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-20250871MN0000444A2C

क	फ़ाइल संख्या FILE NO.	S/49-285/CUS/AHD/2023-24 (CAPPL/COM/CUSP/1671/2023-Appeal)
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-163-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	07.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Speaking Order No. 13/ICD-Tumb/DC-VKY/2023-24 dated 12.09.2023 passed by the Deputy Commissioner of Customs, ICD-Tumb, Valsad.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Nico Extrusions Ltd., Survey No. 678/1/3, Plot No. 4, Bhilad Silvassa Main Road, Post Naroli, Silvassa 396235.

1.	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	**सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते 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. Nico Extrusions Ltd., Survey No. 678/1/3, Plot No. 4, Bhilad Silvassa Main Road, Post Naroli, Silvassa 396235 (hereinafter referred to as 'the appellant') has filed the present appeal against the Speaking Order No. 13/ICD-Tumb/DC-VKY/2023-24 dated 12.09.2023 (hereinafter referred to as 'the impugned speaking order') passed by the Deputy Commissioner of Customs, ICD-Tumb, Valsad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant has imported 22.36 MT Aluminum Scrap 'Twitch' as per ISRI for which they have filed a Bill of Entry No. 7488815 dated 23.08.2023 (hereinafter referred to as 'the impugned Bill of Entry') at ICD, Tumb. They have declared the price of the goods as USD 970.00 per MT (Rs.91.88 per kg). During assessment of the impugned Bill of Entry, it appeared that the value declared by the importer was very low and there was possibility of under-invoicing in this matter. On comparing the value of the imported goods with contemporaneous import prices under Rule 4 and Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the declared value was found to be low. So, it appeared that the declared value was required to be rejected under Rule 12 of the said rules.

Gist of findings of adjudicating authority:

3. The adjudicating authority has observed that he had gone through the contemporaneous price of similar/identical goods, which were imported by various importers at different ports and the unit price has been enhanced to assess against their declared unit price, which was taken from the NIDB data, and the same is as under:

Sr. No.	BoE No.	BoE Date	Country of Origin	Name of Product	Assessed Unit Price (in Rs/Kg)	Port
1	7488815	23.08.2023	Spain	Aluminium Scrap 'Twitch'	122.91	INSAJ6

4. The adjudicating authority observed that it is evident from the above Table that Aluminium Scrap 'Twitch' imported from Spain, at different ports in India, have been assessed against the declared value, at about the same price, as assessed in the present case. He further observed that the assessing officer has rejected the declared value in terms of Rule 12 and assessed at the rate of USD 1465 PMT (Rs. 122.91 per KG) in terms of Rule 4 and

Rule 5 of the Customs Valuation Rules, 2007. The adjudicating authority further observed that the transaction value of USD 970 PMT (Rs.81.38 PKG) as declared in the Bill of Entry, does not represent the correct transaction value and the assessing officer has correctly assessed the Bill of Entry at USD 1465 PMT (Rs.122.91 PKG).

5. The adjudicating authority relied upon the **Order-In-Appeal No. AHD-CUSTM-000-APP-142 & 143-23-24 dated 14.08.2023** passed by the Commissioner (Appeals), Customs, Ahmedabad, in which rejection of the value declared by the importer was upheld.

6. In view of the above findings of the impugned speaking order, the adjudicating authority has rejected the declared value under Rule 12 and ordered to re-assess the goods under Section 17(5), by enhancing the value to USD 1465 PMT (Rs.122.91 PKG) as per contemporaneous import under Rule 4 and Rule 5 read with Section 14 of the Customs Act, 1962 and Rule 3(1) of the Customs Valuation (Determination of value of imported goods) Rules, 2007.

Filing of appeal

7. Being aggrieved, the appellant has filed the present appeal on 05.10.2023. 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 Speaking Order dated 12.09.2023 has been shown as 15.09.2023. 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.

Gist of Grounds of Appeal:

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

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

B. We submit that in the present case, there is a violation of the Principles of Natural Justice rendering the assessment order in complete compliance with statutory directions and a nullity due to non-compliance of Natural Justice as held by Bombay High Court supra, a binding decision. The Re-assessment is required at the declared value and all amounts collected more than the applicable duty on the declared value are required to be refunded with interest as the amount is retained without support of law violating Article 265 read with 300A of the Constitution of India.

