सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20251271MN000000C56A

क	फ़ाइल संख्या FILE NO.	S/49-115/CUS/AHD/2024-25
ख	अपीलआदेश 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-489-25-26**
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	23.12.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Order-In-Original No. 02/DC/ICD-SND/2023-24 dated 30.04.2024 (issued on 02.05.2024) passed by the Deputy Commissioner of Customs, ICD-Sanand.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	23.12.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Guru Rajendra Metalloys India Pvt. Ltd. 101, G R House, 8, Gautam Vihar Society, Aroma School Road, Usmanpura, Ahmedabad – 380013.

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 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.	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 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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 अपीलियअधिकरण, 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 के10 % 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. Guru Rajendra Metalloys India Pvt. Ltd., 101, G R House, 8, Gautam Vihar Society, Aroma School Road, Usmanpura, Ahmedabad – 380013 (hereinafter referred to as 'the appellant') has filed the present appeal against the Order-In-Original No. 02/DC/ICD-SND/2023-24 dated 30.04.2024 (hereinafter referred to as 'the impugned speaking order') passed by the Deputy Commissioner of Customs, ICD-Sanand (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that during the period of May-2019 to December-2019, the appellant has filed 19 Bills of Entry as mentioned in the Table-1 (hereinafter referred to as 'the impugned Bills of Entry') for import of different varieties of Aluminum Scrap such as Taint, Tabor, Tread, Terse, Twitch, Zobra, as specified by the Institute of Scrap Recycling Industries ('ISRI'). Customs Department has not accepted the declared value as correct transaction value for the purpose of assessment of duty and so, the appellant importer was unable to clear the goods. The appellant had given consent letter agreeing to enhance the assessable value of the goods and the assessing officer has enhanced the assessable value. The appellant had paid duty on the enhanced value without protest and got cleared the goods. Particulars of the impugned Bills of Entry are as follows:

Table-1

Sr. No.	Bill of Entry No. & Date	Declared value in USD (unit Price)	Enhanced Value in USD (unit Price)
1	3231703/14.05.2019	1045	1439
2	3829102/27.06.2019	975	1302
3	3916618/03.07.2019	960	1280
4	5588629/07.11.2019	800	1262
5	5592248/07.11.2019	675	1228
6	5614824/09.11.2019	940	1227
7	5635660/11.11.2019	825	1235
8	5680591/14.11.2019	850	1230
9	5614823/09.11.2019	850	1230
10	5666777/13.11.2019	925	1263
11	5662719/13.11.2019	970	1262
12	5666456/13.11.2019	925	1263
13	5747198/19.11.2019	740	1227
14	5727989/18.11.2019	985	1227
15	5786349/22.11.2019	985	1227
16	5854503/27.11.2019	825	1330
17	5862591/28.11.2019	790	1228
18	5883938/29.11.2019	805	1228
19	6102307/16.12.2019	805	1234

3.1 The appellant had filed appeals with this office against assessment of the impugned 19 Bills of Entry. The said appeals had been allowed by way of remand vide Order-In-Appeal No. AHD-CUSTM-000-APP-15 to 33-20-21 dated 12.06.2020 with directions to pass speaking order under Section 17(5) of the Customs Act, 1962.

3.2 Accordingly, the Assistant Commissioner of Customs, ICD-Sanand, had passed an Order-In-Original No. 11/AC/ICD-SND/2020-21 dated 27.10.2020, through which the enhancement of value has been upheld. The last Para of the said Order is as under:

" -// Order //-

I agree, that all the bills of entries as per table annexed with this order are assessed at the enhanced value as worked out on the basis of letter F. No. VAL/Tech/10/2018 (Al Scrap) dated 15.11.2018 of Director General of Valuation, New Delhi."

4.1 Against the above-mentioned O.I.O., the appellant has filed an appeal with this office. The said appeal was allowed by way of remand vide Order-In-Appeal No. AHD-CUSTM-000-APP-132-23-24 dated 31.07.2023. Extracts from the said Order-In-Appeal are given below (underline supplied):

"6.8 It is observed that the adjudicating authority has recorded that on comparison of data relating to import of identical product at other major Customs stations vis-à-vis with the price declared by the appellant, it appeared that the price declared by the appellant is low and questionable. However, he has neither recorded any contemporaneous import data as reflected in NIDB data. Further, there is nothing on record to suggest that any such data was provided to the appellant and their submissions were taken on record before rejecting the declared by the appellant.

