



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 रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009  
टूर्भाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000BFD6

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|---|---|---|
| क | फ़ाइल संख्या FILE NO.   | S/49-51/CUS/MUN/2024-25   |
| ख | अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)<br>: | MUN-CUSTM-000-APP-063-25-26   |
| ग | पारितकर्ता PASSED BY  | Shri Amit Gupta<br>Commissioner of Customs (Appeals),<br>Ahmedabad  |
| घ | दिनांक DATE   | 10.06.2025  |
| ड | उद्भूत अपील आदेश की सं. व दिनांक<br>ARISING OUT OF ORDER-IN-ORIGINAL NO.  | Speaking Order No.<br>CUS/APR/ASS/610/2024-Gr-2-O/o Pr<br>Commr-Cus-Mundra<br>dtd 08.04.2024                        |
| च | अपील आदेश जारी करने की दिनांक<br>ORDER- IN-APPEAL ISSUED<br>ON:   | 10.06.2025  |
| छ | अपीलकर्ता का नाम व पता NAME<br>AND ADDRESS OF THE<br>APPELLANT:   | M/s. Polyton Nano Technology,<br>Survey No. 121, Pl, Plot No. 3,<br>Biliya- Modpar Road, Biliya,<br>Morbi- 363 641. |

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| 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) | बैगेज के रूप में आयातित कोई माल.  |
| (a) | any goods exported  |
| (ख) | भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।  |
| (b) | any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.   |
| (ग) | सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।  |
| (c) | Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.  |
| 3.  | पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :  |
|     | The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :   |
| (क) | कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।   |
| (a) | 4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.   |
| (ख) | सम्बद्ध 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   |



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|  | 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.   | मर्द 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 :  |  |   |  |  |
|  | <table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;"><b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b></td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2<sup>nd</sup> Floor, Bahumali Bhavan,<br/>Nr.Girdhar Nagar Bridge, Asarwa,<br/>Ahmedabad-380 016</td> </tr> </table>   | सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | <b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b> | दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016 | 2 <sup>nd</sup> Floor, Bahumali Bhavan,<br>Nr.Girdhar Nagar Bridge, Asarwa,<br>Ahmedabad-380 016 |
| सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ | <b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>   |  |   |  |  |
| दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016             | 2 <sup>nd</sup> Floor, Bahumali Bhavan,<br>Nr.Girdhar Nagar Bridge, Asarwa,<br>Ahmedabad-380 016  |  |   |  |  |
| 5.   | <p>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-</p> <p>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 -</p> <p>(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 रुपए.</p> <p>(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;</p> <p>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; पाँच हजार रुपए</p> <p>(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 ;</p> <p>(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 रुपए.</p> <p>(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</p> <p>(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।</p> <p>(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.</p> |  |   |  |  |
| 6.   | <p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>   |  |   |  |  |



**ORDER-IN-APPEAL**

Appeal has been filed by M/s. Polyton Nano Technology, Survey No. 121, Pl, Plot No. 3, Biliya- Modpar Road, Biliya, Morbi- 363 641 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Speaking Order No. CUS/APR/ASS/61 0/2024-Gr-2-O/o Pr Commr-Cus-Mundra dated 08.04.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Gr. 2G, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had imported 12861.50 kgs of "Polyester Resin Fine Power" (hereinafter referred as the goods) from Japan and filed Bill of Entry No.2574631 dated 14.03.2024 for clearance for home consumption. The Appellant had classified the imported goods under CTH 39079120 and paid Customs duties at BCD @7.5%, SWS @ 10% and IGST @18%. The subject Bill of entry was allotted to Faceless Assessment Group, ICD, HOSKOTE, Bangalore (INWFD6) by the Customs automated system for verification of the self-assessment by the Appellant under Section-17 (4) of the Customs Act, 1962. During the verification of the self assessment, the declared unit price USD 0.125 per kg was found low when compared to the contemporaneous imports of the identical item from same country.

2.1 Accordingly, first check examination was given by the FAG officer and ordered to draw sample of cargo and forward the same to CRCL. The sample was drawn vide test memo no. 1208516, 1208517, 1208518, and 1208519 all are dated 18.03.2024 and forwarded to CRCL Kandla for testing.