C. The proper officer has re-assessed the Bill of Entry in total disregard to the provisions of law and without affording enough opportunity in case of any further doubts by the Proper officer to enable rebut the same, but instead has enhanced the declared transaction values unilaterally and arbitrarily.

D. The Proper Officer lost sight of the provisions contained in the Customs Act and the valuation rules. The proper officer ought to have observed that Section 14(1) prescribes that the value of imported goods shall be the transaction value of such goods that is to say, the price paid or payable for the goods when goods are sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and the price is the sole consideration. There is no allegation of undervaluation and funds transferred to the sellers other than the bank route. Evidence of the Contract, Invoice, Bank remittances, and payment advice were already submitted to the proper officer.

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

F. The designated customs authority has, without adequate justification, declined to accept the declared value under Rule 12 of the Customs Valuation Rules, 2007, instead of diligently following the prescribed sequential assessment process delineated in Rules 4 through 9 of the aforementioned Customs Valuation Rules of 2007. This specified rule stipulates that, if the designated customs authority harbors suspicions regarding the veracity or precision of the declared value assigned to the

imported goods, said authority shall first request the importer to furnish supplementary or alternative substantiating documentation. Upon receipt of such additional information, or in the absence of a response from the importer, if the designated customs authority maintains reasonable doubts concerning the accuracy or authenticity of the declared value, then it may lawfully reject the declared value and subsequently progress sequentially through Rules 4 to 9 of the Customs Valuation Rules, 2007. This prescribed procedural course should have been adhered to by the designated customs authority.

G. In contrast to the concept of accelerating assessments on the faceless system, the assessment took 9 days, mostly due to the appropriate officer issuing delayed queries. Despite our extensive clarification in our very first response dated 24.8.23, the officer continued to restate the valuation ground on LME/DGOV in all three enquiries. The appellant submitted a Table showing three Queries raised by the assessing officer and replies filed by them. Because time was of the essence for our timely execution of export orders, and because the BE was only passed after 9 days of filing the BE, the appellants had no choice but to pay the demanded duty to enable clear the raw material but without any consent as alleged in Para 10.9 of the OiO and outright reject the allegation: "*despite giving consent to the re-assessment and agreeing with the value loaded by the assessing officer, the importer filed the appeal before the Commissioner (Appeals) which is none but the afterthoughts of the importer and is an attempt to create unnecessary litigation. As the importer had already agreed with the value loaded by the assessing officer and voluntarily paid the duty on the assessed value, there is no question of further litigation about the assessment of the bills of entries concerned.*"

The proper officer is misguiding by mentioning the above grounds since our very first reply dated 24.8.2023 in the last Para mentioned as:

quote "*.....We have already given the evidence of the contemporary imports at or below our declared value and as the Raw Material imported is required urgently to fulfill our export orders before 5th October 2023, it is humbly requested to kindly assess the BE at declared value. However, we would need Speaking Order which may be issued within 15 days as provided under Section 17(5) of Customs Act* ***to enable us file Appeal before the higher authorities in case of any enhancement of the AV and the duty so assessed will be paid***

by us under PROTEST. *We waive our rights of PH just in order to expedite the clearance"* **unquote**

Trust the above will establish that we neither consented to enhancement, nor there is any "afterthought" as alleged.

H. Upon clarification of the final query, the customs official, without offering any explication as to the inapplicability of relevant legal precedents or the methodology employed to establish the augmented valuation. Aluminum Scrap being our regular raw material, evidence of our contemporaneous imports was already available on NIDB of the same ISRI grades at the same port assessed at the declared value at lower prices, but the proper officer has chosen selectively higher value to unilaterally augment the value which was re-assessed value in para 11 of the O-i-O. Notably, the customs official failed to provide any rationale for this decision, disregarding the binding judgments. The customs official's actions in this regard seem to be driven solely by an unarticulated agenda to artificially inflate the valuation, regardless of the evidence provided. The proper officer thereby necessitated our remittance of duty with the insistence on the prompt issuance of a reasoned determination. Furthermore, the resulting determination remains conspicuously silent on the reasons behind the non-applicability of relevant case law or the justification for the customs official's divergence from the preceding Jurisdictional Commissioner's order.