6.9 It is further observed that as per the impugned order the assessable value was enhanced, in respect of 19 Bills of Entry filed in the span of approximately 8 months, on the basis of letter F. No. VAL/Tech/10/2018 dated 15.11.2018 issued by the Director General of Valuation, New Delhi. However, neither the LME price have been recorded nor the formula adopted to arrive at enhanced price is described in the impugned order.

6.10 It is also observed that the adjudicating authority has taken note of the Final Order No. A/10889-11025/2020 dated 29.05.2020 passed by Hon'ble CESTAT, West Zonal Bench, Ahmedabad, in appellants own case. He has also reproduced the

relevant paras of the aforementioned judgment and noted that the order of the Hon'ble Tribunal has been accepted by the department. However, he has neither pointed out any facts, different from the case decided by the Hon'ble CESTAT, Ahmedabad Bench in appellant's own case, pertaining to earlier consignments nor explained how the said case is not applicable in present case, based on the sound reasoning and relying upon any case laws on the issue.

6.11 In other words, the adjudicating authority has simply recorded the facts of the case and submissions made by the appellant and reiterated the already drawn conclusion by upholding the enhanced assessable value, without referring to the relevant Section on the valuation, Customs Valuations Rules, legal provision, case laws on the issue and interpretation of the valuation rules by Hon'ble Courts and Hon'ble CESTAT, without recording / referring to any contemporaneous import data as reflected in NIDB, without considering / countering the submissions made by the appellant and case laws relied by them. Therefore, the impugned order passed by the adjudicating authority is a non speaking order passed in utter disregard to the principles of judicial discipline, as in light of the remand direction, he was expected to pass a well reasoned order considering all the factual aspects, judicial pronouncements on the issue and submissions of the appellant. However, he had failed to do so. Hence, the impugned order suffers from legal infirmity on this count.

... ...

7. In view of above, I set aside the impugned order and allow the appeal by way of remand to the adjudicating authority for passing fresh order after considering the submissions made by the appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions."

4.2 In view of the above-mentioned O.I.A. dated 31.07.2023, the adjudicating authority has passed the impugned O.I.O. dated 30.04.2024 through which enhancement of value in respect of impugned 19 Bills of Entry has been again upheld. The 'Order' portion of the said O.I.O. is as follows:

"ORDER

I agree and hold that the declared self-assessed value of all the nineteen Bill of Entry, as per the table mentioned at Para 2 above, were correctly rejected in terms of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007, and the proper officer had correctly enhanced value relying on the various contemporary import data, LME data as well as Valuation Guidelines issued by DGoV. I also hold that M/s. Guru Rajendra Metalloys India Pvt. Ltd. had rather than to opt for recourse under sub-Rule (2) of Rule 12 of CVR, 2007, had accepted the enhanced value of the said nineteen Bills of Entry and paid the Customs Duty thereon without any protest and therefore, considering the consented value as the declared transaction value, the subject Bills of Entry were accordingly correctly assessed."

5. Being aggrieved, the appellant has filed the present appeal on 15.07.2024. As the appeal has been filed against Speaking Order towards enhancement of value and no demand of duty, interest, penalty etc. has been made therein, pre-deposit under the provisions of Section 129E of the Customs Act, 1962, does not require. In the Form C.A.-1, the date of communication of the Order appealed against has been shown as "16.05.2024". As the appeal has been filed within normal period of 60 days as stipulated under Section 128(1) of the Customs Act, 1962, it has been admitted and being taken up for disposal on merits.

6. One set of the appeal memorandum has been forwarded to the adjudicating authority for his/her comments vide this office letter dated 18.09.2024, but no reply thereof has been received. So, I proceed to decide the appeal on the basis of the documents submitted by the appellant.

Gist of Grounds of Appeal

7. The appellant stated that they use these Aluminum scrap as raw material for self-consumption in the manufacture of Aluminum Ingots, Aluminum Alloy Ingots, etc. At the time of filing the bills of entry for import of various types of Aluminum Scrap, the appellant was also enclosing a consent letter. In the consent letters it was stated that "we had requested the Appraising Officer to accept our transaction value, but the officer relying on the DGV Circular No VAL/Tech/10/2018 dated 15.11.2018 had enhanced our assessable value from transaction value. In order to avoid detention charges of our container, we accepted the loading as per above."

