



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD

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

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20250971MN000000BE1F

क	फाइल संख्या FILE NO.	F.No. S/49-196 to 198/CUS/AHD/2024-25 (03 Appeals) F.No. S/49-200 to 215/CUS/AHD/2024-25 (16 Appeals) F.No. S/49-220 to 224/CUS/AHD/2024-25 (05 Appeals) F.No. S/49-236 to 241/CUS/AHD/2024-25 (06 Appeals)																																																																
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-179 to 208-25-26																																																																
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD																																																																
घ	दिनांक DATE	01.09.2025																																																																
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	<p>Reassessment of following 30 Bills of Entry filed with ICD, Thar Dry Port, Sanand (Reassessment without Speaking Order):</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Appeal No. of 2024-25</th> <th>BE No.</th> <th>BE Date</th> </tr> </thead> <tbody> <tr><td>1</td><td>196</td><td>4496600</td><td>13-07-2024</td></tr> <tr><td>2</td><td>197</td><td>4411272</td><td>09-07-2024</td></tr> <tr><td>3</td><td>198</td><td>4502396</td><td>15-07-2024</td></tr> <tr><td>4</td><td>200</td><td>4880016</td><td>05-08-2024</td></tr> <tr><td>5</td><td>201</td><td>4785225</td><td>30-07-2024</td></tr> <tr><td>6</td><td>202</td><td>4879845</td><td>05-08-2024</td></tr> <tr><td>7</td><td>203</td><td>4792850</td><td>31-07-2024</td></tr> <tr><td>8</td><td>204</td><td>4616916</td><td>20-07-2024</td></tr> <tr><td>9</td><td>205</td><td>4616700</td><td>20-07-2024</td></tr> <tr><td>10</td><td>206</td><td>4522956</td><td>16-07-2024</td></tr> <tr><td>11</td><td>207</td><td>4617478</td><td>20-07-2024</td></tr> <tr><td>12</td><td>208</td><td>4785307</td><td>30-07-2024</td></tr> <tr><td>13</td><td>209</td><td>4879719</td><td>05-08-2024</td></tr> <tr><td>14</td><td>210</td><td>4643842</td><td>22-07-2024</td></tr> <tr><td>15</td><td>211</td><td>4616484</td><td>20-07-2024</td></tr> </tbody> </table>	Sr. No.	Appeal No. of 2024-25	BE No.	BE Date	1	196	4496600	13-07-2024	2	197	4411272	09-07-2024	3	198	4502396	15-07-2024	4	200	4880016	05-08-2024	5	201	4785225	30-07-2024	6	202	4879845	05-08-2024	7	203	4792850	31-07-2024	8	204	4616916	20-07-2024	9	205	4616700	20-07-2024	10	206	4522956	16-07-2024	11	207	4617478	20-07-2024	12	208	4785307	30-07-2024	13	209	4879719	05-08-2024	14	210	4643842	22-07-2024	15	211	4616484	20-07-2024
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17	213	4523515	16-07-2024		
18	214	4618235	20-07-2024		
19	215	4523338	16-07-2024		
20	220	5381986	02-09-2024		
21	221	5431609	05-09-2024		
22	222	5125626	19-08-2024		
23	223	5181672	22-08-2024		
24	224	5277075	27-08-2024		
25	236	5874555	30-09-2024		
26	237	5704584	20-09-2024		
27	238	5661309	18-09-2024		
28	239	5585964	13-09-2024		
29	240	5598146	14-09-2024		
30	241	5618201	15-09-2024		
अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:					01.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:				M/s. Arfin India Ltd., Plot No. 118/1,2,3,4 and Plot No. 117/3,6,7, Ravi Industrial Estate, B/h. Hotel Prestige, Bileshwarpura, Chhatral, Dist. Gandhinagar - 382729.
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 (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.				
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.				
	निम्नलिखित सम्बन्धित आदेश/Order relating to :				
(क)	बैगेज के रूप में आयातित कोई माल.				
(a)	any goods imported on baggage.				
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.				
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.				



(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।				
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.				
3.	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 दस्तावेजों 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 जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। यदि शुल्क, मांगा गया 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 सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केंद्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।				
	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 :				
	<table border="0"> <tr> <td>सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
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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 ब्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार 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 रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार 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 रुपए से अधिक हो तो; दस हजार 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. Arfin India Ltd., Plot No. 118/1,2,3,4 and Plot No. 117/3,6,7, Ravi Industrial Estate, B/h. Hotel Prestige, Bileshwarpura, Chhatral, Dist. Gandhinagar - 382729 (hereinafter referred to as 'the appellant' or 'the importer') has filed the present 30 appeals against Reassessment of 30 Bills of Entry filed with Customs, Thar Dry Port, ICD-Sanand. No speaking order has been passed towards the reassessment of the said Bills of Entry. Particulars of the said Bills of Entry are as under (hereinafter referred to as 'the impugned Bills of Entry'):