I. The Appellants submitted evidence of contemporaneous imports from the same supplier, same commodity, and same-origin assessed under BE no. 7272165 dated 09.08.2023 at US$ 1000/- PMT, which was already available in the NIDB data, but the proper Officer enhanced the value based on DGOV guideline issued vide F. No. VAL/TECH/10/2018 (AL SCRAP) dated 15.11.2018 which is against the Customs Act,1962 and Customs Valuation Rules, 2007. Copy of the aforesaid BE passed at the declared value along with the Sale Contract, Sales Invoice, etc. is enclosed. Since the contract price was accepted for one leg and rejected for the second leg in the same period despite Supplier, item, grade, country of Origin are same, on this ground alone the re-assessment at the enhanced price deserves to be set aside.

J. The Appellants further submit that DGOV Circulars cannot override the provisions of Valuation Rules as per the decision of this Tribunal in the case of Commissioner of Customs v. FSP (India) Pvt. Ltd. - 2009 (234) E.L.T. 268 (Tri.-Mum.) and the Hon'ble

Apex Court in the case of Eicher Tractors Ltd. v. Commissioner of Central Excise - 2000 (122) E.L.T. 321 (S.C.), but it appears the proper officer has adopted the valuation method given in the DGOV Circular based on the LME prices of prime metal minus discounts. The respective assessing authority has to examine every case on merits to decide its validity and he cannot form a view to reject all transaction values based on some general criteria based on the DGOV Circular. Hon'ble Apex Court in the case of M/s. Century Metal Recycling Pvt. Ltd. vs. UNION OF INDIA on 17.05.2019 & Mumbai Tribunal in the case of Commissioner of Customs v. FSP (India) Pvt. Ltd. (cited supra) held that uniform loading based on general criteria is not permissible.

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

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

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

i. 2017 (357) ELT 904 (Tri-Chennai) - Haji Sattar & Sons Vs. CC, Chennai reported in.
ii. 2013 (289) ELT 305 (Tri. Del.) – CC, New Delhi vs. Nath International.
iii. 2015 (330) ELT 799 (Tri. Chennai) – Topsia Estates Pvt. Limited vs. CC (Import-Seaport), Chennai
iv. 2013 (287) E.L.T. 124 (Tri. - Mumbai) - C.C. (IMPORT), NHAVA SHEVA vs. BHARATHI RUBBER LINING & ALLIED SERVICES P. LTD.

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

i. 2007 (214) ELT 3 (SC) – CC, Calcutta Vs. South India Television.

ii. 2009 (238) ELT 135 (Tri-Chennai) – Pushpanjali Silk Pvt. Ltd. Vs. C.C., Chennai.

iii. 2015(318) ELT 649 (Tri-Mum) – PNP Polytex Pvt. Ltd. Vs. Commissioner of Customs, Nhava Sheva.

O. Mere payment of duty does not imply that the duty was voluntarily paid, as right from our 1st reply till the last reply we were insisting on passing speaking orders under Section 17(5). In this regard, Appellants rely upon the judgment of the Hon'ble Calcutta High Court in the case of **Gateway and Commodities Pvt. Ltd. Vs. Union of India reported in 2016 (333) ELT 263 (Cal).**

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

We, M/s. Nico Extrusions Limited, respectfully submit our additional submission against the Speaking Order under Section 17(5) of the Customs Act, 1962, wherein our declared value for Aluminium Scrap 'Twitch' under Bill of Entry No. 7488815, dated 23.08.2023, has been rejected and reassessed at an enhanced value of USD 1465 PMT instead of our declared value of USD 970 PMT. At the outset, we submit that the rejection of the declared value and its enhancement is legally unsustainable due to the following reasons:

1. Transaction Value is the Only Acceptable Basis for Assessment

As per Section 14(1) of the Customs Act, 1962, the value of imported goods must be the actual price paid or payable in the course of international trade.

This has been upheld in **Commissioner of Customs v. Aggarwal Industries Ltd. [2011 (272) E.L.T. 641 (S.C.)]**, where the Hon'ble Supreme Court ruled that:

- A lower contract price remains valid despite market price fluctuations.
- Higher-priced imports made later do not qualify as "contemporaneous imports."
- Price variations alone do not justify rejection of declared value.

