

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**CUSTOMS APPEAL No. 10055 OF 2013**

[Arising out of OIA-78-80/2012/CUS/COMMR-A-/AHD dated 06.10.2012 passed by Commissioner of Customs -AHMEDABAD]

**SURYA EXIM LIMITED**

3040, JASH TEXTILE & YARN MERKET,  
RING ROAD, SURAT-GUJARAT

**.....Appellant**

*VERSUS*

**C.C., AHMEDABAD**

CUSTOM HOUSE,  
NEAR ALL INDIA RADIO NAVRANGPURA,  
AHMEDABAD-GUJARAT

**....Respondent**

**WITH**

**CUSTOMS APPEAL No. 10056 OF 2013**

[Arising out of OIA-78-80/2012/CUS/COMMR-A-/AHD dated 06.10.2012 passed by Commissioner of Customs -AHMEDABAD]

**SACHIN VADHVANA**

3040, JASH TEXTILE & YARN MERKET,  
RING ROAD, SURAT-GUJARAT

**.....Appellant**

*VERSUS*

**C.C., AHMEDABAD**

CUSTOM HOUSE,  
NEAR ALL INDIA RADIO NAVRANGPURA,  
AHMEDABAD-GUJARAT

**....Respondent**

**AND**

**CUSTOMS APPEAL No. 10251 OF 2013**

[Arising out of OIA-78-80/2012/CUS/COMMR-A-/AHD dated 06.10.2012 passed by Commissioner of Customs -AHMEDABAD]

**JP SABOO SURYA EXIM LIMITED 3040**

3040, JASH TEXTILE & YARN MERKET,  
RING ROAD, SURAT-GUJARAT

**.....Appellant**

*VERSUS*

**C.C., AHMEDABAD**

CUSTOM HOUSE,  
NEAR ALL INDIA RADIO NAVRANGPURA,  
AHMEDABAD-GUJARAT

**....Respondent**

**APPEARANCE:**

Shri P.P. Jadeja, Consultant for the Appellant

Shri G. Kirupanandan (Authorized Representative) for the Respondent

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

**Final Order No. A/ 12174-12176 /2022**

DATE OF HEARING: 03.11.2022  
DATE OF DECISION:12.12.2022

**RAMESH NAIR**

Briefly stated the facts of the case are that the appellant had imported 400.5 MTs Suspension grade PVC Resin Off Grade/ Wet Venilen 140/145/150 imported from Venezuela and filed Bill of entry No. 920/09-10 dated 11.03.2010. On preliminary scrutiny of the said bill of entry, it was noticed by the department that the appellant –importer has not submitted chemical analysis report in respect of the PVC resin imported even though the consignment was declared to be “off grade and wet”. Further, during the first check basis examination, the goods imported found to be PVC resin but without any marking “off grade or wet” on any of the bags. Also, as per the packing list, the goods are packed in the uniform packing of 25 Kg bags whereas on physical verification, the impugned goods were found packed in Jumbo bags of 600 Kgs each without any making and weight details, thus the consignment was not as per the packing list. Further, it was also noticed that the appellant – importer declared the CIF Value USD 450/- PMT, which found very low as compared to PLATTS price for the relevant period and also to the data available on NIDB. The sample of the said impugned goods imported, drawn and were sent for testing at Central Excise & Custom Laboratory, Vadodara. As per the test report, in one sample’s percentage of moisture is 16.2 and sample is of prime grade PVC Resin. The % of volatility in the other three sample was abysmally low and varies between 0.04 to 0.08. In all the four sample K-value was more or less identical and all the samples are of prime grade PVC Resin. It appears that the imported PVC Resin is off “prime grade” and not of “off grade” as declared by the Appellant.

