



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhavan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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 DIN – 20260171MN0000822985

क	फ़ाइलसंख्या FILE NO.	S/49-246/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमाशुल्क अधिनियम, 1962 कीधारा 128(क)के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	MUN-CUSTM-000-APP-811-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.01.2026
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	OIO No. MCH/471/AC/KRP/GR4/24-25, dated 04.10.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	30.01.2026
	अपीलकर्तानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s. Suncity Metals and Tubes Pvt Ltd, 503/2, 520/P2, Guntha, Gundala, Gandhidham Mundra Highway, Mundra, Kachch- 370421.
1	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै. This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग, नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहैं. 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.	
	निम्नलिखितसम्बन्धितआदेश/Order relating to :	
(क)	बैगेजकेरूपमेंआयातितकोईमाल.	
(a)	any goods imported on baggage.	
(ख)	भारतमेंआयातकरनेहेतुकीसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसे	

	कमीहो.
(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 उसके 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 साधमूल 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 सीमा शुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 सीमा शुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमा शुल्क, 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 :
	सीमा शुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	दूसरी मंजिल, बहुमाली भवन, निकट गिरधर नगर पुल, असारवा, अहमदाबाद-380016
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench 2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमा शुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमा शुल्क 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 कि सीमा शुल्क अधिकारी द्वारा मांगा गया शुल्क और ब्याज तथा लगाया गया दंड की कम पाँच लाख रुपए या उससे कम हो तो एक हजार 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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पाँचहज़ाररुपए
(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)	अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए .
(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)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके ₹10 अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके ₹10अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।
(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.	उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएगलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए .
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

M/s. Suncity Metals and Tubes Private Limited, 503/2, 520/P2, Guntha, Gundala, Gandhidham Mundra Highway, Mundra, Kachch- 370421 (hereinafter referred to as the "appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against the OIO No. MCH/471/AC/KRP/GR4/24-25 dated 04.10.2024 (hereinafter referred to as the "impugned order") issued by the Assistant Commissioner of Customs, Import Section Gr-IV, Customs House, Mundra (hereinafter referred to as the "assessing authority").

2. Briefly stated, facts of the case is that the appellant had imported the goods declared as 'Stainless Steel Cold Rolled Coils (Grade-J3-Finish-2B)' classifying the said goods under CTH 72193490 vide Bill of Entry No. 5652561 dated 17.09.2024. The said Bill of Entry was filed on 2nd Check basis. At the time of filing the said Bill of Entry, the importer has uploaded Invoice, Packing List and NOC from Technical Division, Ministry of Steel.

2.1 The appellant had declared the Unit Price as 1.245 USD/KGS. The price of the goods was on lower side as per contemporaneous import data at Mundra.

2.2 The appellant had been given query on 25.09.2024 as below:

"DECLARED VALUE OF THE GOODS IS LOWER THAN THE PRECAUTIONARY PRICE OF USD 1.295/KG FOR STAINLESS STEEL OF GRADE J3 WHICH IS NOT IN LINES WITH THE REVIEW MEETING RECOMMENDATIONS FOR CAVR ORDER NO. 02/2023 AND DIRECTIVES ISSUED BY THE OF CONVENOR OF NAC-METAL PRODUCTS VIDE LETTER DATED 11.07.2024.

PLEASE UPLOAD ACCEPTANCE LETTER TO ASSESS THE BOE @ 1.295 USD/ PMT"



The appellant replied to the above query that required documents are uploaded in Sanchit wherein their declared value is not low and is comparable with identical goods imported by us from the same supplier for which the bill of entries has been recently assessed by the Customs at the transaction/ declared value. Further, the same CAVR order/ NAC Directions provide only the guidance basis the average rate of imports and the transaction rate varies on

daily basis as mentioned above they are continuously doing imports and the identical goods has been recently assessed on transaction/declared price.

2.3 After implementation of self-assessment importer is responsible for filling correct documents and follow legal provisions. Import of 'Stainless Steel Cold Rolled Coils (Grade-J3-Finish-2B)' is allowed subject to compliance of mandatory provisions of BIS as per the IS No. 6911: 2017. The appellant in the instant case has produced the NOC from Ministry of Steel.