Our declared value of USD 970 PMT is based on a valid contract and invoice and must be accepted under Rule 3(1) of the Customs Valuation Rules, 2007.

2. Incorrect Use of "Contemporaneous Imports" by Customs

The Supreme Court in Aggarwal Industries Ltd, held that only actual transactions executed at the same time and under identical conditions qualify as contemporaneous imports. The department's reliance on subsequent imports at higher values (or administratively enhanced values) is legally incorrect. Past reassessments or NIDB data cannot be used to determine contemporaneous import prices unless they reflect actual transaction values.

It is trite law that value enhanced by the Customs Authorities cannot be considered as contemporaneous import and as held by the Hon'ble CESTAT, Bangalore Bench in the Final Order No. 21917-21926/2015 dated 08.09.2015 in the case of **M/s. Suvee Impex Pvt. Ltd. Vs. C.C. Bangalore** the Hon'ble Tribunal in Para 7 held that merely because the value as enhanced by the Customs, the same would not become contemporaneous import. In Para 8, the Hon'ble Tribunal held that there is no evidence on record that value as declared is not the correct value or is not in terms of the contract or any underhand consideration has flown back to the supplier. The Hon'ble Tribunal also refer to other judgments, wherein it was held that enhancing the value based on cost construction method cannot be used to decide upon the value of the goods, especially when there is no evidence of any consideration flowing back to the foreign supplier.

Legal Reference:

In this regard the Appellants rely upon the following judgments:

i. **2013 (289) ELT 305 (Tri. Del.) - CC, New Delhi vs. Nath International** observed in Para 7, "..... Contemporaneous imports have to be considered in reference to quality, quantity and country of origin with the imports under consideration....." No such data was provided by the department.

ii. **2015 (330) ELT 799 (Tri. Chennai) - Topsia Estates Pvt. Limited vs. CC (Import-Seaport), Chennai**, wherein it was held "..... Enhancement on basis of NIDB data - HELD: Settled law that declared value cannot be enhanced merely on basis of NIDB data - Value of impugned goods varies widely on basis of quality, size, etc., and same goods accepted by Department at Kolkata port...." In para 7 observed that "..... There is no evidence of higher value of contemporaneous import from same sources. There is no allegation of mis-declaration of the goods".

iii. **A/10397-10407/2023 dated 6.3.2023 in the matter of Sedna Impex India P Ltd vs C.C. Mudra (Tri-Ahd)**, observed in Para 4.5 "..... From the above provisions, it is clear that if there is any doubt about the transaction value declared by the assessee, then if at all the value of contemporaneous import needs to be applied, the value of identical goods or similar goods should be applied. However, in the present case though the contemporaneous import goods were relied upon, but both the adjudicating authority failed to ascertain that whether the goods of contemporaneous imports is identical or similar to the goods of the assessee. Appellants have disputed the said comparable data....."

The appellant has also relied upon the following decisions:

- Aggarwal Industries Ltd. [2011 (272) E.L.T. 641 (S.C.)]
- Eicher Tractors Ltd. [2000 (122) E.L.T. 321 (S.C.)]
- 2007 (214) ELT 3 (SC) - CC, Calcutta Vs. South India Television
- SEDNA IMPEX INDIA PVT. LTD. V COMMISSIONER OF CUSTOMS, FARIDABAD 2017 (347) E.L.T. 317 (Tri. - Chan.), the Tribunal observed that "Merely because declared value of impugned goods less than assessed value of similar imports cannot be basis of enhancement - As per Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, not assessed value but declared value of similar/contemporaneous imports to be taken for determination of transaction value of imported goods"

3. Improper Reliance on DGOV Alert and LME Prices

The proper officer issued three queries:

LME Prices: The Supreme Court has ruled that LME prices cannot be used to determine scrap prices, as they apply to primary aluminium.

DGOV Guidelines: The tribunal has ruled in multiple cases that DGOV guidelines cannot override actual transaction value.

DGOV Alert: The Supreme Court in Sanjivani Non-Ferrous Trading Pvt. Ltd. [2019 (366) E.L.T. 3 (S.C.)] held that alerts are not legally binding and cannot be used to reject a declared price.

