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 - 20250671MN000000BD9F

क	फ़ाइल संख्या FILE NO.	S/49-211/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-110-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. MCH/DC/NJ/Gr-III/532/16-17 dtd 18.11.2016
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. YTH Trading Company, Shop No.29, Hi-Life Mall, PM Road, Santacruz (W), Mumbai-400054

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods 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 दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर 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 हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड 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. YTH Trading Company, Shop no. 29, Hi-Life Mall, PM road, Santacruz (W), Mumbai-400054, (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/DC/NJ/Gr-III/532/16-17, dtd 18.11.2016 (hereinafter referred to as 'the impugned order') passed by the Deputy Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant presented the following Bills of Entry through their CB/CHA M/s. Bright Shiptrans Pvt. Ltd., Gandhidham-

S. No.	Bill of Entry No.	Date	Declared				
			Qty	Ex.rate	Unit price declared	Assessable value	Duty declared
1	2	3	4	5	6	7	8
1	5622675	14.06.2016	18671.70	68.30	1.60	2140253.49	578528.00
2	5693324	20.06.2016	23742.60	68.05	1.60	2697021.03	729026.00
3	5693205	20.06.2016	22959.10	68.05	1.60	2609203.86	705289.00
4	5857692	04.07.2016	25241.20	68.05	1.60	2831027.28	765249.00
5	5991004	14.07.2016	4909	68.20	1.60	552261.57	149280.70
6	5872450	05.07.2016	19665.70	68.05	1.60	2214435.04	598580.00
7	6028687	18.07.2016	22171.60	68.20	1.60	2495157.38	674461.00
8	6337423	11.08.2016	12530.40	67.75	1.60	1402708.13	379163.00
9	6453587	23.08.2016	19574.50	67.75	1.60	2190127.58	592009.00

The appellant sought clearance(s) of Mixed lot of 100% Polyester Knitted Fabrics rolls of assorted different colours & different weight falling under 60063200 of Custom Tariff Act, 1975, originating from China and declaring the unit price as mentioned in column 6 of the above table.

2.1 It appeared that declared unit price is at Rs.108/Kg to Rs.109/Kg whereas the lowest contemporaneous imports of this commodity are at or above **Rs.149/Kg** for similar goods imported. Valuation of the imported goods is governed by the provisions of Section 14(1) of the Customs Act, 1962 read with

the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Hereinafter referred to as "CVR, 2007"). Since the importer has failed to substantiate the correctness of declared value, the value declared by the importer did not appear to be acceptable for assessing the goods imported by them, the same appears to be rejected in terms of Rule 12 of the CVR, 2007 and required to be re-determined as per the provisions of Rule 3(4) of the CVR, 2007 by proceeding sequentially through Rule 4 to Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence, taking into consideration of over all circumstances of the case, there appeared to be undervaluation of goods imported. Importer vide various letters has sought for waiver of SCN/Personal Hearing in the case and requested to issue speaking order and they have paid duty under protest.

2.2 The appellant, vide various letters, requested the Adjudicating Authority to issue speaking order against enhancement of value and they have paid duty under protest. Accordingly, import data was analyzed for the goods imported at about the same time at Mundra port and also at other leading ports; it was observed that the said goods are being cleared at or above Rs. 149/Kg.

2.3 The transaction value of the imported goods was liable to be rejected under Rule 12 of the CVR, 2007, inter-alia, when the Proper Officer of Customs has reason to doubt the truth or accuracy of the value declared in the Bills of Entry. Explanation 1(iii) to Rule 12 of CVR, 2007 provides that 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 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 The adjudicating authority found undervaluation of goods imported, hence, the same was rejected in terms of Rule 12 of the CVR, 2007. Further, the importer had not given any explanation/reason as to why there was such a difference between their declared price i.e. Rs. 108/Kg to Rs.109/Kg whereas the contemporaneous imports of this commodity is at or above around Rs. 149/Kg. Thus, on this count also the declared value was required to be rejected under the provisions of Rule 12 of CVR, 2007 Further, the appellants had imported the goods as mixed lot of 100% Polyester Knitted Fabrics of various size, color and GSM. Accordingly, after taking into consideration of their goods as mixed lot and quantities imported, the declared value of the impugned goods was re-

determined at Rs. 149/- under Rule 5 of CVR, 2007 for similar goods.

2.5 Importer vide various letters informed that they have accepted the enhanced value under protest, accordingly, on the basis of foregoing paras, protest letters submitted by the importer are liable to be rejected

2.6 In view of the above, the adjudicating authority passed the following order:

(a) He rejected the value declared by the importer under the provisions of Rule 12 of CVR, 2007 and re-determined the value at Rs. 149 or 2.2 USD/Kg as per Rule 3(4) read with Rule 5 of the CVR, 2007 and Bill of Entries has been assessed accordingly,

(b) He rejected the protest letters submitted by the importer and appropriated the duty paid under protest.

3 Being aggrieved by the aforesaid OIO, claimant preferred an appeal before the Commissioner of Customs (Appeals), Ahmedabad and Commissioner Appeal rejected the appeal observing that the he did not have any valid reason to interfere with the impugned assessment forming the subject matter of the present appeal that too filed without a competent person having signed and verified the same.