8. The price of various grades of Aluminum dependent on market condition, forecasting, country of export, quantity, LME, etc. It is not straight away related to LME alone. There is no law either in the Customs Act, 1962 or in the Customs Valuation Rules, 2007 allowing the valuation of Aluminum Scrap on the basis of DGV Circular/ guidelines.

9. In fact, the very same issue was taken up by the appellant **in their own case** when Hon'ble Ahmedabad Tribunal vide Para 4.1 of its order dated 29.05.2020 has held under:

> *"4.1 This clearly shows that the enhanced value is exactly the value arrived at on the basis of LME price of prime metal minus discount given in DGOV Circular. This clearly shows that the enhancement of value is not on the basis of contemporaneous import data but it is based on DGOV Circular irrespective of the mention made in the consent letter that the appellant have gone through the contemporaneous import data. Therefore, it is clear that contemporaneous import data was neither available nor relied upon for enhancement of the value. Therefore, the enhancement of value is absolutely illegal and incorrect. We are of the clear view that merely based on DGOV Circular also, value cannot be enhanced which is without authority of law."*

10. **The appellant further submitted that the issue is if without rejecting the transaction value and without contemporaneous import at higher prices; the assessable value can be enhanced on the basis of Alerts/Circular issued by DGV, came up for consideration in following cases:**

i. **The Hon'ble Supreme Court of India in case of M/s Prabhudayal Premchand** while answering the question of law framed by the Revenue as to "whether to accept the transaction value as declared by the importer or the price of the imported goods be determined on the basis of LME prices." has held that since no details of contemporary import or any other material indicating the price notified by the LME had either being referred to by the Adjudicating Authority in the adjudication order or such material was placed before the Tribunal at the time of hearing, the Tribunal had rightly set aside the additional demand created against the appellant.

ii. **The Hon'ble CESTAT, Delhi in case of M/s Modern Manufactures reported at 2018 (316) ELT 1020 (Tri. Del)** has held that without rejecting the transaction value by referring to Rule 12 of the CVR, 2007, **the value cannot be enhanced on the basis of the DGV Circular or NIDB Data.**

iii. **The Hon'ble CESTAT, Mumbai in case of M/s Bharathi Rubber Lining & Allied Services Pvt. Ltd.** has held that the DGV Circular cannot override the provisions of Valuation Rules, 2007 as before rejecting the transaction value cogent reasons had to be given.

iv. **The Hon'ble CESTAT, Ahmedabad in case of M/s Palco Metals Ltd.** has held that there is no reason given in the order for rejecting the transaction value and for adopting the LME price. It is well settled law that LME can be a guide to be adopted for purpose of enhancement only in those cases where transaction value found to be incorrect.

v. **The Hon'ble CESTAT, Ahmedabad in case of M/s Pushpak Metal Corporation** has held that LME prices do not pertain to metal scrap which are merely indicative of the prime quality metals and hence the same cannot be adopted for the valuation of metal scrap.

Similar view was also taken by various appellate authority in the under mentioned cases:

i. **M/s South India Television Pvt. Ltd. reported at 2007 (214) ELT 3 (SC)** – para 6, 7 & 9.

ii. **M/s Sanjivani Non- Ferrous Trading Pvt. Ltd. reported at 2017 (7)** GSTL 82 (Tri All) – this case also relates to valuation of imported Aluminium Scrap & para 2, 4, 5 & 7.

iii. **M/s Sanjivani Non- Ferrous Trading Pvt. Ltd. reported at 2019 (365) ELT 3 (SC)** - para 10, 12, 13 & 14.

iv. **M/s Century Metals Recycling Pvt. Ltd. (2019) 367 ELT 3 (SC)** - para 3, 14, 18, 20, 22, 23 & 24.

v. **M/s Nico Extrusions Pvt. Ltd. reported at 2019 (369) ELT 1183 (Tri.-Mumbai)** - held that enhancement of value by a non-speaking order is not sustainable particularly when there is no evidence of higher contemporaneous import price of similar goods rather declared value need to be accepted.