3. Being aggrieved with the impugned order, the Appellant have filed the present appeal and mainly contended the following:

- The assessing officer has assessed the impugned BE in **contravention to the principle of Natural justice** as he had not granted personal hearing in spite of disagreement by the appellant for proposed loading(enhancement) of value as proposed by the proper officer of customs vide his quarry dated 25/09/2024.
- Attention in this regard is invited towards the **BE No. 4964813 DT. 09/08/2024** which pertains to "identical goods" supplied by the same supplier to us at **"same commercial level"** and the said BE No. **BE No. 4964813 DT. 09/08/2024** had been assessed at Mundra Customs port itself @ 1,235 USD/kg and the details of the same were made available to the "proper officer" of the Customs by the Appellant vide their reply Dt. 27/09/2024 and as such the details of assessable value of "identical goods" was in the domain of the adjudicating authority
- In-spite of the above fact that value "of identical goods" was available before the AO. the AO under FAG rejected the declared value as per order in original. The declared value had been rejected under 12 of CVR,2007 by the AO by adopting the "value" of the **"similar goods"** instead of value of the **"identical goods"** and re-determined the value as per rule-5 of CVR ,2007 , whereas the price of the "identical goods" was available before him for the **"identical goods"** supplied from the same supplier and supplied to us(same importer) as well as at same commercial level as such the impugned BE should have been assessed on the basis of price available for **"identical**



- **goods**” taking resort to rule-4 of CVR ,2007 by the adjudicating authority instead of taking resort to rule-5 of CVR ,2007 and as such the impugned order is Bad in law .
- In view of the above, assessing officer had assessed the impugned BE in contravention of the provisions of Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007 (hereinafter referred to as “CVR 2007” .

The CVR, 2007 provides the method for the determination of the method of valuation and as per rule 3(4) of the said rule it is provided that if the value cannot be determined under the provisions of sub-rule (1) of rule 3 of CVR , 2007, **the value shall be determined by “proceeding sequentially” through rule 4 to 9. The relevant portion of said sub rule (4) of rule 3 of CVR ,2007 is reproduced as below:**

*“(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.”*

In view of the above, the assessing officer made a grave error of law by jumping to rule (5) of the CVR,2007 by comparing the value of the goods of so called “similar goods” whereas in this case the value of **“identical goods”** was available to him (as the assessed Bill of entries for identical goods of the same supplier to us were available before him on his portal) and in such cases rule 4 of CVR 2007 was applicable and as such the assessing officer had made blatant lie/misstatement in Pata-10 of the impugned order by holding that

*“exact **identical goods** on same commercial level were not available in import data value could not be determined under rule 4. However, it was observed that the data for **similar goods**, with near identical/similar description for grade/type specifications were found in NIDB for the contemporary times against various Bs/E.”*

In view of the above, the adjudicating authority in blatant defiant of Customs act and rules as stated above, re-determined the **value as per rule-5 of CVR ,2007 , adopting the price of “similar goods”** whereas the price of the “identical goods” was available before him for the identical goods supplied from the same supplier and supplied to us(same

importer) and at same commercial level as such the impugned BE should have been assessed on the basis of price available for "identical goods taking resort to rule-4 of CVR ,2007 by the adjudicating authority instead of taking resort to rule-5 of CVR ,2007 and as such the impugned order is Bad in law .

- In this regard it is stated that the Customs department cannot enhance the value by rejecting the value of **identical goods** which were available on the Customs portal specifically when the value of said identical goods were for same period and from same supplier and for same commercial level and the attention of the "proper officer of the customs was specially drawn by the appellant vice their reply dt. 27/09/2024 in which they specifically attaché the copy of BE NO. **4964813 DT. 09/08/2024 , which** had been assessed at Mundra Customs port itself @ 1,235 USD/kg.

In this regard we rely upon the decision of CESTAT Chennai in the case of *COMMISSIONER OF CUSTOMS, NEW DELHI Vs INTERNATIONAL TRADERS reported at 2009(239)ELT290(Tri-Delhi) wherein it has been held as under:*

Valuation (Customs) - Transaction value - Value enhanced by Department based on NIDB data - Evidence of contemporaneous imports produced by respondent but rejected and value enhanced - Communication from EDI Section stating that value of impugned item not available - Evidence produced by respondent to show that same goods imported at lower price - Impugned order setting aside enhancement of value sustainable - Sections 14 and 17 of Customs Act, 1962. [paras 2, 4].



In view of the above, the adjudication officer made a grave error in re-determining the value to 1.295 USD /kg by adopting rule -5 for **similar goods**(as per Para-11 to Para 12(i) of the order) when the contemporaneous "assessed" value for identical goods @ 1.235 USD/kg assessed vide BE No. 4964813 dated 09/08/2024 at the same port and from the same supplier was available before him. In such cases the adjudicating authority should have adopted the price of "identical goods as per rule-4 of CVR 2007.