2.2 Further, a query in ICES was raised to the Appellant asking them to justify the declared value along with all supportive documents with an option of personal hearing. The query given to the Appellant and reply of the Appellant are reproduced below for ready reference:

**"QUERY 1: UPLOAD TEST REPORT. JUSTIFY VALUE WITH SUPPORTING DOCUMENTS. DECLARED VALUE IS LOW. PLEASE GIVE CONSENT TO LOAD VALUE AS PER CONTEMPORANEOUS IMPORT DATA IF LOADING OF VALUE IS NOT ACCEPTED THEN YOU ARE REQUESTED TO PROVIDE**



EMAILS OF YOUR APPELLANT COMPANY LINKED WITH YOUR DULY AUTHORISED REPRESENTATIVES EMAIL ADDRESS FOR AVAILING THE OPPORTUNITY OF PERSONAL HEARING THE INTEREST OF PRINCIPLES OF NATURAL JUSTICE BEFORE DECIDING THE CASE ON MERITS.”

“REPLY: RESPECTED SIR, WE ARE DROWN SAMPLE FOR LAB TESTING. IT WILL TAKE A MINIMUM OF 10 TO 15 DAYS FOR THE TEST REPORT. WE ARE REQUESTED TO YOU KINDLY ASSESS OUR BILL OF ENTRY PROVISIONALLY. OUR VALUE IS FAIR AND TRUE WE HAVE ATTACHED SWIFT COPY OF THE PAYMENT MADE VIDE IRN NO 2024031900090222. WE ARE HEREBY ATTACHING THE PREVIOUS BOE VIDE IRN NO 2024031900089329 WHICH GOT GREEN SIGNAL FROM SIIB AGAINST NCTC INQUIRY. NOC VIDE IRN NO 2024031900089328 WE ARE REQUESTED YOU KINDLY ASSES BE SAME VALUE.”

2.3 Hence it appeared that the Appellant had submitted certain documents in support of the declared value such as swift copy of the payment and other import documents, however the Appellant refrained to represent himself to defend the declared value. In reply to query, the Appellant stated that declared value was fair and did not agree for value enhancement and requested to assess the Bill of Entry on provisional basis before the outcome of test report. Subsequently, the bill of entry was pushed by the FAG (INWFD6), ICD, HOSKOTE, Bangalore to PAG (INMUN1), Mundra for further assessment. After receiving the lab test report, the goods are found in prime form of Polyester resin. The declared value of the cargo was found low when compared to the contemporaneous imports of the identical item from same country. Accordingly, a query in ICES was raised to the Appellant asking them to justify the declared value along with all supportive documents with an option of personal hearing. The given to the Appellant and reply of the Appellant are reproduced below for ready reference:

“ QUERY 2: AS PER TEST REPORT RECEIVED FROM CRCL, IT IS INDICATED THAT THE GOODS ARE PRIME MATERIAL AS PER PLATT RATE/ NIDB, THE GOODS ARE HUGE UNDEVALUED AND NO SUPPORTING DOCUMENTS TO SUBSTANTIATE THE VALUE HAS BEEN PROVIDED. PLEASE JUSTIFY THE VALUATION OF THE GOODS AND PROVIDE SATISFACTORY DOCUMENTS. PLEASE GIVE CONSENT TO ENHANCE VALUE, IF YOU HAVE ANY QUERY, YOU HAVE OPPORTUNITY OF

PERSONAL HEARING BEFORE THE COMPETENT AUTHORITY IN THE MANNER TO SERVE NATURAL JUSTICE. PLEASE PROVIDE YOUR EMAIL ADDRESS FOR VIRTUAL PH.

THE ABOVE SAID QUERY IS RAISED U/S. 17(3), CUSTOM ACT, 1962, IF YOU FAIL TO PROVIDE ANY SATISFACTORY DOCUMENTS, THE VALUE WILL BE ENHANCED U/S. 17(4), CUSTOM ACT, 1962.”

