly or goods are not classified correctly. In absence of any evidence the penalty is unjustified. Section 114AA of the Act provides for penalty if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business for the purposes of the Act. However, it is not established in this case that the appellant had knowingly or intentionally made, signed or used or caused to be made, signed or used any declaration, statement or document which was false or incorrect in any material particular. Thus, it is clear that the said provision comes into play only in cases where material particulars have been found to be incorrect and false. However, as has been substantiated earlier, there has been no deliberate mis-declaration, and therefore, the same could not be the basis for imposing any penalty under Section 114AA of the Customs Act. This being the case. Section 114AA is not at all applicable in the facts of the present case and hence such penalty is liable to be dropped in the interest of justice.

- The penalty imposed under section 112(b) is also unjustified and unwarranted in the facts of the present case. Any person who acquires possession or is in any way concerned in carrying, removing, depositing, harboring, keeping. concealing, selling or purchasing, or in any other manner dealing with any goods which he knew or had reason to believe were liable to confiscation under section 111 is liable for penalty under section 112(b) of the Customs Act For invoking this provision also, the knowledge or the reason to believe that the concerned goods were liable to confiscation is a sine qua non. But the evidence on record shows that the appellant had no knowledge nor any reason to believe that the subject goods were liable to confiscation under section 111 of the Act, or otherwise. The record and evidence of the case shows that the appellant was under a genuine and bona-fide impression that the goods being imported was not in the nature of offending or prohibited goods for import to India. The revenue has nowhere suggested, nor established, that the appellant knew or had reason to believe that the cargo in question was liable to confiscation under section 111 and therefore no penalty under section

112(b) of the Act is permissible in the facts of the present case Section 112(b) of the Customs Act is attracted only when a person acquired possession of, or was in any way concerned in carrying. removing, depositing, harboring, keeping, concealing, selling or purchasing. or in any other manner dealing with any goods which he knew or had reason to believe were liable to confiscation. In this case, it is not shown by the Department as to how the appellant was indulging in carrying harboring. keeping, concealing, selling or purchasing any goods which the appellant knew or had reason to believe were liable to confiscation; nor is an evidence adduced in support of such allegation. A person could not be engaged in all the activities as referred in this section. It is not pointed out in these proceedings as to which particular activity was the appellant concerned with. Therefore, the impugned order which imposes a penalty under Section 112(b) of the Customs Act. 1962 is liable to be set aside in the interest of justice.

- Without prejudice to the abovementioned submissions, it is submitted that the case of the department that though imported goods are anesthesia equipments but are in the nature of ventilators and since used ventilators are prohibited for import, is completely baseless. In the show cause notice or the OIO it is nowhere disputed that the imported goods have the primary function of being anesthesia workstations. The case of the department is that the good also have ventilators integrated in the anesthesia workstations and hence the goods are used ventilators. Therefore, there is no doubt that the imported goods do have the primary function of being anesthesia workstations. It is submitted that an anesthesia workstation is used to administer anesthesia during surgical procedures, and since anesthesia has an effect on the nervous, the ventilator is integrated to prevent any problems during the procedure. Because of the effects of anesthesia, it is possible that a patient might suffer breathing difficulties or the brain may not be able to send proper signals to enable the patient to breathe and hence the anesthesia workstation also has a ventilator component to assist with breathing during surgery This however does not mean that the imported equipment have a principal role of being used as a ventilator and that administering anesthesia is a secondary function. As per the show cause notice and the chartered engineer's certificate, it is very clear that the imported goods are anesthesia workstations and not ventilators. Thus, what is essential to examine is whether the principal