3.1 Being aggrieved by the aforesaid OIA No. MUN-CUSTM-000-APP-324 to 341-17-18 dated 03.01.2018, the claimant filed appeal before the Hon'ble CESTAT, WZB, Ahmedabad. Hon'ble CESTAT vide Final Order No. A/12645-12662/2023 dated 22.11.2023 held at Para 6 that;

"6. The matters are remanded back to the Commissioner (Appeals) to provide an opportunity to the appellant to correct this defect. If the defect is corrected then the matters may be decided by Commissioner (Appeals) on merits."

4. SUBMISSIONS OF THE APPELLANT:

In view of the above order of Hon'ble CESTAT, WZB, Ahmedabad, vide letter dated 29.02.2024 have approached this Authority with a request to allow them to rectify their mistake and also decide the matter on merits as per the order of

Hon'ble CESTAT.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 03.06.2025, following the principles of natural justice wherein Shri Nikhil Pareek, Advocate, appeared for the hearing and he submitted the appeal prayer and verification part signed by the Partner, M/s YTH Trading Company along with his authorization. He re-iterated the submission made at the time of filing the appeal which are as under.

4.1 Since the Adjudicating Authority had not followed the statutory procedure for valuation and assessment therefore the enhancement is not sustainable in the eyes of law. Transaction Value can be rejected only under specific circumstances as described under the CVR 2007. None of these circumstances is present and applicable in the instant case of the Appellant. It is submitted that for the purpose of application of Rule 5 of the CVR, 2007 in respect of imported goods, the Adjudicating Authority had to first reject the declared price as per the procedure and circumstances prescribed under rule 12 of the CVR, 2007.

4.2 It is submitted that the Adjudicating Authority had failed to properly reject the transaction value first before adopting the value of the identical goods or similar goods on contemporaneous basis. Sir, the Hon'ble Supreme Court of India held in the case of M/s Gira Enterprises vs CC, Ahmedabad in Civil Appeal Nos. 433-434 of 2006, decided on 21-8-2014 and reported on 2014(307)ELT 209 (SC) that if the valuation is to be done on the basis of the value of identical goods or similar goods then the same must be evidence by the department that such imports are comparable imports and assessee must be given reasonable opportunity to put his counter claim. The Supreme Court rules that if the department finds any comparable transaction of import of goods at a different rate then the facts must be brought/supplied to the importer clearly and the appellant importer should have been given a reasonable opportunity to establish that the import transaction were not comparable. Since the department fails to do so therefore the enhancement of value in terms of Rule 4 or Rule 5 of the Valuation Rules cannot be accepted and transaction value will be the value of the imported goods. The relevant abstract of the case are reproduced herein below:

Valuation (Customs) - Contemporaneous imports - Revenue claiming to have information about imports valued at higher rate, but did not supply to importer computer printout which formed basis of their conclusion about undervaluation - HELD : Importer did not have opportunity of establishing that Revenue's claim was unsustainable in law - Mere existence of alleged computer printout was not proof of existence of comparable imports, and assuming such printout did exist and content thereof were true, question remained whether transaction evidenced by it were comparable to impugned transaction of importer - Importer had to be given reasonable opportunity to establish that transactions were not comparable - Rule 5 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 - Section 14 of Customs Act, 1962. [paras 21, 22, 23, 24]

4.3 In the present case, the Adjudicating Authority only observed that the declared price of Rs 108/- To 109/- per Kg cannot be accepted since the Average price of Similar Goods comes to Rs 149 per Kg. Here they at their own determined the 'Average Value of Similar goods' and even failed to give the details of the Contemporaneous import of Similar Goods viz. Bills of entry number and date, date and time of import, nature and description of Imported goods, quantity imported, name of importer, details of port, country of origin, grade, colour, thickness, size etc. The Adjudicating Authority had also failed to give proper evidences like how the contemporaneous import is eligible to perform same function and commercially interchangeable with the goods under consideration having regards to the quality and reputations.

The entire procedure and conditions have laid down under Rule 12 of the said Rules for rejection of the transaction value which are as under :

When there are reasons to doubt the truth or accuracy of the value declared of imported goods, the importer may be asked to furnish further information/ including documents or other evidence and 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.

However in the present case the proper officer has not asked us to furnish any further information/ including documents or other evidence as may be required.

Hence the assessing officer have simply proceeded on the basis of pure presumption and assumption by taking NIDB data which is in gross violation of the said condition.

The importer shall be intimated in writing the grounds for doubting the truth or accuracy of the value declared and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

However in the instant case no such ground have been intimated in writing or provided personal hearing, which a gross violation of natural justice, hence entire proceedings should be quashed in limine

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;

However in the present case the difference between the price declared 1.60 USD per KG and assessed at 2.20 USD per KG is not significantly higher and it is within the range of 20% which is very much within the normal range of international transactions. The value can be considered as significantly higher only if it exceeds 50% or more, which is not the case in the present appeal

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

There is no discount in the present imports which is evident from Contract/ LC/ Invoice or nothing on record which establish that there are abnormal reduction from the ordinary competitive price. Hence on this ground the transaction value cannot be rejected

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

There are no special discounts limited to exclusive agents, hence on this ground the transaction value cannot be rejected.