- In this case the contemporaneous value of the "identical goods" was

- available and as such the assessing officer was duty bound to adopt rule 4 of CVR 2007 instead of rule 5 of CVR 2007 because the rule 3 of CVR 2007 debars the customs officer to jump to rule 5 of CVR 2007, if the "value" of "identical goods" is available as per rule 4 of CVR 2007 and in such case the value can only be re-determined under rule 4 of the CVR. 2007. The sub-rule (1) of rule 3 of CVR, 2007, categorically states that **the value shall be determined by "proceeding sequentially" through rule 4 to 9. The relevant portion of said sub rule (4) of rule 3 of CVR, 2007.**
- In this case the price of identical goods brought to the notice of the adjudicating authority from same supplier under various Bills of Entry was not doubted by the AO in the order in original and no discussion on the same has been made and as such he had not considered the value of the "identical goods" made available to him and on the other side he relied upon irrelevant Bill of entries and the **description of comparable imports relied upon by Department had not been made available to the appellant and not been reflected anywhere in the adjudicating order and the same is not for same commercial value and is not the same for same quality, characteristics and as such the value of such so-called similar goods cannot be adopted by the adjudicating authority** Attention in this regard is invited towards the decision of CESTAT in the case of GLOBAL INDUSTRIES Versus COMMISSIONER OF CUSTOMS, COCHIN Reported at 2011 (272) E.L.T. 724 (Tri. - Bang.) wherein it has been held that:

Valuation (Customs) - Transaction value - Rejection of - Appellants imported goods regularly during 2010 at US \$275 per MT and placed on record the details of such regular imports - Entire quantities under the two contracts placed on record have been imported by appellants as per details submitted by them - Quantity and description of imports from same supplier under various Bills of Entry not doubted by Revenue - Description of comparable imports relied upon by Department is not the same - Imported goods are agricultural produce and have different varieties - Appellants have imported the goods in bulk and other imports are not comparable both on account of quality and quantity - Invocation of Rule 5 of Customs (Valuation) Rules, 1975 not sustainable. [paras 14, 21, 24, 25, 26, 27]

- The proper officer of the customs in his quarry" dated 25/09/2024

- did not raise quarry to the effect that contemporaneous value for "identical goods" is not available before him and therefore he wanted to resort to contemporaneous value of "similar goods" to re-determine the "value" as per rule-5 of CVR 2007, without adopting the rule-4 of CVR-2007. In view of the above BE has been re-assessed against the principle of natural justice by adopting the value of "similar goods" under rule-5 of CVR Rules,2007. The impugned order deserves to be set aside on this point as the same has been passed on the "grounds" which were not the subject matter of the objection/quarry of the adjudicating authority in his quarry dated 07/09/2024.
- In this regard it is stated that the assessing officer vide Para -7 of the impugned order had given the finding that instead of adopting the value of "identical goods" he is adopting the **weighted average of USD 1.295 per kg** in terms of Convener of NAC-Metal products vide their letter dated 11/07/2024 wherein directions to sensitize the field formation about fixation or precautionary price for assessment @ USD 1.295 per kg were given post CAVR order .
- In this regard it is stated that there are no provision in the customs act for determination of "value" on the basis of **weighted average basis** as held by the CESTAT Mumbai in the case of MEHTA TRADING HOUSE PVT. LTD. Versus COMMISSIONER OF CUSTOMS, MUMBAI reported at 2007 (213) E.L.T. 54 (Tri. - Mumbai wherein it has been held as under:

Valuation (Customs) - Rejection of transaction value - Revenue seek to adopt determination of value in respect of previous consignment on basis of weighted average value for all sizes - No such provision of law available either under Customs Act, 1962 or under Rules made there under. [para 14]



In this regard it is further stated that "proper officer" of customs while discharging his duty is duty bound only to Customs Act and rules and thereof and he cannot follow any direction of higher authorities which are in contravention of CVR 2007 and as such the impugned order which has been passed as per directions issued under CAVR order (as per Para-8 of the order) is illegal and BAD in Law and requires to be quashed.

