



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

DIN - 20250471MN0000015690

क	फाइल संख्या FILE NO.	S/49-56/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-018-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.04.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 1711/2022-23/DC/GI/CAC/JNCH dated 30.03.2023 bearing DIN 20230378N0000111A54
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Mahesh Chemicals & Allied Industries, 24, Industrial Area-3, Sirsa-125055



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं. Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order. निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	वैगेंज के रूप में आयातित कोई माल. (a) any goods imported
(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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए 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, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं



	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd 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 हजार रूपए.	
(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 हजार रूपए	
(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 हजार रूपए.	
(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 है, 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 Mahesh Chemicals & Allied Industries (IEC-3394002817), 24 Industrial Area-3, Sirsa-125055 (hereinafter referred to as 'the Appellant') have filed the present appeal in terms of Section 128 of the Customs Act, 1962 challenging the Order-in-Original bearing No. 1711/2022-23/DC/GI/CAC/NS-I/JNCH dated 30.03.2023 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs, Customs Group I&IA, NS-1, JNCH, Nhava Sheva, Dist. Raigad, Maharashtra (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed bill of entry No. 4897897 dated 04.03.2023 for clearance of goods declared as "Zinc Skimming (Zinc 70-72% Lead 1% Max Cd-Nil, Metallic Zinc 10% approx..) having the following details :

Item Description	Zinc Skimming (Zinc 70-72% Lead 1% Max Cd-Nil, Metallic Zinc 10% appx
Quantity	50500 Kgs
Declared CTH	26201990
Declared Unit Price	1.05 USD/Kg
Declared Assessable Value (INR)	44,29,681.27
B/L No. & date	JEAINMUN21155 dated nil
Invoice No & date	130856 dated 10.02.2023

2.1 The bill of entry was presented in Faceless Assessment at FAG port Nhava Sheva (INNSA1). As import of Zinc skimmings is restricted and allowed as per following policy condition

"As per policy conditions of Chapter 26, import of the following kinds of Zinc ash/skimmings is permitted without a licence to units registered with Ministry of Environment and Forest, Government of India, on actual used basis upto the annual quantity limits indicated in the registration certificate:

- (i) Zinc ash in dispersible form containing zinc greater than 65% and lead and cadmium equal to or less than 1.25% and 0.1% respectively;
- (ii) Zinc skimmings containing zinc 65% and above, lead and cadmium less than 1.25% and 0.1% respectively;
- (iii) Spent cleaned metal catalyst containing zinc."



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2.2 In view of the above policy conditions the bill of entry was assessed on first check basis with order to draw samples and forward the same to Customs laboratory for the purpose of testing the 'nature, composition, whether goods are as declared, % of zinc content, % of metallic zinc, % of lead, % of Cadmium'. The bill of entry was examined and subsequently sent back to FAG port on 09.03.2023, after recording the examination report. Sample was drawn and sent to CRCL, Kandla for testing. Query was raised to the importer on 09.03.2023 to upload the test report as and when received. In reply the importer on 17.03.2023, uploaded the test report in E-sanchit and requested to assess the bill of entry.

The findings of the test report were as follows:

"The sample as received is in form of heterogenous mixture of greyish brown colour friable and non-friable lumps of irregular shape and sizes and metallic pieces having oxidized surfaces together with brownish coarse powder. It is composed of metallic zinc, oxides of zinc together with small amount of compounds of iron, aluminium and siliceous matter. It has the following constants:

Total Zinc content (% by wt.)	= 74.50%
Metallic Zinc content (% by wt.)	= 23.40%
Lead content (% by wt.)	= within prescribed limit
Cadmium content (% by wt.)	= It does not answer the test for Cadmium

It has characteristics of zinc ash/skimming. It is non-hazardous. Sealed remnant sample returned herewith"

2.3 From the above test findings, it is evident that the total zinc content was found to be more than 65% and the metallic zinc content was found to be 23.40% instead of declared 10%. Since the valuation of the goods have a direct bearing to the metallic content of the goods and the same was not as per declaration, therefore the declared value of the goods was liable to be rejected as per Rule 12 of CVR Rules 2007. Hence upon rejection, transaction value is to be re-determined sequentially in terms of Rule 4 to Rule 9 of the CVR Rules, 2007.

2.4 It is in the above context the Appellant has filed the present appeal in terms of Section 128 of Customs Act, 1962 before this appellate authority seeking to set aside the impugned order dated 30.03.2023 so passed by the Deputy Commissioner of Customs, Customs Group I&IA, NS-1, JNCH, Nhava Sheva, Dist. Raigad, Maharashtra.