Table-1

Sr. No.	Appeal No. of 2024-25	BE No.	BE Date	Date of Assessment	Date of payment	Date of filing appeal	No. of days from date of Assessment	Delay in filing appeal beyond 60 days
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]
[A] Appeals filed within normal period of 60 days from the date of assessment								
1	220	5381986	02-09-2024	19-09-2024	20-09-2024	11-11-2024	53	---
2	221	5431609	05-09-2024	21-09-2024	26-09-2024	11-11-2024	51	---
3	236	5874555	30-09-2024	19-10-2024	22-10-2024	27-11-2024	39	---
4	237	5704584	20-09-2024	08-10-2024	09-10-2024	27-11-2024	50	---
5	238	5661309	18-09-2024	30-09-2024	09-10-2024	27-11-2024	58	---
6	240	5598146	14-09-2024	30-09-2024	01-10-2024	27-11-2024	58	---
[B] Appeals filed within condonable period of 60 + 30 days from the date of assessment								
7	200	4880016	05-08-2024	12-08-2024	29-08-2024	28-10-2024	77	17
8	201	4785225	30-07-2024	03-08-2024	30-08-2024	28-10-2024	86	26
9	202	4879845	05-08-2024	12-08-2024	29-08-2024	28-10-2024	77	17
10	203	4792850	31-07-2024	12-08-2024	29-08-2024	28-10-2024	77	17
11	208	4785307	30-07-2024	03-08-2024	28-08-2024	28-10-2024	86	26
12	209	4879719	05-08-2024	12-08-2024	29-08-2024	28-10-2024	77	17
13	210	4643842	22-07-2024	01-08-2024	22-08-2024	28-10-2024	88	28
14	222	5125626	19-08-2024	03-09-2024	05-09-2024	11-11-2024	69	9
15	223	5181672	22-08-2024	03-09-2024	05-09-2024	11-11-2024	69	9
16	224	5277075	27-08-2024	05-09-2024	17-09-2024	11-11-2024	67	7
17	239	5585964	13-09-2024	26-09-2024	01-10-2024	27-11-2024	62	2
18	241	5618201	15-09-2024	23-09-2024	01-10-2024	27-11-2024	65	5
[C] Appeals filed within beyond condonable period of 60+30 days from date of assessment								
19	196	4496600	13-07-2024	24-07-2024	27-07-2024	25-10-2024	93	33
20	197	4411272	09-07-2024	24-07-2024	27-07-2024	25-10-2024	93	33
21	198	4502396	15-07-2024	24-07-2024	27-07-2024	25-10-2024	93	33
22	204	4616916	20-07-2024	27-07-2024	14-08-2024	28-10-2024	93	33
23	205	4616700	20-07-2024	27-07-2024	14-08-2024	28-10-2024	93	33
24	206	4522956	16-07-2024	24-07-2024	05-08-2024	28-10-2024	96	36
25	207	4617478	20-07-2024	27-07-2024	14-08-2024	28-10-2024	93	33



26	211	4616484	20-07-2024	27-07-2024	14-08-2024	28-10-2024	93	33
27	212	4523857	16-07-2024	24-07-2024	14-08-2024	28-10-2024	96	36
28	213	4523515	16-07-2024	24-07-2024	14-08-2024	28-10-2024	96	36
29	214	4618235	20-07-2024	27-07-2024	28-08-2024	28-10-2024	93	33
30	215	4523338	16-07-2024	24-07-2024	14-08-2024	28-10-2024	96	36

2. Facts of the case, in brief, are that the appellant is engaged in import of various types of Scarps i.e. Aluminium Scrap of different grades, Titanium Scrap and Ferro Silicon Calcium, for which they have filed Bills of Entry with Customs, Thar Dry Port, ICD-Sanand. As per the submissions of appellant, the self-assessed Bills of Entry were selected by the EDI System for the purpose of verification of the declaration made. During re-assessment of impugned Bills of Entry, the assessing officer has enhanced the value of goods as prescribed under Section 17(4) of the Customs Act, 1962. According to the appellant, the assessing officer has not followed the procedure as prescribed for rejection of the transaction value under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('CVR 2007', in short). Considering the urgency of the requirement of the material and to save from amount of demurrage and detention charges, the appellant got the goods cleared by paying the duty on higher values as assessed by the officer. The appellant further submitted that, in order to avoid the unnecessary delay and levy of detention charges, they have accepted the price loading as per DG Valuation ('DGV' for short) Guidelines Circular No. VAL/Tech/10/2018 dated 15.11.2018 by giving consent/online declaration to enhance the value. Only after the said value enhancement, the officer allowed clearance of the imported consignments.

