



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंजिल 4th Floor, हड्डको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250571MN0000924199

क	फाइल संख्या FILE NO.	S/49-407/CUS/AHD/23-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-048-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
	दिनांक DATE	28.05.2025
	इहमदाबाद भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO. / BILLS OF ENTRY NO.	CAO No. AC/SRA/423/2023-24/Adj (i)/ACC, dated 27/28.10.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	28.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Sakar Industries Pvt. Ltd., H/10, Madhavpura Market, Near Police Commissioner Office, Shahibaug Road, Ahmedabad – 380 004 Factory Address: M/s. Sakar Industries Pvt. Ltd. Plot No. 140-141, Santej – Vadsar Road, Post - Santej, Tal - Kalol, Dist. – Gandhinagar, Gujarat – 382721

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 आहूत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शर्षी 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 आहूत 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 मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd 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 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)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(ब)	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 रुपए से अधिक हो तो; दस हजार रुपए.	
(प)	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 ।	
(द)	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 प्रत्यावर्त्तन 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

M/s. Sakar Industries Pvt. Ltd., H/10, New Madhavpura Market, Near Police Commissioner Office, Shahibaug Road, Ahmedabad – 380 004 having factory at Plot No. 140-141, Santej – Vadsar Road, Santej, Tal-Kalol, Dist. – Gandhinagar, Gujarat – 382721, (hereinafter referred to as 'the Appellant') have filed the present appeal challenging Order – In – Original bearing CAO No. AC/SRA/423/2023-24/Adj (I)/ACC, dated 27/28.10.2023 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Custom, Appraising Group 3 & 4, Air Cargo Complex, Mumbai (hereinafter referred to as 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had filed Bill of Entry No. 4958669, dated 06.08.2021 under self-assessment scheme for clearance of goods "Shredded Aluminium Scrap Tense" as per ISRI with declared value at USD 1055.000127 per MT. The subject Bill of Entry was allocated for Faceless Assessment and during scrutiny of the Bill of Entry and related documents, it was ascertained that the value of goods "Shredded Aluminium Scrap Tense" was declared very much on the lower side as compared to contemporaneous imports. Accordingly, a query was raised regarding valuation of the goods declared in the Bill of Entry. The Appellant had not replied satisfactorily. The FAG was not left with any other option but to load the value as per contemporaneous import of the similar goods. In support of the value loading, five (5) contemporaneous Bills of Entry were relied, as detailed in Para 2 of the impugned order, wherein contemporaneous imports were assessed at minimum of USD 1653 per MTs. The adjudicating authority after considering the written submissions of the Appellant had vide the Order-In-Original dated 31.08.2021 rejected the declared value of 1055.000127 of the said goods under Rule 12 (1) of the Customs Valuation Rules, 2007 and reassessed at USD 1653 per MTs under Section 17 (4) of the Customs Act, 1962 in terms of Rule 5 of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

2.1 Being aggrieved by the Order – In – Original dated 31.08.2021, the Appellant preferred an appeal before the Commissioner (Appeals), Customs, Ahmedabad. The Commissioner (Appeals), Customs, Ahmedabad vide OIA No. AHD-CUSM-000-APP-131-23-24, dated 26.07.2023 allowed the appeal by way of remand with direction for passing fresh order after supplying contemporaneous import data to the Appellant and considering the submission made by the Appellant in the present case on record.

2.2 In the remand proceedings, the adjudicating authority vide the impugned order has ordered to accept the redetermined value and reassessed the declared transaction value at USD 1653 per MTs under Section 17 (4) of the Customs Act, 1962, in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant have filed the present appeal. The Appellant, inter-alia, have raised various contentions and filed detailed submissions on following points, as given below, in support their claims :

- The adjudicating authority had relied upon the contemporaneous import price as mentioned in Para 9 (i) of the impugned order without supplying the copies of the Bills of Entry and Invoices is illegal method of enhancement of value; that the adjudicating authority had relied upon Rule 5 of CVR, 2007, which covers the



goods of similar to the import; that the grade declared must be matched. The adjudicating authority had not applied his mind and arbitrary enhanced the value without following the principles of natural justice and directions of the Appellate authority. The order passed by the adjudicating authority is contempt and judicial indiscipline committed and mockery of adjudication and appellate procedure;