function of the goods is being used as a ventilator or was the principal function administering anesthesia? It is submitted that anesthesia workstations have an integrated ventilator but such ventilator is not the same as the one used in ICU or by patients who require breathing support. The imported machines cannot be used in place of ventilators in an ICU or by a patient who requires mechanical breathing The small integrated ventilator as mentioned above is for the purpose of regulating breathing when the person is under the influence of anesthesia. The OIO has ordered to reclassify the goods under CTH 90192010 which is for oxygen therapy apparatus; however, the equipment imported by M/s. Medinnova Systems Pvt. Ltd. is not classifiable under the category of oxygen therapy apparatus inasmuch as the principal function of the imported goods is to be used as anesthesia workstations. The department in the SCN or the Additional Commissioner in the OIO has also not adduced any specific evidence that how would the imported goods fall in the category of oxygen therapy apparatus when the principal function of the goods is to administer anesthesia. Therefore, it is submitted that the imported equipment is correctly classifiable under CTH 90189099 as anesthesia workstations and since the correct description has been used in the Bill of Entry and correct chapter tariff heading has been declared, there is no mis-declaration in the present case. Even if it is the department's case there is an integrated ventilator and hence the principal function of anesthesia workstation is to be ignored, such question is a question of interpretation. There is no mala-fide intention on the part of the appellant or on the part of M/s. Medinnova Systems Pvt. Ltd. to mis-declare the goods and since the issue is one of technicality and interpretation, the action of the Additional Commissioner to impose penalty on the appellant is an action without jurisdiction.

PERSONAL HEARING

5. Personal hearing in the appeals filed by appellant No. 1 and appellant No. 2 was held on 13.12.2024 wherein Shri John Christian and Shri Ashish Jain, Consultants appeared for hearing on behalf of appellant No. 1 and appellant No. 2 and they reiterated the submissions made in appeal memorandum.

5.1 Due to change in the Appellate authority, fresh personal hearing was held on 27.05.2025 wherein Shri John Christian and Shri Ashish Jain, Consultants appeared for hearing on behalf of appellant No. 1 and appellant No. 2 and they reiterated the submissions made in appeal memorandum. In their additional submission, they have requested for re-inspection of the Imported goods from an expert at their cost to ascertain whether the goods are covered under the category of 'critical care equipment' as specified by the Ministry of Environment, Forest and Climate Change (HSM Division) vide Office Memorandum dated 19.5.2023 and to arrive the correct valuation of the old and used imported machine as the Chartered Engineer in his report dated 05.12.2022 has arrived the current market value of brand-new make of machine. They have submitted in their support print out taken from the Portal of India Mart wherein the value of brand-new Anesthetic Work Machine is mentioned.

5.2 Shri Parth P Rachchh, Advocate appeared for personal hearing on behalf of the appellant No. 3 on 27.05.2025 held in virtual mode. He reiterated the submissions made at the time of filling of appeal. He also relied upon a compilation of following case laws submitted through email on 26.05.2025

(1) CC(import) V/s. Trinetra Impex Pvt.Ltd- 2020(372) ELT 332 (Del.)

(2) HIM Logistics Pvt.Ltd. V/s. CC Export (ICD TKD), New Delhi-2025(5) TMI 665- CESTAT New Delhi

(3) A.V. Global Corporation Pvt.Ltd. V/s. CC, New Delhi-2024(10) TMI 159-CESTAT New Delhi

DISCUSSION AND FINDINGS

6. I have carefully gone through the impugned order, appeal memorandum filed by the appellants, submissions made by the appellants during course of hearing as well as the documents and evidences available on record. The matter revolves around two issues viz. 1) Whether the goods are Ventilators and prohibited for import and 2) Whether the declared value is liable for rejection or otherwise.

7. The appellants have strongly contended that the goods under import are **Anaesthesia Workstations**, a fact clearly supported by the **Chartered Engineer's Inspection Report No. DRI/169/22-23 dated 05.12.2022**, which forms the sole basis for the allegations made in the present case. It is a well-settled principle of law that the opinion of a subject-matter expert—such as a **Chartered Engineer** is critical in determining the actual nature and

classification of machinery. In the present case, **Point No. 2, Part d(iv)** of the inspection report issued by **M/s Suvikaa Associates, Chartered Engineers**, unequivocally certifies the description of the goods as **"Anaesthesia Workstations"** and **"Endoscopy Trolley."** This certification directly supports the appellants' declaration and undermines the basis for the charges levelled in the Show Cause Notice. The relevant text of the certificate is reproduced under:

"2. I have visually inspected the Medical Equipment imported under BoE : 3102798 dated 31.10.2022 and certify the following:

d. Details of the Goods:

iv. Description of the Machine:	• *Anesthesia Work Stations* • *Endoscopy Trolly*

7.1 Further, the CE Opinion/ Conclusions in the report dated 5.12.2022 pertaining to the description of goods under import is reproduced under for better understanding:

"The anesthetic workstations in the cargo consist of ventilators integrated in the machine itself. Thus, the anesthetic workstations can also be used as ventilators if required by the operator."