3. Being dissatisfied and aggrieved by the impugned assessments, the appellant has filed the present appeals. As the Grounds of Appeal for all the appeals are similar, Grounds of Appeal for the Bill of Entry No. 5598146 dated 14.09.2024 are mentioned below for sake of brevity.

Grounds of Appeal

4. In this case, the issue for consideration is whether rejection of the transaction value of various types of imported Aluminum Scrap is valid, and whether the assessable value can be enhanced on the basis of DGV Circular dated 15.11.2018 on the ground that the appellant has consented for the same, as held by the Assessing Authority.

5. In this connection, it is stated that in respect of import of various types of Aluminum Scrap, the transaction value is not being accepted as a practice by the Assessing Officer; and



in order to avoid delay in clearances leading to excessive demurrage, the assessees are being asked to give a consent/online declaration, providing consent for the enhanced value arrived on the basis of Valuation Guidelines issued by DGV. Thus, to expedite the clearance of Aluminum Scrap and thereby avoid demurrages, the present appellant also started giving the consent for enhancement of Value.

6. In fact, this very issue was decided by **Hon'ble Ahmedabad Tribunal vide Para 4.1 of its order dated 29.05.2020 in case of M/s Guru Rajendra Metalloys India Pvt. Ltd.** Relevant portion of the said order is reproduced as 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."

7. **As regards to the challenge that once consent letter is given by the appellant they cannot challenge the same.** It has been the view of the Assessing Officer that since "Bill of Entry was assessed at enhanced rate as per the consent/online declaration of the importer and only after the value enhancement was accepted by the importer", **This issue came up for consideration in following cases:**

7.1 **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.



7.2 **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.**

7.3 **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.

7.4 **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 are found to be incorrect.

7.5 **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.

8. **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)** - has 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.

9. With regard to the enhanced assessed values finally taken up by the Department rather than the transaction values originally provided for by the respective importers provides a wrong picture to contest that the contemporaneous import data was available in order to reject appellant's transaction value so as to enhance it. The position of the assessing officer 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 similar case of M/s Guru Rajendra Metalloys India Pvt. Ltd., which has been accepted by the Department.

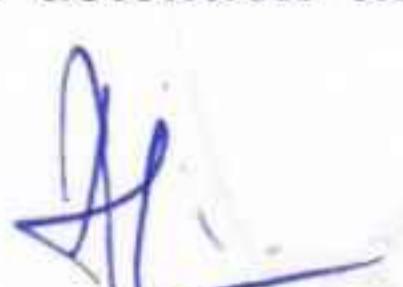
10. With respect to enhancement of transaction value in absence of any objection, the appellant submitted that according to the Rule 12 of the Customs Valuation (Determination of Price of imported Goods) Rules, 2007, the proper officer has to intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard. The relevant Rule 12 of the Customs Valuation Rules, 2007 is reproduced as under:

"Rule 12(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)."

In appellant's case, the grounds for doubting the truth or accuracy of the transaction value are not just baseless but also bad in law as well as erroneous. Further if there had been any contemporary import at or about the same time, the officer should have intimated such import details in writing and should have given the opportunity of being heard.

11. In fact, at the time of filing the bill of entry, the appellant was showing the transaction value only and accordingly the assessable value based on the said transaction value automatically gets shown in the System. In order to avoid detention charges of their



containers, the appellant accepted the loading as per above and therefore the Assessing Officer has been enhancing the assessable value based on said consent/online declaration, which was arrived at on the basis of DGV Circular dated 15.11.2018. In other words, the enhanced assessable value was never shown by the appellant in the bills of entry, but was arrived at by the assessing officer on the basis of enhancement.

12. Therefore, the rejection of the transaction value by enhancing the same as indicated above, that the price declared by the importer was low and prime facie questionable having due regard to the information relating to the price of identical/ similar goods available on record, **is without any basis as no evidence in support of the same has been given by the Assessing Authority.**

13. **The issue as to whether without rejecting the transaction value, can the assessable value be enhanced without giving details of the contemporaneous import, came up for consideration in the following cases:**

a) **The Hon'ble Supreme Court of India in case of M/s Prabhudayal Premchand, in para 4 of the Order upheld the Hon'ble Tribunal finding as below:**

"4.

In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy Commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. Therefore, assessment in this case has to be taken as having been made purely on the basis of LME Bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allowed the appeal."

b) **The 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 has held as under:**

"7. Thus, without any specific evidence of contemporaneous imports, the assertion of contemporaneous price is baseless. The Order in Original does not disclose the documents, the data, quantity, price, etc. of the contemporaneous import. In these circumstances, following the decision of the Hon'ble Apex Court, we hold that the Order in Original was without any evidence. The Commissioner



(Appeals) has rightly set aside the demand. The appeal filed by the Revenue is therefore, dismissed."

