



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
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DIN - 20250571MN0000275E53

क	फ़ाइल संख्या FILE NO.	S/49-139/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-026-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	20.05.2025
	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. KOL/CUS/DC/PORT/AG-I/483/2023, dated 03.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	20.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s TRS Metals Alloys, Plot No. 65, Palwal Industrial Area, Hathin, Palwal Faridabad, Haryana 121103



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। 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.
(b)	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, केन्द्रीय 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
	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 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 हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

Appeal has been filed by M/s TRS Metals Alloys, Plot No. 65, Palwal Industrial Area, Hathin, Palwal Faridabad, and Haryana 121103 (hereinafter referred to as the 'appellant' in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. KOL/CUS/DC/PORT/AG-I/483/2023 dated 03.09.2023 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner of Customs (Port), Custom House, Kolkata (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had imported a consignment of 'Aluminum Dross (Import DGFT Licence No. 0111009080 dt. 05.06.2023)' from Bahrain under Bill of Entry No. 7375748 dated 16.08.2023 (detailed at Table-'A' below) classifying the impugned goods under Customs Tariff Item No. 26204010 for clearance for home consumption.

Table A

Sl. No.	Bill of Entry No. & Date	Name of the Importer	Item Description	CTH	Qty (in MT)	Assessable Value (in Rs.)
1	7375748 dated 16.08.2023	M/s TRS Metals Alloys (IEC-AATFT5292L)	Aluminium Dross (Import: DGFT Lic. No. 0111009080)	26204010	263.607	10,02,846

2.1 The aforesaid goods imported vide Bill of Entry No. 7375748 dated 16.08.2023 are covered under Invoice No. SINV-2023-0153 dated 12.08.2023 of CNF value USD 11862.32 raised by the overseas supplier M/s Taha International for Industrial Services WLL, Building B46 Road 3501 Block 635 AL, Manama, P.O. Box 20451, Kingdom of Bahrain. The declared assessable value of the goods is Rs. 10,02,846/- (Rupees Ten Lakh Two Thousand Eight Hundred and Forty Six only). Importer had self-assessed the duty as Rs. 2,45,597/- (Rupees Two Lakh Forty Five Thousand Five Hundred and Ninety Seven only). The declared Net Weight of the goods is 263.607 MT. The aforesaid Bill of Entry went for verification of self-assessment under Section 17(2) of the Customs Act, 1962 to FAG (Faceless Assessment Group) IB, Kolkata Port Commissionerate (INCCU1).

The port of import of goods is MUNDRA (INMUNI).

2.2 The unit price of Item Sl. No. 1 'Aluminium Dross (Import DGFT Lic. No. 0111009080 dt. 05.06.2023)' has been declared as USD 45.000019/MT CNF equivalent to Rs.3762.00/MT. On perusal of the import documents, declaration made in the Bill of Entry, corresponding RMS instructions and contemporaneous import value of similar goods available in NIDB and ICES, the declared value appeared to be very low which in turn provided considerable reasons to doubt the truth and accuracy of the declared value of the imported goods.

2.3 Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (in short, CVR, 2007) empowers the proper officer of Customs to ask the importer of any goods to furnish information including documents and other evidence when the proper officer has reason to doubt the truth and accuracy of the declared value based on grounds stipulated in explanation (1)(iii) of Rule 12 of the CVR, 2007 which inter-alia includes 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.

2.4 Therefore, a query dated 17.08.2023 was raised to the importer in the ICES which reads as below:

"1) PLEASE UPLOAD (A) LOAD-PORT CHEMICAL ANALYSIS REPORT CONTAINING MAINLY ZINC/LEAD/CADMIUM/ COPPER/LEAD/ ALUMINIUM QUANTITY IN %AGE (B) PRE-SHIPMENT CERTIFICATE, (C) TECHNICAL WRITEUP, (D) MSDS, (E) FORM-6 & FORM-9 (F) PHOTOCOPIES OF LEDGER PAGES OF PASSBOOK SHOWING QUANTITY OF IMPORT ALREADY MADE, (G) BANK REMITTANCE COPY.

2) PLEASE UPLOAD THE LATEST PREVIOUS TEST REPORT (PTR) NOT MORE THAN SIX MONTHS OLD COVERING THE IDENTICAL GOODS, GRADE, SPECIFICATIONS HAVING SAME COO IMPORTED FROM SAME SUPPLIER AVAILABLE WITH YOU AND TECHNICAL LITERATURE, PRE-SHIPMENT CERTIFICATE OF THE PRODUCT. ALSO PLEASE STATE WHETHER YOU ARE A MANUFACTURER. IN ABSENCE OF THE SAME BE MAY BE ASSESSED PROVISIONALLY

Handwritten signature

DUE TO PENDING TEST REPORT.