The linguistic construction of the said opinion/ conclusion made by the Chartered Engineer expressly indicates that the cargo has been categorized as 'Anesthesia Workstation'. It has further opined that the Anesthesia Workstation consists of ventilator integrated in the machine itself. This finding clearly points out to the fact that the imported cargo which was inspected by the Chartered Engineer has been certified to be 'Anesthetic Workstation' of which ventilator is one of the integrated components. This fact is fortified by Observation Nos. 9 & 10 of the report which reads as under:

"9. It was observed that the anesthetic workstations have a small provision for a ventilator.

10. The ventilators in the work stations were integrated in the machine itself."

The above observations are clear pointers that the Chartered Engineer has expressed clarity that the imported goods are Anesthetic Workstations.

7.2 The latter part of the Chartered Engineer's opinion, stating that *"thus, the anaesthetic workstations can also be used as ventilators if required by the operator,"* further reinforces the actual nature of the goods. The use of the word **"also"** clearly signifies that the ventilator function is **an additional or auxiliary feature**, implying that the **primary purpose** of the goods is **not** that of a ventilator. In other words, the Chartered Engineer's report affirms that the goods are **primarily designed and intended for use as Anaesthesia Workstations**—that is, for administering anesthesia during medical procedures—but they may additionally serve as ventilators, **if such a requirement arises**. The phrase **"if required"** emphasizes that the ventilator function is **contingent and optional**, and not intrinsic to the regular or principal operation of the equipment. This observation does not suggest that the goods lack functionality in the absence of a ventilator requirement. Rather, it affirms that the ventilator capability is **situational** and not definitive of the equipment's classification. Therefore, the Chartered Engineer's report effectively certifies that the goods under import are **not ventilators per se**, but are **Anaesthesia Workstations** with an optional ventilator feature.

7.3 Additionally, I find that the classification of the goods as **Anesthesia Workstations** is further corroborated by the Chartered Engineer's (CE) certificate dated 05.12.2022, particularly through the **valuation methodology adopted** therein. The valuation parameters outlined in the certificate include a comparison with the **current market value of a brand-new make of the same type of machine**, based on **research of similar products from a reputed manufacturer's website**. The last three pages of the report contain this comparative research, referencing the **GE Ohmeda 210SE**, which is clearly identified as an **Anesthesia Machine**. Notably, this report bears the signatures of the **DRI officers, the importer, and the panch witnesses**, thereby reinforcing its **admissibility as valid evidence**. The Chartered Engineer's reliance on the price of a **brand-new Anesthesia Machine** to determine the value of the imported goods strongly suggests that the goods were understood and treated as **Anesthesia Workstations**, and not as ventilators. Had the Chartered Engineer considered the goods to be **Ventilators**, the logical course of action would have been to compare them with the market price of a brand-new

ventilator. The fact that he did not do so further supports the conclusion that the goods in question are **Anesthesia Workstations**, not ventilators.

7.4 The above observations, expert opinion, and the Chartered Engineer's certificate clearly establish that the imported goods have been **expressly certified as Anesthesia Workstations**. These findings leave **no scope for doubt or ambiguity** regarding the nature of the goods. Contrary to the conclusion drawn by the adjudicating authority, there is **no evidence to support the classification of the goods as Ventilators**. Given that the Chartered Engineer—a qualified technical expert—has **categorically identified the goods as Anesthesia Workstations**, there is **no justification for speculative interpretation** or reclassification of the goods as Ventilators. Therefore, I am of the considered view that the imported goods are **correctly and primarily identifiable as Anesthesia Workstations**, and I have **no hesitation in holding accordingly**.