2. On this basis, Appellant was issued show cause notice dtd. 23.09.2010 proposing to demand differential duty, as also to confiscate the goods under Section 111(d) and (m) of the Customs Act for misdeclaration of description and value and to impose penalty on them under Section 112(a) and 114A of the Act. After due process of law, the show cause notice was adjudicated vide Order-In-Original dtd. 21.10.2011, wherein it was held that the goods were of Suspension grade PVC Resin of “Prime Grade” and the value of the goods was re-determined at 1,55,22,713/- under Section 14 of the Customs Act, 1962 read with Rule 9 and Rule 4 of the Customs Valuation (Determination of Price of the imported Goods), Rules, 2007; the goods was confiscated

under Section 111(d) and (m) of the Act with option for redemption against payment of fine of Rs. 20 lakhs under Section 125 ; a differential customs duty of Rs. 14,71,167/- was ordered to be paid by the importer; a penalty of Rs. 14,71,167 was imposed on the importer under section 114A of the Act ; and penalty of Rs. 2,00,000/- was imposed on Shri J.P. Saboo, Director of Appellant and penalty of Rs. 25,000/- was imposed on Shri Sachin Vadhvana, authorised signatory of the Appellant under Section 112(a) of the Customs Act, 1962. Being aggrieved with the said order, Appellants filed appeals with Commissioner (Appeals), who vide impugned Order-In-Appeal dated 06.10.2012 upheld the order of lower adjudicating authority. Therefore the present appeals are directed against the impugned order passed by the Commissioner (Appeals).

3. Shri P.P.Jadeja, learned Consultant appearing for the appellant submits that samples have not been drawn as per Methods prescribed by BSI and Analysis reports are silent on methods of Sampling, Test and the Analysis. In the present case, no samples have been drawn by the customs as per ISI standards. He placed reliance on the decisions of Tata Chemicals Ltd v/s CC (Prev), 2015 (320) E.L.T. 45 (S.C.)

4. He also submits that there is no evidence to hold that the goods in question are "prime grade", where Appellants claimed it to be "off grade". Appellants in statement dated 22-04-2010 by shri J.R. Saboo has clarified that imported goods are wet/off grade PVC Resin. This is not regular product of supplier and supplier produces Prime /Standard grade PVC Resin only. PVC resin Wet/Off Grade is identified by the supplier and classified only when it does not fulfill parameters of Prime or Standard grade PVC Resin. Appellant had negotiated prices as well and accordingly, the present consignment was transacted. There are correspondences with overseas supplier for the quality, quantity and value of the goods in question. The overseas supplier had agreed for the negotiated price and thereafter only forwarded Proforma Invoice and LC for remittance was opened, which are on record. The analysis report of prime grade PVC Resin of supplier is submitted to department along-with previous Bill of Entry for 55 containers imported for Prime Grade. As informed by supplier and offered the material was of PVC Resin Wet/Off Grade. It is identified by supplier and offered to Appellants. Relevant correspondence has been submitted vide letter dated 19-03-2010. The

prime Grade PVC Resin does not contain any moisture and volatile matter is less than 0.3 % and purity is 99.7 %, which has been clarified in Appellant's letter dated 05-04-2010. Appellant has clarified that report states "**moist powder**" for Sr. No.2 of test Memo, whereas "prime grade" does not contain any moisture. The PVC content of the prime grade is 99.70% + whereas the report states that the PVC Content was 83.6% in respect of product mentioned at Sr. No.2 of test Memo. No details of such PVC content is mentioned for the remaining 3 samples. The volatile matter of prime grade PVC Resin are maximum 0.30%, whereas the volatile matter as reported by the Chemical Examiner was 16.2%, 0.045, 0.08 and 0.05%. The % of PVC content was mentioned in case of only one sample i.e. No. 2 and there was no mention of PVC content in other three samples. The report was silent on the methods adopted in testing. There are other parameters like density, VCM in residual PPM, absorbing amount of plasticizer for 100 Gms resin, degree of polymerization has not been even tested by Customs laboratory.

