



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD

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DIN-20250471MN000000FD93

क	फ़ाइल संख्या FILE NO.	S/49-84/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-001-25-26
ग	पारितकर्ता PASSED BY	SHRI AKHILESH KUMAR Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	02.04.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	Reassessment Order No. 160/DC/AG/Gr.III/Imp-II/2020-21, dated 07.10.2021 passed by Deputy Commissioner of Customs, Group-III, Office of the Commissioner of Customs, Import-II, Mumbai Customs Zone-I.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Waaree Energies Ltd., Survey No. 38/1, Village Tumb, Taluka Umbergaon, Dist. Valsad - 396150.

1. यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.

This copy is granted free of cost for the private use of the person to whom it is issued.

2. सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं.

Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.

	निम्नलिखित सम्बन्धित आदेश/Order relating to :	
(क)	बैगेज के रूप में आयातित कोई माल.	
(a)	any goods 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 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षक 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 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 सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	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 रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
(a)	in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
(b)	for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.

ORDER-IN-APPEAL

1. M/s. Waaree Energies Ltd., Survey No. 38/1, Village : Tumb, Taluka : Umbergaon, Dist. : Valsad - 396150 (hereinafter referred to as the 'appellant') have filed the present appeal against the Reassessment Order No. 160/DC/AG/Gr.III/Imp-II/2020-21, dated 07.10.2021 (hereinafter referred to as the 'impugned order') passed by Deputy Commissioner of Customs, Group - III, Office of the Commissioner of Customs, Import - II, Mumbai Customs Zone - I (hereinafter referred to as the 'adjudicating authority').

2.1 Facts of the case, in brief, are that the appellant has imported 'Arc Solar Glass' through ICD - Tumb, for which they have filed Bill of Entry No. 5553531, dated 23.09.2021 (hereinafter referred to as the 'impugned Bill of Entry'). The said Bill of Entry has been assessed by the assessing officer of Faceless Assessment Group, Import - II, Mumbai Zone - I. The assessing officer had doubt about truth or accuracy of the declared value and so, he has raised a query seeking information like catalogue, technical write-up, previous Bills of Entry, local GST Invoice of similar goods etc. to justify the value. The appellant has submitted a reply on 25.09.2021 stating they have uploaded catalogue, technical write-up and previous BoE through e-Sanchit. The appellant further submitted that they are manufacturer and the imported product is a raw material, which is being used in manufacturing of Solar PV Module and so, local Invoice is not available.

2.2 After perusing the reply, another query was raised by the assessing officer on 25.09.2021 to the effect that price declared in the previous Bills of Entry is higher than the current unit price and hence, needs to be loaded. Opportunity of Personal Hearing was offered to the appellant. The appellant replied that the previous BoE, Purchase Order, Proforma Invoice have been uploaded through e-Sanchit and so, the appellant has requested to assess the Bill of Entry.

2.3 The assessing officer observed that the appellant had imported the goods vide previous Bill of Entry No. 3326213, dated 27.03.2021, for which the supplier and the country of origin were the same. On the basis of the value declared in said previous Bill of Entry, it appeared that the declared Unit value of 3.2 USD/SQM is required to be loaded to 6.44 USD/SQM.

2.4 The adjudicating authority has rejected the transaction value of Rs. 41,72,217/- declared by the appellant under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('CVR, 2007' for short) and re-determined the same as Rs. 78,40,007/- under Rule 5 of the CVR, 2007.

3. Being aggrieved, the appellant had filed an appeal No. S/49-1610/2021-Misc/JNCH/Appeal before the Commissioner of Customs (Appeals), Mumbai Zone - II, on 08.12.2021. Later, it was observed that as per Para 4.4.7 of the Public Notice No. 46/2020, dated 01.08.2020, issued by the Commissioner of Customs (Import-II), Mumbai, an appeal against any speaking order on re-assessment passed by a Faceless Assessment Group lies before the Commissioner (Appeals) having jurisdiction over the port of import. As the goods have been imported through ICD - Tumb, falling under the appellate jurisdiction of the Commissioner of Customs (Appeals), Ahmedabad, the said appeal has been transferred by Mumbai-II Zone to this office vide a letter F. No. CC (Appeals) - 18 /2019 JNCH Part File I, dated 01.05.2024, which has been received in this office on 18.06.2024.

