

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

**CUSTOMS Appeal No. 12856 of 2019-DB**

[Arising out of Order-in-Original/Appeal No AHD-CUSTOM-000-APP-352-415-19-20 dated 30.09.2019 passed by Commissioner of CUSTOMS-AHMEDABAD]

**CMR Nikkei India Pvt Limited**

**.... Appellant**

Survey No 676 Village Mouje Vanod Taluka Dasada  
Surendrangar, Gujarat

*VERSUS*

**Commissioner of Customs, Ahmedabad**

**.... Respondent**

Custom House, Near All India Radio Navrangpura,  
Ahmedabad, Gujarat

**WITH**

**(i) Customs Appeal Nos. 10369 to 10431 of 2021-DB (CMR Nikkei India Pvt Limited)**

[Arising out of Order-in-Original/Appeal No AHD-CUSTOM-000-APP-352-415-19-20 dated 30.09.2019 passed by Commissioner of CUSTOMS-AHMEDABAD]

**(ii) Customs Appeal Nos. 10432 to 10451 of 2021-DB (CMR Nikkei India Pvt Limited)**

[Arising out of Order-in-Original/Appeal No MUN-CUSTOM-000-APP-126-145-19-20 dated 30.09.2019 passed by Commissioner of CUSTOMS-AHMEDABAD]

**APPEARANCE :**

Shri Ashok Sikka, Authorised Signatory of the Appellants  
Shri G. Kirupanandan, Superintendent (AR) for the Revenue.

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)  
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING : 12.04.2022

DATE OF DECISION: 01.08.2022

**FINAL ORDER NO. A/10822-10905 / 2022**

**RAMESH NAIR :**

These Appeals have been filed challenging two Orders-In-Appeal both dated 30.09.2019 whereby the Commissioner (Appeals) had upheld the reassessment of 84 Bills of Entry.

2. The Brief facts of the case are that Appellants have imported Aluminium scrap under various Bills of Entry and the price was declared in the Bills of Entry is as per the invoice of the foreign supplier. The Assessing officer did not accept the transaction value declared in the Bills of Entry and reassessed the Bills of Entry by enhancing the value on the basis of Circular issued by Director General of Valuation. Appellant challenged the said reassessment and filed the Appeals before the Commissioner (Appeals). The Commissioner (Appeals) vide impugned orders rejected the Appeals on the grounds that the Appellant have given a consent letter accepting the enhanced value of the Assessing authority, therefore, the Appellant is not a aggrieved person. Being aggrieved by the impugned orders-in-appeal the Appellant filed the present Appeals.

3. Shri Ashok Sikka, learned Authorised signatory of the appellant appearing on behalf of Appellant submit that during the reassessment the Appellant did not have any other option but to pay the excess duty demanded by the assessing officer at enhanced value in order to clear the consignment without delay, in order not to incur additional damages by way of detention charges, demurrage, ground rent, loss of interest and production loss. For this purpose the Customs Authorities had pressurized the Appellant to give a consent letter agreeing to increase the unit price of the goods as dictated by the Customs authorities.

4. He also submits that Ld. Commissioner (Appeals) has not considered the written submission made at the time of personal hearing by the Appellant. On making the reassessment of the Bills of Entry, the Customs authorities have not cited any Section of the Customs Act, 1962 or any Rules

of the Customs Valuation Rules. At the very outset it is the case of the Appellant that there is no provision anywhere under the Customs Act, 1962 or Rules framed thereunder for any importer to give "consent letter". In absence of any such provisions the consent letter given by the Appellant has no meaning in law and the same cannot be used against the Appellant.

5. He further submits that the Assessing officer has not followed the mandatory Rules for rejection of declared value as per Rule 12 of Customs Valuation Rules, 2007 read with Rule 3 and Rule 10 of the said Rules. If the Assessing officer has reason to doubt the truth or accuracy of the value declared in relation to imported goods for which Bills of Entry were filed, he has to ask the importer further information including documents or other evidence in respect of such goods. If the doubt persists then he cannot determine the value as per provisions of sub-Rule 1 of Rule 3. There is no inquiry made by the Assessing officer as well as not demanded any documents or documentary evidence in respect of imported goods for which the declared value was rejected.