8. Having come to the conclusion that the goods under consideration are Anesthesia Workstations, I proceed to examine whether the same merit classification under CTH 90192010 or otherwise. The major head 901920 covers the goods falling under the category of "Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus" and the sub-head 90192010 covers the goods falling within the scope of "Oxygen therapy apparatus'. As already discussed hereinabove, the imported goods are Anesthesia Workstations having the primary function of administering anesthesia to patients and as such are clearly out of the umbrage of Oxygen Therapy Apparatus. As for the alternate use of the goods as certified by the Chartered Engineer, I find that classification of goods is to be determined on the basis of the primary function and characteristics of a product and cannot be based on either one of its components or alternate use of the goods. In the instant case the goods are primarily meant for administering anesthesia and have to be classified accordingly. Thus, the impugned order to the extent of classifying the imported goods under CTH 90192010 is not sustainable and is required to be set aside.

9. Coming to the aspect whether the goods are prohibited and liable for confiscation or otherwise, I find that the adjudicating authority has absolutely confiscated the goods under consideration on the ground that the same are covered under Basel No. B1110 of Schedule VI of the Hazardous Waste Management Rules, 2016 (HWM Rules for short) and are prohibited under Rule

12(6) of the HWM Rules. Basel No. B 1110 of Schedule VI covers the "Used critical care medical equipment for re-use". So it needs to be ascertained whether Anesthesia Workstations are covered under the umbrage of 'critical care equipment' or otherwise.

9.1 The above aspect needs to be determined in light of the 'critical care medical equipment' defined by the Ministry of Environment, Forest and Climate Change (HSM Division). This is especially so in light of the fact that the HWM Rules have been enacted by the Ministry of Environment, Forest and Climate Change (HSM Division) and the same is to be interpreted as per the clarifications and specifications issued by the governing Ministry. An exhaustive list of 'critical care medical equipment' has been specified by the Ministry of Environment, Forest and Climate Change (HSM Division) vide Office Memorandum dated 19.5.20203 issued from F. No. 23/104/2022-HSMD. Careful scrutiny of the said list indicates that the same does not specify Anesthesia Workstation/ Machine as critical care equipment. The direct inference drawn from the said facts is that Anesthesia Workstation is not covered under Basel No. B1110 of Schedule VI of the HWM Rules and resultantly, the said goods are not covered under the scope of 'prohibited goods'.

9.2 As regards the findings of the adjudicating authority to the extent that the very same goods had been considered as prohibited goods and ordered to be re-exported vide Order-in-Original No. 241/2022-23/ADC/Gr.V/NS-V/CSC/JNCH, I find that prohibition has to be examined in light of the provisions of law and the nature of the goods imported and not on the basis of the antecedents of the goods. In the instant case, I find that the imported goods are Anesthesia Workstations which are not covered under the category of critical care equipment in terms of Office Memorandum dated 19.5.20203 issued by the Ministry of Environment, Forest and Climate Change (HSM Division) from F. No. 23/104/2022-HSMD. Further, I find that the importer in that case was M/s Soma Tech Pvt. Ltd. (now known as M/s Medinnova Systems Pvt. Ltd.) which is a distinct legal entity having CIN U36109GJ2006PTC049637 as against the appellants who are a body corporate having CIN U33309GJ2006PTC048939. Any action against a separate legal entity does not have a bearing on the facts of the case at hand.

9.3 In view of the above, the impugned order to the extent of holding the goods as prohibited is set aside. Resultantly, absolute confiscation of the said goods under Section 111(d) of the Customs Act,1962 does not survive.