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3. SUBMISSIONS OF THE APPELLANT:

- 3.1 The Impugned order is liable to be set aside on both facts and law.
- 3.2 The rejection of transaction value and enhancement of the same is bad in law being against the facts and law as well.
- 3.3 The manner of assessment in not following the statute and the Valuation Rules framed there under and blindly applying circulars/alerts/guidelines is against the settled principles of law.
- 3.4 The reliance of the Adjudicating Authority on certain Valuation Proposal issued vide F. No. S/26-Misc.-79/2008 Gr.I dated 12.12.2008 by the Customs (Import) JNCH, is highly misplaced as any study report or guidelines cannot override the statutory mandate. Moreover, any such valuation proposal cannot override the mandate of Valuation Rules and merely referring to the Study Report is not permissible under the law.
- 3.5 The Adjudicating Authority has erred in not appreciating the law with regard to application of any Alert/Circular/Standing Order which has been settled by the Hon'ble Supreme Court in the case of M/s Versha Plastic versus Commissioner of Customs. The Hon'ble Supreme Court has held that Guidelines/Alert/Circulars are only to add and supplement the existing act and Valuation Rules in case of any ambiguity but it cannot override the mandate of the Act. Further the said DGOV Guidelines dated 01.12.2016 also clarifies that the guidelines are for the purpose of reference while applying the CVR, 2007 at the time of assessment and are not meant for superseding the statutory provisions of the Customs Act, 1962 and CVR, 2007. However, in the present case the Assessing Authority has applied the Valuation Proposal issued vide F. No. S/26-Misc. - 79/2008 Gr.I dated 12.12.2008 by the Customs (Import) JNCH ignoring the mandate of statutory provisions of the Customs Act, 1962 and CVR, 2007 and therefore the impugned enhancement of value merely on the basis of Valuation Proposal issued vide F. No. S/26-Misc. - 79/2008 Gr.I dated 12.12.2008 by the Customs (Import) JNCH is liable to be set aside.
- 3.6 The guidelines dated 12.12.2008 is also not applicable in the case of the appellant as taking average weighted LME price of prime material and then apply the same based on several permutations and combinations for goods like Scrap which are highly susceptible based on the quality for deciding the specific value for scrap is also beyond the scope of commercial practice.
- 3.7 The Hon'ble High Court of Bombay in the case of Life Style International Pvt. Ltd. versus Union of India reported in 2011 (271) ELT 190(Bom.) has held that standing order being mere departmental guidelines have no statutory force, it can be used only when Rules are silent and they can be utilized only to supplement and standing order contrary to statutory provisions cannot be applied.
- 3.8 Reliance on the guidelines issued by DGOV and to fix the value of scrap would mean to override the statutory provision and to usurp the power which has not vested with the Director General of Valuation. The Hon'ble Tribunal in the case of M/s Om Drishian International Ltd. versus CCE reported in 2015(315) ELT 441 (Tri.)



while referring to one such Circular issue by Commissioner of Customs (Import) JNCH being Circular No. S/26-Misc-2195/05 VA dated 24.09.2008 concerning the valuation of Ball bearing, held that the only provisions for fixing assessable value for the purpose of assessment is Section 14 (2) of the Customs Act, 1962 under which the Central Government by a notification fixes the Tariff Value on which the imported goods are to be assessed. Such assessable value cannot be fixed by Assessing Officer on their own. The Hon'ble Tribunal was relying on its earlier judgment in the case of Commissioner of Customs New Delhi versus Nath International reported in 2013 (289) ELT 305 (Tri-Del) were also the similar circular of Commissioner of Customs (Import) Mumbai being F.No. S/26-757/97-VA dated 12.12.2006 was in question.