Considering the above judgement, since in the appellant case also details of the genuine contemporaneous imports are not available, therefore, rejection of the transaction value is not valid.

14. As regards *no protest from the appellant as it could be seen from the consent/online declaration* it is stated that only because the word protest is not appearing in the consent/online declarations, can it mean that the appellant was not protesting the non-acceptance of transaction value. The protest may be in any form and any context made while filing the bills of entry. **The Hon'ble CESTAT Ahmedabad Final Order No. A/10955/2019 dated 03.06.2019 in case of M/s Basf India Ltd** has explained as to what would be treated as under protest by holding as under:

"4.

In case of Indian Cements Ltd. (1989) 2 SCC 676, the Apex Court has held that where an assessee raises an objection about the levy and the department has insisted for payment, the letter has to be considered as protest. In case of Indian Pistons Ltd. 1990 (46) ELT 3 (SC), the Apex Court while granting refund held that there is no prescribed form of protest. In case of Tamil Nadu Petro Products 2008 (226) ELT 51 (Mad.), the Hon'ble High Court held that the making of representation in that case the same has to be understood as protest. Similarly in case of Arignar Anna Sugar Mills 2012 (277) ELT 63 (Mad.), the Hon'ble High Court has held that it is immaterial that procedure prescribed under Rule 233B of erstwhile Central Excise Rules was not followed. In the present case we find that the intention of the Appellant making reversal "Under protest" was apparent from content of their letter. In case of Shree Shyam Filaments 2014 (303) ELT 195 (RAJ.), the Hon'ble High Court has held that the requirement of Section 233B of erstwhile rules cannot be construed in a narrow or hyper technical manner and essential what is required that substantively there has to be protest in writing. Further as held in case of USV Ltd. 2007 (210) ELT 376 (TRI) the reversal of credit was done to avail benefit under FTP Scheme and not under the provisions of Central Excise Act or Rules framed there under. In case of Delhi Bottling Co. Pvt. Ltd 1995 (76) ELT 635 (TRI), the Tribunal has held that letter of assessee clearly indicating entitlement to benefit of Notification No. 30/72 and duty to avoid official displeasure amounts to protest. We find



that the same are the circumstances in the case in hand and therefore the letter of the Appellant has to be construed as intimation of payment "Under Protest".

In this case the appellant has already stated that they through their Association had made various representations to Custom Authorities requesting for assessment of Aluminum Scrap on transaction value. As such the appellant has been continuously protesting for non-acceptance of transaction value of imported Aluminum Scrap by the Customs Authorities of Ahmedabad.

15. Reliance is placed by the appellant on the following judgements since **no cogent reasons has been given by the Assessing Officers in the impugned order for rejecting the transaction values and enhancement of assessable values without contemporaneous import price, the said rejection of transaction value of said Bill of Entry be set aside.**

(i) **The Hon'ble Supreme Court of India in case of M/s Sanjivani Non-Ferrous Trading Pvt. Ltd.**, did not agree to the request of the appellant that appeal could not have been allowed straightway by accepting the transaction value and the Hon'ble Tribunal should have remanded the matter back to the assessing officer for examining the matter as he had failed to examine the evidence that was available with the Department. Accordingly, Hon'ble Supreme Court rejected the Department appeal on merit.

(ii) **The Hon'ble Tribunal, Mumbai in case of M/s Nico Extrusions Pvt. Ltd.** has rejected the appellant request for remand of the case as no speaking order was passed by holding that since the assessing authority has enhanced the declared value without any contemporary import at higher value it has been rightly set aside by the learned Commissioner (Appeals).

(iii) **The Hon'ble Supreme Court of India in case of M/s Century Metals Recycling Pvt. Ltd.** which is identical to the case of the appellant wherein also without rejecting the transaction value, the assessable value was enhanced on the basis of Alerts issued by DGV and on the consent of the importer and not on the basis of contemporary import, has set aside the order as it was contrary to law since it did not give any cogent and valid reasons in terms of Section 14(1) read with Rule 12 of CVR, 2007 for rejecting the transaction value as declared in the bill of entry.



16. *Regarding consenting to the enhanced value under protest to avoid detention charges* the appellant submitted that without having any proof that the transaction value is inaccurate or there is contemporary import at or about the same time, the said value enhancement is totally erroneous and bad in law. The appellant has indicated transaction/invoice value only and in a separate consent/online declaration given with the bill of entry, they have indicated the enhanced assessable value also because the transaction value was not being accepted; that therefore the Assessing Officer 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 Assessing Officer had proceeded with the enhanced assessable value based on the consent/online declarations given by the appellant, knowing fully well that the enhanced values given in the consent/online declarations is not the contemporaneous import price but is the value arrived on the basis of DGV 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**. As the appellant is regular importer of the Aluminum Scrap and thus if the said goods are not cleared in time, heavy demurrage charges would have to be paid. In this regards the appellant relies on the various case laws detailed as below wherein it was held that there cannot be any consent against the settled law:

a) 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.