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

There is no mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production, hence on this ground the transaction value cannot be rejected.

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

All the details are mentioned in Contract / Invoice/ Bill of Entry / Certificate of origin and Lab reports and goods was duly examined by the proper officer before clearance of goods. Hence on this ground the transaction value cannot be rejected

(f) the fraudulent or manipulated documents.

There are no fraudulent or manipulated documents in the present appeal. Even the Adjudicating Authority had also not discussed on this parameter. Hence on this ground the transaction value cannot be rejected

4.4 In view of the above, it is clear that the there are no reasons and evidence on record which shows that the transaction value can be rejected in terms of Section 14 of CA 1962 and Valuation Rules 2007.

4.5 In the matter, the Appellant had already submitted with the Adjudicating Authority all the relevant documents for the imported cargo viz. copies of Contract/ LC/ Certificate of origin /Invoice/Packing List which shows that actual price of imported goods were 1.60 USD per KG FOB basis. The appellant was never informed about the exact details of the contemporaneous import on which the Adjudicating Authority was relying. The Adjudicating Authority even in the impugned Order-in-Original has not given the proper details of the contemporaneous imports of identical goods/Similar goods. Only objection raised at the time of assessment was that the declared price is not acceptable since there are goods which are assessed at higher rates. But the exact information were never communicated to the appellant or appellant's authorised CHA. Without the exact information about other importers/imported cargo, the appellant cannot submit his proper response to a vague query.

Therefore the objection as discussed in the para 7.4 of the Order-in-Original is not become a justified ground for rejection of the declared value. Accordingly the rejection of declared price is not sustainable in the matter.

4.6 The appellant had also submitted that the same cargo is imported and assessed at the same rate of 1.60 USD per Kg FOB. The appellant herewith also submitting the copies of some bills of entry where the identical goods are assessed by the Customs at the same value 1.60 USD per Kg. Since the identical goods are being valued at the same price of the imported goods therefore the transaction value of the imported cargo under the Bills of Entry under consideration cannot be rejected. Even the so called similar goods are valued and assessed at various ports at even less than this price. The copies of so called similar imports and their import price is enclosed herewith. The further data and copies of other imports will be submitted during the course of personal hearing. Hence it can be clearly seen that it is factually incorrect that our import prices are significantly less or there is undervaluation of imported goods. The price data of so called similar imports proves and certifies that average price cannot be taken into consideration. The allegation under the OIO that our prices are quite less and recourse under Rule 5 of CVR 2007 is to taken is incorrect and wrong and has no correct basis and ground. When import prices of various other imports are less than price in the present case, any allegation of undervaluation is found wanting and illegal.

4.7 In view of the above submission, it is established that the Adjudicating Authority had rejected the declared price without complying the prescribed procedure and even without considering the value of identical goods imported at the same time and place and same in quantity. Therefore the rejection of the declared priced is not sustainable in the eyes of law and therefore the Order-in-Original so passed become vitiated and therefore must be quashed and set aside immediately in the interest of justice.

4.8 The Price of the similar goods cannot be taken a basis of assessment of imported cargo in the present case of appellant. However without prejudice to the above submission, if the provisions of Valuation Rules 2007 are to be considered. For adopting the value of similar goods or identical goods it is first and foremost necessary that the Transaction value needs to be rejected by issuing the suitable Order and reasons to be recorded in writing and evidence to reject such transaction value should be brought on record. However in the

instant case and in view of above submission, the Adjudicating Authority has fails to brought on record any evidence which cause a reason to discard the transaction value. Hence, there is gross violation of procedure as laid down under the Rule 3, 4, 5 and 6 of the Valuation Rules 2007. Without proper rejection of the transaction value, determination of value in terms of Rule 4 and 5 is not proper and valid and entire proceeding and assessment becomes redundant and in-fructuous. The Adjudicating Authority failed to properly reject the transaction value first before adopting the value of the similar goods on contemporaneous basis. Sir, the Hon'ble Supreme Court of India held in the case of M/s Gira Enterprises vs CC, Ahmedabad in Civil Appeal Nos. 433-434 of 2006, decided on 21-82014 and reported on 2014(307)ELT 209 (SC) that if the valuation is to be done on the basis of the value of identical goods or similar goods then the same must be evidence by the department that such imports are comparable imports and assessee must be given reasonable opportunity to put his counter claim. The Supreme Court rules that if the department finds any comparable transaction of import of goods at a different rate then the facts must be brought/supplied to the importer and the appellant importer should have been given a reasonable opportunity to established that the import transaction were not comparable. Since the department fails to do so therefore the enhancement of value in terms of Rule 4 or Rule 5 of the Valuation Rules cannot be accepted and transaction value will be the value of the imported goods. the relevant abstract of the case are reproduced herein below:

> *Valuation (Customs) - Contemporaneous imports - Revenue claiming to have information about imports valued at higher rate, but did not supply to importer computer printout which formed basis of their conclusion about undervaluation - HELD : Importer did not have opportunity of establishing that Revenue's claim was unsustainable in law - Mere existence of alleged computer printout was not proof of existence of comparable imports, and assuming such printout did exist and content thereof were true, question remained whether transaction evidenced by it were comparable to impugned transaction of importer - Importer had to be given reasonable opportunity to establish that transactions were not comparable - Rule 5 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 - Section 14 of Customs Act, 1962. [paras 21, 22, 23, 24]*

4.9 The act of re-determination of transaction value has to mandatorily proceeded with rejection of the declared value in cases where there is a

reasonable doubt that such declared value does not represent transaction value. Rule 12 of CVR, 2007 provides a mandatory sequence for rejection of declared value after an element of reasonable doubt is observed by the proper officer. In the instant case, nowhere the records indicate that the adjudicating authority had reached even a 'degree or element of suspicion' regarding the veracity of the declared value. In this regard, we rely upon the decisions of Hon'ble Tribunal in the case of United Copier Systems - 2009 {247} ELT 767 (Tri.Del) and Rakesh Kumar Agarvval - 2009 (234) ELT 732 (Tri. Chennai) wherein it is held that without confronting the NIDB data for rebuttal and without bringing cogent evidences on records, transaction value cannot be rejected. It is submit that no such reasons or evidences have been communicated to us or available on records before rejecting the declared transaction value, except that the assessing authority found to have been swayed by the NIDB data.

4.10 If there is a mis-declaration, department is entitled to reject the transaction value declared by the importers. However in the present case there is no allegation of any mis-declaration of goods. In the case of Varsha Plastics Pvt. Ltd. - 2009 (235) ELT 793 (sq, Hon'ble Supreme Court has held that once the nature of the goods have been found mis-declared, the value declared for such goods becomes unacceptable. In the case of P V Ukkru International Trade - 2009 (235) ELT 229(Ker), Hon'ble High Court has made it unambiguously clear that once there is mis-declaration by the importer about the product imported, the department gets right to question the correctness of valuation of goods by the assessee. However, the critical point is that in such cases, the onus is on the department to prove with sufficient evidences relating to comparable goods imported in comparable quantity from the same country of origin and at comparable time. This stand has also been taken in the case of Kailashchandra Jain - 7996{86} ELT 529 (Tri.Del) as well as in case of Margra Industries Ltd. - 2004(171) E.L. T. 334' (Tri.Del.). Further, Hon' ble Tribunal in the case of Spices Trading Corporation - 1998 (104) ELT 665 held that transaction value is to be adopted unless Department can produce objective reasons and strong evidence to show that the declared value was not bono fide. Thus the burden to discharge the obligation that declared value was not bona fide rests solely on the Department. There is evidences on record which establish the same. The adjudicating authority was having on record no reasons as illustrated under explanation-1 (iii) to rule 12(2) of CV 2007 for the purpose of arriving at a 'reasonable doubt' regarding the declared value. Even otherwise, adjudicating authority is bound to follow the provisions of rule 12(1) and 12(2) in seriatum,

to communicate all the relevant factors to the importer and call for documents or information which he thinks relevant for the purpose of substantiating such reasonable doubt. It was, incumbent upon him to inquire into the matter to Substantiate such 'element of suspicion', if any, by taking it forward to the level of a 'reasonable doubt' by adducing corroborative evidences. The ratio of South India Television Pvt. Ltd. - 2007 (214) E.LT. 3 (S.C.) is squarely applicable in this case wherein the Hon'ble Apex Court held:-

> *"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 o allege undervaluation. It must make detailed inquiries, collect material and also adequate evidence."*

4.11 The appellant also relies upon the judgment of Hon'ble Apex Court in the case of Aggarwal Industries Ltd. - 2011 (272) ELT 641 (SC) wherein it is held that mere suspicion on the invoice price would not make 'reasonable doubt' for rejection of transaction value It is a settled principle of law that NIDB data cannot be considered sacrosanct for rejecting invoice value, especially when the Board also vide Circular No. 26/2013-Cus dated 19.07.2013 doubted the veracity of NIDB data and explicitly mentioned the unfeasibility of adopting such value for valuation purpose. Hon'ble Tribunal has also turned down absolute reliance on NIDB data as per in the cases of United Copier Systems, Rakesh Kumar Agarvval- 2009 (234) ELT 132 (Tri. Chennai) both cited supra, besides in Neha Inter Continental Pvt. Ltd. - 2006 (202) ELT 530 (Tri.Mum) which was also maintained by Hon'ble Apex Court vide 2008 (221) ELT A31 (SC). If the adjudicating authority found some higher prices on contemporaneous imports, he should have conducted an inquiry to substantiate the same with incontrovertible evidences which should have been confronted to the importer before passing a speaking order for rejection of declared value. With no observance to these statutory procedures, the rejection of invoice value declared by the importer is incorrect and illegal and observed as under.