- The assessing officer has not given any finding that the price adopted by him (vide BE No. 4981266 Dt. 10/08/2024 and BE No. 4935127 Dt. 08/08/2024 and (Sl. No. 4 and sl. No. 5 of Table as per Para 10 of the

- “order”) even for the “similar goods” are comparable with regard to “commercial level” / “quantity level” and “characteristics ” thickness of the sheet, etc and not suitably “adjusted” the “price as required as per rule sub rule (2) of rule 5 read with rule 4(1)(c) of CVR Rules 2007 which states that:

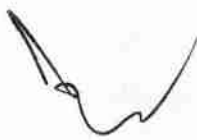
“(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.”

- The assessing officer has not supplied the relevant copies of invoice and Bill of entries against the price adopted by him as per BE No. 4981266 Dt. 10/08/2024 and BE No. 4935127 Dt. 08/08/2024 and (Sl. No. 4 and sl. No. 5 of Table as per Para 10 of the “order”) and as such in absence of the same it cannot be justified by the adjudicating authority that the above BEs for so called **similar goods** were for same commercial value and were for **similar goods**.

Even otherwise it is a settled law that the value cannot be enhanced for imported goods on the basis of other Bill of entries, the copies of which are not supplied to the importer. Reliance in this regard is made towards the CESTAT judgment in the case of SHREE PANCHGANGA AGRO vs COMMISSIONER OF CUSTOMS, NHAVA SHEVA reported at 2010 (250) E.L.T. 55 (Tri. - Mumbai) wherein it has been held as under:

Natural justice - Non-supply of copies of Bills of Entry relied upon - Valuation (Customs) - Assessable value enhanced based on 3 bills of entries - Said B/E not supplied to assessee - Without going into merits of orders passed by lower authorities, matter remanded to Commissioner (Appeals) who will supply copies of Bills of Entry to appellants and hear them afresh and decide the matter. [para 3]

- Further reliance is made towards the decision in the case of MANISH MEHTA Versus COMMISSIONER OF CUSTOMS (ACC & IMP), MUMBAI – reported at 2008 (230) E.L.T. 516 (Tri. - Mumbai)



Valuation (Customs) - Undervaluation - Enhancement of value in terms of Rule 5 of the Customs (Valuation) Rules, 1988 - Natural justice - Violation of - Contention of appellants that copies of invoices of import at Chennai by HCL Infosystem and copy of market enquiry report were not submitted to them, hence principles of natural justice stand violated, is acceptable - Matter remanded for a fresh decision to Commissioner with a direction to furnish copies of relevant documents to appellants - Section 14 of Customs Act, 1962. [para 3]

- The order do not reflect any where that prices adopted by the adjudicating authority as per BE No. 4981266 Dt. 10/08/2024 and BE No. 4935127 Dt. 08/08/2024 and (Sl. No. 4 and sl. No. 5 of Table as per Para 10 of the "order") were **"declared value" by the importers** or **"loaded assessable value"** by the customs department because the **"loaded assessable value"** cannot be termed as "contemporaneous value" as per settled law by CESTAT.

Attention in this regard is invited towards the CESTAT Chandigarh judgment in the case of **Artex Textile Pvt. Ltd vs CCE, Delhi-IV** (delivered on 19 June, 2017) in appeal nos. C/3167-3176, 4179-4182/2012 wherein in Para -9 it has been held that **"In the case laws cited by the appellant, this Tribunal has already held that for the purpose of comparison to contemporaneous imports, the value to be adopted is not the value arrived at after loading by the department but the value that has been declared and accepted without any enhancement. The relevant portion of the judgment is as below:**

"9. In the impugned order, we find that the Commissioner (Appeals) has relied on the assessed value and not the value declared. Rule 5 of the Valuation Rules provide for enhancement of the value is to be done as per said rule. Moreover, the declared value is found less than the assessed value which cannot be the basis of enhance the value. In this case, the department has assessee identical goods at the rate of 2.85 US\$ per kg whereas the value declared by the appellant ranges between 2.00 US\$ to 2.63 US\$ per kg. The price which has been adopted to be assessed is not the declared value. In fact, the same is the assessed value. Therefore, the said value cannot be said as the value contemporaneous import. Similar issue



came up before this Tribunal in the case of Ravi Dyeware Co. Ltd. (Supra) wherein this Tribunal has observed as under:

*5.1 The enhancement of the value has been done under Rule 5 of the Customs Valuation Rules, 1988. As per the said Rule, if more than one value is found, then the lowest of the such value shall be used to determine the value of the imported goods. In the present case as pointed out by the Ld. Counsel; the department has assessed identical goods at lower values ranging from US \$ 1070 to US \$ 1090 PMT, whereas the value declared by the appellant is higher at US \$ 1100 PMT. Further, the price adopted for comparison is not a declared value but an enhanced value by the Customs. The values declared in those transactions ranged from US \$ 1050 to US \$ 1090 PMT. **In the case laws cited by the appellant, this Tribunal has already held that for the purpose of comparison to contemporaneous imports, the value to be adopted is not the value arrived at after loading by the department but the value that has been declared and accepted without any enhancement.** Besides, we notice that no evidence has been led by the Revenue in the instant case to counter the appellants contention that the transaction value declared by them, as evident from the documents is not the real transaction value."*

- The adjudicating authority was bound to adopt LOWEST price as mandated by rule 4(3) of the CVT 2007 which states as under:

*"(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."*

(I) It is further submitted that our transaction value is the sole consideration for the import of the goods against the impugned bill of entry and no other consideration flows directly or indirectly. In such cases also the value cannot be re-determined under CVR 2007. Reliance is placed towards the decision in the case of SIDDHARTHA POLYMER LIMITED *Versus* COMMISSIONER OF CUSTOMS, NEW DELHI 2007(216)ELT 604(Tri-Del) wherein it has been held that:



Valuation (Central Excise) - Undervaluation - No material showing fact that purchases were at a higher price or payments in excess at a higher price or payments in excess of invoice prices have taken place - Finding regarding misdeclaration of value is the off-shoot of finding regarding misdeclaration of description and not sustainable - Section 14 of Customs Act, 1962. [para 20].

PERSONAL HEARING

4. Shri Shyam Lal Bansal, consultant of the appellant attended the personal hearing on 04.09.2025 in virtual mode on their behalf. He reiterated the submission made in the appeal memorandum. He further submitted that in earlier appeals having "identical, issues" the matter had been remanded back for fresh adjudication order to the adjudicating authority and if the same course is adopted in these appeals, a time frame may kindly be prescribed to decide the matter afresh in remand proceedings by the adjudicating authority.

DISCUSSION & FINDINGS

5. It is observed that the appellant has contended that the adjudicating authority has erred in rejecting the declared transaction value under Rule 12 of the Customs Valuation Rules, 2007, without properly applying Rule 4 of the

Customs Valuation Rules, 2007, despite availability of contemporaneous imports of identical goods at the same port and from the same supplier. Instead, assessing authority applied Rule 5 of the Customs Valuation Rules, 2007 bypassing the mandatory sequential application of valuation rules as per Rule 3(4). Further, appellant stated that the contemporaneous price of "identical goods" was available at the Customs portal wherein they had imported the identical goods vide Bill of Entry **4964813 dated 09/08/2024** supplied by the same supplier which had been assessed by the proper officer of Customs in the @ 1.235 USD/kg and the same was not taken into account by the adjudicating authority.

5.1 Further, the appellant has also contended that assessing officer has not given any finding that the price adopted even for the similar goods are comparable with regard to "commercial level" / "quantity level" and "characteristics" thickness of the sheet, etc. and not suitably "adjusted" the price as required as per rule sub rule (2) of rule 5 read with rule 4(1)(c) of CVR Rules 2007 which states that:

"(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value."

In this regard, it is observed that Bill of Entry No. **4964813** dated **09/08/2024**, as submitted by the appellant pertain to the same goods and port of import. The said Bill of Entry has also been assessed by the proper officer. Accordingly, the assessing authority is directed to examine the facts of the case in light of this Bill of Entry and consider the same for determination of the contemporaneous value of identical goods, in terms of Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. As per the mandate of Rule 3(4) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the assessing officer is required to apply the valuation methods sequentially from Rule 4 to Rule 9 of CVR 2007 when the transaction value is rejected under Rule 12 of CVR 2007. In the interest of justice and to ensure fair and lawful determination of assessable value, the matter is hereby remanded back to the assessing authority with a direction to re-assess the goods in accordance with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.2 In view of the above, I find that remitting the present appeal to the authority for passing fresh order for considering the submissions made by the appellant in the present appeal has on record, become sine qua non to meet the ends of justice. Accordingly, the case is remanded back to the adjudicating authority, in terms of sub-section of (3) of Section 128A of the Customs Act, 1962, for passing a fresh order by following the principles of natural justice.

6. The appeal is allowed by way of remand.

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


(AMIT GUPTA)
COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD

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1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Pr. Commissioner of Customs, Custom House , Mundra.
3. The Deputy/Assistant Commissioner of Customs, Import Section Gr-IV,
Custom House, Mundra.
- ✓ 4. Guard File.

