

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

PRINCIPAL BENCH COURT NO. I

**CUSTOMS APPEAL NO. 51848 OF 2021**

(Arising out of Order-in-Appeal No. CC(A)/Customs/D-II/Imp/ICD/TKD/1209/2020-21 dated 17.12.2020 passed by the Commissioner of Customs (Appeals),

**PRINCIPAL COMMISSIONER OF CUSTOMS  
NEW DELHI (IMPORT)**

**APPELLANT**

ACC (Import) Commissionerate,  
New Custom House,  
New Delhi-110037.

Versus

**M/S GLOBAL TECHNOLOGIES &  
RESEARCH**

**RESPONDENT**

Shop No. 5, B-I/8, Apsara Arcade Building,  
Main Pusa Road, Karol Bagh,  
New Delhi-110005.

**APPEARANCE:**

Shri Sunil Kumar, Authorised Representative for the Department

Shri B L Garg, Advocate for the respondent

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT  
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**DATE OF HEARING : MARCH 31, 2022  
DATE OF DECISION:SEPTEMBER 29,2022**

**FINAL ORDER NO. 50935/2022**

**P.V. Subba Rao**

This appeal has been filed by the Revenue assailing Order in Appeal<sup>1</sup> dated 17.12.2020 passed by the Commissioner (Appeals) whereby the appeal filed by the importer (Respondent herein) was

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<sup>1</sup> Impugned order

allowed and the order in original<sup>2</sup> 31.03.2018 passed by the Joint Commissioner was set aside.

2. We have heard Shri Sunil Kumar, learned authorised representative for the appellant/ Department and Shri B L Garg, learned counsel for the respondent.

3. The respondent imported a consignment of camera stabilizers through the Air Cargo Complex (Import) Delhi and filed Bill of Entry No. 5233199 dated 16.02.2018. On the basis of the information received, the Special Intelligence and Investigation Branch<sup>3</sup> examined the consignment 100% and found that the goods were under-valued and seized them. After retrieving the values of the same goods imported by the same party from the Customs Electronic Data Interchange<sup>4</sup>, it found that the respondent had imported identical/similar goods at much higher prices. The matter was investigated further, statements were recorded and market survey was conducted. Shri Mayank Chachra, the proprietor of the importer firm submitted a letter dated 27.3.2018 & 28.3.2018 requesting for early release of his shipment without being issued a Show Cause Notice or being granted a personal hearing.

4. The Joint Commissioner adjudicated the matter and passed order in original in which, he rejected the transaction value of the goods under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules<sup>5</sup> 2007 and re-determined the

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<sup>2</sup> OIO

<sup>3</sup> SIIB

<sup>4</sup> EDI

<sup>5</sup> Valuation Rules

assessable value under Rules 4 & 5 and ordered recovery of differential duty of Rs 16,22,228/- under Section 28(1) of the Customs Act, 1962<sup>6</sup> and confiscated the imported goods confiscated under Section 111(l) and 111(m). He gave an option to the respondent to redeem the goods on payment of fine of Rs. 9,93,000/-. He also imposed penalties of Rs 2,00,000/- under Section 112(a) and Rs 3,31,000/- under Section 114AA on the Respondent.

5. The respondent assailed the order in original before the Commissioner (Appeals) who, by the impugned order, set aside the OIO and allowed the appeal. The impugned order was reviewed by a Committee of Commissioners under Section 129A (2) of the Act which directed the Assistant Commissioner of Customs (Review) to file an appeal before this Tribunal seeking the impugned order to be set aside and the OIO to be restored. Accordingly, Revenue filed this appeal.

6. On behalf of the Revenue, the submissions have been made.

a) The impugned goods were admittedly of "Zhiyun" brand only. Goods of the same brand were imported earlier but in this Bill of Entry they have been declared them as of 'unpopular brand' instead of 'Zhiyun brand'. Investigation revealed that there was no product of Zhiyun known as 'unpopular brand', neither was any 'low version' of the product available in the market, and no product of the said brand was available at such low price. Thus, it is a case of

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<sup>6</sup> Act

declaration of drastically reduced value of the goods. The previous imports were of similar or even higher quantities in some cases.