“REPLY: RESPECTED SIR, REFER TO QUERY PLEASE BE INFORMED THAT SAID CARGO IS ROW MATERIAL AND AS PER LEB REPORT ONLY ASH INCLUDE. ALSO FLOWCHART UPLOADED E-SANCHIT VIDE IRN NO. 2024032600094697 AND PREVIOUS BE NO 8153927 DTD 05.10.2023, UPLOADED VIDE IRN NO 2024032600094696 SIIB INVESTIGATION BE 3629284 DTD 07.12.2022 UPLOAD IN E-SANCHIT VIDE IRN NO 2024031900089329 AND 3RD BE NO.4935013 DATED 07.03.2023 UPLOADED VIDE IRN NO 2024032600094698, BANK REMITTANCE UPLOAD VIDE IRN NO UPLOAD VIDE IRN NO 2024031900090222 FOR YOUR READY REFERENCE ALL THREE BOE SUPPLYER AND APPELLANT AND PRODUCT ARE SAME. AND LATEST BOE NO 8153927 DTD 05.10.2023 PRODUCT IMPORT CIF PRICE IS 14.96 PER KGS, SHIPMENT UNDER HEAVY DEMURRAGE AND DETENTION SO WE ARE REQUEST YOU TO PLEASE ACCESS THE SAME.”

2.4 Hence it appeared that the Appellant had submitted the documents pertaining to the declared value with swift copy of the payment and other import documents. However, once again, refrained himself to represent himself before proper officer for personal hearing in support of the declared value. In reply to query, the Appellant stated that declared value was fair and did not agree for value enhancement and requested to assess the Bill of Entry.

2.5 In absence of the proper justification of declared value and the non-appearance of Appellant before the proper officer to attend the personal hearing, the Bill of Entry was assessed with value enhancement i.e., unit price was enhanced to USD 1.30 per kg based on contemporary value of the similar goods cleared vide BE No. 9352700 dated 22/12/2023 of INMAA1.

2.6 The adjudicating authority observed that before the value was enhanced, the Appellant was given opportunity to defend the declared value by

providing relevant documentary evidences in support of the declared value. In response, the Appellant attempted to justify the low unit price with sales contract, proforma invoice and bank remittance copies. However, the declared unit price appeared to be too low as there is a substantial difference in declared unit price and contemporary values of similar goods. The unit price of the identical goods from various countries was as per below in Annexure-A.

| SI No. | Bill of Entry No | Bill of Entry Date | Description  | Customs Tariff Heading | Custom House  | Quantity | Unit Value in Rs. |
|--------|------------------|--------------------|--|------------------------|---------------|----------|-------------------|
| 1      | 2068066          | 09-Feb-21          | POLYESTER RESIN (USED POWDER COATING PAINT END SERVICES) | 39079120               | INNKA6        |          | 113.78            |
| 2      | 9352700          | 22-12-2023         | <b>POLYESTER RESIN (MODEL: CE3312)</b>                   | <b>39079120</b>        | <b>INMAA1</b> |          | <b>108.94</b>     |
| 3      | 9678767          | 16-01-2024         | POLYESTER RESIN  | 39079120               | INNSA1        | 18000    | 134.8             |
| 4      | 9193724          | 07-12-2023         | POLYESTER RESIN  | 39079120               | INNSA1        | 60000    | 120.38            |
| 5      | 8980223          | 28-11-2023         | POLYESTER RESIN  | 39079120               | INNSA1        | 57000    | 125.24            |
| 6      | 8719706          | 10-11-2023         | POLYESTER RESIN  | 39079120               | INHYP4        | 1080     | 1418.99           |
| 7      | 2101812          | 12-02-2024         | POLYESTER RESIN  | 39079120               | INWFD6        | 19000    | 125.93            |
| 8      | 2004686          | 06-02-2024         | POLYESTER RESIN  | 39079120               | INNSA1        | 19000    | 117.95            |

2.7 Consequently the adjudicating authority passed a impugned speaking order wherein the adjudicating authority ordered as under :-

(1) He rejected the declared value of the goods imported against Bill of Entry No. 2574631 dated 14.03.2024 under the provisions of Rule 12 of CVR, 2007.