> *" 11. It needs little emphasis 'that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports,*

which obviously would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation, Rule 10A of CVR, 1988 contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that 'reason to doubt' does not mean 'reason to suspect'. A mere suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject it as evidence of the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. "

4.12 The Re-determination of the transaction value is covered under Section 14 of the Act read with rule 3 of CVR, 2007. Hon'ble Apex Court has categorically specified in several cases that only when the transaction value under rule 4 is rejected in accordance with law, then only under rule 3 (ii) the value shall be determined by proceeding sequentially through rules 4 to 9 of Valuation Rules. Conversely, if the transaction value can be determined under rule 3(1) and does not fall under any of the exceptions in rule 3(2), there is no question of determining the value under subsequent rules [The decisions of Hon'ble Supreme Court in the cases of Bureau Veritas - 2005 (181) E.L.T. 3 (S.C.), J,D. Orgochem Ltd. - 2008 (226) E.L.T. 9 (S.C.) and Eicher Tractors Ltd.- 2000 (122) 321 (SC) refers]. Rule 3(4) of CVR, 2007 also categorically states that if value cannot be determined under rule 3(1), the value is to be determined by proceeding sequentially through rule 4 to rule 9 . The decision of Hon'ble Apex Court in the case of Eicher Tractors Ltd. - 2000 {122} ELT 321 SC is squarely applicable in the present case, wherein Hon'ble Apex Court has laid down mandatory procedures for rejection and redetermination of transaction value. When rejection of the declared value was not made in accordance with the legal provisions, the very act of redetermination of the value would be in-fructuous. Thus, the impugned assessment orders are perfunctory and per incuriam which would not stand scrutiny of the law; and hence the rejection and redetermination of transaction value in these cases is not maintainable. The para 10 from the decision of Hon'ble Tribunal in re Margra Industries Ltd. 2007 (216) ELT 710 Tri.Del) in a similar case which has also been maintained by Hon'ble Supreme Court as per 2012 (275) ELT A83 SC, which is squarely applicable in the instant case..-

"10.... While market prices vary depending upon myriad factors, Rule 4 of Customs Valuation Rules specifically provides that transaction value should be the basis for which the valuation of the consignment under assessment, unless the transaction value is not representing the full price for the reasons mentioned in the rule itself, Law does not allow a pick and choose approach. Revenue's acceptance of higher prices and rejection of lower prices for assessment is clearly illegal "

4.13 It is submitted that the Valuation of the imported goods is governed by the Customs Valuation (Determination of Value of Imported goods) Rules, 2007. As per the Rule 3(1) of the said Valuation Rules, the value of the imported goods shall be the transaction value adjusted in accordance with the rule 10 of this rules. Rule 3(2) envisage some conditions for accepting the transaction value as value of the imported goods. These conditions are:

(a) no restriction as to disposal of goods or use of goods;

(b) sale or price is not subjected to any condition or consideration;

(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 seller, and;

(d) the buyer and seller are not related person.

4.14 If any one of the above condition was not fulfilled then the transaction value will not be accepted and the valuation of the imported goods to be done in terms of Rule 4 to Rule 9 of the valuation Rules, 2007. However in the present case, the Adjudicating Authority failed to show any evidence that value declared by importer appellant was not price actually paid, that buyer and seller were related persons and price was not sole consideration. Declared value enhanced without reference to contemporaneous bill of entry on NIDB data for imported goods. Neither any evidence of excess payment by importer produced nor contemporaneous bill of entry provided to importer for establishing themselves that the identical goods or similar goods are not comparable. Therefore the department could not invoke provision of the Rule 4 or rule 5 of the Valuation Rules and therefore the enhancement of value will be considered as illegal and invalid and therefore must be set aside with consequential relief.

4.15 Without prejudice to the above, even for sake of discussion if the value of similar goods or identical goods is to be taken for assessment, it is incumbent upon Assessing Officer to follow the procedure and condition as laid down under Rule 4 and 5 of the Valuation Rules 2007 as stated above. The Rule 4 and 5 clearly states that

- the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;
- In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity
- 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.

4.16 The Adjudicating Authority had applied the provision of Rule 5 of CVR, 2007 in the present case. The relevant para of the Order-in-Original are reads as under :

"14. Since, Polyester Knitted Fabric being Textile product cannot be same in all respects, the value cannot be re-determined in terms of Rules 4 of the CVR, 2007. Hence, the same has to be redetermined by applying the provisions of Rule 5 of the CVR, 2007 which reads as under :-

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

Accordingly, taking recourse to the value of similar goods and not as identical goods as Polyester Knitted Fabrics though cannot be same in all respects, still possess 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 etc.

It is noticed that average unit price of Polyester Knitted Fabrics on the basis of similar imports at the relevant period is Rs. 149/kg. Thus, the declared value of the impugned goods merits determination as USD 2.2 /Kg CIF under Rule 5 of CVR,2007."