- The verification of self-assessment; examination; valuation and investigation is biased with oblique motive;
- There is no iota of evidence produced in the form of any documents that the value of goods is mis-declared with the intention to evade the duty. They have submitted required documents at the time of clearance so where is intention to evade the duty or any provision of law;
- The adjudicating authority has enhanced the value to USD \$ 1653 PMT without providing the copies of Bills of Entry mentioned in Table mentioned at Para 9 (i) of the impugned order;
- The adjudicating authority has not considered the submissions made in the reply to the query while the Adjudicating authority has recorded the points submitted in personal hearing but did not answered. The observation of the Adjudicating authority that the Authorized Representative failed to provide value evidence and written submissions is patently incorrect. There is no question of written submissions when the Respondent has not supplied the copies of the relied upon document;
- Re-determination of valuation of goods for assessment of duty is arbitrary and contrary to the provision of Section 14 (1) of Customs Act, 1962 read with CVR, 2007;

PERSONAL HEARING:-

4. Personal hearing in the matter was held on 07.05.2025 in virtual mode. Shri H.K. Hirani, Consultant, appeared on behalf of the Appellant. He had reiterated the submissions made at the time of filing of appeal. Further, he also filed additional written submissions, wherein, he inter-alia, submitted that:

- The issue of Valuation of Scrap has been finally decided by Hon'ble SC and Tribunals. The issue of valuation of scrap has been decided by the orders and decisions passed by the Hon'ble Tribunal and Apex Courts. More recently in the case of M/s Niraj Silk Mills v/s Commissioner of Customs, Delhi High Court, the decisions are binding on the lower authority including the Appellate authorities. The arbitrary loading of value by the Proper Officer is thus required to be set aside and the declared value to be upheld in view of the findings of the higher forum;
- The Assessing Officer has rejected the declared transaction value of the Appellant without assigning any reason as per Rule 12 of CVR 2007. The valuation of imported goods is governed by Section 14 (1) of Customs Act 1962 r/w CVR 2007. These provisions are statutory and sacrosanct and required to be

11-
/

scrupulously followed by the Proper Officer. The re-determination of value cannot be done without following the proper procedure and evidence thereof;

- The adjudicating authority had not followed the provisions of Rule 12 (1) of CVR 2007 before enhancement and hence the enhancement of value is illegal;
- The Valuation of the Goods is covered under Section 14 (1) of the Customs Act 1962 which is an independent provision r/w CVR 2017. The Proper Officer has to follow the provisions of Section 14 (1) of Customs Act 1962 and state the reasons for rejection of declared value. In the case of any Scrap; the value cannot be determined under Rule 4 or Rule 5 of CVR as each consignment is distinct. The Assessing Officer neither followed the provisions of Section 14 (1) of the Customs Act 1962 nor the Customs Valuation Rules 2007. He did not assign any reason for rejecting the declared transaction value;
- Section 14 (1) of the Custom Act 1962 clearly provides that the value of imported goods shall be the 'transaction value' of the goods subject to the conditions mentioned therein. In the absence of any finding to this effect, the re-assessment is not sustainable. The transaction value cannot be rejected. It is a settled law if there is no evidence of any amount paid over and above the invoice value; the transaction value is not rejectable;
- Reasons for rejection of declared value i.e. transaction value should be recorded first in writing as per Rule 12 of CVR 2007. The transaction value can be rejected only under exceptional circumstances like manipulation of invoice; mis-declaration and under invoice etc. Rule 12 has to be read with 3 (2) of CVR 2007 and, after receiving the reply from the importer; the decision with regard to the rejection of transaction value can be taken by the Proper Officer. The re-determination of value has to be in sequential method as per CVR 2007;
- The Proper Officer cannot alter / enhance the declared value without assigning any reasons in writing of rejection of invoice value and non-consideration of the documents submitted and re-determine the value with reference to LME or citing contemporaneous import. If the value of the goods is not determined as per Section 14 (1) of Customs Act 1962 read with CVR 2007, it is contempt of the WTO Valuation Agreement and bad in law;
- It is only that when the value cannot be determined as per Rule 3 (1) of CVR 2007, it shall be determined by proceeding sequentially through rule 4 to 9 of CVR 2007. It has been held in the case of Eicher Tractor V/s CC ELT 321; that the 'transaction value' cannot be rejected except for reasons specified in Rule 3 (2) of CVR 2007. The burden of proof is on Customs. The transaction value can be rejected only on the basis of strong and tangible evidence;
- It is a settled law that unless there is additional consideration involved or any of the exceptions as specified in Rule 3 (2) of the Customs Valuation Rules, 2007 is attracted, the transaction value cannot be rejected. No such allegation or finding or evidence relating to the extra remittance is forthcoming in re-assessment proceedings;
- If the value is proposed to be enhanced; then details of such imports are required