3) YOUR DECLARED VALUE IS APPEARED TO BE VERY LOW W.R.T CONTEMPORANEOUS IMPORT FROM SAME COO, SAME SUPPLIER, SAME SPECIFICATION. JUSTIFY YOUR VALUE."

The importer replied to the aforesaid query on 18.08.2023 stating as below:

"Requested Sir We have Uploaded Required Documents bank remittance copy, msds data Sheet, declaration copy, certificate analysis, and form-6 and 9, via Esanchit IRN.no.2023081800136368, 2023081800136367, 2023081800136366, 2023081800136365, 2023081600008232, 2023081600008233, Pls. Assess BoE. thanks you sir."

2.5 The reply was found to be not satisfactory and therefore a second query was raised on 19.08.2023, which may be read as below:

"REPLY SEEN AND SAME IS NOT SATISFACTORY. AS MED FROM THE SAME SUPPLIER IN RECENTLY. SO, VALUE OF THE GOODS MAY BE ENHANCED AS PER THE CONTEMPORANEOUS IMPORT VALUE OF SIMILAR GOODS. PLEASE STATE IF ANY AO IN THIS REGARD IS DESIRED."

The importer replied to the aforesaid query on 28.08.2023 stating as below:

"RESPECTED SIR, WE WISH TO BRING YOUR KIND INFORMATION THAT WE HAVE SUBMITTED PREVIOUS BILL OF ENTRY AND CERTIFICATE OF ANALYSIS UNDER E-SANCHIT VIDE IRN NO. 2023082800033560, 2023082800033561, 2023082800033562. PLEASE NOTE THE CONSIGNMENT IS INCURRING HEAVY DETENTION CHARGES. WE HEREBY REQUEST YOU TO KINDLY ASSESS THE BILL OF ENTRY AT YOUR BEST AT THE EARLIEST TO AVOID FURTHER CHARGES. THANKS & REGARDS."

2.6 Since, the matter pertains to gross under-valuation, in this respect 3rd query on 28.08.2023 was raised to the importer i.e.

"REPLY IS NOT SATISFACTORY. YOU DID NOT UPLOAD PTR OF CONTEMPORANEOUS IMPORT FROM SAME SUPPLIER AND SAME COO. THIS IS THE LAST QUERY, FURTHER THE DECISION WILL BE TAKEN ON THE BASIS OF YOUR SUBMISSION AND AVAILABLE RECORDS. THE MATTERS APPEARS TO BE GROSS UNDER-VALUATION WHILE COMPARING THE DATA WITH THE SAME SUPPLIER FROM SAME COUNTRY. PLEASE NOTE THAT BASED ON YOUR RESPONSE, IF PROPER OFFICER IS SATISFIED TO THE TRUTH AND ACCURACY OF DECLARED VALUE, DECLARED VALUE SHALL BE ACCEPTED IN TERMS OF RULE 12 EXPLANATION 1(II) OF THE CVR 2007, OR IF THE PROPER OFFICER STILL HAVE REASONABLE DOUBT, RE-ASSESSMENT MAY BE REQUIRED. THE DECLARED VALUE(S) IS/ARE NOT JUSTIFIABLE AS IT APPEAR(S) TO BE NOT AS PER CONTEMPORARY PRICE. PLEASE CLARIFY WHETHER DO YOU ACCEPT LOADING AS PER NIDB DATA AND RECENT ASSESSMENT VALUE OF SAME GOODS IMPORTED FROM SUPPLIER AND SAME COO. PLEASE NOTE THAT VALUE IS NOT IN CONFORMITY WITH THE CONTEMPORARY PRICE, HENCE, IT CREATES A REASONABLE GROUND TO DOUBT AND REJECT THE DECLARED VALUE. FURTHER, VALUE CAN BE LOADED BASED ON THE NIDB DATA/OTHER ASSESSMENT AS PER VALUATION RULES. PLEASE GIVE YOUR CONSENT FOR ACCEPTANCE OF LOADING VALUE AVAILABLE WITH THE DEPARTMENT AND SPEAKING ORDER SHALL BE ISSUED AS PER RULES. ELSE PL CLARIFY YOUR COMMENTS"



