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 - 20250871MN000000ABA5

क	फ़ाइल संख्या FILE NO.	S/49-131/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-164-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Bill of Entry no. 6673151 dated 01.07.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. KUSHAL TIMBER PRIVATE LIMITED, Survey No. 41/1, Meghpar, Boreichi, Gandhidham, Kachchh-370201

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. KUSHAL TIMBER PRIVATE LIMITED, Survey No. 41/1, Meghpar, Boreichi, Gandhidham, Kachchh-370201, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the assessment of Bill of Entry no. 6673151 dated 01.07.2023 (hereinafter referred to as 'the impugned order') by the Assessing Officer (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, as per the Appeal memorandum are that the appellant are engaged in the import of various wood logs falling under CTH 4403. The Appellant had filed Bill of Entry No. 6873151 dated 01.07.2023 at Mundra Port through their Customs Broker for the import of three different grades of totally 427.290 CBM of South African Pine Logs Fresh Cut. The value declared was USD 80, 80 and 108 for three different grades. The said Bill of Entry was assigned by the Customs Automated System for verifying the assessment to the Faceless Assessment Group (FAG) officer at Nhava Sheva. The Customs Officer at Nhava Sheva raised a query regarding valuation. The said query is reproduced hereunder.

"THE DECLARED VALUE APPEARS LOW AS PER CONTEMPORANEOUS IMPORT AND VALUE WILL BE ENHANCED AS PER CONTEMPORANEOUS IMPORTS REFER TO BILL OF ENTRY NO. 2027010/05-06.2023 AND 544710-4.2023. PLEASE ACCEPT VALUE ENHANCEMENT OR YOU MAY AVAIL PERSONAL HEARING IN THIS REGARD."

2.1 The Appellant replied to the query on 07.07.2023, as under:

"RESPECTED SIR, WE HAVE UPLOADED THE SALE CONTRACT VIDE IRN NO. 2023/070/006/35/50 AS PER CONTRACT OUR PAYMENT TERMS IS DP AFTER 30 DAYS & WE HAVE PURCHASED THE CARGO FROM THE SAW MILLER, MANUFACTURER DIRECTLY NO AGENT & NOBODY IS IN & OUR PURCHASE IS AT FAIR VALUE PRICE & MOREOVER THIS IS WOOD PRODUCT & IT DEPEND QUALITY OF THE WOOD WHICH IS MANUFACTURED FROM LOGS WHICH IS NATURALLY GROWN & THE QUALITY OF EVERY LOGS IS DIFFERENT & MOREOVER THE PLEASED REFERENCE GIVEN BY YOU IN THE TWO BILL OF ENTRY THE PRICE IS

VARIANT & THIS DEPENDS UPON VOLUME & QUALITY & MOREOVER YOU ARE WELL AWARE THE MARKET IS UNDER DOWNWARD TRENDS THAT IS WHY WE HAVE PURCHASED THIS CARGO AT LOWER VALUE BUT STILL IF YOU FIND ANYTHING YOU MAY PLEASE FORWARD THE BILL OF ENTRY TO PAG & SO WE CAN GET THE DOCUMENTS CLEARED OVER HERE & WE ARE UNNECESSARILY BEARING GROUND RENT IN THIS PLEASE DO THE NEEDFUL & OBLIGE."

2.2 The Appellant had submitted the documents viz copy of Sales Contract dated 01.06.2023 and copy of the Sale Invoice dated 15.06.2023 for justification of the declared value.

2.3 The assessing officer proceeded to enhance the value without any approval or agreement from the Appellant's side and reassessed the BE at the enhanced value of USD 116 for all three different grades. No Show Cause Notice or opportunity of Personal Hearing was given to the Appellant.

2.4 The Appellant, under their Email addressed to all the concerned, informed the Department that the enhancement of the value is not acceptable to them and paid the duty assessed under Protest. The Appellant also requested for issue of Speaking Order in the matter. However, no Speaking Order has been issued.

3. SUBMISSIONS OF THE APPELLANT:

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

3.1 The appellant has submitted that the reassessment of the BE at enhanced value done by the assessing officer is bad in law, unsustainable and contrary to the fact and law and the same requires to be set aside. It is submitted that the reassessment is untenable under the provisions of the Customs Act, 1962.