5. He also argued that except the Analysis report given by the Chemical Examiner, Vadodara and CRCL, New Delhi, there is no evidence to show that imported goods are of "prime Grade" and not of "off Grade" as declared. In the Chemical Analysis report of Chemical Examiner, Central Excise and Customs, Vadodara and New Delhi, Chemical Examiners have jumped to undue inference that samples are of "Prime Grade" PVC (Suspension Grade) Resins without adducing any justified reasoning and original adjudicating authority has accepted these reports without allowing cross examination of chemical examiners. There are inherent contradictions in observations and conclusions in reports. Further by not allowing cross examination Chemical Examiners under section 138B of the Customs Act 1962, principles of natural justice have been violated in this case. On one hand Revenue initiated proceedings as Appellants have not submitted chemical Reports in question, however while alleging that goods are "Prime Grade" PVC Resins, it was obligatory on Revenue to have spelt out and produced evidences that parameters of such "Prime Grade" PVC Resins are existing in respect of the goods in question. Thus, Revenue has not discharged its burden heavily cast on Revenue by Law.

6. He further submits that Revenue has enhanced Assessable value from declared value of Rs. 84,94,661/- to Rs. 1,61,39,269/- which is

about 52 % higher than declared value which is neither justified nor acceptable under established law. Law requires to take Assessable value of goods in accordance with section 14 of Customs Act 1962 read with Customs Valuation Rules 2007, which provide that for assessment, value of goods shall be price paid or deemed to be price at which such or like goods are ordinarily sold, or offered for sale, for delivery at time and place of importation, as the case may be, in course of international trade, where seller and buyer have no interest in business of each other and price is the sole consideration for sale or offer for sale and that where such value cannot be determined under provisions of Rule 3(i) of Customs Valuation Rules 2007, the value shall be determined by proceeding sequentially through Rules 4 to 9 of Customs Valuation Rules. Thus, where transaction value is not available or may be rejected for valid or justified reasons, then, such price shall be determined in accordance with Customs Valuation Rules 2007. Rule 3(i) of Customs Valuation Rules 2007 shows that For purpose of the said Rules, value of imported goods shall be "Transaction Value" and Rule 3(ii) provides that if the value cannot be determined under the provisions of Rule 3(i), then, such value shall be determined by proceeding sequentially to Rules 4 to 9 of Customs Valuation Rules 2007. Rule 3(1) is that transaction value of imported goods shall be price actually paid or payable for goods when sold for export to India, adjusted in accordance with Rule 10 of Customs Valuation Rules 2007. However, Revenue has compared which is not comparable for enhancing the duty. In the present case, when imported goods are not mis-declared by Appellant and transaction value is available, it was required to accept the same as per the law settled. However, department has chosen not to accept declarations and such transaction value, hence, first of all, there has to be justified reason for rejecting the transaction value and then only it can be further proceeded to re-determine such value proceeding sequentially to Rules 4 to 9 of the Customs Valuation Rules, 2007. There is no reason or justification except assumptions and presumptions for alleged misdeclaration for rejecting transaction value with reliable evidences on one hand and on the other hand none of circumstances as are provided in Rules of 2007 for rejecting transaction value are existing, found or proved by the Revenue with reliable evidences. Since value is not correctly determined, in present case, in accordance with the provisions of section 14 of Customs Act 1962 or Customs Valuation Rules of 2007 with any reliable evidences, value of goods taken is not correct or as per the established

law. Transaction Value has to be accepted, unless the exceptions as provided in Customs Valuation Rules 2007 are found.