4. No Concrete Evidence to Justify Enhancement

Rule 12 of the Customs Valuation Rules, 2007 requires customs to provide clear reasons before rejecting a transaction value. Suspicion alone is not a valid reason.

The Hon'ble Supreme Court in Aggarwal Industries Ltd. held that mere price difference is not sufficient to reject the declared value.

10. Vide letter dated **27.06.2025**, the appellant has submitted **Additional Submission**, in which it has been stated that the queries were raised on the grounds of LME prices and the valuation guidelines issued by DGOV. However, the proper officer enhanced the assessable value solely on the basis of a single Bill of Entry (B/E) drawn from the NIDB vide Para 11 of the speaking order, which, notably, pertains to our own Company and is the subject matter of the present Appeal. Such enhancement, therefore, lacks independent corroborative basis and cannot withstand judicial scrutiny.

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

Personal Hearing

12. Personal Hearing in this matter was held on 13.03.2025, which was attended by Shri Hari Shankar A. Pandey, Manager (Legal) of the appellant company. He reiterated the written submissions made at the time of filing of appeal. He also submitted additional submissions dated 13.03.2025 with citation of various case laws, as mentioned hereinabove.

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

Findings:

14. 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 rejection of declared value and enhancement of value of imported goods, is legal and proper or not.

15. I have seen copies of Queries raised by the assessing officers and replies submitted by the importer. I find that the importer/appellant was never agreed with the proposals of assessing officer to load/enhance value and they have submitted detailed replies to the queries. In reply dated 24.08.2023 to the query dated 23.08.2023, the importer has also mentioned that in case of enhancement of assessable value, the duty so assessed would be paid under PROTEST and they waive their rights of PH just to expedite the clearance. The importer had also sought speaking order under the provisions of Section 17(5) of the Customs Act, 1962, so that they can file appeal.

16. I find that the adjudicating authority has enhanced the value of Aluminium Scrap 'Twitch' merely on the basis of NIDB data, but particulars of the contemporaneous imports in NIDB data like Bills of Entry No. & Date, Quantity, Grade and Specification of goods, Country of Origin, Port of loading and Port of discharge etc. has not been shown in the impugned order. The findings of the adjudicating authority regarding reliance placed upon NIDB data are as under:

> 11. I have gone through the contemporaneous price of the similar/identical goods which were imported by various importer at different ports and the unit price has been enhanced to assess against their declared unit price, which was taken from the NIDB data and the same are under: -
>
> | Sr. No. | BoE No. | BoE Date | Country of Origin | Name of Product | Assessed Unit Price (in Rs/Kg) | Port |
> |---|---|---|---|---|---|---|
> | 1. | 7488815 | 23.08.2023 | Spain | Aluminium Scrap 'Twitch' | 122.91 | INSAJ6 |
>
> 12. I also find that Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that the value of imported goods shall be the transaction value of identical goods sold for export to India and imported on or about the same time, goods being valued subject to provisions of Rule 3. It is also evident from the above Table above that the Aluminium Scrap 'Twitch' imported from Spain, at different ports in India have been assessed against the declared value, at about the same price, as assessed in the present case.

From the above findings, it can be seen that the language deployed in the impugned order is ambiguous. Instead of relying upon Bills of Entry of contemporaneous import of identical or similar goods, the adjudicating authority has wrongly relied upon the impugned same Bill of Entry No. 7488815, which is the Bill of Entry in the present case, for which the impugned speaking order has been passed. I find that the adjudicating authority has erred in relying upon one and same Bill of Entry No. 7488815 for re-assessment of the same Bill of Entry No. 7488815. On one had the adjudicating authority has relied upon the above Table as evidence, on other hand, particulars of no other Bills of Entry of contemporaneous imports have been mentioned in that Table. Instead of mentioning such particulars, the Bill of Entry No. 7488815 dated 23.08.2023 has been mentioned in the Table, which is the Bill of Entry itself for which the speaking order has been passed. In Para 3 of the impugned speaking order, it has been mentioned that the importer has declared the value as **USD 970.00 PMT (Rs.91.88 PKG)**, whereas, in the above Table the Assessed Unit Price has been shown as **Rs.122.91 per Kg**, which is not the value declared by the importer, but, it is the value reassessed by the apprising officer. By relying upon the same, the adjudicating authority has ordered for enhancing the value to **USD 1465 PMT (Rs.122.91 PKG)** vide impugned order. Thus, I am of the considered view that the adjudicating authority has committed a serious error in not relying upon any other Bills of Entry in the impugned order and not suppling copy of NIDB data of contemporaneous imports to the appellant.