b) The Hon'ble CESTAT Mumbai in case of **M/s Andrew Telecommunication Pvt. Ltd. reported at 2018 (362) ELT 896 (Tri Mum)** has held that:

"5. The assessing authority places reliance on the price of the base metal published in bulletin of the London Metal Exchange and the consent of the importer to adopt that as the base for re-determination. However, it cannot be lost sight of that the clearance was ordered to be held up on the basis of raw



material prices in the said bulletin when the goods under import were manufactured products. The rationale for the comparatively low prices was claimed to lie in the supply contracts to which importers had drawn the attention of the assessing officer who, however, chose to disregard these. We find that the resort to prices of base metal to reject the declared price of manufactured goods, particularly, in the light of an explanation offered and not disputed is not in accordance with Section 14 of Customs Act, 1962. **Consent at gun-point is no consent and consent of any sort cannot condone deviation from the law."**

c) 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."

As the consent by the appellant was not voluntarily given but was given under compulsion & duress so as to avoid delay in clearance leading to demurrage, so the consent cannot condone deviation from the law.

17. The appellant further contended that Section 12 of the Customs Act, 1962, is charging Section of the said Act and it provides that duty of the customs shall be levied on goods imported to India or exported from India. Section 14(1) of the said Act provides that the assessment of the duty is to be made on value of the goods. Value of the goods will be fixed by the Central Government under Section 14(2) of the said Act. Where the value is not so fixed, the value will be determined as per provisions of Section 14(1) of the said Act. Section 14(1) provides that the value of the imported goods would be the transaction value of such imported goods i.e., to say the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of the removal. In other words, the



transaction value will be the actual price paid for the imported goods. Section 14 provides that the actual price paid or payable by the importer to the supplier of the goods will be considered if the following conditions are complied with:

- 1) The price should be paid or payable for the goods when sold for export to India;
- 2) The price should be for delivery at the time and place of importation;
- 3) The buyer and seller of the goods are not related;
- 4) The price should be the sole consideration.

That if the above 4 conditions have been complied with by the importer and there is no evidence for mis-declaration in value of the imported goods, the assessing officer is bound to accept the price declared by the importer in the bill of entry. The proviso to Section 14 provides that Rules made under Section 14 is applicable in a case when any one of the conditions provided in Section 14 (1) has not been complied with.

18. That Rule 12 of the Custom Valuation Rules, 2007 provides the circumstances under which the assessing officer can reject the declared value. It provides that when the assessing officer has reason to believe about the truth or accuracy of the value declared in relation to imported goods, then the value should not be determined in terms of Rule 3(1) of the Valuation Rules. Rule 3(4) provides that if the value cannot be determined under the provisions of sub rule (1), the value shall be determined by proceedings sequentially from Rule 4 to 9. In the present case, appellant declared the correct value in terms of Section 14. The assessing officer has not disputed the accuracy and truth of the value declared by the importer. In such circumstances, the assessing officer cannot reject the transaction value declared by the importer.

19. The appellant further contended that the assessing officer has power to reject the transaction value only if he has doubt about the accuracy and truth of the declared value. Even if the value is rejected after having reasonable doubt, the assessing officer is bound to follow Rule 4 to 9 sequentially for ascertaining correct value of the imported goods. Rule 4 provides that 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 as the goods being valued. In case the transaction value of the identical goods is not ascertainable, value of the imported goods will be determined in terms of Rule 5 which provides the value of imported goods shall be the transaction value of similar goods sold for export to India and to import at the same time. In case the value of similar value is not ascertainable, value can be determined in terms



of Rule 6 which provides that the value shall be determined in terms of Rule 7 and if the value cannot be determined under Rule 7, the value should be determined in terms of Rule 8. Rule 7 deals with deductive value whereas Rule 8 deals with computed value. In case value of imported goods cannot be determined under the provisions of any of the preceding Rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules and based on data available in India.

20. The appellant has further stated that in the present case, the assessing officer without following due process of law as provided in Section 14 of the said Act and Customs Valuation Rules 2007, assessed the bill of entry by rejecting the transaction values and enhanced the declared values. Such action of the assessing officer for assessing the bills of entry is not only without the following the principle of natural justice but is also contrary to the provision of Section 14 read with Rule 12 of the Customs Valuation Rules, 2007 which specifies the situation when value can be rejected. The Assessing authority forgot to follow the provisions of Rule 5 wherein it has been clearly provided that in case the transaction value of the identical goods is not ascertainable, value of the imported goods will be determined as per Rule 5 which provides that the value of imported goods shall be the transaction value of similar goods sold for export to India and to import at the same time. However, the Assessing authority used the enhanced assessed values as contemporaneous data instead of the actual transaction values.