3.2 The assessing officer arbitrarily and capriciously concluded that the transaction value declared by the Appellant was lower than the contemporaneous import prices found in the NIDB data. The assessing officer, after issuing a query memo to the Appellant for enhancement of declared value,

reassessed the Bills of Entry finally enhancing the declared value without disclosing the basis of the comparison. The Appellant has, time and again, requested the Department to issue the speaking order in terms of the law provisions made under Section 17 of the Customs Act, 1962. But to date neither any reply nor speaking order from the Department has been received by the Appellant. In the query memo there was reference to two bills of entry for contemporaneous import. Except for the registered number of the bills of entry no details were provided to see and compare the factual data in relation to the imports under those two bills of entry. It is settled position of law that NIDB Data cannot be relied upon unless and until the details thereof are provided to the importer for rebuttal. In the case of M/s. Agarwal Foundries (P) Ltd. 2020 (371) ELT 859 it has been held that invoice value cannot be rejected without any specific evidence solely based on NIDB data. This decision is maintained in 2020 (371) ELT A295 by the Apex court. However, in sheer overlooking the same, the assessable value was enhanced to USD 116, as per whims and caprice of the assessing officer. It is worth mentioning that in the bill of entry the Appellant has declared three different grades of pine logs by describing it with the average CFT per log and based on that the value of three different grades vary from USD 80 to USD 106.

3.3 It is also on record that there is no allegation of extra consideration or any misdeclaration. There is no corroborative evidence to show undervaluation. To reject the declared price, there must be reasonable doubt as per Rule 12 of the CVR, 2007. NIDB data showing different prices does not constitute reasonable doubt for rejection of the transaction value. In this regard, the Appellant would like to refer to and rely upon the decision in the case of Mrs. Sai Exports 2019 (370) ELT 388. No exercise was undertaken to check whether the price found in NIDB data pertains to similar goods in quantity, quality, country of origin and other characteristics of the goods imported by the Appellant. Undervaluation in the present case has not been established in any manner. In the case of National Organic Chemicals Ltd., it is held that transaction value cannot be rejected without corroborative evidence.

3.4 It is submitted that it is a settled principle of law that redetermination of transaction value must be mandatorily preceded with rejection of the declared value, in the cases where there is reasonable doubt that such declared value does not represent the transaction value. The value declared by an importer is required to be rejected by invoking the provisions of Rule 12 of

CVR, 2007. It is evident that the statute clearly provides that first there must be a rejection of the declared value by following a mandatory sequence before resorting to re-determination of the value, as shown below in that order -

- Reasonable doubt regarding the truth and accuracy of the declared value.

- Requisition of further information including documents or other evidence from the importer.

- Further reasonable doubt: after receipt of such information or in the absence of a response from the importer.

- Written intimation to the importer regarding the doubts on the truth and accuracy of the declared value, and

- Providing reasonable opportunity of being heard.

No such sequence has been followed in the present case.

3.5 The Appellant highly relies upon the judgment of Hon'ble Apex Court in the case of Aggarwal Industries Ltd. - 2011 (272) ELT 647 (SC) wherein it is held that mere suspicion on the invoice price would not make 'reasonable doubt' for rejection of transaction value and observed as -

... 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 contemplated 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' as evidence of the value of imported goods. The doubt held by the officer concerned means is to be based on some material evidence and is not to be formed on a mere suspicion or speculation.

3.6 It is submitted that the Appellant relies on the decision of Hon'ble Apex Court in the case of Eicher Tractors Ltd. - 2000 (122) ELT 321 SC, wherein the Hon'ble Apex Court has laid down mandatory procedures for rejection of transaction value. None of the ingredients, as illustrated in this case, has been fulfilled in the present case.

3.7 It is, therefore, submitted that the AA has arbitrarily rejected the transaction value without following the principles laid down in the statute, hence the reassessment of the BE would not stand test of law.