The importer replied to the 3rd query on 29.08.2023 stating that:

"RESPECTED SIR, THE IMPORTER IS MANUFACTURER IMPORTING THE GOODS FOR MANUFACTURING PURPOSE. PREVIOUS BILL OF ENTRY FROM THE SAME SUPPLIER FOR THE SAME IMPORTER FOR THE SAME GOODS UPLOADED UNDER E-SANCHIT. PLEASE NOTE THAT THE VALUE OF GOODS IS FAIR. TEST REPORT IS NOT AVAILABLE. KINDLY ASSESS THE BILL OF ENTRY PROVISIONALLY UNDER TEST BOND WITHOUT BANK GUARANTEE. THE CONSIGNMENT IS INCURRING HEAVY DETENTION AND DEMURRAGE CHARGES KINDLY ASSESS THE BE, IF NOT POSSIBLE WE HEREBY HUMBLY REQUEST YOU TO KINDLY PUSH THE BE TO

THE MOTHER PORT. TO AVOID FURTHER CHARGES. THANKS & REGARDS"

2.7 The importer was given three opportunities to explain and justify with documentary evidence the apparent massive difference in unit import value of goods imported vide subject Bill of Entry No. 7375748 dated 16.08.2023 i.e. 45.000019 USD/MT when compared with the data with same goods with the same supplier.

2.8 Rule 12 of the CVR, 2007 stipulates that 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 and accuracy of the declared value, 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 of the CVR, 2007. Further, Sub Rule (4) of Rule 3 *ibid* prescribes that 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. Therefore, in such cases transaction value requires to be determined under Sub-Rule (4) of Rule 3 *ibid* by proceeding sequentially through Rule 4 to 9.

2.9 Sub-Rule (3) of Rule 4 of the CVR, 2007 regarding 'Transaction value of identical goods' stipulates that - 'In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.' Further, Sub-Rule (2) of Rule 5 of CVR, 2007 regarding 'Transaction value of similar goods' stipulates that - 'The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.'

2.10 Therefore, it appeared that the goods at item Sl. No. 1, declared as 'Aluminum Dross (Import DGFT Lic. No. 0111009080 dt. 05.06.2023)', classified under Customs Tariff Item 26204010 with declared unit import value of 45.000019 USD/MT equivalent to Rs. 3762.00/MT (Exchange Rate - 1 USD = Rs.83.60), of the subject Bill of Entry No. 7375748 dated 16.08.2023 has been massively undervalued. In view of the same, the declared value did not appear to be the true transaction value of the goods under provisions of the Section 14 of the Customs Act, 1962 read with those of Sub-Rule (1) of Rule 3 of the CVR, 2007 and accordingly it appeared liable to be rejected under Rule 12 of CVR, 2007 and the same required to be re-determined under Sub-Rule (4) of Rule 3 of

the CVR, 2007 by proceeding sequentially through Rule 4 to 9.

2.11 Sufficient data relating to contemporaneous import of identical goods could not be located in relevant DoV and ICES search and as such the value of the goods under importation could not be determined under Rule 4 of the CVR, 2007.

2.12 Therefore, data pertaining to contemporaneous import of similar goods was searched in the records available in ICES and DoV and the relevant details have been tabulated below:

Table 'B'

S. No	BE No.	BE date	Goods description	Qty (KGs)	Unit AV (Rs.)	COO	Supplier
1	5378949	05.04.2023	Aluminum Dross (Import Sil License No:0111001658 Dt:05.10.2021)	60930	30.471	Bahrain	Taha International
2	3252731	10.11.2022	Aluminum Dross (Import License For Restricted List Of Import Item License No:0111001658 Dt:05.10.2021)	2,62,060	38.13	Bahrain	Taha International
3	3250452	10.11.2022	Aluminum Dross (Import License For Restricted List Of Import Item License No:0111001658 Dt:05.10.2021)	2,63,080	38.13	Bahrain	Taha International

2.13 It was observed from the import data as illustrated in the above table that contemporaneous unit assessable value of similar goods is very high as compared to the declared unit assessable value of goods imported vide subject Bill of Entry No. 7375748 dated 16.08.2023. As such, the declared value as Transaction value in respect of subject goods was found apparently liable to be rejected in terms of Rule 12 of the CVR, 2007. Further, Sub-Rule (2) of Rule 5 read with Sub-Rule (3) of Rule 4 ibid stipulates that the lowest value amongst multiple available contemporaneous import values of similar goods has to be considered for determination of value of imported goods. In this regard, it was seen from the above table that the lowest value amongst contemporaneous import values of similar goods is Rs. 30.471/KG which pertains to goods imported vide Bill of Entry No. 5378949 dated 05.04.2023 where the importer,

description of goods and Country of Origin of goods as well as port of discharge are same as those in subject Bill of Entry.