- 3.9 The Valuation Proposal issued vide F. No. S/26-Misc :- 79/2008 Gr.I dated 12.12.2008 by the Customs (Import) JNCH laying emphasis on enhancement of declared value to the level of the price and formula indicated in the valuation proposal is contrary to the Customs Valuation Rules which lay emphasis on the primacy on transaction value which can be rejected and substituted when and only when the Transaction Value is not found genuine and there is evidence of contemporaneous import of identical goods and comparatively much higher price.
- 3.10 The price quoted in Metal Bulletin are not representative of the transaction contracted for identical goods on the particular day and the price shown in Metal Bulletin do not relate to any quantity as they are general in nature. The CESTAT in the case of Jindal Strips versus CCE reported in 2001(133) ELT 570 has held that merely relying on LME price without any evidence bringing on record with regard to import of identical commodity by another importer at higher price, which resembles to the LME price is not permissible.
- 3.11 If the price indicated in the LME is to be referred to then certainly there has to be some evidence of contemporaneous import of the said metal by other importer at around the same time from the same country of origin and in comparative quantity as the price shown in the LME. No such evidence of contemporaneous import of similar scrap as imported by the appellant was confronted and therefore, merely relying on LME price and theoretical price calculation of scrap based on LME Bulletin without any corroborative evidence is not permissible as held by Hon'ble Supreme Court in the case of Commissioner of Customs, New Delhi versus Prabhu Dayal Premchand reported in 2010 (253) ELT 353 (SC).
- 3.12 The Hon'ble CESTAT considered similar issue in the case of Pushpak Metal Corporation versus Commissioner of Customs Kandla reported in 2014 (312) ELT 381 (Tri.) and held that LME prices do not pertain to metal scrap and they are merely indicative of prime quality metals only.

The valuation proposal dated 12.12.2008 laying down the guidelines to be adopted in reference to LME price for assessing the transaction value for metal scrap has no legal backing. The CESTAT in the case of Royal Oil Field Pvt. Ltd. versus Commissioner of Customs Nehva Sheva reported in 2005 (180) ELT 395 held that standing order



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issued by Board laying down guidelines to be adopted in reference of pallets price has no legal backing and that the revenue is first required to show that the invoice price is not correct and genuine price. In the present case, the value has merely been enhanced without first rejecting the Transaction Value and theoretical calculation as indicated in the Circular dated 01.12.2016 has been applied and therefore, the enhancement of value is liable to be set aside.

- 3.14 A duty has been cast on the department to prove that the transaction value is not genuine and then only on the basis of cogent evidence on record, the same can be rejected. In the present case the only reason given is the acceptance of the value by other importers.
- 3.15 The manner of assessment is arbitrary and illegal as the practice of not making the assessment on the declared value in terms of the mandate of Section 14 of the Customs Act, 1962 read with Rule 3 the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (herein after referred to as the CVR, 2007), is against the provisions of law.
- 3.16 Under the Customs Act, 1962, Customs Duty is chargeable on goods and according to Section 14(1) of the Act the assessment of duty is to be made on the value of the goods. The value according to Section 14(1) shall be deemed to be price at which such or like goods are ordinarily sold or offered for delivery at the time or place of importation in the course of international trade. The word "Ordinary" necessary implies the exclusion of "extra ordinary" or "special" circumstances. This is clarified by the last phrase of Section 14 which describes an "ordinary" sale as one "where the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale " subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1)(A) in accordance with the rules framed in this behalf. A reading of the wording used in sub section (1) reveals that the valuation of goods is subject to provisions of valuations rules.
- 3.17 Section 2(41) of the Customs Act states that the "value" in relation to any goods means the value thereof determined in accordance with the provision of Sub-Section (1) or Sub-Section (2) of Section 14.
- 3.18 Rule 3 of the CVR, 2007 provides that subject to Rules 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. It further provides that the Value of imported goods under sub-rule (1) shall be accepted :

Provided that -

(a) *there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which :-*

(i) *are imposed or required by law or by the public*



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authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicates that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) Substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 "

3.19

Thus as can be seen the transaction value is to be arrived after adjustment provided under rule 10 which has been subjected to the provisions of Rule 12 also, sub Rule (2) of Rule 3 further provides the conditions satisfying which the value under sub rule (i) shall be acceptable. These conditions relate to restrictions regarding disposition/used of the goods, sale/price being subject to some

A.1-

conditions or consideration, part of the proceeds of any subsequent re-sale/disposal/use of the goods accruing directly or indirectly to the seller and buyer and seller being related. No such exceptions have been pointed out in the assessment. Therefore, when none of the conditions stipulated under sub Rule(2) of Rule 3 is alleged to have been violated, valuation under the provisions of sub Rule (1) of Rule 3 is acceptable.

3.20 Rule 12 provides for the rejection of the declared value. The Appellant fulfills all the conditions for acceptance of the declared value and there is no other condition which could entitle the Department to reject the same. The Rule 12 is reproduced below :-

"12. Rejection of declared value. -- (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).