11. Thus, the finding and the order of the Adjudicating Authority that law in respect of valuation of Aluminum Scrap was to value it on the basis of DGV circular is clearly erroneous

as held in the above quoted orders of the various authorities including Hon'ble Jurisdictional Ahmedabad Tribunal in the appellant's own case, which has been accepted by the Department.

12. The appellant further submitted that the Adjudicating Authority was first required to reject the transaction value on the basis of the contemporaneous import price by specifically mentioning the name of the importer, bills of entry no. and specific description of the goods, quantity, country of export, type of scrap, etc. as held in the various decisions including that of **Hon'ble Supreme Court of India in case of M/s Prabhudayal Premchand reported at 2010 (253) ELT 353 (S.C.)** which was relied upon by this Hon'ble Bench CESTAT, Ahmedabad in case of **M/s Artex Textile Pvt. Ltd. Delhi in their Final Order No. A/11519/2019 dated 08.08.2019.** Without doing so Adjudicating Authority had proceeded to accept the enhanced assessable value based on the consent letters given by the appellant, knowing fully well that the enhanced values given in the consent letters is not the contemporaneous import price, but is the value arrived on the basis of DGoV Alerts and also, that the said consent was not given by the appellant willingly and voluntarily, rather the **said consent was given under compulsion and duress just to avoid demurrage charges.**

13. The Hon'ble Supreme Court of India in case of **M/s Century Metal Recycling Pvt. Ltd. reported at 2019 (367) ELT 3 (S.C.)** has allowed the Party's Appeal by holding that without rejecting the transaction value, the assessable value cannot be enhanced on the basis of Valuation Alert issued by DGV even though the appellant has consented for enhancement of assessable value, as the same is contrary to law.

14. **The Hon'ble CESTAT Delhi in the case of M/s Ankit Electronics reported at 2013 (294) ELT 336 (Tri. Del)** has held as under:

> *"5. We however, do not agree with the above contention of the Revenue. The said circular itself makes it clear that proper officer is required to intimate in writing the grounds for enhancing the value and a reasonable opportunity is required to be given to the importer before the final decision is taken. It is only in those cases where both the sides agree to resort to enhancement of value. That no orders are required to be passed.* ***Merely because the importer has cleared the goods at enhanced value to save the demurrage charges or otherwise, by itself, does not mean that the importer is consenting to enhance the value. It is right of the importer to contest the***

enhancement and fact of clearance of goods, cannot preclude the importer from exercising the right of appeal. As such, we find no merit in the Revenue's appeal."

15. The appellant further submitted that all the issues/grounds taken up by the Adjudicating Authority in the impugned order was taken up by the appellant with the jurisdiction Ahmedabad Tribunal in the appellant's own case on the identical issue, **the jurisdiction Ahmedabad Tribunal vide its order dated 27.05.2020 has categorically held that without rejecting the transaction value, value cannot be enhanced either on the basis of consent or on the basis of DGV Circular without higher contemporary import price.** In other words, the Hon'ble Ahmedabad Tribunal has already dealt with every issue raised by the Adjudicating Authority in the impugned order. **The said jurisdiction Ahmedabad Tribunal's order was specifically brought to the notice of the Adjudicating Authority and also the fact that the said order has been accepted by the Principal Commissioner of Customs Ahmedabad but the Adjudicating Authority in utter disregards and disrespect to the higher Appellate Authority order on identical issue in the appellant own case, not only dis-obeyed the same but also did not give any reasons as to why the Hon'ble Ahmedabad Tribunal order in the appellant's case on Identical Issue was not followed by him.**