to be supplied so that the importer can explain the value difference. Without the supply of relied upon documents related to contemporaneous import; such as B/E; invoices etc., the enhancement of value is arbitrary and illegal. The Proper Officer cannot quote a few selected B/Es from NIDB and proceed to enhance the value. This practice itself is illegal and must be stopped;

- The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act 1962;
- Under Faceless Assessment, the Proper Officer is required to pass the Bill of Entry as per Self-Assessment. If the importer is AEO - Status holder; his consignments are required to be cleared as per declaration. By denying the declaration; the very purpose of AEO is defeated, which is contrary to the declared policy of the Government and the Board;
- Under Faceless Assessment; there has to be uniformity in assessment. Otherwise the very purpose of Faceless Assessment is defeated. The Appellant is a regular importer of the goods and the consignments are assessed at various Customs House. It is a mockery of the Faceless Assessment when some consignments are cleared at declared value while in some consignments the value is enhanced;

There is no revenue consideration involved. The basic duty applicable @ 2.5% only. The delay due to the clearance involves demurrage and detentions. The goods are therefore cleared after making the payment under protest and the relief sought in Appeal;

- The query raised by the Proper Officer had been duly replied with the evidence of contemporary B/Es assessed at declared value. The lower authority has not taken into consideration the reply to the query submitted. The lower authority has relied upon the NIDB data but the copy of which was not supplied. The re-determination of value on the basis of NIDB data itself is illegal and arbitrary;
- Relied upon B/E and invoices not supplied to them;
- It is for the revenue to supply the basis of enhancement and not for the Appellant to supply the evidence with regard to valuation of goods. The invoice is the basis of valuation. No two consignment can be similar / identical. This itself proves that the value cannot be determined on the basis of NIDB data;
- There is contradiction in the findings itself that the observation is recorded that value cannot be determined under Rule 4 and is determined under Rule 5 of CVR 2007. Two/ Three Bills of entries have been quoted as basis for enhancement without supply of the copy of the B/E and invoice. It appears that the B/E quoted are re-assessed and the declared value cannot be compared with enhanced value;
- The lower authority has to adjudicate the case on the basis of the facts and law applicable. Before rejecting the declared value, the Proper Officer has to provide



the reasons in writing and, after getting the reply from the importer, can proceed to re-determine the value citing the reasons. The query cannot be used as a substitute for the notice issued under Rule 12 (1) of CVR 2007 nor the Adjudication order passed by the Respondent.

DISCUSSION & FINDINGS:

5. I have carefully gone through the appeal memorandum as well as records of the case, submissions made by the Appellant during course of hearing as well as the documents and evidences available on record. The issue to be decided in the present appeal is whether the impugned orders passed by the adjudicating authority enhancing the declared value in the Bill of Entry No. 4958669, dated 06.08.2021, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the Appellant has filed the present appeal on 04.01.2024. In the Form C.A.-1, the date of communication of the Order dated 27.10.2023 has been shown as 06.11.2023. Therefore, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. Further, the Appellant has paid the entire duty as assessed by the Assessing Officer of the Bill of Entry No. 4958669, dated 06.08.2021, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and complies with the requirement of Section 129E of the Customs Act, 1962, the appeals has been admitted and being taken up for disposal on merits.

6. It is evident from the facts of the case that in view of the specific direction given in Order – In – Appeal dated 26.07.2023, the adjudicating authority was required to pass fresh order after supplying contemporaneous import price data to the Appellant and taking the submissions made by the Appellant on record following principle of natural justice and legal provisions. However, the Appellant on the other hand has contended that the adjudicating authority had relied upon the contemporaneous import prices / NIDB data, without supplying the copies of the Bills of Entry to them. It has been further contended by the Appellant that the query raised by the Proper Officer had been duly replied with the evidence of contemporary Bills of Entry assessed at declared value. However, the adjudicating authority has not taken into consideration the reply of the query submitted. Thus, the adjudicating authority had arbitrarily enhanced the value without following the principles of natural justice and directions of the Appellate authority.