21. That in the case of **Eicher Tractors Ltd. Vs. Commissioner of Customs reported in 2000 (12) ELT 321 (SC)**, the Hon'ble Supreme Court held in para 13 that when the value of the imported goods cannot be determined under any of the provisions of the Customs Valuation Rules, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India. It further provides that these Valuation Rules will be applicable only when transaction value under Rule 4 is rejected and then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the said Rules.

22. That the assessing officer ought to have appreciated that **the price of the Aluminum Scrap depends on the negotiation between the buyer and the seller, and the price is decided on the basis of market condition, demand and supply, content of aluminum and the expected recovery of the aluminum from such scrap.** In absence of examination



of any of such criteria, the action of the assessing officer for rejecting the transaction value is contrary to the provisions of law.

23. That the assessing officer as provided under Section 17 of the Customs Act, 1962 has to examine the contract, insurance policy and other relevant documents to ascertain the duty leviable on the imported goods. Although the assessing officer accepted the document filed by the appellant for ascertaining the value of the goods for the purpose of levy of duty yet rejected the transaction value without any reasoning thereof.

24. That the Hon'ble **CESTAT Regional Bench, Allahabad in case of M/s Sanjivani Non-Ferrous Trading Pvt. Ltd. reported at 2017(7) GSTL 82(Tri. All.)** has rejected the enhancement of Value of Aluminum Waste & Scrap as no reasons were provided for rejection of the transaction value; as authority has failed to establish as to how the enhancement of the assessable value was in accordance with the provisions of Section 14 of the Customs Act, 1962 and that the value was enhanced for purpose of assessment on the basis of consideration, which have no authority of law.

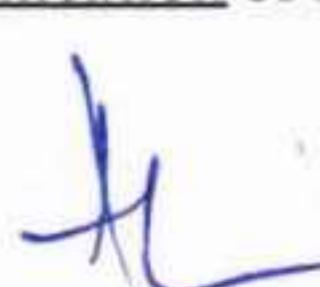
25. In light of above contentions, the appellant contended that the current Assessing Authority has committed judicial indiscipline by not following the binding as well as accepted order of the jurisdictional Ahmedabad Tribunal in the identical case and identical issue. Hence the impugned assessment of the Assessing Authority enhancing the values without rejecting the transaction values be not only set aside as the same is contrary to the law and the binding as well as accepted order dated 29.05.2020 of the jurisdictional Ahmedabad Tribunal.

26. In view of the above submissions, the appellant has requested to set aside the impugned assessment and to accept the transaction value / invoice value.

Discussion regarding admission or rejection of appeals

27. As the appeals have been filed against enhancement of value by re-assessment of Bills of Entry, pre-deposit under the provisions of Section 129E of the Customs Act, 1962, does not require.

28. The appellant has filed the present 30 appeals on the dates mentioned in column [7] of the Table-1. As per Section 128(1) of the Customs Act, 1962, appeals before Commissioner (Appeals) can be filed within sixty days from the date of communication of decision or order.



In the present cases, no speaking order has been passed. However, the appellant has filed appeals against the assessment of Bills of Entry. Assessment of Bill of Entry can be treated as decision or order; and appeal against assessment (including self-assessment and re-assessment) can be filed by importers with appellate authority as held by Hon'ble Supreme Court in the case of **ITC Ltd. Vs. Commissioner of Central Excise, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]**. So, the appeal against assessment is required to be filed within 60 days or within condonable period of further 30 days, **from the date of communication of assessment as per Section 128(1)**.

29. So, it is to be ascertained on which dates the Assessment of the impugned Bills of Entry have been communicated to the appellant. Section 153 of the Customs Act, 1962, prescribes **modes for services of notice, order etc.** As per **clause (ca)** of Sub-Section (1) of Section 153, an order, decision, etc. may be served by **making it available on the common portal**. As per Section 2(7B) of the Customs Act, 1962, the term 'common portal' has been defined as Common Customs Electronic Portal referred to in Section 154C. Notification No. 33/2021-Cus (NT) dated 29.03.2021 has been issued under the provisions of Section 154C, through which the URL <https://icegate.gov.in> has been notified as 'common portal'. So, I am of the view that the Assessments of Bills of Entry done through Customs EDI System and made available in the common portal ICEGATE are to be treated as served to the appellant as per the provisions of Section 153(1)(ca) of the Customs Act, 1962, as amended by the Finance Act, 2021. So, the appellant was required to file appeals within the normal period of 60 days or within further condonable period of 30 days from the date the assessment.