Gist of Additional Submissions

16. The appellant further submitted that the next issue is can the transaction value be rejected if there is no contemporaneous import at higher price. In this connection it is submitted that the adjudicating authority in para 10.3 of page 32, 33 & 34 of her order has gave details of contemporaneous import price of similar items imported from the same countries as well as other countries during the period from May 2019 to December 2019 to conclude that even the lower quality of the Scrap in terms of ISRI specification was imported at much higher price than of the declared value of the said importer. When these facts of the adjudicating authority were checked and verified, it was found that the price per MT indicated in the table to the said para was **not the contemporaneous import price or the transaction value (i.e. the price actually paid by the importer to the exporter abroad)** as held by the adjudicating authority rather the said price has been arrived on the basis of DGV Circular dated 15.11.2018. In other words, price per MT indicated in the table to the said para is the enhanced price worked out on the basis of DGV Circular and not the transaction value or the contemporaneous import price. To prove this, the appellant could lay hands on 2 such bills of entry no. 3314816 dated 20.05.2019 and 3323196 dated 21.05.2019, referred to in the table at page 32 of her order. **Price per MT in these bills of**

entry has been indicated to be 1364 USD per MT (bill of entry no. 3314816 dated 20.05.2019, total assessable value is USD 28856.784, total quantity is 21.156 MT, assessable value per MT works out to USD 1364; and in respect of bill of entry no. 3323196 dated 21.05.2019, total assessable value is USD 28386.204, total quantity is 20.811 MT, assessable value per MT works out to USD 1364); **whereas, the transaction value as shown by the said importer, as evident from the bills of entry, works out to USD 1135 per MT** (bill of entry no. 3314816 dated 20.05.2019, total invoice value is USD 24012.06, total quantity is 21.156 MT, thus the invoice value per MT works out to USD 1135; and in respect of bill of entry no. 3323196 dated 21.05.2019, total invoice value is USD 23620.49, total quantity is 20.811 MT, thus the invoice value per MT works out to USD 1135 (copy of both the bills of entry enclosed by the appellant as evidence). Thus, the finding of the adjudicating authority that the assessable value has been correctly enhanced relying on the contemporaneous import data, is not factually correct.

17. In view of the above submissions, the appellant has requested to set aside the impugned order, through which the value declared by the appellant has been enhanced for the purpose of assessment.

Personal Hearing

18. Personal Hearing in this matter was held on 17.06.2025, which was attended by Shri Deepak Kumar, Consultant, on behalf of the appellant company. He reiterated the written submissions made at the time of filing of appeal. He informed that additional written submissions will be submitted within 10 days. Later, vide letter dated 24.06.2025, he submitted Additional Submissions, which have been mentioned hereinabove in brief.

Discussion and Findings:

19. I have carefully gone through the impugned order 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 impugned order towards enhancement of value for the assessment of impugned 19 Bills of Entry is legal and proper or not.

20. I have seen the **Consent Letter** dated 07.11.2019 given by the appellant for enhancement of value, which has been reproduced in Para 8.3 of the impugned order. The said Consent Letter has been given by the appellant for the Bill of Entry No. 5692248 dated 07.11.2019, in which it has been mentioned by the appellant that **they had requested the Appraising Officer to accept their Transaction Value, but the appraising officer relying**

on the Circular dated 15/11/2018 No. VAL/TECH/10/2018 had enhanced the assessable value. The appellant importer has further mentioned that **in order to avoid detention charges of their container, they accept the loading.** I am of the view that this Consent Letter cannot be termed as voluntary acceptance of enhanced value. By obtaining the said Consent Letter, the right of the importer to challenge enhancement of value cannot be taken away.

21. As regard payment of duty voluntarily, i.e. **not Under Protest**, I observe that if the importer pays duty 'Under Protest', the time-limit for claiming refund within the limitation period of one year shall not be applicable as per the Second Proviso to Section 27(1) of the Customs Act, 1962. Whereas, the present case is not related to refund. Therefore, I find that there is no requirement to pay duty 'Under Protest' to file appeal against enhancement of value within prescribed time limit.

22. As regards enhancement of value on the basis of communication received from Directorate General of Valuation (**'DGoV'**), it can be seen from the earlier Order-In-Original dated 27.10.2010 that the declared value of all the Bills of Entry had been enhanced on the basis of letter F.No. VAL/Tech/10/2018 (Al Scrap) dated 15.11.2018 issued by DGoV, New Delhi. In the impugned Order-In-Original dated 30.04.2024 also, it has been mentioned that the value has been enhanced relying upon contemporary import data, LME data as well as Guidelines issued by DGoV. Particulars of LME price and applicable discount to arrive at enhanced assessable value has been shown in a Table given at Para 9.3 of the impugned order. As regards enhancement of value merely on the basis of guidelines issued by DGoV or on the basis of LME price, there are several case law pronounced by higher forums, as mentioned hereinabove, in which it has been held that enhancement of value merely on the basis of DGoV guidelines or LME price is not sustainable. In addition to the judgments/orders relied upon by the appellant, some other orders on this issue are also being mentioned in subsequent paragraphs of this order.