3.8 The ratio of South India Television Pvt. Ltd. - 2007 (214) ELT. 3 (S.C.) is squarely applicable in this case wherein the Hon'ble Apex Court held as:

> *"Invoice is the evidence of value. Casting suspicion on an invoice produced by the Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence."*

3.9 Hon'ble High Court has made it unambiguously clear that once there is misdeclaration by the importer about the product imported, the department gets right to question the correctness of valuation of goods by the assessee. However, in such cases, the onus is on the department to prove with sufficient evidence relating to comparable goods imported in comparable quantity from the same country of origin and at comparable time that there actually has a mis-declaration. This stand has also been taken in the case of Kailashchandra Jain reported at 1996(86) E.L.T 529 as well as in case of Margra Industries Ltd. - 2004(17) E.L.T. 334 (Tri. Del.) Further, Hon'ble Tribunal in the case of Spices Trading Corporation - 1998 (104) E.L.T 655 held that the transaction value is to be adopted unless the Department can produce objective reasons and strong evidence to show that the declared value was not bona fide. Thus, the burden to discharge the obligation that declared value was not bona fide rests with the Department. The onus is also on the Department to prove with sufficient evidence relating to comparable goods imported in comparable quantity from the same country of origin and at comparable time, as provided

under Explanation-(iii) given under Rule 12(2) of CVR, 2007 and held in the aforesaid cases of Kailashchandra Jain and Margra Industries Ltd.

3.10 It is worth mentioning that there was a concept of 'deemed value' in Section 14 of the Customs Act, 1962. From 10.10.2007, Section 14 of the Act has been amended to incorporate 'transactional value'. Though there was specification of transaction value under CVR, 1988, section 14(1) still provided for 'deemed value', and in that case, prior to 10.10.2007, one could still determine value based on values prevailing in international trade (adopting them to the value at the time and place of importation in India). With the incorporation of 'transaction value' under section 14 of the Customs Act, 1962, each value stands on its own legs, unless evidence is produced to prove that the transaction value did not represent true price. Hence, the requirement of the revenue to adduce evidence for rejection of transactional value and the basis of redetermination has become more stringent. Therefore, in the present case there is no scope for adopting such "deemed value" in the valuation of the goods and doing reassessment based on enhanced value.

3.11 It is submitted that there is nothing on records as to whether the transaction value was rejected after examining if the same falls within the exceptions specified under the proviso to Rule 3(2) of CVR, 2007. In other words, it is not brought on records that the sale or price is subject to any condition or consideration for which a value cannot be determined in respect of the goods being valued; part of the proceeds of any subsequent resale, disposal, or use of the goods by the buyer will accrue directly or indirectly to the seller; and that buyer is related to the seller. Thus, AA has not followed proper procedures before rejecting the transaction value, hence the reassessment is on a shaky ground on these critical components of the law.

3.12 It is also submitted that redetermination of the transaction value is covered under Section 14 of the Act ibid 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 3 is rejected, then under Rule 3(1) the value shall be determined by proceeding sequentially through Rules 4 to 9 of the Rules. Conversely, if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules [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. (supra) 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 3 to Rule 9. The AA authority has erred in not considering these facts before unilaterally re-determining the value, hence the entire reassessment is vitiated and not sustainable under the law.

3.13 Last but not the least, it is submitted that after following the prescribed sequence of Valuation Rules (which has not been done in the present case), the AA was required to pass a speaking order as provided under Section 17(6) of the Act. None of the aforesaid ingredients have been followed by the AA, while rejecting neither the transaction value, nor any speaking order issued in respect of reassessment of the BE, even after it was requested for the same.

3.14 In view of the foregoing submissions, it is established beyond doubt that the reassessment is not sustainable and is required to be set aside forthwith and substantive benefit is required to be extended to the Appellant.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 01.07.2025, following the principles of natural justice wherein Shri K J Kinariwala, Consultant appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, the defense put forth by the Appellant in their appeal and the relevant legal provisions and precedents.

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

(i) Whether the delay in filing the appeal should be condoned.

(ii) Whether the re-assessment of the Bill of Entry by enhancing the declared transaction value is legally sustainable in the absence of a speaking order as required by Section 17(5) of the Customs Act, 1962.

(iii) Whether the rejection of the declared transaction value and its re-determination were carried out in accordance with the mandatory procedures laid down in Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007).

(iv) Whether the reliance on NIDB data without providing full details to the Appellant for rebuttal is legally permissible.