17. Further, I find that the appellant has replied the query dated 23.08.2023 of the assessing officer vide letter dated 24.08.2023 in which they have mentioned that contemporary import price of Aluminium Scrap of the same grade declared under BoE No. 7272165 dated 09.08.2023 has been accepted by Customs Department. In the said letter, the importer has mentioned following Table:

SR. NO.	BE NO. & DATE	SUPPLIER	IMPORTER	ITEM	DECLARED VALUE $	ASSESSED PRICE $
1	7272165 09.08.2023	FLOTAMEL S.L.	NICO EXTRUSIONS LTD	ALUMINIUM SCRAP TWITCH AS PER ISRI	1000	1000

In view of the above, the importer has contended that the price of current BE in question is @ $970/MT is in line with the contemporary price. In this regard, I find that the adjudicating authority has not discussed anything about the particulars of contemporaneous import

provided by the appellant. Without considering the particulars of contemporaneous import provided by the importer and without mentioning particulars of any other Bill of Entry, the adjudicating authority has arbitrarily enhanced the import value to USD 1465 PMT, which is not proper and legal.

18. Further, I find that the **Order-In-Appeal No. AHD-CUSTM-000-APP-142 & 143-23-24 dated 14.08.2023**, which was relied upon by the adjudicating authority, has been set aside by Hon'ble CESTAT, Ahmedabad, vide Final Order No. 11639-11641/2024 dated 25.07.2024 in Customs Appeal Nos. 10796 to 10798 of 2023 in the case of M/s. Metalloys Recycling Limited. In the said Final Order dated 25.07.2024, Hon'ble CESTAT, by relying upon number of previous decisions, held that only NIDB data cannot be a basis for enhancement of value.

19. I also find that my predecessor Commissioner (Appeals), Customs, Ahmedabad, vide **Order-In-Appeal No. AHD-CUSTM-000-APP-126 to 135-24-25 dated 01.07.2024** in Appeal Nos. 364 to 373/Cus/Ahd/23-24 had observed that the in terms of Rule 4(3) of the Valuation Rules, as where more than one transaction value of goods is found, the lowest of such value should be used to determine the value of imported goods. He further observed that in absence of any contemporary import data, solely relying upon the LME price or DGoV guidelines, is legally not sustainable. Thus, he set aside the assessments on enhanced assessable value on the basis of LME price or DGoV guidelines and allowed the appeals filed by **M/s. Metalloys Recycling Ltd.**

20. 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:

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

"4.7 We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. Tribunal in the

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

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

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

"104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a valuation addition based solely on NIDB data would wholly unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. The legal position so articulated would ensure fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs valuation and a deviation from declared values being founded on tangible and justiciable material. A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the afore-noted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences.

V. DISPOSITION

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

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

20.3 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."

21. 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 speaking order passed towards enhancement of value, merely based upon the NIDB data, but without disclosing the same, without mentioning particulars of contemporaneous imports, and without discussion of any corroborative evidence, is not legal and proper in terms of Section 14(1) of the Customs Act, 1962; Rules 3, 4 and 5 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 read with above-mentioned decisions of higher forums.

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

Order

22.1 I set aside the Speaking Order No. 13/ICD-Tumb/DC-VKY/2023-24 dated 12.09.2023 passed by the Deputy Commissioner of Customs, ICD-Tumb, Valsad, and I direct the adjudicating authority to re-assess the impugned Bill of Entry No. 7488815 dated 23.08.2023 on the declared transaction value and communicate the same to the appellant within a period of 90 days from the date of receipt of this order.

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

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

F.No. S/49-285/CUS/AHD/2023-24
(CAPPL/COM/CUSP/1671/2023-Appeal)

Date: 07.08.2025

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

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

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-Tumb, Valsad.
   (email: cusicd-tumb@gov.in)

4. Guard File.

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