TABLE C

S. No	BE No. & Date	Importer's Name	Goods description	Qty (KGs)	Unit AV (USD)	COO	Supplier
1	6993826 dated 22.07.2023	Ashirwad Enterprise	Aluminium Dross (Import DGFT Lic. No. 0111007035 dt. 30.01.2023)	2,69,828	0.376081	Bahrain	Taha International
2	7377231 dated 16.08.2023	Ashirwad Enterprise	Aluminium Dross (Import DGFT Lic. No. 0111007035 dt. 30.01.2023)	26204010	0.376081	Bahrain	Taha International

2.14 It was also observed from the import data of Port of assessed at INCCU1 Port as illustrated in the above Table - C that contemporaneous unit assessable value of similar goods was 0.376081 USD/KG after enhancement of the unit value and passed assessment order under section 17(5) of CA'62.

2.15 However, it appeared from the assessment of the BE as mentioned in Table-'C', all queries and replies thereon submitted by the importer for the above-said BE and as well as his uploaded documents, goods have been exported from Bahrain and exporter was Taha International for Industrial Services WLL. The said Bill of Entry of the imported goods "Aluminium Dross (Import DGFT Lic. No. 0111007035 dt. 31.01.2023)" was assessed with Unit Value as 0.376081 USD per Kg as mentioned in Table 'C'. Therefore, the most appropriate value of the impugned goods should be value as 0.376081 USD per Kg as per documentary evidence submitted by the importer.

2.16 Accordingly, unit assessable value of goods was loaded to 376.081 USD/MT & assessed provisionally and necessary remarks dated 30.08.2023 were duly entered in the Departmental Comments Section reading as follows:

"THE DECLARED VALUE OF THE GOODS HAS FOUND TO BE VERY LOW WHEN COMPARED WITH THE VALUE WITH CONTEMPORANEOUS IMPORT VALUE OF SIMILAR GOODS. ON THE BASIS OF IMPORTER'S SUBMISSION AND DATA, THE VALUE HAS ENHANCED TO 376.081 USD PER MT. ASSESSMENT ORDER WILL

BE ISSUED WITHIN THE TIME LIMIT AS PER U/S 17(5) OF CUSTOMS ACT, 1962."

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

- (1) He rejected the declared unit assessable value and total assessable value of goods, imported vide Bill of Entry No. 7375748 dated 16.08.2023, as Rs.3762.01/MT (i.e. 45.000019 USD/MT) and Rs.10,02,846/- (Rupees ten lakh two thousand eight hundred and forty six only) respectively under provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined the same as Rs. 31440.37/MT (viz. 376.081 USD/MT) and Rs.83,81,141/- (Rupees eighty three lakh eighty one thousand one hundred and forty one only) respectively in terms of Sub-Rule (2) of Rule 5 ibid.
- (2) He rejected the declared total duty leviable on the goods imported vide Bill of Entry No. 7375748 dated 16.08.2023 of Rs.2,45,597/- (Rupees two lakh forty five thousand five hundred and ninety seven only) and determined the same as Rs.20,52,542/- (Rupees twenty lakh fifty two thousand five hundred and forty two only).
- (3) He ordered for re-assessment of the subject Bill of Entry No. 7375748 dated 16.08.2023 under Section 17(4) of the Customs Act, 1962 as ordered above.

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 filed Bill of Entry No. 7033548 Dt.25.07.2023 for import of goods based on Invoice Price along with invoice payment advice and packing list and Bill of lading. The value declared was as per purchase and paid for. The Assessing Authority did not accept the declared price and raised Queries online which were replied to and uploaded all relevant documents in appellant's support. The Assessing authority arbitrarily loaded price. Since the goods were needed and the delay would have caused demurrage charges, the appellant paid

the duty at the enhanced value under protest.

3.2 The appellant has submitted that arbitrary enhancement has led to payment of excess Customs duties and GST amounting to Rs.20,52,542.00 as per calculation sheet enclosed which is wrong and refundable.