7. He placed reliance on the following decisions in support of above views.

- (i) 2019 (365) E.L.T. 3 (S.C.) – CCE vs Sanjivani Non-Ferrous Trading Pvt. Ltd
- (ii) 2011 (272) E.L.T. 641 (S.C.) – CCE v/s AGGARWAL INDUSTRIES LTD.
- (iii) 2010 (253) E.L.T. 353 (S.C.) – CCE v/s PRABHU DAYAL PREM CHAND
- (iv) 2009 (244) E.L.T. 4 (S.C.) -MOTOR INDUSTRIES CO. LTD. V/s CC
- (v) 2008 (226) E.L.T. 9 (S.C.) – CC v/s J.D. ORGOCHEM LTD.
- (vi) 2008 (224) E.L.T. 343 (S.C.) – CC V/S Initiating Explosives Systems (I) Ltd.
- (vii) 2007 (214) E.L.T. 3 (S.C.)- CC v/s SOUTH INDIA TELEVISION (P) LTD.
- (viii) 2005 (181) E.L.T. 3 (S.C.)- CC v/s BUREAU VERITAS
- (ix) 2000 (122) E.L.T. 321 (S.C.) - EICHER TRACTORS LTD.
- (x) 2009 (239) E.L.T. 468 (Tri. - Bang.) – CC v/s MISRI APPARELS PVT. LTD.
- (xi) 2006 (202) E.L.T. 530 (Tri. - Mumbai)- Neha Intercontinental (P) Ltd.
- (xii) 2005 (184) E.L.T. 65 (Tri. - Del.) – CC v/s MODERN OVERSEAS
- (xiii) 2005 (184) E.L.T. 65 (Tri. - Del.) – CC, New Delhi v/s MODERN OVERSEAS
- (xiv) 2006 (202) E.L.T. 530 (Tri. - Mumbai)- Neha Intercontinental (P) Ltd. v/s CC
- (xv) 2009 (246) E.L.T. 340 (Tri. - Ahmd.) - APAR INDUSTRIES LTD.
- (xvi) 1996 (81) E.L.T. 195 (S.C.) - BASANT INDUSTRIES Vs CC, Customs

8. He also submits that the adjudicating authority has not correctly appreciated the facts and has applied NIDB Data for re-determination of the imported goods being valued. The Settled law is that declared value cannot be enhanced merely on basis of NIDB data when the Value of

impugned goods are declared correctly in B/E. Every seller and buyer entered into some agreement to sell and purchase of goods on transaction, which cannot be rejected comparing such prices of some other transaction. Thus, Revenue has neither followed proper procedure to reject declared value nor determined Assessable Value in accordance with Custom Valuation Rules, 2007. He placed reliance on the following decision:-

- (i) 2021 (376) E.L.T. 743 (Tri. - Del.) - B.B.M. IMPEX PVT. LTD vs CC(P), New Delhi
- (ii) 2015 (330) E.L.T. 799 (Tri. - Chennai) - TOPSIA ESTATES PVT. LTD. v/s CC
- (iii) 2015 (329) E.L.T. 406 (Tri. - Del.) - UMRAO SINGH PAWAN KUMAR v/s CCE
- (iv) 2015 (317) E.L.T. 295 (Tri. - Del.) - CC v/s VIRASAT ELECTRONICS
- (v) 2013 (298) E.L.T. 290 (Tri. - Mumbai) - AUTO STORES v/s CC
- (vi) 2013 (297) E.L.T. 450 (Tri. - Del.) - CC v/s D.M. INTERNATIONAL
- (vii) 2013 (296) E.L.T. 207 (Tri. - Del.) - CC v/s RAINBOW IMPEX
- (viii) 2013 (295) E.L.T. 726 (Tri. - Del.) - CCE v/s Century Metal Recycling Pvt. Ltd.
- (ix) 2013 (291) E.L.T. 549 (Tri. - Del.) - CC v/s SHRI GAYATRI EXPORTS
- (x) 2013 (289) E.L.T. 346 (Tri. - Del.) - CC v/s MARBLE ART
- (xi) 2013 (289) E.L.T. 305 (Tri. - Del.)- CC v/s NATH INTERNATIONAL
- (xii) 2013 (289) E.L.T. 169 (Tri. - Del.) - CC v/s DM INTERNATIONAL
- (xiii) 2012 (286) E.L.T. 720 (Tri. - Del.) - CC v/s ASIA PACIFIC DISTRIBUTORS
- (xiv) 2012 (278) E.L.T. 197 (Tri. - Del.) - CCE v/s SAI SALES CORPORATION
- (xv) 2009 (247) E.L.T. 761 (Tri. - Del.)- UNITED COPIER SYSTEMS v/s CC
- (xvi) 2009 (243) E.L.T. 444 (Tri. - Mumbai) - MIDAS IMPEX v/s CC
- (xvii) 2009 (241) E.L.T. 536 (Tri. - Del.) - CCE v/s OM SAIRAM TRADING CO.