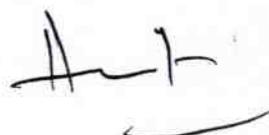
(2) He confirmed the assessment of goods imported vide Bill of Entry No. 9352700 dated 22/12/2023 of INMAA1 by enhancing the unit price to USD 1.30 per KGs under section 17(4) of Customs Act, 1962, with consequent duty liabilities.

### **3. SUBMISSIONS OF THE APPELLANT:**

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that Rule 5 of Customs Valuation Rules, 2007 is wrongly applied to the facts of the goods under consideration. Rule 5 is reproduced below for the ease of ready reference:

*"5. Transaction value of similar goods.- (1) Subject to the provisions*



*of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being imported:*

3.2 The appellant has submitted that the Assessing Officer has nowhere found that the reference goods were sold for export to India at or about the same time as the goods covered by the bill of entry filed by appellant. Further, goods covered by a bill of entry filed in December, 2023 cannot be considered as imported at or about the same time as the goods imported in March, 2024. Hence, the impugned order fails both the criteria laid down in Rule 5 of CVR, 2007.

3.3 The appellant has submitted that that reference goods are different in terms of description and country of origin and therefore, Rule 12 and Rule 5 is wrongly invoked for rejecting the transaction value and determination respectively.

3.4 The impugned order is contrary to the settled legal position that NIDB data cannot be solely relied for rejecting the transaction when there is no evidence to show remittance or promised remittance of any amount over and above the declared value in respect of imported goods.

#### **PERSONAL HEARING:**

4. Personal hearing was granted to the Appellant on 20.05.2025 following the principles of natural justice wherein Shri Vikas Mehta, Consultant, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal memorandum.

#### **DISCUSSION AND FINDINGS:**

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Gr. 2G, Custom House, Mundra and the defense put forth by the Appellants in their appeal. The Appellant has filed the present appeal on 20.05.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the impugned order dated 08.04.2024 as 08.04.2024. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has made

payment of entire duty amount . As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that the issue required to be decided in the present appeal is whether the rejection of the transaction value under Rule 12 of CVR, 2007, and its re-determination under Rule 5 of CVR, 2007, is legally sustainable.

5.2 Section 14(1) of the Customs Act, 1962, read with Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, stipulates that the value of imported goods shall ordinarily be the transaction value, i.e., the price actually paid or payable for the goods when sold for export to India. This transaction value is to be accepted unless there are reasons to doubt its truth or accuracy, as provided under Rule 12 of the CVR, 2007. Only upon rejection of the transaction value under Rule 3 read with Rule 12, can the subsequent valuation methods (Rules 4 to 9) be sequentially applied.

5.3 In the present case, the adjudicating authority rejected the transaction value and directly resorted to Rule 5 of CVR, 2007, relying on a Bill of Entry for different goods. Rule 5 states:



*"5. Transaction value of similar goods. - (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being imported."*

The conditions for applying Rule 5 are stringent: the goods must be "similar" and imported "at or about the same time."

5.4 The Appellant has rightly pointed out that the reference goods relied upon by the adjudicating authority fail to meet the criteria of "similar goods" and "at or about the same time":

5.5 Difference in Time: The impugned goods were imported on 14.03.2024, while the reference goods were imported on 22.12.2023. A time difference of nearly three months cannot be considered "at or about the same

time" in a dynamic market. The Hon'ble Tribunal in Gypsie Impex Vs Commissioner of Customs (CESTAT Chennai) held that reliance on non-contemporaneous imports is not justified for re-determination of value.

5.6 Difference in Country of Origin: The impugned goods are from Japan, while the reference goods are from China. Rule 2(f)(ii) of CVR, 2007, specifically defines "similar goods" as those "produced in the country in which the goods being valued were produced." This crucial condition is not met. The Delhi High Court in Niraj Silk Mills Versus Commissioner Of Customs (ICD) (CUSAA 26/2022 & CM APPL 22868/2022 dated 27.11.2024) emphasized that NIDB data alone is insufficient without corroborative evidence or contemporaneous import comparisons, and that the burden shifts to the Appellant only when the department provides evidence of contemporaneous imports at higher prices.