23. 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 Bulletin without any corroborative evidence of imports at or near that price, which was not held permissible by the Tribunal. Against this order, Customs Department had filed a 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.

24. 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' and they are not of prime quality metals. However, in the Table given at Para 9.3 of the impugned order, discount in the range of 22.84% to 28.32% has been deducted from the LME price to arrive at Assessable Value. Although discount has been given in the impugned order, I am of the view that valuation of the scrap MERELY based upon LME price less discount, is not sustainable, without following the method prescribed under the Customs Valuation Rules, 2007.

25. Further, I find that in the present case, the declared value has not been rejected by following Rule 12 of the Customs Valuation Rules, 2007. In absence of exercise of rejection of declared value and determination of assessable value by applying Valuation Rules sequentially, the enhancement of value is not sustainable. I find that in the appellant's own case, titled as ***Guru Rajendra Metalloys India Pvt. Ltd. Versus Commr. of Customs, Ahmedabad,*** vide Final Order Final Order Nos. A/10889-11025/2020-WZB/AHD, dated 29-5-2020 [2020 (374) E.L.T. 617 (Tri. - Ahmd.)], Hon'ble CESTAT, Ahmedabad, has observed and held as under:

> *"4.11 In the case of Modern Manufacturers (supra) this Tribunal dealing with identical issue held that enhancement of value of imported goods based on NIDB data and circular issued by DGOV without rejecting declared value under Rule 12 of Customs*

Valuation Rules, 2007. Redetermination of value based on NIDB data and DGOV circular is not sustainable. In the present case, no exercise of rejecting the declared value under Rule 12 and process of applying Valuation Rules sequentially were followed. Therefore, the value declared by the appellant has to be accepted."

The above-mentioned Final Order in appellant's own case (for earlier imports) has not been stayed, set aside or overruled by any higher forum. Therefore, the ratio of the said Final Order passed by the jurisdictional Tribunal is required to be followed by observing judicial discipline.

26. The Case law relied upon by the appellant, as mentioned hereinabove, are in favour of them and required to be followed. In addition to the same, I rely upon the following Orders/Judgments.

27. 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, [2023 (3) TMI 1080 - CESTAT AHMEDABAD] 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.

28. I also rely upon 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."*

29.1 In the impugned order, in Para 10.3, four Bills of Entry have been relied upon as **contemporaneous imports** during the month of May-2019. Out of them, I have seen copies of bills of entry no. 3314816 dated 20.05.2019 and 3323196 dated 21.05.2019, which have been submitted by the appellant. Particulars of these Bills of Entry, both filed by M/s. Arfin India Ltd., are mentioned below:

Table-2

BE No. & Date	Quantity in MT	Invoice Value in USD	Invoice Unit Value per MT in USD	Assessable Value in USD	Unit Assessable Value per MT in USD
3314816 dated 20.05.19	21.156	24012.06	1135	28856.784	1364
3323196 dated 21.05.19	20.811	23620.49	1135	28386.204	1364

29.2 **In view of the above, I agree with the submission of the appellant that the value of contemporaneous import adopted in the impugned order is the loaded/enhanced value determined by Customs officer, not invoice based transaction value declared by M/s. Arfin India Ltd.**

29.3 Rule 4(1)(a) of the Customs Valuation Rules, 2007 for imported goods, prescribes that subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time. Thus, this rule provides for adoption of 'transaction value' of identical goods; whereas, in the impugned order, the loaded value i.e. enhanced value, of identical or similar goods has been adopted, which cannot be termed as 'transaction value'.