4.17 It is admitted by the adjudicating Authority himself that the since, Polyester Knitted Fabric being Textile product cannot be same in all respects, the value cannot be re-determined in terms of Rules 4 of the CVR, 2007. Hence when Adjudicating Authority himself finds that the said imported goods cannot be same in all respect, then even it cannot fall under the category of similar goods in terms of Rule 5 of CVR 2007. The adjudicating authority has tried to held that it will fall under the definition of similar goods on the ground that it still possess 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. The said contention is completely erroneous and based on complete assumption and presumption and no evidence has put forth to substantiate such argument. It is no where establish or proved that the imported goods in the present case is

(a) possessing like characteristics
(b) like component materials which enable them to perform the same functions
(c) commercially interchangeable with the goods being valued having regard to the quality, reputation

4.17.1 As regards (a), it is submitted that they have imported Polyester knitted fabrics of different color and sizes pertaining to chapter 60063200 . hence it is nearly impossible that the similar goods are of also of same color and sizes as imported in the present case. Specifically in the case of fabrics the price can be vary even on color to color and size and design. In the case of fabrics it is not at all feasible to compare the prices of similar goods, except if the brand name, fabric, thickness, chemical composition, color, size, design, packing are same, which is not in the present case. Therefore having similar characteristic is factually incorrect and not sustainable.

4.17.2 As regards (b) like component materials which enable them to perform the same function, it is to submit that there is no component in Polyester knitted fabrics and as regards similar material, it is submitted that it was categorically mentioned in the Bill of Entry, Invoice that imported goods is of different color and sizes, hence question of similar material in case of fabrics does not arise. Instead in case of fabrics, even on little variation on account i.e colour, shade, design, size etc, the material does not remain same. There is nothing on record or no evidence has been put forth or chemical result which shows that the present imported consignment is having similar characteristic. It appears more so completely illegal and not tenable when average price of other imported goods has been taken for assessment. When average price has been taken, which means that many imported consignment has been taken into consideration for determining average value. Hence when even it is very difficult that two imported fabrics are of same characteristic, the large no. of consignment can be same. It is further held the imported goods are perform the same function, it is submit that if we want to compare the goods on their use and function, it will lead to chaos and become absurd. As an example the shirt may cost from Rs 100/- to Rs 5000/- per piece depending upon the quality size, color, grade etc, however its functions are same i.e it to be weared by a person. Hence to compare the goods on the basis of its function is incorrect and factually not possible.

4.17.3 As regards (c) that commercially interchangeable with the goods being valued having regard to the quality, reputation. In this regard it is submitted that there is nothing on record that the imported goods are commercially interchangeable with the other imported goods and the quality and reputation is same or similar. As stated above the quality of the two or more fabrics do not same except if the brand, quality, grade, size, colour thickness, county of origin etc is same, which is not the case in the instant case. The reputation has no relevancy and concern with valuation and even there is nothing on record in this regard.

4.18 Hence the entire ground on which price has been enhanced by adjudicating authority is incorrect, wrong and not tenable in terms of CVR 2007. The criteria adopted by the Adjudicating Authority for enhancing the prices of similar goods is in complete contravention of Rule 4 and 5 of CVR as stated above. The price of similar goods is strictly required to be determined and considered as per the condition stipulated there in i.e

- the value of imported goods should be at or about the same time as the goods being valued;
- The sale should be at the same commercial level and in substantially the same quantity
- if more than one transaction value of identical goods, the lowest such value shall be used to determine the value of imported goods.

4.19 None of the ingredients is available in the present case on record, and even otherwise lowest price was required to be taken for assessment, whereas as in the present case the average value of other imports has taken into consideration which is in gross violation of the Rule 5 of CVR and in complete contradiction of genesis and sprit of method of valuation in terms of Section 14 of CA 1962 and CVR 2007.

4.20 The assessing officer has re-determined the value on the basis of AVERAGE VALUE of other imported goods. In this regard it is to submit that there is no provision at all under Section 14 of CA 1962 or under Rule 4 and 5 of CVR 2007 to take the average value in consideration. The adjudicating authority has erroneously re-determined the value on presumption and assumption basis and in contravention of the conditions of the said provisions. The Rule 4 and 5 of CVR clearly stipulates that lowest price of identical/similar goods is to be taken into consideration, whereas the adjudicating authority has taken the average value which has no basis at all under the eyes of law. There is no concept of average value under Rule 4 and 5 of CVR 2007 of which recourse has been taken by adjudicating authority. The said OIO is not tenable and legal and requires to be set aside on this ground alone. Therefore, there is nothing on record which establish that the prices adopted of similar goods are imported at or about the same time of the present imports and whether the identical imports are on same commercial level and in substantially the same quantity. When, these two conditions are not being fulfilled the value of identical goods or similar goods cannot be adopted at all in terms of Rule 4 of Valuation Rules 2007.