5.2 The Appellant has filed the present appeal on 09.10.2023. In the Form C.A.-1, the date of communication of the order appealed against has been shown as 12.07.2023 i.e out of charge date. However, the date of assessment is 10.07.2023 which is being considered as date of communication. Accordingly the last date of filing the appeal within normal period of 60 days was 08.09.2023 with condonable period of 30 days ending on 08.10.2023. However the appeal has been on 09.10.2023 i.e Monday. It is observed that there were public holidays on 07.10.2023 and 08.10.2023 on account of Saturday and Sunday. Therefore, as per Section 10 of the General Clauses Act, 1897, the present appeal filed on the next working day i.e. 09.10.2023 which is with condonable period of 30 days.

5.2.1 The appellant has filed an application for condonation of delay wherein they have submitted the reason for delay is that the appellant was waiting for the issuance of speaking order. Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of 30 days beyond the initial sixty-day period, but within the extended thirty-day period. The Appellant has attributed the delay to wait for receipt of speaking order. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice and the appeal is admitted for disposal.

5.3 I find that the present appeal has been filed against assessment of Bill of Entry. It is observed that the Hon'ble Supreme Court in case of ITC Ltd Vs CCE Kolkata [2019 (368) ELT216] has held that any person aggrieved by any order which would include self-assessment, has to get the order modified under Section 128 or under relevant provisions of the Customs Act, 1962. Hence, the appeal preferred by the appellant against assessment in the impugned Bill of Entry is maintainable as per the judgment of the Supreme Court in ITC case supra.

5.4 Section 17(5) of the Customs Act, 1962, clearly mandates that where any imported goods are assessed to duty, the importer shall be issued a "speaking order" if the assessment is not in accordance with the declaration made by the importer and the importer requests for such an order. In the present case, the Appellant explicitly requested a speaking order in their reply to the query, and reiterated this request via email after paying duty under protest. It is undisputed that no such speaking order has been issued by the adjudicating authority.

5.5 The issuance of a speaking order is a fundamental requirement of natural justice and transparency in quasi-judicial proceedings. It ensures that the importer is aware of the reasons for the differential assessment and can effectively challenge it. The non-issuance of a speaking order, despite a specific request, is a serious procedural lapse that vitiates the re-assessment. Without a speaking order, it is difficult for the Appellant (and this appellate authority) to ascertain the precise reasons and methodology adopted by the adjudicating authority for the value enhancement and to effectively address the basis of such enhancement. Therefore, the re-assessment of the Bill of Entry by enhancing the declared transaction value is not legally sustainable in the absence of a speaking order, which is a mandatory requirement under Section 17(5) of the Customs Act, 1962, and a fundamental principle of natural justice.

5.6 Rule 12 of CVR, 2007, outlines the procedure for rejecting the declared transaction value. It requires the proper officer to have "reason to doubt the truth or accuracy of the value declared," to ask for further information, and if doubts persist, to intimate the importer in writing the grounds for doubting and provide a reasonable opportunity of being heard. Only then can the transaction value be deemed non-determinable under Rule 3, leading to sequential valuation under Rules 4 to 9. The Appellant has strongly argued that

this mandatory sequence was not followed. The query merely referenced two Bill of Entry numbers without providing details for comparison (e.g., quality, quantity, grade, origin, time of import). The Appellant explicitly requested these details, which were not provided. The Hon'ble Supreme Court in Agarwal Industries Ltd. - 2011 (272) ELT 641 (SC) has clearly held that "reason to doubt" does not mean "reason to suspect" and that a mere suspicion based on the correctness of an invoice is not sufficient to reject it. The doubt must be based on "some material evidence" and not "mere suspicion or speculation." The non-disclosure of full NIDB data details, as cited by the Appellant in M/s. Agarwal Foundries (P) Ltd. 2020 (371) ELT 859 and M/s. Sai Exports 2019 (370) ELT 398, is a significant procedural flaw. The department's failure to provide the full details of the contemporaneous imports, despite the Appellant's specific request, deprived the Appellant of a fair opportunity to rebut the comparison.

5.7 The Appellant contends that the adjudicating authority "proceeded to enhance the value without any approval or agreement from the Appellant's side and reassessed the BE... without issuing any Show Cause Notice or without affording any opportunity of Personal Hearing." This indicates a failure to formally reject the declared value in writing with reasons and to provide a proper opportunity of being heard before final re-assessment, as mandated by Rule 12(2) of CVR, 2007. The Hon'ble Supreme Court in Eicher Tractors Ltd. - 2000 (122) ELT 321 SC laid down mandatory procedures for rejection of transaction value, emphasizing adherence to principles of natural justice.