6. He placed reliance on the following decisions.

- (a) Century Metal Recycling Pvt. Limited vs. UOI- 2019 (367) ELT 3 (SC)
- (b) Sunland Alloys vs. CC Ahmedabad 2020-(6) TMI 71 – CESTAT
- (c) Guru Rajendra Mealloys India Pvt. Ltd. vs. CC, Ahmedabad - 2020 (6) TMI 68 –CESTAT Ahmedabad.

7. Shri G. Kirupanandan, learned Superintendent appearing on behalf of Revenue reiterates the finding of the impugned orders. He placed reliance on following decisions.

- (a) V.S.M. Impex Pvt. Limited – 2019 (370) ELT 930 (Tri.)
- (b) West Coast Paper Mills – 2004 (164) ELT 375 (SC)

- (c) Advanced Scan Support Technologies – 2015 (326) ELT 185 (Tri. Del.)
- (d) Vikas Spinners – 2001 (128) ELT 143 (Tri. Del.)
- (e) Guardian Plasticote Limited 2008 (223) ELT 605 (Tri. –Kol.)
- (f) BNK Intrade (P) Limited – 2002(140) ELT 158 (Tri. Del.)

8. Heard both sides and perused the records. We find that the dispute in the present case is regarding the valuation of the goods imported by the Appellant. The Assessing Authority re-assessed the imported goods at values higher than what was declared by the Appellant in the Bills of Entry for self-assessment. The Appellant accepted the enhanced value by submitting the consent letter. In spite of the acceptance before the Assessing Authority, the Appellant challenged the valuation/assessment of goods by filing appeals. The learned Commissioner (Appeals) upheld the impugned reassessment. The Commissioner (Appeals) has observed in the impugned orders that the Appellant had given their written acceptance of the enhanced value and thereby has forgone his right to speaking order under Section 17(5) of the Customs Act. We noticed that in view of such admission, no speaking order was issued as per requirements for Section 17(5) of the Customs Act, 1962.

9. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step-by-step methodology to be adopted for re-determination of the assessable value in certain cases. The primary requirement for re-determination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the basis for arriving at the assessable value.

10. Perusal of the records of the case indicates that the only reason cited for re-assessment of value is that the Appellant has accepted the enhanced value. No doubt acceptance of the enhanced value in writing waives the requirement of the issue of speaking order under Section 17(5) *ibid*. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming from the record of the case that what is the basis for such re-assessment.

11. Revenue has vehemently argued that the department were justified in enhancement of value since the importer had accepted such enhancement. We note that in the present matter, other than the admission on the part of the importer, no basis for the adoption of the enhanced value is given. We find that the Appellant in their grounds of Appeals also submitted that the assessment orders have been passed in complete defiance of the provisions of Section 14 of the Customs Valuation Rules, 2011. Neither the provisions of Section 14 of the Customs Act dealing with "Valuation of Goods" nor the provisions of Customs valuation Rules, 2011 have been followed while assessing the impugned bills of entry. The assessment orders do not assign any reason for discarding the transaction value nor do they mention under which rule of Customs Valuation Rules, the value has been determined.

12. Considering the above facts, we are of the view that, in spite of the admission on behalf of the importer, the Revenue is required to satisfy the requirements prescribed under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation.

13. In view of the above discussion, the matter is required to be remanded to the Original Assessing Authority for sharing the basis for such re-

assessment with the importer /Appellant. Thereafter he will pass the speaking order after extending the sufficient opportunity the importer to rebut the basis for such enhancement. With this observation, we set aside the impugned order. Appeals are disposed of by way of remand to the assessing authority.

*(Pronounced in the open court on 01.08.2022)*

**(Ramesh Nair)**  
**Member (Judicial)**

**(Raju)**  
**Member (Technical)**

KL