30. **In the Form C.A.-1, at Sr. No. 4, the appellant has mentioned the Date of Payment of duty, as 'Date of communication of decision or order' and accordingly calculated the limitation period for filing appeal. However, I find no provision of law under which the date of payment of duty can be taken as date of communication of order. Therefore, I am of the considered view that time-limit for filing appeal starts from the date of assessment of Bill of Entry, which has been served and communicated to the appellant through ICEGATE portal, as per the provisions of Section 153(1)(ca) of the Customs Act, 1962.**

31. In view of the above discussion, the 30 appeals covered in the present order have been divided in three parts for the purpose of considering limitation period as under:

[A] Appeals filed within normal period of 60 days from the date of assessment

Appeals mentioned at Sr. Nos. 1 to 6 of Table-1 have been filed within normal period



of 60 days from the date of assessment, as stipulated under Section 128(1) of the Customs Act, 1962. So, these six appeals are being admitted and being taken up for disposal on merits.

[B] Appeals filed within condonable period of 60 + 30 days from the date of assessment

Appeals mentioned at Sr. Nos. 7 to 18 of Table-1 have been filed beyond normal period of 60 days, but within condonable period of further 30 days, i.e. total 90 days from the date of assessment, as stipulated under Proviso to Section 128(1) of the Customs Act, 1962.

As regards condonation of delay up to a period of 30 days in filing appeals, I refer the Judgment of Hon'ble Supreme Court in the case of *Collector, Land Acquisition Anantnag and Another vs. Mst. Katiji and Others reported in 1987 (28) ELT 185 (SC)* wherein it has been held that a justifiable liberal approach should be adopted in cases of condonation of delay. In view of the above position, I condone the delay up to 30 days in filing Appeals as per the first proviso to Section 128(1) of the Customs Act, 1962, and admit the twelve appeals, as mentioned at Sr. Nos. 7 to 18 of Table-1.

[C] Appeals filed beyond the condonable period of 60 + 30 days from date of assessment

(i) As per the proviso to Section 128(1) of Customs Act, 1962, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. Thus, the Commissioner (Appeal) has no statutory power to condone the delay beyond the period of 30 days.

(ii) In this regard, I rely upon the Judgment of the Hon'ble Supreme Court in case of *Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur* [2008 (221) E.L.T. 163 (S.C.)], wherein the Hon'ble Apex Court while interpreting the Section 35 of the Central Excise Act, 1944, which is *pari materia* to Section 128 of the Customs Act, 1962, held that the appeal has to be filed within 60 days, but in terms of the proviso, further time of 30 days can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The relevant para of the said Judgment is reproduced below (underline supplied):

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of



the Indian Limitation Act, 1963 (in short, the 'Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period."

- (iii) The above view was reiterated by the Hon'ble Supreme Court in the case of *Amchong Tea Estate* [2010 (257) E.L.T. 3 (S.C.)]. Further, the Hon'ble High Court of Gujarat in case of *Ramesh Vasantbhai Bhojani* [2017 (357) E.L.T. 63 (Guj.)] and the Hon'ble Tribunal, Bangalore in the case of *Shri Abdul Gafoor Vs Commissioner of Customs (Appeals)* [2024-TIOL-565-CESTAT-BANG] took a similar view while dealing with Section 128 of the Customs Act, 1962.
- (iv) In terms of legal provisions under Section 128 of the Customs Act, 1962 and in light of the judicial pronouncements by Hon'ble Supreme Court, Hon'ble High Court and Hon'ble Tribunal, it is settled proposition of law that the appeals before first appellate authority under the provisions of Customs Act, 1962, are required to be filed within 90 days, including the condonable period of 30 days, as provided in the statute; and the Commissioner of Customs (Appeals) is not empowered to condone any delay beyond 30 days.
- (v) In light of the above observation, I am of the view that the appeals, which have been filed after **delay of more than 30 days**, beyond the statutory time-limit of 60 days, are time-barred in terms of Section 128(1) of the Customs Act, 1962. Thus, 12 appeals mentioned at Sr. Nos. 19 to 30 of Table-1 are liable to be rejected on the grounds of limitation without going into merits.



Personal Hearing

32. Personal Hearing in this matter was held in virtual mode, i.e. through video conference, on 08.08.2025, which was attended by Shri Gunjan Shah, Chartered Accountant, on behalf of the appellant company. He reiterated the written submissions made at the time of filing of appeal.

Findings:

33. I have carefully gone through the appeal memorandums submitted by the appellant with relevant documents including written submissions as well as oral submissions made by or on behalf of the appellant. The issues to be decided in the present appeal is whether the enhancement of value by way of reassessment of the impugned Bills of Entry, without passing Speaking Order towards rejection of declared value and enhancement of value, is legal and proper or not. It is also to be decided as to whether the appeals have been filed within the time-limit, as prescribed under the provisions of Section 128(1) of the Customs Act, 1962 or not.