Grounds of Appeal:

4.1 According to the appellant, the whole chronology and events of the assessment has not been discussed in the Reassessment Order. Along with their reply to the Query dated 25.09.2021, the appellant had uploaded their 03 previous Bills of Entry filed in August-2001 in e-Sanchit, having assessed Unit Value as 3.2 USD per SQM. However, all the three Bills of Entry of contemporaneous import have been neglected and not considered by the assessing officer, which is in sheer violation of Rule 4 and Rule 5 of the CVR, 2007. The appellant have further mentioned that if more than one transaction value is found, the lowest of such value should be used to determine the value of imported goods. Despite that lowest value found to be 3.2 USD per SQM, the assessing officer had neglected the submission of the appellant and enhanced the value to 6.44 USD per SQM. Thus, the assessable value in Indian currency has been enhanced from Rs. 41,72,217/- to Rs. 78,40,007/-.

4.2 Further, the assessing officer has neither followed the provisions of Section 14 of the Customs Act, 1962, nor the provisions of the CVR, 2007. Section 14(1) clearly provides that the value of imported goods shall be the transaction value, subject to the condition mentioned therein. The assessing officer has not mentioned as to which condition the appellant has failed to comply and how the appellant has failed to declare the correct transaction value.

4.3 The appellant further mentioned that the global market was highly volatile in COVID-19 pandemic era and the prices were highly fluctuating. So, the price declared in a six months old Bill of Entry cannot be considered as contemporaneous import price of the same importer.

4.4 Further, the assessing officer never found any illicit transaction or Hawala or any mis-declaration to establish undervaluation. There is no evidence of any amount paid over and above

the invoice value. So, the transaction value cannot be rejected. In this regard, the appellant has relied upon following decisions:

- *CC, Delhi Vs. Maruti Fabric Impex - 2016 (343) E.L.T 963 (Tri. Del.)*
- *Sedna Impex India Pvt. Ltd. Vs. CC, Faridabad - 2017 (347) E.L.T. 317 (Tri. Chan.)*

Personal Hearing:

5. Personal Hearing in this matter was held on 13.03.2025, which was attended by Shri Abhishek Rathod, Assistant General Manager (Commercial) of the appellant company. He reiterated the submissions made at the time of filing of appeal. He has also submitted a summary of the written submissions and a Sheet showing rates per square meter (SQM) for the imports made by them during the period of April - 2020 to October - 2021.

Findings:

6. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant.

7. The issue to be decided in the present appeal is whether the impugned order directing re-assessment of impugned Bill of Entry by rejecting the declared Unit Price of 3.2 USD/SQM and re-determining the same as 6.44 USD/SQM, in the facts and circumstances of the case, is legal and proper or otherwise.

8. I find that in respect of the impugned Bill of Entry No. 5553531, dated 23.09.2021, the declared Unit Price of the impugned goods, i.e. USD 3.2 per SQM, has been rejected and re-determined as USD 6.44 per SQM, vide the impugned order, merely on the basis of a Bill of Entry No. 3326213, dated 27.03.2021, of the same appellant and the same supplier. The appellant has contended that they have uploaded 3 Bills of Entry filed in August - 2001 having Unit Price of USD 3.2 per SQM, but the value declared in the said Bills of Entry filed has not been considered by the assessing officer, instead the value of a six-month old Bill of Entry filed in March - 2001 has been adopted for loading the value of goods covered in the impugned Bill of Entry filed in September - 2001. Particulars of these Bills of Entry filed by the appellant for import of Arc Solar Glass from M/s. Xinyi Solar (Malaysia) Sdn. Bhd, Malaysia, are as under:



Table-1

Sr. No.	BoE No.	Qty (SQM)	Location	Unit Value (USD per SQM)	Remarks
1	5553531, dtd. 23-09-2021	15215.51	ICD Tumb	Declared - 3.2 Reassessed - 6.44	Present BoE
2	5086247, dtd. 17-08-2021	39560.32	ICD Tumb	3.2	Not considered in Reassessment Order
3	5162698, dtd. 23-08-2021	9129.30	JNCH	3.2	
4	5197799, dtd. 26-08-2021	18258.61	JNCH	3.2	
5	3326213, dtd. 27-03-2021	39560.32	ICD Tumb	6.44	Relied upon in Reassessment Order

9. I find that the adjudicating authority has mentioned in the impugned order that details of exact identical goods on the same commercial level were not available in import data and so, value of the impugned goods cannot be determined under Rule 4 of CVR, 2007. However, data of similar goods, with near identical/similar description for grade/type/specification were found for BE No. 3326213, dated 27.03.2021, of the location ICD - Tumb and from the same Country of Origin and same supplier. Therefore, the value has been re-determined as per Rule 5 of the CVR, 2007. Text of the said Rules of the CVR, 2007, is reproduced below (underline supplied).

“Rule 4. Transaction value of identical goods —

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued :

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

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(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.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.



(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.

Rule 5. Transaction value of similar goods -

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

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

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

10. As the adjudicating authority has applied Rule 5 for the purpose of valuation, I find that as per Rule 5(1), the value of similar goods imported at or about the same time, was required to be adopted. Whereas, in the present case, for the purpose of valuing the goods imported under BoE dated 23.09.2021, the value of the goods imported during the month of August - 2021 has been ignored, but the value of the goods imported under BoE dated 27.03.2021 has been adopted, which cannot be treated as the value of similar goods imported at or about the same time. Even if it is considered that there are more than one transaction values of similar goods during the period of import, the lowest of such values has to be adopted, as mentioned in Rule 5(2) read with Rule 4(3) of the CVR, 2007. Whereas, in the impugned order, the higher value has been adopted and it was not the value of the goods imported at or about the same time, i.e. contemporaneous import. In view of this factual position, I find that the adjudicating authority has erred in re-determining the Unit Price as USD 6.44 per SQM for the impugned goods.

11. In view of the above factual and legal position, I find substantial force in the arguments of the appellant. Thus, I hold that the impugned order towards reassessment of Bill of Entry is not sustainable and liable to be set aside. As the goods have been imported through ICD - Tumb, the impugned Bill of Entry will be required to reassessed by the proper officer at ICD - Tumb, on the declared transaction value i.e. Invoice Value.

12. In the appeal memorandum, the appellant has sought consequential refund of duty collected in excess. In this regard, I find that the appellant is required to file a refund claim with relevant documents in the office of the Deputy/Assistant Commissioner of Customs, ICD - Tumb, after reassessment of duty by the proper officer, as ordered hereinabove. So, any order regarding refund of duty cannot be passed in the present proceedings.

Order:

13. In view of the discussion made hereinabove, I set aside the impugned order and direct the Deputy/Assistant Commissioner of Customs, ICD - Tumb, to reassess the impugned Bill of Entry on the declared transaction value i.e. Invoice Value. Appeal filed by the appellant is allowed to this extent.

(Signature)
2nd April, 2025

(AKHILESH KUMAR)
Commissioner (Appeals)
Customs, Ahmedabad

F.No. S/49-84/CUS/AHD/2024-25

Date: 02.04.2025

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

To

M/s. Waaree Energies Ltd.,
Survey No. 38/1, Village Tumb,
Taluka Umbergaon,
Dist. Valsad - 396150.

(email: waaree@waaree.com ; abhishekrathod@waaree.com)



Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Pr. Commissioner of Customs, Ahmedabad.
(email: cus-ahmd-guj@nic.in ; rra-customsahd@gov.in)
3. The Deputy/Assistant Commissioner of Customs, ICD, Tumb.
(email: cusied-tumb@gov.in ; icdtumb@gmail.com)
4. The Deputy Commissioner of Customs, Group-III, Office of the Commissioner of Customs, Import-II, Mumbai Customs Zone-I, New Custom House, Ballard Estate, Mumbai - 400 001. (email: acgroup3nch@gmail.com)
5. Guard File.

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