29.4 In this regard, I place reliance on the Final Order No. C/28317 to 28326 /2013-DB dated 08.09.2015 passed by Hon'ble CESTAT in the case of ***Suvee Impex Pvt Ltd Versus Commissioner of Customs and Service Tax Bangalore*** [2015 (12) TMI 653 - CESTAT BANGALORE]. Para 7 of the said Order is as follows:

> *"7. There is no reference by the Revenue to any contemporaneous import declaring the price of identical goods at a higher value. The only reference is to those imports where the value was enhanced by the Customs Authorities based upon the letter of Commissioner of Customs (Imports) Nhava Sheva, Bombay.* ***Merely because the value was enhanced by the Customs, the same would not become contemporaneous imports.*** *In the present case also, the Customs have enhanced the value and the present enhancement cannot be considered to be contemporaneous for the other subsequent imports."*

29.5 In the case on hand also, the impugned order has adopted the value of those imports, where the value was enhanced by the Customs Authorities, not the originally declared transaction value. The value was enhanced by the Customs in other cases, could not become value of contemporaneous imports.

29.6 Thus, I am of the considered view that the adjudicating authority has erred in relying upon loaded/enhanced value of other Bills of Entry as contemporaneous import value in the impugned order.

30.1 I observe that the adjudicating authority has relied upon the Final Order No. 51584-51619 / 2020 dated 20.10.2020 passed by Hon'ble CESTAT in the case of ***Commissioner of Customs Delhi Vs. Hanuman Prasad & Sons*** [(2024) 17 Centax 473 (Tri.-Del) = 2020 (12) TMI 1092 - CESTAT NEW DELHI]. In the said Final Order dated 20.10.2020 it has been held to the effect that when the enhanced value has been accepted by the importer in writing without any protest, the declared value automatically stood rejected; and it is not necessary for assessing officer to determine the value in the manner provided in Rules 4 to 9 of the Valuation Rules sequentially. Thus, Hon'ble CESTAT, New Delhi, had decided the appeal in favour of Revenue vide order dated 20.10.2020.

30.2 In this regard, I find that the said issue was challenged by the importers viz. M/s. Niraj Silk Mills, M/s. Hanuman Prasad and Sons and Others before Hon'ble Delhi High Court of Delhi by filing appeal numbers CUSAA 26/2022 and others. Vide Judgment dated 27.11.2024, **Hon'ble Delhi High Court,** in the case of ***M/s. Niraj Silk Mills, Hanuman Prasad and Sons and Others Vs. Commissioner of Customs (ICD) Patparganj, New Delhi***, [2024 (11) TMI 1361 - DELHI HIGH COURT], observed and held 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."

30.3 **Thus, the view taken in the Final Order dated 20.10.2020 of Hon'ble CESTAT, New Delhi, in the case of Hanuman Prasad and Sons (supra) stands overruled by Hon'ble High Court of Delhi vide the aforesaid Judgment dated 27.11.2024.**

31. I find that the ratio of the above-mentioned Orders/Judgments pronounced by the higher forums is squarely applicable to the present case. Therefore, the impugned order passed towards enhancement of value, relying upon LME price, DGoV Guideline and loaded/enhanced value of other Bills of Entry, is not legal and proper in terms of Section 14(1) of the Customs Act, 1962 and Rules 3, 4, 5 & 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 read with above-mentioned decisions of higher forums.

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

Order

32.1 I set aside the Order-in-Original No. 02/DC/ICD-SND/2023-24 dated 30.04.2024 passed by the Deputy Commissioner of Customs, ICD-Sanand, and I direct the adjudicating authority to re-assess the impugned 19 Bills of Entry on the invoice based transaction value declared by the appellant; and communicate the particulars re-assessment to the appellant within a period of 90 days from the date of receipt of this order.

32.2 The appeal filed by M/s. Guru Rajendra Metalloys India Pvt. Ltd. is hereby allowed with consequential relief, in accordance with law.

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

F.No. S/49-115/CUS/AHD/2024-25

Date: 23.12.2025

By E-mail (As per Section 153(1)(c) of the Customs Act, 1962)

To
M/s. Guru Rajendra Metalloys India Pvt. Ltd.
101, G R House, 8, Gautam Vihar Society, Aroma School Road,
Usmanpura, Ahmedabad – 380013
(Email: jayant@grmetal.in)



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
   (email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
   (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)

3. The Deputy/Assistant Commissioner of Customs, ICD-Sanand.
   (email: customs-sanand@gov.in)

4. M/s. Tax-O-Legal Services (India) Pvt. Ltd., Ahmedabad. (taxolegal@gmail.com)

5. Guard File.

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