34. I find that the case laws relied upon by the appellant, as mentioned hereinabove, are in favour of them. However, as no speaking order in respect of assessment of Bills of Entry is available in these appeals, it is not known whether the importer had cited these cases before the assessing officer or not; and whether the assessing officer has considered the same or not. Further, it appears that the procedure for rejecting declared value as prescribed under Rule 12 of the Customs Valuation (Determination of Price of imported Goods) Rules, 2007, has not been followed. The facts and reasons behind the not following the said procedure by assessing officer are not available on record. Under this situation, the claims made by the appellant cannot be verified in appeal proceedings. The contentions raised in the appeal memorandums have been raised for the first time in writing in these appeals. The adjudicating authority / assessing officer had no occasion to consider the same.

35. One set of every appeal memorandum filed by the appellant were forwarded to the Deputy Commissioner of Customs, ICD-Sanand, for his comments on the contentions raised by the appellant. In the said letter, it was also asked to report as to whether the appellant has confirmed his acceptance of the re-assessment in writing as per Section 17(5) of the Customs Act, 1962 and if so, a copy of the same was sought for. No reply thereof has been received from the office of the Deputy Commissioner of Customs, ICD-Sanand. Therefore, I find that remitting the case to the proper officer for passing speaking order becomes *sine qua non* to meet the ends of justice. **Further, as per Section 128A(3)(b)(ii) of the Customs**



Act, 1962, in case where no order or decision has been passed after re-assessment under Section 17, the Commissioner (Appeal) can remand the cases to adjudicating authority for fresh adjudication.

36. Accordingly, the appeals, which are filed within the time-limit of 90 days from the date of assessment, are required to be remanded back, in terms of Sub-section (3)(b) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer under the provisions of Section 17(5) of the Customs Act, 1962 after following the principles of natural justice. It is expected that the appellant shall raise all contentions before the adjudicating authority in remand proceedings and the adjudicating authority shall pass a speaking order afresh after following principles of natural justice and legal provisions.

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

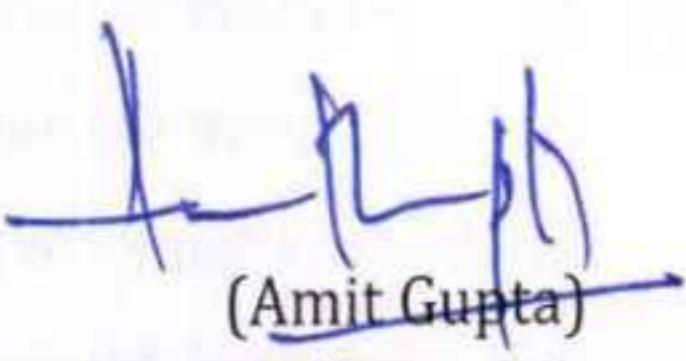
Order

(i) I set aside the re-assessment of 18 Bills of Entry, as mentioned at Sr. Nos. 1 to 18 of the Table-1, to the extent it enhances the value declared by the appellant. I direct the Deputy/Assistant Commissioner of Customs, Thar Dry Port, ICD-Sanand, to re-assess the said 18 Bills of Entry by passing Speaking Order(s) in terms of Section 17(5) of the Customs Act, 1962.

(ii) I reject the 12 appeals, as mentioned at Sr. Nos. 19 to 30 of the Table-1, being time-barred as per the provisions of Section 128 of the Customs Act, 1962.

The appeals filed by M/s. Arfin India Ltd. in respect of eighteen Bills of Entry as mentioned at Sr. Nos. 1 to 18 of the Table-1 are hereby allowed by way of remand in above terms. Remaining twelve appeals as mentioned at Sr. Nos. 19 to 30 of the Table-1 are rejected being time-barred. While passing this order, no opinion or views have been expressed on the merits of the cases.




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

(i) F.No. S/49-196 to 198/CUS/AHD/2024-25
(ii) F.No. S/49-200 to 215/CUS/AHD/2024-25

Date: 01.09.2025

(iii) F.No. S/49-220 to 224/CUS/AHD/2024-25
(iv) F.No. S/49-236 to 241/CUS/AHD/2024-25

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

To
M/s. Arfin India Ltd.,
Plot No. 118/1,2,3,4 and Plot No. 117/3,6,7,
Ravi Industrial Estate, B/h. Hotel Prestige,
Bileshwarpura, Chhatral,
Dist. Gandhinagar – 382729.
(Email: srmexim@arfin.co.in info@arfin.co.in)



Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
(email: ccoaahm-guj@nic.in)
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
(email: kus-ahmd-guj@nic.in rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, Thar Dry Port, ICD-Sanand.
(email: customs-sanand@gov.in customs.sanand@gmail.com)
4. Shri Gunjan Shah, Chartered Accountant, Ahmedabad (email: taxolegal@gmail.com)
5. Guard File.

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