5.7 Difference in Description/Grade: The impugned goods are "Polyester Resin Fine Powder," whereas the reference goods are "Polyester Resin (Model: CE 3312)." These are distinct products, potentially having different characteristics, applications, and market values. Rule 2(f)(i) of CVR, 2007, states that "similar goods" must "have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark." The adjudicating authority has not provided any evidence to establish that "Polyester Resin Fine Powder" and "Polyester Resin (Model: CE 3312)" are commercially interchangeable or have like characteristics, especially considering the "fine powder" distinction.

5.8 Therefore, the very basis for applying Rule 5 of CVR, 2007, by the adjudicating authority is flawed, as the reference goods do not qualify as "similar goods" imported "at or about the same time."

5.9 The adjudicating authority's reliance primarily on NIDB data for value enhancement is contrary to a catena of judicial pronouncements. The National Import Database (NIDB) is a risk assessment tool, not a conclusive basis for rejecting transaction value or re-determining it without further corroborative evidence. The CESTAT Ahmedabad, in 2025 (5) TMI 1287 - AT - Customs - Tax Management India. Com, observed that "the declared value cannot be enhanced merely on the basis of the NIDB data... NIDB data cannot be made the basis for



enhancement of the declared import value." Similarly, CESTAT Chennai in Albany Molecular Research Hyderabad Research Centre Pvt Ltd Vs Commissioner of Customs held that "enhancement of transaction value solely on the basis of NIDB data, without determining how imported goods are comparable and contemporaneous, not justified."

5.10 The principle reiterated across various forums is that the transaction value, as per Section 14 of the Customs Act, 1962, and Rule 3 of CVR, 2007, must be accepted unless there is cogent evidence to the contrary. The burden of proving undervaluation lies squarely on the department. Mere reference to NIDB data, without establishing that the buyer and seller are related, or that additional consideration flowed, or that the goods are truly identical/similar and imported contemporaneously, is insufficient to reject the transaction value. The Hon'ble Supreme Court in Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai (2000) 122 ELT 321 (SC) has consistently held that transaction value should be accepted unless clear evidence exists to reject it.

5.11 In the present case, there is no allegation of a relationship between the buyer and seller, nor any evidence of additional payments beyond the declared invoice value. The adjudicating authority's rejection of the transaction value and re-determination based solely on disparate NIDB data, without fulfilling the conditions of Rule 5 of CVR, 2007, is unsustainable. The Appellant's act of paying duty under protest further indicates their disagreement with the re-assessment, preserving their right to appeal.

5.12 In light of the detailed discussions and findings above, I find that the adjudicating authority erred in rejecting the transaction value and re-determining it under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The conditions for applying Rule 5, particularly regarding "similar goods" and "at or about the same time," were not met, and the sole reliance on NIDB data without corroborative evidence is not permissible as per established legal precedents.

Therefore, the impugned order is legally unsustainable and is liable to be set aside. The transaction value declared by the Appellant, being the price actually paid or payable, should have been accepted.

*A-12*

6. In view of the above findings, I hereby set aside the impugned speaking order bearing F. No. CUS/APR/ASS/610/2024-Gr. 2-O/o Pr. Commr-Cus-Mundra dated 08.04.2024. I hold that the transaction value declared by M/s. Polyton Nano Technology for the imported goods, "Polyester Resin Fine Powder," is the correct assessable value under Section 14 of the Customs Act, 1962, read with Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

7. The appeal filed by M/s. Polyton Nano Technology is hereby allowed.



(AMIT GUPTA)

Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-51/CUS/MUN/2024-25  
1371

Date: 10.06.2025

By Registered post A.D/E-Mail

To,  
M/s. Polyton Nano Technology  
Survey No. 121, P1, Plot No. 3,  
Biliya-Modpar Road,  
Biliya, Morbi- 363641.

सत्यापित/ATTESTED  
अधीकान/SUPERINTENDENT  
सीमा द्वाल्क (अपील), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Deputy/Assistant Commissioner of Customs, Custom House, Mundra.
4. Guard File.