3.3 The appellant has submitted that the value declared was based on invoice payment advice was uploaded. The Assessing authority did not give any notice to Show Cause or hearing. The enhancement was therefore in violation of principles Natural Justice and is liable to be set aside for that reason. The enhancement has been done without citing any contemporaneous import at loaded price. The enhancement was therefore arbitrary. The Assessing Authority has passed a speaking order on our request which was received by us on 09.09.2023 the appeal is therefore being filed against order O-I-O no. KOL/CUS/DC/PORT/AG-1/483/2023 Dt. 03.09.2023.

3.4 Appellant has placed reliance on the ratio of Superior Court decisions in following case laws.

- (i). Hon'ble Supreme Court decision 2008(231) ELT 198(SC) in the matter of Mahalaxmi Gems- Held.
- (ii). Hon'ble Supreme Court decision 2011(272)ELT641(SC)- Aggarwal Industries Ltd.-Held.
- (iii). Tribunal decisions 2017(350)ELT262-Agarwal Marbles India Pvt. Ltd.- Held-
- (iv). Tribunal decision-2017(352) ELT 62(T)- Panna Lal & Sons- Held-
- (v). Tribunal decision-2017(357) ELT 904(T)- Haji Sattor & Sons- Held-

PERSONAL HEARING:

4. A personal hearing was granted to the Appellant on 24.04.2025 following the principles of natural justice wherein Shri N. K. Sharma, Advocate, appeared on behalf of the Appellant. He reiterated the submissions made in the appeal and submitted letter dated 24.06.2025 regarding the Condonation of delay in filing the appeal.



DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Deputy Commissioner of Customs (Port), Custom House, Kolkata and the defense put forth by the Appellants in their appeal. In the Form C.A.-1, the Appellant have mentioned BE No. 7375748 dated 16.08.2023 instead of OIO no KOL/CUS/DC/PORT/AG-1/483/2023 dated 03.09.2023. The appellant vide their letter dated 26.04.2024 have informed that appeal against impugned order dated 03.09.2023 was filed by them at Nhava Sheva through speed post on 26.10.2023 which was subsequently forwarded to this office.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal which are as follows:

- i. Whether the speaking order passed by the Adjudicating Authority has followed the principles of natural justice or otherwise.

Whether the value loading done by the Adjudicating authority in the impugned order is correct or otherwise.

5.2.1 Firstly, I take up the issue whether the speaking order passed by the Adjudicating Authority has followed the principles of natural justice or otherwise. It is observed three queries were raised on 17.08.2023, 19.08.2023, and 28.08.2023 through the ICES system, requesting specific documents to substantiate the declared value of USD 45/MT. The appellant responded on 18.08.2023, 28.08.2023, and 29.08.2023, submitting documents via e-Sanchit. These interactions provided the appellant with multiple opportunities to present their case, satisfying the requirement of a fair hearing. Further, vide the query raised on 28.08.2023, it was specifically informed to the appellant that their reply is not satisfactory and they had not uploaded PTR of contemporaneous import from same supplier and same coo and that it was the last query and further the decision will be taken on the basis of their submission and available records. It was clearly informed to the appellant that the matters appeared to be gross under-valuation while comparing the data with the same supplier from same country and that based on the response of the appellant, if proper officer is satisfied to the truth and accuracy of declared value, declared value shall be accepted in terms of rule 12 explanation 1(ii) of the CVR 2007, or if the proper officer still have reasonable doubt, re-assessment may be required. It was



informed to the appellant that the declared value is not justifiable as it appeared to be not as per contemporary price and it was requested to the appellant to clarify whether do they accept loading as per NIDB data and recent assessment value of same goods imported from supplier and same coo. It was requested to the appellant please give your consent for acceptance of loading value available with the department and speaking order shall be issued as per rules. The appellant, vide their reply dated 29.08.2023 requested to assess the bill of entry provisionally under test bond without bank guarantee.

5.2.2 It is observed that while the appellant contends that a formal show cause notice and personal hearing were necessary, Section 17 of the Customs Act, 1962, governs the assessment process. Section 17(3) allows the proper officer to request documents or information, and Section 17(5) mandates a speaking order for re-assessments contrary to self-assessment, which was issued on 03.09.2023. The statute does not explicitly require a personal hearing for valuation disputes, and written communications are deemed sufficient and ample opportunities have been given to the appellants to submit their reply.