- b) The respondent failed to justify the drastically reduced price of the impugned goods. Claims of 'low version goods', 'goods imported for demo and promotional purpose', and production of 'a letter dated 16.01.2018 from the supplier' long after the goods were seized on 21.02.2018 are only afterthoughts. In absence of reliable documentary or digital evidence (particularly the Wechat which was supposedly received by the Respondents on 17<sup>th</sup>/18<sup>th</sup> January 2018) to support such claims, and in the face of much higher value of Respondents own contemporaneous imports and availability of Zhiyun brand goods at much higher value at e-commerce websites, this is a case of gross undervaluation of goods.
- c) The learned Commissioner (Appeals) erred in holding that the Original Authority failed in establishing that the impugned goods were identical/similar to goods imported under Bill of Entry no. 3971522 dated 13.11.2017. Further, observations of the learned Commissioner (Appeals) that the Original Authority did not spell out the applicability of Rule 4 & 5 of the Rules for re-determination of value is factually incorrect.
- d) Reliance placed by the learned Commissioner (Appeals) on the ratio laid down by Hon'ble Apex Court in the case of

**Sanjivani Non - Ferrous<sup>7</sup>** is not correct because in this case, data of contemporaneous imports was available unlike in **Sanjivani Non-ferrous**.

- e) Minor differences in technical specifications of item number 2 and 3 cannot justify the large difference in the value (refer Table B and C of Para 14 of the Order-In-Original). Even during market enquiry also, goods of 'unpopular brand' could not be found which supports the conclusion that the term 'unpopular brand' was simply inserted to justify undervaluation with intent of duty evasion.
- f) If contemporaneous value of goods is available for re-determination of values, question of considering the promotional prices as claimed by the Respondents does not arise and is totally irrelevant.
- g) The facts and circumstances of the case clearly indicate collusion between the Respondent Importer and the supplier of goods. Production of the offer letter long after the seizure made by the Customs and the claim of Wechat message supposedly received on 17-18 January 2018 (which was never produced) do establish that the importer was hand in glove with supplier to justify the evident undervaluation.
- h) Facts of drastic fall in the value of goods as compared with the similar/identical goods imported earlier coupled with sale of most of the goods by the importer to the firm M/s

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<sup>7</sup> 2019 (365) ELT 3(S.C.)

AVCS in which the importer (Shri Mayank Chachra) is a director holding 33% share is clear indicator of deliberate undervaluation of goods in collusion with supplier by inserting terms like 'low version/unpopular brand/promotional goods' in the description of the impugned goods.

- i) Rejection of transaction value under Rule 12, re-determination of assessable value under Rule 4 and 5, duty demand under Section 28(1) of the Customs Act 1962, confiscation of goods under Section 111(m) and imposition of penalty under Section 112 and 114AA were correct in law in view of mis-declaration of actual description and value of goods.
- j) The contention of the Respondent in its submissions that the review of the appeal is time-barred is not correct. Unlike Section 129D (3), Section 129A (2) does not prescribe any limitation for review of order passed by Commissioner (Appeals). Further, the entire period is covered by the *suo moto* orders passed by the Supreme Court in view of the COVID pandemic.
- k) The term 'should be imported at or about the same time' used in Rule 3 and 4 refers to contemporaneous imports and it cannot be restricted to a period of 90 days. Depending on nature of sale, goods and the transaction, various courts have upheld/considered imports even up to six months before or after import under dispute as contemporaneous imports.

l) Thus, the impugned order cannot be sustained and needs to be set aside and the OIO must be restored.

m) Reliance was placed on the following case laws:

(i) **Pine Chemical Suppliers vs Collector of Customs<sup>8</sup>**

(ii) **Prasant Glass works Pvt. Ltd. vs Collector of Customs, Calcutta<sup>9</sup> affirmed by Supreme Court<sup>10</sup>**

(iii) **Chandani International vs Commissioner of Customs (Imports) Mumbai<sup>11</sup>**

(iv) **Harshita International vs Commissioner of Customs (Prev) Kolkata<sup>12</sup>**

(v) **Anil Kumar Tiwari vs Commissioner of Customs (Prev) Mumbai<sup>13</sup>**

(vi) **Carpenter Classic Exim Pvt. Ltd. vs Commissioner of Customs, Bangalore<sup>14</sup>**

(vii) **Carpenter Classic Exim Pvt. Ltd. vs Commissioner of Customs (Import)<sup>15</sup>**

7. On behalf of the respondent, the following submissions have been made.

- a) Review of the impugned order by the Committee of Commissioners is time-barred, and hence this appeal of Revenue is not maintainable.
- b) Imported items used for comparison and loading of value were not comparable.
- c) The Original Authority had also incorrectly applied Rules 4 and 5 for re-determination of value of impugned goods in

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<sup>8</sup> 1993 (67) ELT 25 (S.C.)