5.8 The Appellant correctly highlighted that sequential valuation under Rules 4 to 9 can only be resorted to after a valid rejection of transaction value under Rule 3 read with Rule 12. This principle has been consistently upheld by the Supreme Court in cases like Bureau Veritas - 2005 (181) E.L.T. 3 (S.C.) and J.D. Orgochem Ltd. - 2008 (226) E.L.T. 9 (S.C.). If the initial rejection process under Rule 12 is flawed, any subsequent re-determination of value would also be vitiated. Therefore, the rejection of the declared transaction value and its re-determination were not carried out in strict accordance with the mandatory procedures laid down in Rule 12 of CVR, 2007. This constitutes a significant procedural irregularity, warranting a remand.

5.9 This issue regarding the reliance on NIDB data without providing full details to the Appellant for rebuttal is closely linked to procedural fairness in valuation. The Appellant specifically requested the details of the Bills of Entry

cited as contemporaneous imports, which were not provided. The principle that evidence relied upon must be disclosed to the party against whom it is used is a cornerstone of natural justice. If the department relies on NIDB data for value enhancement, it is incumbent upon them to provide sufficient details of the comparable imports to enable the importer to demonstrate why those comparables are not appropriate (e.g., differences in quality, quantity, time of import, terms of sale, etc.). The Hon'ble High Court of Kerala in P V Ukkru International Trade - 2009 (235) ELT 229 (Ker) and the Tribunal in cases like Kailashchandra Jain 1996(86) ELT 529 and Margra Industries Ltd. - 2004(171) E.L.T. 334 (Tri. -Del.) have emphasized that the onus is on the department to prove undervaluation with sufficient evidence, including details of comparable goods. The failure to provide such details renders the reliance on NIDB data questionable and violates the Appellant's right to proper defense. Therefore, the reliance on NIDB data without providing full details to the Appellant for rebuttal is not legally permissible and constitutes a procedural lapse. This further supports the decision to remand the matter. Copies of appeal memorandum were also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the proper officer for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is required to be remanded back, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order by the proper officer of the Customs Act, 1962 by following the principles of natural justice. While passing the speaking order, the proper officer shall also consider the submissions made in present appeals on merits. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. In view of the detailed discussions and findings above, this appellate authority finds that the impugned re-assessment suffers from significant procedural infirmities, particularly the non-issuance of a speaking order, non-adherence to the mandatory steps for rejection of transaction value under CVR,

2007, and non-disclosure of complete details of relied-upon NIDB data. These lapses constitute a violation of the principles of natural justice.

7. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The delay in filing the appeal is hereby condoned.

(ii) The appeal filed by M/s. Kushal Timber Pvt Ltd is hereby allowed by way of remand.

(iii) The impugned re-assessment of Bill of Entry No. 6673151 dated 01.07.2023 is hereby set aside.

(iv) The matter is remanded back to the adjudicating authority (Assessing Officer, Customs, Mundra) for de novo adjudication.

(v) The adjudicating authority is directed to:

(a) Re-assess the Bill of Entry strictly in accordance with the provisions of Section 14 of the Customs Act, 1962, and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, ensuring strict compliance with Rule 12 of CVR, 2007.

(b) If the transaction value is to be rejected, provide clear, specific, and written grounds for such doubt, along with complete details of any contemporaneous import data (e.g., NIDB data) relied upon, to the Appellant for their rebuttal.

(c) Afford a proper opportunity of personal hearing to the Appellant.

(d) Issue a detailed and reasoned "speaking order" under Section 17(5) of the Customs Act, 1962, clearly articulating the basis for any re-assessment.

(vi) The Appellant shall cooperate fully with the adjudicating authority during the de novo proceedings.

(vii) The duty paid under protest by the Appellant shall be subject to the outcome of the de novo adjudication.

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

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

F. No. S/49-131/CUS/MUN/2023-24 Date: 08.08.2025

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By Registered post A.D/E-Mail

To,
M/s. Kushal Timber Pvt Ltd,
Survey No. 41/1, Meghpar, Boreichi,
Gandhidham, Kachchh-370201.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Dy/Asstt Commissioner of Customs, Custom House, Mundra.
4. Guard File.