4.21 The appellant has submitted that the law puts the burden of proof of undervaluation on the Department and it is for the department to make sufficient enquiry at all major ports. The department failed to provide such proof to the appellant importer and randomly assess the value on average basis based on their NIDB data. The charge of undervaluation cannot be upheld on the basis of NIBD data, more so when there is no proof to show that the imports shown in

the NIBD data were of identical or similar goods and of similar quantity. We have imported Polyester knitted fabrics of different color and sizes pertaining to chapter 60063200. It is categorically mentioned in the Contract/ Invoice/ Packing List/ Certificate of Origin the imported goods is fabrics of different colors and sizes, hence it is nearly impossible that the similar goods or identical goods are of also of same color and sizes as imported in the present case. Specifically in the case of fabrics the price can be vary even on color to color and size and design. In the case of fabrics it is not at all feasible to compare the prices of similar or identical goods, except if the brand name, fabric, thickness, chemical composition, color, size, design, packing are same. However in the present case nothing is on record that all these parameters are similar or identical to the goods whose value has been taken for assessment. In the case of SWASTIK MECHATRONICS PVT.LTD vs COMMR. OF CUSTOMS (ICD), NEW DELHI reported at 2014 (314) E.L.T. 373 (Tri. - Del.), the Principal Bench of CESTAT at New Delhi hold that the NIBD data for valuation of contemporaneous import cannot be held to be an admissible evidence for the purpose of enhancement of value.

4.22 Further the Hon'ble Supreme Court of India also held that the Transaction value acceptable when enhancement of value not supported by contemporaneous imports of similar goods in the case of Commissioner v. Polyglass Acrylic Mfg. Co. Ltd. - 2015 (322) E.L.T. A40 (S.C.). It is settled law that the transaction value can be rejected on the basis of the reasonable and cogent evidence of the contemporaneous import of identical or similar goods, having same country of origin and import at the same commercial level. Onus is on the department to prove that the invoice value does not represent the true commercial value in the market. In the case of CCE Vs Modern Overseas reported at 2005 (184)ELT 65 (CESTAT) it was held that the initial onus is on the revenue to show that the transaction value is not correct value. In the case of CC vs Sharda Casting reported at 2005 (187)ELT 506 (CESTAT) it was held that before proceeding to determine the value of imported goods under rule 4 to rule 9 of the Valuation rules, 2007 sequentially the transaction value declared had to be discarded on the valid grounds.

4.23 Before proceeding, it is quintessential to read and analyze the provision of Section 14 of the Customs Act 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Section 14 of the CA 1962 clearly envisage that the transaction value of such imported goods, that

is to say, the price actually paid for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale. The appellant fulfills all the condition for adopting the transaction value only as

- the price actually paid was 1.60 USD per KG which is clearly evident from Contract/LC/Invoice/ Packing list and will be further proved by remittance certificate issued by the Bank.
- The price is to taken at the time and place of importation and the correct value was declared of this consignment on the basis of the said documents
- The buyer and seller are not related person
- The price is the sole consideration for the sale and there is no evidence on record that there are any other consideration flown directly or indirectly between buyer and seller

4.24 Hence every condition of Section 14 has been fulfilled, the question of rejecting Transaction value does not arise and it is completely illegal and not tenable. Therefore to reject the transaction value and adopt the NIDB data of similar goods or identical goods is void and to be quashed. The price declared by the appellant-importer is just and proper and cannot be rejected without brought on records any cogent evidences. Without prejudice to the above submission, it is further submitted that they have submitted copies of Sales Contract, Commercial Invoice, Certificate of Origin, Bill of Lading and certificate of AZO test along with Bill of Entry. The said documents clearly show that they have imported Polyester knitted fabrics of different colors and sizes pertaining to chapter 60063200 at the FOB price of 1.60 USD per KG. They have also remitted /paid the value of imported goods as declared in the said documents. It is settled legal principle that unless and until there are evidence on record of flowing of money directly or indirectly, the transaction value cannot be discarded, otherwise the entire principle and genesis to assess the goods on transaction value will become redundant and void and purpose of Section 14 will be defeated summarily which is not the intention of legislature. There is no iota of evidence / documents to show that there is directly or indirectly flow of money to the foreign seller.

4.25 In view of the above said submissions and to sum up the issue it is to submit that since adjudicating authority has not alleged any mis-declaration

and since there is no evidence of any act of omission or commission to' substantiate undervaluation of imported goods, as also the adjudicating authority has neither pointed out cogent grounds for rejection of the declared value, nor scrupulously followed the mandatory procedures prescribed under section 14 read with CVR, 2007 as discussed supra for the purpose of examining the veracity of the declared value, the declared value has to be treated as true transaction value in terms of section 14, and the same cannot be rejected. Hence, the impugned BOEs are required to be assessed on the basis of declared invoice value by the importer only.