<sup>9</sup> 1996 (87) ELT 518 (Tri.)

<sup>10</sup> 1997 (89) ELT A179 (S.C.)

<sup>11</sup> 2003 (153) ELT 312 (Tri. - Del)

<sup>12</sup> 2008 (229) ELT 386 (Tri. - Mumbai)

<sup>13</sup> 2016 (344) E.L.T. 1051 (Tri. - Chennai)

<sup>14</sup> 2006 (200) ELT 593 (Tri. - Bang.)

<sup>15</sup> 2009 (235) ELT 201 (S.C.)

as much as the earlier imports were more than 90 days before the import of impugned goods.

- d) Rejection of discounted price for two items (Sr. Nos. 1 and 2) by the Original Authority was improper and penalty for declaration of discounted price is not sustainable.
- e) Imposition of penalty under Section 114AA of the Act is not sustainable.
- f) Demand in the case is made under Section 28(1) which does not involve collusion, mis-statement or suppression of facts. Penalty on the Respondent is, therefore, not sustainable.
- g) The grounds of appeal are not valid.
- h) Reliance was placed on the following precedent decisions:
  - (i) **Suketu Jhaveri vs Commissioner of Customs (Import), Nhava Sheva**<sup>16</sup>
  - (ii) **Max Speciality Films Ltd vs Commissioner of Customs, Ludhiana**<sup>17</sup>
  - (iii) **CC (Import) Mumbai vs Tiong Woon Project & Contracting (I) P Ltd.**<sup>18</sup>
  - (iv) **Unimark Remedies Ltd vs Commissionr of Customs (Export Promotion), Mumbai**<sup>19</sup>

8. We have considered the submissions on both sides and perused the records. The questions to be answered in this appeal are:

- (i) Is the review of the impugned order by the Committee of Commissioners under section 129A (2) time-barred as asserted by the respondent?

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<sup>16</sup> 2014(314) ELT 828(Tri-Mumbai)

<sup>17</sup> 2017(357) ELT 342(Tri-Del)

<sup>18</sup> 2017(356) ELT 138(Tri-Mumbai)

<sup>19</sup> 2017 (355) ELT 193(Bom)



(ii) Was the Commissioner (Appeals) correct in setting aside the rejection of the declared transaction value under Rule 12 and re-determination of value under Rules 4& 5 by the original authority?

(iii) Was the Commissioner (Appeals) correct in setting aside the demand of differential duty with interest and the fine and penalty on the respondent?

9. The preliminary objection to this appeal by the respondent was that the "Review" of the impugned order in appeal by the Committee of Commissioners in terms of Section 129A(2) was time-barred and hence this appeal is not maintainable. It has been submitted that there was a gap of 10 months and 10 days between the date of the impugned order and the order of Review. Learned authorised representative for the Revenue submitted that unlike section 129D, section 129A (2) does not lay down any time limit for review by the Committee of Commissioners. He further pointed out that the entire period falls within the period which must be excluded in terms of the *suo moto* orders of the Supreme Court in the wake of COVID pandemic. The relevant sections are as follows:

**Section 129A. Appeals to the Appellate Tribunal. -**

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -

(a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;

(b) an order passed by the Commissioner(Appeals) under [section 128A](#);

(c) an order passed by the Board or the Appellate Commissioner of Customs under [Section 128](#), as it stood immediately before the appointed day;

(d) an order passed by the Board or the Principal Commissioner of Customs or Commissioner of Customs, either before or after the

appointed day, under [section 130](#), as it stood immediately before that day :

**Provided** that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to, -

(a) any goods imported or exported as baggage;

(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;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder :

**Provided** further that] the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where -

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under [section 125](#); or

(ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order, does not exceed two lakh rupees.