10. Coming to the aspect of valuation, I find that the cardinal principle for enhancing the assessable value is rejection of the transaction value based on legal permissible ground as indicated in the Valuation Rules. In this regard, I place reliance on the case laws of M/s Eicher Tractors Ltd. reported at 2000 (122) ELT 321 (SC), M/s Sanjivani Non-Ferrous Trading P Ltd. reported at 2019 (365) ELT 3 (SC), M/s Motor Industries Co, Ltd. reported at 2009 (244) ELT 4 (SC) and M/s Lucky Steel Industries reported at (2023) 9 Centax 409 (T). In the instant case, the transaction value is sought to be rejected on the grounds that the description of the product has been manipulated in the Bill of Entry. Since, I have already found that there was no instance of mis-declaration of the description of the goods, hence the ground for rejection of transaction value is not justified.

10.1 In the instant case, the allegation of mis-declaration of description of the goods in itself is found to be unsustainable and accordingly, rejection of the transaction value in the impugned order on the basis of such unsustainable allegation does not survive. The very foundation of the entire matter i.e. the reason for rejection of transaction value is found to be unsustainable and as such the subsequent action i.e. enhancement of assessable value is falls flat. At this juncture it would not be out of context to mention the principle of ***Sublato fundamento cadit opus*** which means 'the foundation being removed, the structure falls'. The maxim in legal terminology implies that if initial action is not in consonance with law, all subsequent proceedings would fail as illegality strikes at the root. The maxim " ***Sublato fundamento cadit opus*** " has been a cornerstone in legal proceedings, signifying that actions based on an unlawful foundation are inherently invalid. The principle underlines the invalidity of legal actions premised on an unlawful or improper beginning. The maxim has wide application in administrative, taxation and constitutional law impacting the legal landscape of our country. The Maxim is applied by Courts to prevent the building of legal structures on unlawful foundation. The said principle has been considered in the case of State of Punjab V/s Davinder Pal Singh Bhullar reported at AIR 2012 Supreme Court 364 of which the relevant text is reproduced under:

> *72. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublatofundamentocadit opus" meaning thereby that foundation*

being removed, structure/work falls, comes into play and applies on all scores in the present case.

73. In Badrinath v. State of Tamil Nadu & Ors., *AIR 2000 SC 3243; and* State of Kerala v. Puthenkavu N.S.S. Karayogam&Anr., *(2001) 10 SCC 191, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.*

74. Similarly in Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors., (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

75. In C. Albert Morris v. K. Chandrasekaran & Ors., *(2006) 1 SCC 228, this Court held that a right in law exists only and only when it has a lawful origin.*

(See also: Upen Chandra Gogoi v. State of Assam & Ors., *(1998) 3 SCC 381;* Satchidananda Misra v. State of Orissa & Ors., *(2004) 8 SCC 599;* Regional Manager, SBI v. Rakesh Kumar Tewari, *(2006) 1 SCC 530; and* Ritesh Tewari &Anr. v. State of U.P. & Ors., *AIR 2010 SC 3823).*

76. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/orders/FIR/ investigation stand automatically vitiated and are liable to be declared non est.

In view of the above, the impugned order to the effect of enhancing the assessable value is legally not sustainable .

10.2 Even otherwise, **Appellant No. 1** has contended that the valuation determined by the **Chartered Engineer (CE)** is **arbitrary**, as it is based on the price of a **brand-new machine**, without taking into account the **year of manufacture** of the **second-hand goods** under import. This concern is substantiated by **Report No. DRI/169/22-23 dated 05.12.2022** issued by **M/s Suvikaa Associates**, along with its annexures. A careful perusal of the report reveals that it does **not mention** whether key parameters—such as

depreciation, cost of repairs/refurbishment, or **reasonable profit margin**—were factored into the valuation. Furthermore, the report is **silent on the methodology** adopted to arrive at the assessable value. Instead, it simply refers to the **market price of a brand-new machine** as the base reference. This is contrary to the well-established valuation principles for second-hand machinery, as laid down in **CBEC Circular No. 25/2015-Cus dated 15.10.2015**, which **explicitly requires** consideration of factors such as **depreciation, reconditioning, and refurbishing costs** in arriving at the assessable value of used goods. In the absence of any indication that these essential parameters were considered—and given the lack of transparency regarding the valuation method employed—it is evident that the CE's report lacks **evidentiary credibility**. Therefore, **enhancement of the assessable value solely on the basis of such an arbitrary and unsupported valuation is not legally sustainable** in the facts and circumstances of the present case.