6.1 On perusal of the impugned order, I find that even though, the details of contemporaneous import prices are recorded in the Table at Para 9 (i) of the impugned order, it is not forthcoming whether the data as recorded in the said Table of the impugned order was provided to the Appellant before enhancing the assessable value. Thus, I find that the adjudicating authority has not adhered to the remand directions of the



Commissioner (Appeals), Ahmedabad and pass the impugned order contrary to the legal provisions / principles. I am of the considered view that before rejecting the declared value under Rule 12 of the said Rules, the relevant contemporaneous import data should have been provided to the Appellant. In the regard, I rely upon the judgment of Hon'ble CESTAT, WZB, Mumbai in case of Gupta Coal India Pvt. Ltd. [2016 (343) E.L.T. 706 (Tri. – Mumbai)], wherein, Revenue was directed to furnish the NIDB data to the appellant. It was further directed that the data should contain the data of contemporaneous imports, quality and quantity of the goods covered by the transaction in the NIDB data and all other relevant particulars. Relevant para of the judgment is reproduced below:

“5.1Further, as regards the enhancement in value made by the assessing officer based on the NIDB data, basis for such enhancement should have been made known to the appellant before undertaking the enhancement of value. This has not been done in the instant case and therefore, there is a clear violation of the principles of natural justice. Therefore, the matter has to go back to the adjudicating authority for de novo consideration. We direct the Revenue to furnish the NIDB data which they want to rely on for enhancement in value. The details should contain the data of contemporaneous imports, quality and quantity of the goods covered by the transaction in the NIDB data and all other relevant particulars so that the appellant can make effective submissions on the charge of undervaluation made against them. Thus, the appeal is allowed by way of remand. Stay petition is also disposed of.”



6.2 Therefore, in light of the above observation, I am of the considered view that the impugned order is non speaking order and have been passed in violation of principles of natural justice. Hence, the impugned orders suffers from legal infirmity on this count.

6.3 Apart from the above, the Appellant has raised various grounds in the present appeal and the adjudicating authority had no occasion to consider the same. Moreover, the appeal was sent to the adjudicating authority for his comments on the grounds raised in the appeal, however, no response have been received.

7. In view of the discussion made above, I am constraint to remit the present appeal to the adjudicating authority for passing fresh order, after supplying the contemporaneous import price data / NIDB data to the Appellant so as to enable them to explain the value difference and after considering the submissions made by the Appellant, 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. 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 Pvt. Ltd. [2012-TIOL-1317-CESTAT-DEL] and Hawkins Cookers Ltd.

[2012 (284) E.L.T. 677 (Tri.-Del)] holding 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.

8. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant by way of remand to the adjudicating authority for passing fresh order after supplying the contemporaneous import price data / NIDB data to the Appellant and considering the submissions made by the Appellant in the present appeal on record. The Adjudicating Authority shall examine the available facts, documents, submissions and issue speaking order afresh following principles of natural justice and legal provisions.

.9. The appeal preferred by the Appellant is allowed by way of remand.




(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

Date: 28.05.2025

• F. No. S/49-407/CUS/AHD/2023-24

By Registered Post A.D
To,

M/s. Sakar Industries Pvt. Ltd.,
H/10, Madhavpura Market,
Near Police Commissioner Off
Shahibaug Road,
Ahmedabad – 380 004

सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT

अधीक्षक/SUPERINTENDENT

Factory Address:

M/s. Sakar Industries Pvt. Ltd

Plot No. 140-141, Santej – Vadsar Road,
Santej, Tal-Kalol,
Dist. – Gandhinagar,
Gujarat – 382721

Copy to:

- ✓ 1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
- 2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
- 3. The Assistant Commissioner of Customs, Appraising Group 3 & 4, Office of the Commissioner of Customs (Import), Air Cargo Complex, Sahar, Andheri (E), Mumbai – 400 099
- 4. The Assistant / Deputy Commissioner, Customs, ICD Sanand, ICD Thar, Kadi Road, Sanand.
- 5. Guard File.