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**(2) The Committee of Commissioners of Customs may, if it is of the opinion that an order passed by the Appellate Principal Commissioner of Customs or Commissioner of Customs under [section 128](#), as it stood immediately before the appointed day ,or by the Commissioner (Appeals)] under [section 128A](#), is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order:**

**Provided** that where the Committee of Principal Commissioners of Customs or Commissioners of Customs] differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner of Customs or Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.

**Explanation** .-For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Principal Chief Commissioner of Customs or Chief Commissioner of Customs having jurisdiction over the adjudicating authority in the matter.

**(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Principal Commissioner of**

**Customs or Commissioner of Customs, or as the case may be, the other party preferring the appeal.**

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**Section 129D. Powers of Committee of Principal Chief Commissioner of Customs or Chief Commissioner of Customs or Principal Commissioner of Customs or Commissioner of Customs to pass certain orders.**

(1) The Committee of Principal Chief Commissioner of Customs or Chief Commissioner of Customs may, of its own motion, call for and examine the record of any proceeding in which a Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Principal Chief Commissioners of Customs or Chief Commissioners of Customs in its order.

**Provided** that where the Committee of Principal Chief Commissioners of Customs or Chief Commissioner of Customs differs in its opinion as to the legality or propriety of the decision or order of the Principal Commissioner of Customs or Commissioner of Customs, it shall state the point or points on which it differs and make a reference to the Board which, after considering the facts of the decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs, if is of the opinion that the decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs is not legal or proper, may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order, as may be specified in its order.

(2) The Principal Commissioner of Customs or Commissioner of Customs may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority subordinate to him has passed any decision or order under this Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any officer of Customs subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Principal Commissioner of Customs or Commissioner of Customs in his order.

**(3) Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority.**

**Provided** that the Board may, on sufficient cause being shown, extend the said period by another thirty days.

(4) Where in pursuance of an order under sub-section (1) or sub-section (2), the adjudicating authority or any officer of in this behalf by the Principal Commissioner of Customs or Commissioner of Customs, makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority, such application shall be heard by the Appellate Tribunal or the Commissioner (Appeals), as the case may be, as if such application were an appeal made against the decision or order of the adjudicating

authority and the provisions of this Act regarding appeals, including the provisions of sub-section (4) of [section 129A](#) shall, so far as may be, apply to such application.

10. A plain reading of the above two sections shows that while section 129A deals with orders passed by the Commissioner (Appeals), section 129D deals with orders passed by the original authority. As per section 129D, if the original authority who passed the order is a Commissioner, it can be reviewed by a Committee of Chief Commissioners or Principal Chief Commissioners and if the original authority who passed the order is an officer lower in rank than the Commissioner, the Committee of Commissioners or Principal Commissioners can review it. The order of review in both cases must be issued within 3 months (extendable by the Board by 30 days) and an order may be passed directing an officer to apply to the Appellate Tribunal (if the impugned order is passed by a Commissioner) or Commissioner (Appeals) (if the impugned order is passed by a lower authority) for the determination of such points arising out of the decision or order as may be specified in the order. The officer who has been so directed must file the application within one month of receiving the order and the application will be dealt with as if it is an appeal.

11. By contrast, section 129A deals with review of orders passed by the Commissioner (Appeals) by a Committee of Commissioners or Principal Commissioners. No time limit for review is prescribed in this section. However, sub-section (3) of section 129A prescribes a time limit of 3 months from the date of communication of the impugned order for filing an appeal by either side. It may happen

that the appeal is filed late with an application for condonation of delay and if the application is allowed, the appeal is admitted and decided on merits. Learned counsel's submission that the review order under section 129A(2) is time-barred is misplaced because this sub-section lays down no time limit at all and we cannot read into it any time limit. The related question is whether this appeal itself is time-barred because section 129(3) lays down a time limit of 3 months from the date of receipt of the order to file an appeal. The impugned order dated 17 December 2020 was received by the Principal Commissioner on 3 August 2021 and the review order was passed by the Committee on 2 November 2021 which was received by the Deputy Commissioner (Review) on 11 November 2021 and he filed this appeal on 17 November 2021. The entire period is covered by the various *suo moto* orders of the Supreme Court passed in view of the COVID pandemic. Therefore, this appeal should be treated as if it is filed without any delay.