5.2.3 The speaking order detailed the reasons for rejecting the declared value, including discrepancies in aluminum recovery rates and comparisons with contemporaneous import data, fulfilling the requirement for a reasoned decision. The absence of a personal hearing does not vitiate the process, as the appellant was actively engaged through written queries and responses. Thus, the impugned order adhered to the principles of natural justice, providing notice, opportunity to respond, and a reasoned decision.

5.2.4 Now I come to the issue regarding the value loading done by the Adjudicating authority in the impugned order. The value loading by adjudicating authority has increased the unit assessable value from USD 45/MT to USD 376.081/MT, based on Rule 3(4), Rule 4(3), Rule 5(2) and Rule 12 of the CVR, 2007. Rule 12 permits the proper officer to doubt the declared transaction value if there are reasons, such as significantly higher values of identical or similar goods. Relevant portion of the rules are reproduced here under:

3. Determination of the method of valuation.-

(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.



4. Transaction value of identical goods. -

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

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 valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

12. Rejection of declared value. -

...

(2) ...

(i) 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.



5.2.5 It is observed that Rule 12 permits the proper officer to doubt the declared transaction value if there are reasons, such as significantly higher values of identical or similar goods. If rejected, Rule 3(4) requires valuation through Rules 4 to 9 sequentially. Rule 4 applies to identical goods, and Rule 5 to similar goods, defined as goods with like characteristics and commercial interchangeability. Rule 12 of the CVR, 2007 stipulates that 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 and accuracy of the declared value, 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 of the

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CVR, 2007. Further, Sub Rule (4) of Rule 3 *ibid* prescribes that 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. Therefore, in such cases transaction value requires to be determined under Sub-Rule (4) of Rule 3 *ibid* by proceeding sequentially through Rule 4 to 9. Further, Sub-Rule (3) of Rule 4 of the CVR, 2007 regarding 'Transaction value of identical goods' stipulates that - 'In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.' Further, Sub-Rule (2) of Rule 5 of CVR, 2007 regarding 'Transaction value of similar goods' stipulates that - 'The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.'

5.2.5 It is observed that in the instant case, the Adjudicating Authority has followed the CVR, 2007. The Adjudicating Authority found no data for identical goods but identified contemporaneous imports of similar goods, as detailed in Tables B and C of the impugned order. Table B shows a unit assessable value of Rs. 30.471/KG (Rs. 30,471/MT) for similar goods, and Table C shows USD 0.376081/KG (USD 376.081/MT), converted to approximately Rs. 31,440/MT at an exchange rate of Rs. 83.6/USD. The authority adopted the USD 376.081/MT value from Table C, as it was contemporaneous with the import data and involved similar goods from the same supplier and country of origin.

5.2.6 It is observed that the appellant has relied on *Mahalaxmi Gems vs. Union of India* ([2008] 231 ELT 198 SC) is misplaced. In that case, the Supreme Court held that the transaction value must be accepted unless contemporaneous evidence proves the invoice price is incorrect, such as through fabrication or related-party influence. Here, the Adjudicating Authority has provided clear evidence of higher values for similar goods, justifying the rejection under Rule 12.

5.2.7 It is observed that the Appellant has also relied on *Aggarwal Industries Ltd. vs. Union of India* ([2011] 272 ELT 641 SC) (*Aggarwal Industries*) wherein Hon'ble Supreme Court upheld the invoice price because no evidence suggested extra payments or special circumstances under Rule 4(2) of the CVR, 1988. In contrast, the appellant's case involves contemporaneous data showing a significant value discrepancy, and the appellant failed to provide a previous test report or other evidence to support their declared value. The Supreme Court's decision in *Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai*

At

2000 (122) E.L.T. 321 (S.C.) reinforces that transaction values can be rejected when special circumstances, such as significantly higher contemporaneous values, exist, as was the case here. It is also observed that the value arrived at is in accordance with the due process of the sequential application required by the Rules is not in doubt.

5.2.8 It is observed that the Tribunal decisions cited by the appellant viz. Agarwal Marbles India Pvt. Ltd., Panna Lal & Sons, Haji Sattor & Sons are not binding, as they lack the precedential weight of Supreme Court rulings. Moreover, without specific details on these cases, their applicability is limited, and the department's adherence to CVR, 2007, overrides their relevance.

5.2.9 The value loading was thus legally and factually correct, supported by contemporaneous evidence and compliant with the sequential valuation process under CVR, 2007.

6. In view of the above discussions, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings of the adjudicating authority.

7. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant.



(Signature)
(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-139/CUS/MUN/2023-24

Date: 20.05.2025

By Registered post A.D/E-Mail

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