- (xviii) 2009 (239) E.L.T. 468 (Tri. - Bang.) - CC V/S MISRI APPARELS PVT. LTD.
- (xix) 2006 (202) E.L.T. 530 (Tri. - Mumbai) - NEHA INTERCONTINENTAL (P) LTD
- (xx) 2005 (184) E.L.T. 65 (Tri. - Del.) - CC v/s MODERN OVERSEAS

9. Countering the arguments made on behalf of the appellants, Shri G. Kirupanandan, learned Superintendent (Authorized Representative), appearing for the Revenue counters the appellant's contention by reiterating the findings of impugned orders. He submits that where the goods have been mis-declared in description the Revenue was justified in getting the same tested to find out the quality of the same and then adopting the value of the identical imports for the purpose of the determining the assessable value of the goods in question. He also supports the confiscation of the goods and imposition of penalty upon the appellants.

10. Heard both sides and perused the records. The issue that requires to be considered in this case is as to whether the goods Suspension grade PVC Resin imported by the appellant is Prime grade as contended by the department or "wet/off grade" as claimed by the appellant. After an investigation conducted by revenue, the samples were got tested by Chemical Examiner and on the basis of its report revenue contended that the impugned imported PVC Resin is of "Prime grade". Accordingly, the present proceedings have been initiated. However we find that Appellant objected on the said test report right from the investigation on the ground that non-mention of method of testing, not testing relevant parameters, quantity of remnants not mentioned, delay in re-testing and there are other parameters like density, VCM in residual PPM, absorbing amount of plasticizer for 100Gms resin, degree of polymerization has not been tested. We also find that the appellant had requested for cross-examination of the Chemical Examiner. However, no such opportunity was granted to them. In the present proceeding the Test reports are the only evidences with the Revenue to say that imported goods are "Prime Grade", therefore, adjudicating authority was not right in rejecting the cross-examination of the chemical examiner.

11. Revenue relied upon the case law of Reliance Cellulose Products Limited v. CCE, Hyderabad 1997(93)ELT 646 (SC) (supra) to argue that chemical report of the departmental chemical examiner cannot be brushed aside. Para 12 of the Apex Court judgment in the case of Reliance Cellulose Products Limited v. CCE, Hyderabad (supra) is reproduced below : -

*"12. These orders are now under challenge before this Court. We were referred to a number of test reports obtained by the appellant from various persons and on the basis of these opinion, the reports of the Departmental Chemical Examiner and also the Chief Chemist were assailed. We are of the view that the Assistant Collector cannot be said to have erred in relying upon the reports given by the Chemical Examiner and the Chief Chemist. It may be that in a given case, the report of the Chief Chemist may be demonstrated to be palpably wrong. In such a case, the Court may direct re-examination of the whole issue. But that is not the case here. It has not been shown that the Chemical Examiner or the Chief Chemist were in error in their analysis in any way. The views expressed by the Chief Examiner and Chief Chemist of the Government cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the appellant."*

It is seen from the above that Hon'ble Apex Court has also observed that there could be a situation where report of the Chemical Examiner is palpably wrong. The facts of the case before the Apex Court were thus different than the facts and circumstances of these proceedings.

12. In the present matter, refusal to allow cross-examination of the Chemical Examiner is to be viewed as a serious violation of principles of natural justice. Had the cross examination been allowed, the appellant could have availed an opportunity to enquire the testing methodology and standards adopted by CRCL and its suitability vis-a-vis the ISI. We also find that the said test report nowhere states that the goods are not as declared as in the Bill of Entry or that they are not "PVC Resin Off Grade". The said test report has simply given an opinion on composition of the goods. In the circumstances, it is not correct to allege mis-declaration of the goods in question on the part of the appellant.