**12. Thus, the preliminary objection by the learned counsel for the respondent that the Review Order passed by the Committee of Commissioners is not correct because no time limit is prescribed under section 129A (2) and a time limit cannot be read into it.**

13. We now proceed to the next question if the rejection of the declared value by the original authority which has been set aside by the impugned order. The value of imported goods shall be determined as per section 14 of the Act read with the Valuation Rules. Section 14 reads as follows:

**Section 14. Valuation of goods. -**

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the **value of the imported goods** and export goods **shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods** when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, **where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:**

**Provided** that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

**Provided** further that **the rules made in this behalf may provide** for,-

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

**(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:**

(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

**Provided** also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

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14. As may be seen, Section 14 requires the valuation to be done as per the transaction value subject to some conditions. Clause (iii) of the second proviso to this Section provides for rejection of transaction value by the proper officer under certain circumstances. If the transaction value is rejected, then the value shall be re-determined as per the Valuation Rules. Rule 12 of the Valuation Rules deals with the rejection of transaction value. It reads as follows:

**Rule 12. Rejection of declared value.**

(1) When the **proper officer has reason to doubt the truth or accuracy of the value declared** in relation to any imported goods, **he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.**

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-

(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

15. Thus, Rule 12 provides that if the proper officer has **reason to doubt the truth and accuracy of the transaction value, he can call for further information** and if no such information is provided or after considering the information so provided, **the proper officer still has a reasonable doubt about the truth or**

**accuracy of the value so declared,** it shall be deemed that the valuation cannot be done as per the transaction value. The grounds on which the proper officer can doubt the transaction value has been given by way of illustration in clause (iii) to the Explanation. One of the grounds is significant significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

16. In this case, the officers acted on the basis of intelligence and opened and examined the goods 100%. What was declared in the Bill of Entry was 'Unpopular brand' and the goods which were actually found were of Zhiyun brand and goods of this brand were imported by the respondent itself previously describing the goods as Zhiyun brand. The prices declared in this Bill of Entry were much lower than the prices at which they were imported by the respondent when they were declared as Zhiyun brand. **This, in our considered view, constitutes a reason to doubt the truth and accuracy of the transaction value.**

17. The officers investigated the matter and found that the goods were of the same brand and model as those imported earlier by the same importer declaring them to be of Zhiyun brand and they were imported from the same supplier. We find that some brands may not be popular and may, with time, become popular. If the importer had declared the goods to be of Zhiyun brands earlier and in the disputed Bill of Entry described them as 'unpopular brands', there is no good reason as to why that brand has become 'unpopular' with time. The explanation of the importer was



that it had imported 'unpopular models' of Zhiyun brand but had incorrectly declared them as 'unpopular brand'. This explanation cannot be accepted for the reason that the model numbers of the goods imported in the disputed Bill of Entry dated 16.20.2018 and the model numbers of the goods imported earlier by the importer were the same as discussed in the order in original.

18. A further explanation of the importer was that though they were of the same model and the brand, they were low end versions meant to popularize among those making videos for YouTube, etc. and hence were priced lower. This argument also cannot be accepted for the reason, that the models of the imported goods nowhere specify that they were of a low end versions. It must also be noted that it is an undisputed fact that the importer maintains the website for the Zhiyun brand in India [www.zhiyumindia.com](http://www.zhiyumindia.com) and this website also did not indicate the availability of the so called low versions of the same models. The officers also conducted a market survey on 26.03.2018 and it was found that there were no such low versions in the market. In support of the contention that what were imported were lower versions of the same model, Shri Mayank Chandra, Director of the importer, in his statement before the officers mentioned that around 17-18<sup>th</sup> January 2018, they had received information about the low end versions from the overseas supplier on WECHAT and that he had, after the case was booked, requested the supplier to send a letter again on gmail and he had received it the previous day. When asked for the WECHAT message which was received, he could not produce it. Thus, we find that the contention that the imported

goods were lower versions of the same models of Zhiyun brand is not supported either by the imported documents or by the declaration in the Bill of Entry nor was the existence of such lower versions indicated on the website of Zhiyun in India maintained by the importer itself and no such lower versions were also found in the market survey. The assertion of the importer that such lower versions exist and that it had received information about them in January 2018 on WECHAT message is not substantiated as no such message was produced by the importer. The only evidence in support of this contention of the importer was an email received by the importer after the case was booked by the Customs which, in our considered view, is not sufficient to establish the theory of the existence of lower versions of the model and their import. If there were such lower versions which were imported, we find no good reason for the importer to have not declared them in the Bill of Entry or any of the documents. What was declared in the Bill of Entry was 'unpopular brand' and what was imported was Zhiyun brand. It is unthinkable that the owner of a brand or its dealer in India (the importer in this case) who also maintains the website for the brand in India markets the brand by calling it 'unpopular brand'.