4.26 In their additional submission, Shri Nikhil Pareek, Advocate, placed reliance on the Final Order No. 75888/2025 dtd. 09.04.2025 passed by Hon'ble CESTAT, Kolkata in case of Commissioner of Customs (Port), Kolkata V/s. M/s. R A Electricals in Customs Appeal No.77296 of 2019.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Deputy Commissioner, Custom House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 It is observed that the original Order-in-Appeal dated 03.01.2018 rejected the appeals, including that of the appellant , stating that they were "filed without a competent person having signed and verified the same." This aspect has been directly addressed by the Hon'ble CESTAT, Ahmedabad, Final Order No. A/12645-12662/2023 dated 22.11.2023. In the aforementioned CESTAT order, it was explicitly held that a Custom House Agent cannot file an appeal under his signature and authorization unless the importer is not in India at the material time and the CHA or any other person is duly authorized in terms of Rule 3 of Customs Appeal Rules, 1982. However, the CESTAT further held that this deficiency should have been pointed out by the Commissioner (Appeals) to the appellant, and the same could have been corrected. It was emphasized that such a defect "cannot be a ground for rejection of appeal itself." In the interest of justice, the matter was remanded back to the Commissioner (Appeals) to treat this as a defect and offer an opportunity to the appellant to correct the same. In pursuance of the above order of the Hon'ble CESTAT, the appellant was given opportunity to rectify the defect and appear for personal hearing. After the

appellant has filed the appeal paper duly signed by the competent authority i.e Partner , the appeal is taken up for disposal on merits

5.2 The core of the dispute on merits revolves around the enhancement of the declared value of 100% Polyester Knitted Fabrics based on NIDB data. The appellant has contended that the adjudicating authority failed to follow statutory valuation procedures and improperly rejected the transaction value under Rule 12 of the CVR, 2007, without first rejecting the declared value.

5.3 Section 14 of the Customs Act, 1962, read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, stipulates that the value of imported goods for assessment of duty shall ordinarily be the transaction value, i.e., the price actually paid or payable. Rule 12 of the CVR, 2007, provides for the rejection of the declared value if the proper officer has reasonable doubt about its truth or accuracy. However, this rejection must be preceded by a proper inquiry, requiring the importer to furnish further information or evidence.

5.4 Numerous CESTAT judgments, including the ones cited in Customs Appeal No.77296 of 2019 (Commissioner of Customs (Port), Kolkata Vs. M/s Bajaj Writing Aid, Final Order No.77599/2023 dated 31.10.2023, and Commissioner of Customs (Port), Kolkata Vs. M/s Krishna Wax Pvt. Ltd., FO/75466-75472 dated 21.03.2018), consistently hold that the rejection of transaction value is not permissible without valid reasons and proper inquiry. Furthermore, recent rulings of Hon'ble CESTAT have reiterated that NIDB data alone cannot form the sole basis for the enhancement of value under the Customs Act. For instance, the Hon'ble CESTAT, New Delhi, in a recent case (M/s Hewlett Packard Sales Pvt. Limited v. Principal Commissioner of Customs ACC (Import) Commissionerate, CUSTOMS APPEAL NO. 50203 OF 2021) observed that re-determination of value is invalid without the rejection of transaction value under Rule 12 of the 2007 Rules. The Tribunal emphasized that unless the proper officer rejects the transaction value under Rule 12, the valuation has to be based on transaction value as per Rule 3.

5.5 Another important aspect highlighted by the Hon'ble Tribunal is that voluntary payment of differential duty cannot validate improper Customs reassessment without following proper procedures under Section 17 of the Customs Act and Rule 12 of the Valuation Rules. The Department's reliance

solely on NIDB data to enhance valuation, without conducting a mandatory enquiry under Rule 12 or Section 17(4) examination, has been deemed procedurally deficient.

5.6 In the case of appellant, the impugned order indicates that the value enhancement was based on NIDB data. However, there is no clear indication that the proper officer followed the procedure mandated by Rule 12, including issuing a show cause notice, providing an opportunity for the importer to submit further information or evidence, and recording a speaking order for the rejection of transaction value and subsequent re-determination. Mere reliance on NIDB data without fulfilling these procedural requirements is not sufficient to reject the transaction value. Therefore, the enhancement of value in the impugned order is legally not sustainable and deserves to be set aside.

5.7 In this regard, I find that Final order dtd.09.04.2025 of Hon'ble CESTAT in Customs Appeal No.77296 of 2019 pertaining to Commissioner of Customs (Port), Kolkata V/s. M/s. R A Electricals explicitly supports the appellant's contention regarding procedural due process. The reference to Commissioner of Customs (Port), Kolkata Vs. M/s Bajaj Writing Aid and Commissioner of Customs (Port), Kolkata Vs. M/s Krishna Wax Pvt. Ltd. underscores the principle that rejection of transaction value cannot be arbitrary and must be based on a reasoned process as per valuation rules. These judgments reinforce the argument that the onus is on the department to demonstrate how the transaction value is not accurate or truthful, and merely comparing it with NIDB data is insufficient.

6. In view of the detailed discussions above and consistent with the principles laid down by the Hon'ble CESTAT, particularly in Customs Appeal No.77296 of 2019, and other judicial pronouncements concerning customs valuation, I am of the considered view that the enhancement of the declared value based solely on NIDB data, without following the due process as mandated by Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is legally unsustainable. Accordingly, the transaction value declared by the appellant is to be accepted and the impugned order is set aside.

7. The Adjudicating Authority is directed to implement this order and take necessary actions to finalize the assessment based on the transaction value declared by the appellant.

8. The appeal filed by the appellant is allowed.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

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

F. No. S/49-211/CUS/MUN/2023-24 1801 Date: 30.06.2025

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