Explanation. - (1) For the removal of doubts, it is hereby declared that :-

This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value: where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price

(c) the sale involves special discounts limited to exclusive agents;

(d) the mis-declaration of goods in parameters such as description,



quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value.

(f) the fraudulent or manipulated documents.

3.21 In the case of Eicher Tractor reported in 2000 (122) ELT 321 (SC) has held that unless the price actually paid for the particular transactions falls within the exceptions provided under Rule 4 (2) (now sub rule (2) of Rule 3) the Customs Authority are bound to assess the duty on the transaction value. It held as under :-

".....14 It is only when the transaction value under Rule 4 is rejected, then under Rule 3 (ii) the value shall be determined by proceedings sequentially through Rule 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4 (1) and does not fall under any of the exceptions in rule 4 (2), there is no question of determining the value under the subsequent rules."

Though the case of Eicher Tractors (Supra) was delivered in the light of erstwhile valuations Rule 1988 and provisions of Section 4 as it existed prior to its substitution with effect from 10.10.2007. However, the concept of transaction value did not undergo any essential change by enactment of new section 14 of the Act and Valuation Rule 2007. Earlier transaction value within a reasonable range on either side of the contemporaneous price in the international trade was acceptable as assessable value. Then also no price arrived at by negotiations in the course of trade on commercial basis could be rejected as transaction value. This position continues even after 10.10.2007 after enactment of the Customs Valuations Rules, 2007. The shift from a deemed normal price in the international trade for valuation of imported goods in section 14 to the transaction value has not resulted in any change in practice. The circumstances statutorily particularized in the erstwhile Valuations Rule 4 (2) of the Valuations Rules, 1988 to reject the declared value still exists in the Valuations Rules, 2007 and therefore, the ratio of Eicher Tractors (supra) is still valid and relevant.

3.22 The Hon'ble Supreme Court, in the case of South India Television (P) Ltd. reported in 3 (2010) 10 SCC 576 has explained as to how the value is derived from the price under what circumstances the deemed value mentioned in Section 14 (1) can be departed with. The Hon'ble Supreme Court held as under :-

"10. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to



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mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the bill of entry is the value referred to above and not merely the invoice price.

xxx xxxx xxxxxx

12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1-A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid.

Therefore, the charge of under invoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

3.23 The Hon'ble Supreme Court in the case of Commissioner of Central Excise & Service Tax Versus M/s Sanjeevani Non-Ferrous Trading (P) Ltd. being Civil Appeal No. 18300-18305/2017 has held that the declared price can be rejected on the basis of cogent reasons and admissible evidence to show that the transaction value was not the correct value and without having done any such exercise, the transaction value cannot be rejected.



4. PERSONAL HEARING:

A personal hearing was granted to the Appellant on 24.04.2025 following the principles of natural justice wherein Shri Prem Ranjan Kumar , Advocate appeared on behalf of the Appellant. He reiterated the submissions so made in the appeal.

5. DISCUSSION AND FINDINGS:

5.1 I have carefully gone through the case records, impugned order and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 12.06.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 30.03.2023 has been shown as 03.04.2023. Therefore, the appeal was required to be filed by 02.06.2023 i.e. with in stipulated period of 60 days under Section 128(1) of the Customs Act, 1962. Since the appeal has been filed on 12.06.2023, there is a delay of 10 days beyond the stipulated period of 60 days. The Appellant has also filed an application for condonation of delay. The appellant has submitted that the duty has been paid and goods also have been cleared.

5.2 On going through the material on record, I find that there are two issues required to be decided in the instant appeal which are as follows:

- i. That condonation of delay application so filed by the appellant is to be allowed or otherwise i.e. whether the appeal is time barred or not.
- ii. That whether the transaction value of the goods so imported by the Appellant is liable to be re-determined as per CVR Rules, 2007.

5.3 Firstly, I take up the issue of condonation of delay application so filed by the appellant along with the appeal. It is on record that the impugned Order dated 30.03.2023 was received by the appellant on 03.04.2023 as is mentioned in the relevant column of form CA-01 of the appeal. Accordingly, appeal was to be filed within 60 days i.e. latest by 02.06.2023.

5.3.1 In the instant case, appeal was filed on 12.06.2023 with a delay of 10 days. The Appellant vide application for condonation of delay in filing the appeal so filed along with the appeal has submitted that due to misplacement of documents pertaining to the assessment of instant Bill of Entry the appeal was delayed and prayed to condone the said delay in the interest of natural justice.