19. The original authority had compared the features of the models of the goods imported in the impugned Bill of Entry and the earlier imports as follows:

Parameteres	BoE No. 379105 dated 04.10.2017	BoE No. 4684794 dated 05.01.2018	BoE No. 5233199 dated 16.02.2018
Description of Goods	Zhiyun Crane 2 Camera Stand (Model CRA02)	Camera Stand (3 Axis Stablizer	Camera Stand (3 Axis Stablizer-

		with Follow Focus-Unpopular Brand)	CRA02, Unpopular Brand
Key Features	Real time follow focus control, Tilt Angle 320°, Roll Angle 360°, Pan Angle 360°, Nt. Wt. 1250g	Real time follow focus control, Tilt Angle 320°, Roll Angle 360°, Pan Angle 360°, Nt. Wt. 1250g	Real time follow focus control, Tilt Angle 320°, Roll Angle 360°, Pan Angle 360°, Nt. Wt. 1250g
Display	Intiutive OLED Display	Intiutive OLED Display	Intiutive OLED Display
Battery Runtime	Min. 12h; Max. 18h	Min. 12h; Max. 18h	Min. 12h; Max. 18h
Payload capacity	3.2 Kg. Max.	3.2 Kg. Max.	3.2 Kg. Max.
Package accessories	1Tripod, 1 Battery Charger, 3 18650 Li-ion Batteries, 1 Micro to Mini USB Cable, 1 Sony Camera Control/Charging Cable, 1 Micro USB Cable, 1 User Manual, 1 Each Shot Cleaning Cloth, 1 Anti-slip Grip Tape	1 Tripod, 1 Battery Charger, 3 18650 Li-ion Batteries, 1 Micro to Mini USB Cable, 1 Sony Camera Control/Charging Cable, 1 Micro USB Cable, 1 User Manual, 1 Each Shot Cleaning Cloth, 1 Anti-slip Grip Tape	1 Tripod, 1 Battery Charger, 3 18650 Li-ion Batteries, 1 Micro to Mini USB Cable, 1 Sony Camera Control/Charging Cable, 1 Micro USB Cable, 1 User Manual, 1 Each Shot Cleaning Cloth, 1 Anti-slip Grip Tape
Declared Unit Price	USD 385 (CIF)	USD 50 (FOB)	USD 55 (FOB)

B. Comparative chart for item Zhiyun Crane & Zhiyun Crane Plus 3-axis camera stabilizers:

Parameters	BoE No. 3985161 dated 13.11.2017	BoE No. 5233199 dated 16.02.2018
Description of Goods	Camera Stand (Zhiyun Crane, Type Monopod)	Camera Stand (3 Axis Stablizer-CRA01, Unpopular Brand)
Key features	Customized and suitable for almost all mirrorless cameras, Core techniques of the fifth Zhiyun honeycomb low level control arithme, tiny butamazing, Compatible with 18650 and 26650 batteries, 3 axes 360 degrees unlimited rotation, Firmware upgrade via APP Zhiyun’s mature attitude algonthm, HF measuring range from idle load to full load, Multiple	Point of View (POV) Mode, Intelligent object tracking, motion memory, night lapse, Tilt Angle 360°, Pan Angle 360°

	professional servo motors, Built-in IMU and incredibly precise and powerful brushless motor.	
Battery Runtime	Min 6h; Max. 12h	Min 12h; Max. 18h
Payload capacity	1200g Max.	2500g. Max.
Declared Unit Price	USD 280 (CIF)	USD 45 (FOB)