10.3 In view of the above, I find that both the pieces of evidence sought to be relied upon in the impugned order viz. 1) misdeclaration of description of goods and 2) valuation report of CE are found to be unsustainable. In addition, I find that there is no other evidence of wrong declaration of value, additional remittance of money or relationship of the buyer and the seller on record. At this juncture, it is pertinent to mention that the principles of adjudicating merely provide for ascertaining whether the charges alleged are sustainable on the basis of evidence presented on record or otherwise. There is no scope for traveling beyond the Show Cause Notice in an attempt to adduce fresh evidences. In such circumstances where the evidence placed on record is insufficient to establish the charges leveled in the notice, the law does not permit enhancement of transaction value without any evidence of under-valuation on record. My views are supported by the findings in the case of M/s Lucky Steel Industries reported at (2023) 9 Centax 409 (T) of which the relevant text is reproduced under:

> *We also find that in the present matter the only reason for increase in value made is mis-declaration in description of goods. No evidence of additional remittance of money is brought out. Also there is an issue that scrap is not a type of goods which can be easily compared. The appellants have also taken objection that the value adopted for assessment has no legal basis. We also find that, there is no admission of Appellant admitting to undervaluation, or any evidence of any extra financial consideration apart from the declared*

transaction value, paid to the overseas supplier. Further, there is no evidence that the appellant and overseas supplier are related parties or that the invoice value was not the transaction value. The Department has failed to show any contemporaneous evidence of higher price, and thus the transaction value cannot be rejected, as held by the Hon'ble Apex Court in Commissioner Central Excise v. Sanjivani Non-Ferrous Trading Pvt. Ltd. - (2019) 2 SCC 378 = 2019 (365) E.L.T. 3 (S.C.) and Commissioner of Customs v. South India Television Pvt. Ltd. - (2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.)/2002 taxmann.com 910 (SC). Further, in the present case, particularly, when the invoice price of the appellant was not disputed on the basis of any evidence of wrong declaration of the value, the enhancement in the present case is illegal and incorrect. We find that there is no dispute that the customs has power to reject the transaction value and enhance the assessable value in terms of Customs Valuation Rules. However, such rejection of transaction value and enhancement of assessable value has to be on the basis of some evidence on record. Contemporaneous imports have to be considered in reference to quality, quantity and country of origin with the imports under consideration. For any enhancement in assessment value, the transaction value has to be first rejected based on legal permissible ground as indicated in the valuation Rules. We find that in the present matter, Revenue has not advanced any such evidence to support their case inasmuch as, no evidence of rejection of transaction value was produced by the department.

10.4 In view of the above discussion, I find that the **enhancement of the transaction value** in the present case is **not sustainable on merits**. Consequently, the **confiscation of the goods under Section 111(m) of the Customs Act, 1962**, which is solely based on the alleged mis-declaration of value, is also **unsustainable**. Accordingly, the **impugned order**, to the extent it pertains to the **enhancement of assessable value and the consequent confiscation of goods**, is **liable to be set aside**.

11. Consequently, I find that the penalties imposed on all the three appellants do not survive in circumstances where the fundamental charges of violation of law are found to be unsustainable.

12. In view of the above, allow all the three appeals and set aside the impugned order with consequential relief. All the three appeals are disposed of accordingly.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

Date: 08.08.2025

(1) F.No. S/49-80/CUS/MUN/2024-25
(2) F.No. S/49-79/CUS/MUN/2024-25
(3) F.No. S/49-49/CUS/MUN/2024-25

2808

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Dist. Vadodara 391775.

(2) Shri Kaushal Buharilal Parikh,
Director of M/s Medinnova Solutions Pvt. Ltd.
E-114, GIDC Savli, ManjusarSavli Road, Tal. Savli,
Dist. Vadodara 391775

(3) M/s Tulsidas Khimji Pvt. Ltd.
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