Accordingly, I allow the condonation of delay application of the Appellant in light of the reasons so mentioned in their said application and in the interest of natural justice.

5.4 Now I come to the second issue i.e. whether the transaction value of the goods so imported by the Appellant is liable to be re-determined as per CVR Rules, 2007 or not.

5.5 In this regard, I find the test report of Customs laboratory to be crucial. The findings of the test report in regard to the contents of the goods imported and that so declared by the importer were different. In view of the same and the fact that valuation of impugned goods has a direct bearing to the metallic content, the declared value was rightly rejected by the adjudicating authority as per Rule 12 of CVR, 2007. The adjudicating authority has clearly given his detailed findings for the rejection of declared value in the impugned order. Moreover, the Certificate of Quality dated 10.02.2023 so submitted by the appellant in respect of the contents of goods i.e. Zinc Skimming so exported by them is of the seller i.e. Galvanizing Services LLC, UAE and not of any approved testing laboratory. After rejection of declared value as per Rule 12 of CVR, 2007, the transaction value has to be determined as per CVR, 2007 by proceeding sequentially from Rule 4 to Rule 9. It is observed that the adjudicating authority has in the impugned order followed these steps sequentially and has also given his findings for each of the sequential step which are valid looking to the facts of the case. Accordingly, I find that the adjudicating authority has rightly concluded that the value of impugned goods are to be re-determined as per Rule 9 of CVR, 2007.

5.6 Further, in this regard, the metallic content refers to the quantity of metal zinc that can be extracted from the zinc skimmings. Therefore, the value of zinc skimmings has a direct impact with the LME price of Zinc metal. As the adjudicating authority had resorted to Rule 9 (Residual method) of CVR, 2007, value of impugned goods is to be determined using reasonable means consistent with the principles and general provisions of these Rules and on the basis of data available in India. In this regard, I find that there has been a valuation proposal issued vide F. No. S/26-Misc-79/2008 Gr I dated 12.12.2008 by the Commissioner of Customs (Import), JNCH which was available before the adjudicating authority to determine the valuation in case of similar goods. The adjudicating authority has accordingly placed reliance on the aforesaid Valuation proposal issued by the Commissioner of Customs (Import), JNCH which being a departmental guideline is legally sustainable in the facts and



circumstances of the case. In view of the aforesaid valuation proposal, if the impugned goods have no content of metallic zinc, its value should be calculated at 40% of LME price and if it has metallic content, the percentage point of 40% should be increased by 2.25% for every slab of 5% of metallic content in the impugned goods. Thus, if the impugned goods have 100% metallic content the price should be taken as 85% of the LME. Based on above mentioned proposal, using LME price of zinc the value of the impugned goods have been rightly calculated which is as follows:

LME price of Zinc as on 10.02.2023	-	3119 USD/MT
Metallic Content as per test report	-	23.4%
Value of impugned goods as per aforesaid formula	-	(3119*50.53%)1576 USD/MT

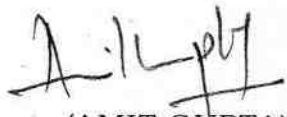
Thus, value of the impugned goods has rightly been arrived at 1576 USD/MT. Accordingly, after rounding off, the value of the impugned goods is correctly re-determined at 1500 USD/MT.

5.7 In view of the above, I am of the considered view that the declared unit value of the goods has been rightly rejected by the adjudicating authority as per Rule 12 of the CVR, 2007 and re-determined to 1.5 USD/Kg under Rule 9 of the CVR, 2007. I find that the Bill of Entry in question has been correctly re-assessed under Section 17(4) of the Customs Act, 1962.

5.8 Therefore, in light of the above discussions, the defense so taken by the appellant in their appeal application and the case laws so relied upon does not come to the rescue of the appellant in the instant matter.

5.9 Accordingly, the impugned order dated 30.03.2023 of the adjudicating authority is upheld and warrants no interference. The appeal filed by the appellant is hereby rejected.




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

F. No. S/49-56/CUS/MUN/2023-24

Date: 30.04.2025

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
रहीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

By Registered post A.D. ~~706~~

To,

M/s Mahesh Chemicals & Allied Industries,
24 Industrial Area-3, Sirsa 125055

Copy to:

- ✓ 1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Custom House, Mundra.
3. The Dy/Asstt Commissioner of Customs, NS-(I), JNCH, Mumbai Zone-II.
4. The Dy/Asstt Commissioner of Customs, Mundra,
5. Guard File.