C. Comparative chart for item Dual Hand Handles for Zhiyun Crane camera stabilizers:-

Parameters	BoE No. 3985161 dated 13.11.2017	BoE No. 5233199 dated 16.02.2018
Description of goods	Dual Handle for Camera Stand (for Zhiyun Crane)	Dual Handle (Unpopular Brand, Parts of Camera Stand)
Brand & type of product	Zhiyun brand, Gimbal Accessories	Zhiyun Brand, Gimbal Accessories
Product weight	0.450 kg	0.450 kg.
Declared Unit Price	USD 50 (CIF)	USD 10 (FOB)

20. The Commissioner (Appeals) has, however, relied on the ‘four page technical letter dated 12 December 2017’ (obtained by the importer by email after the case was booked) and held that the lower version of the goods imported in the impugned Bill of Entry and the normal versions were different as follows:

S. No.	Feature	Difference between normal and low version
1.	Handle Main screen	Difference in font
2.	Menu button settings	Options different, no wheel setting in low version
3.	Inner Options setting	Options different, no joystick setting in low version
4.	Motor control	No motor wheel setting in low version
5.	Output current	No camera charging in low version
6.	Battery runtime	Low version – 8 hrs Normal version – 12 hrs
7.	Following accuracy	Better in normal version

8.	Rotational angle	Better in normal version
9.	Movement speed	Better in normal version
10.	Modes	Low version – PF/L/F Normal Version-PF/L/F/POV/S
11.	Motor Poles	Low version – 36 Normal version – 42
12.	Display PCB	Low version – OLED 32 Bit Normal Version – OLED 64 Bit
13.	Camera Charging	Not available in low version
14.	Joystick Control PCB Board	Low version-Un programmed V 1.6 Normal version – programmed with EF lens support v 1.72

Parameters	BoE No. 3985161 dated 13.11.2017	BoE No. 5233199 dated 16.02.2018
Description of goods	Dual Handle for Camera 'Dual Stand (for Zhiyun Crane)	Dual Handle (Unpopular Brand, parts of Camera Stand)
Brand & type of product	Zhiyun brand, Gimba Accessories	Zhiyun brand Gimba Accessories
Product weight	0.450 kg.	0.450 kg.
Declared unit price	USD 50 (CIF)	USD 10 (FOB)

21. This finding of the Commissioner (Appeals) cannot be sustained for the reason that there is nothing in the import documents or the Bill of Entry to substantiate that the goods which were imported were of a lower version with lower features. As already discussed, the importer’s assertion that the existence of such lower end versions were communicated to it by WECHAT could not be substantiated because no such WECHAT message was produced. No such lower end versions were found during the market survey nor were any such low end versions put up on the website of the company maintained by the importer itself. **The Commissioner (Appeals) has erred in relying on an email obtained by the importer after the case was booked when all other evidence is to the contrary. Therefore, the**

**Commissioner (Appeals) was not correct in setting aside the rejection of the transaction value and its re-determination under Rules 4&5 by the original authority.**

22. As far as the confiscation of the goods and imposition of penalties are concerned, the relevant provisions are as follows:

**111. Confiscation of improperly imported goods, etc.**—The following goods brought from a place outside India shall be liable to confiscation:—

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(m) **any goods which do not correspond in respect of value or in any other particular with the entry made under this Act** or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

**112. Penalty for improper importation of goods, etc.**—Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

**(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be**

**evaded or five thousand rupees, whichever is higher:**

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

**114AA. Penalty for use of false and incorrect material.**—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

23. In this case, the goods which were indicated in the Bill of Entry were 'unpopular brands' while what were imported were Zhiyun brand goods. The prices which were declared in the Bill of Entry were a fraction of the price of the Zhiyun brand goods imported by the same importer from the same overseas supplier and they were of the same models. We have already held as a matter of fact that the importer's assertion that they were

'unpopular brands' (as declared in the Bill of Entry) or 'unpopular models' or 'lower versions' of the models were not substantiated by the evidence available on record. Therefore, the imported goods were correctly confiscated under section 111 and consequently, penalty was correctly imposed under Section 112 by the original authority. Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under section 114AA by the original authority. The Commissioner (Appeals) has erred in setting aside the confiscation of the goods and imposition of penalties by the original authority.

24. In view of the above, we allow the appeal of the Revenue, set aside the order of Commissioner (Appeals) and restore the order of the original authority.

(Pronounced in open Court on 29.09.2022)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(P V SUBBA RAO)**  
**MEMBER (TECHNICAL)**