13. It is pertinent to be noted that in the present case, this is not the case rival goods are two different goods. The goods chemically may be same but to ascertain that the goods is off grade there may be various reason such as the prime goods may be mixed with the dirt, moisture or

any other foreign material and for that reason the goods fetch lower price. This is general trend in the commercial market. In such case there is no surprise that the chemical parameters of prime material and off grade material may be same but externally the goods may be different quality and use. Therefore without accepting, even if the chemical composition is same of both quality of goods, the off grade material can not be construed as prime material and on this basis the price can not be same. On our this view also the price enhanced by the revenue is not correct and legal.

14. We also find that the value has been enhanced by adopting the value of contemporaneous imports. However, there is no admission of Appellant admitting to undervaluation, or any evidence of any extra financial consideration apart from the declared transaction value, paid to the overseas supplier. Further, there is no evidence that the appellant and overseas supplier are related parties or that the invoice value was not the transaction value. The Department has failed to show any contemporaneous evidence of higher price, and thus the transaction value cannot be rejected, as held by the Hon'ble Apex Court in Commissioner Central Excise v. Sanjivani Non- Ferrous Trading Pvt. Ltd. - (2019) 2 SCC 378 = [2019 \(365\) E.L.T. 3](#) (S.C.) and Commissioner of Customs v. South India Television Pvt. Ltd. - (2007) 6 SCC 373 = [2007 \(214\) E.L.T. 3](#) (S.C.).

15. Further, in the present case, particularly, when the invoice price of the appellant was not disputed on the basis of any evidence of wrong declaration of the value, the enhancement in the present case is illegal and incorrect. We find that there is no dispute that the customs has power to reject the transaction value and enhance the assessable value in terms of Customs Valuation Rules. However, such rejection of transaction value and enhancement of assessable value has to be on the basis of some evidence on record. Contemporaneous imports have to be considered in reference to quality, quantity and country of origin with the imports under consideration. It has been held in a number of decisions that NIDB data cannot be made the basis for enhancement of value. Appellant has relied upon various decisions of the Tribunal holding that for any enhancement in assessment value, the transaction value has to be first rejected based on legal permissible ground as indicated in the valuation Rules. We find that in the present matter, Revenue has not

advanced any such evidence to support their case inasmuch as, no evidence of rejection of transaction value was produced by the department.

16. As regard quality of the imported goods in question, we find that there is clear understanding between the supplier and the appellant importer that the goods in question has more moisture content and therefore the quality of goods is inferior to the prime material and on that basis the supplier agreed to sell the goods at lower price. As against this fact, the revenue could not adduce any evidence to reject this fact. Therefore the claim of the appellant that the goods in question is 'off grade' is legitimate and convincing. In this fact on the quality of the goods, obviously the price cannot be the same of the prime grade material. Hence the price negotiated and finalised as sale price between the supplier and the appellant importer and declaration of the same cannot be disputed.

17. The appellant, post hearing, also submitted an NCLT order dated 01.07.2022 whereby a resolution plan was approved under the IBC proceeding. We reproduce the relevant para of the said NCLT's order:

**"ORDER**

- I. Application is allowed.*
- II. The Resolution Plan of M/s. Agarwal Coal Corporation Private Limited for Corporate Debtor i.e. M/s Surya Exim Limited, stands allowed as per section 30(6) of the IBC, 2016.*
- III. The Resolution Applicant claimed various reliefs and concessions in the resolution plan. However, we grant the reliefs in the following manner and to this extent;*
  - a. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders prior to CIRP against the Corporate Debtor shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall also stand extinguished against the Corporate Debtor after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished;"*

As per the above order of NCLT, we find that dues of government, if any, shall stand extinguished. Similar view was also expressed by the Hon'ble

Supreme Court which was referred in the NCLT order in para 16. Which is reproduced below:

*“16. As far as reliefs and concessions claimed by the resolution applicant, the law has been well settled by the Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited and Ors. reported in MANU/SC/0273/2021** in the following words:*

*I. "The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.*

*II. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of IB Code and continuing with the proceedings, has brought out the 2019 amendment so as to cure the said mischief..."*

18. With regard to pending dues of Customs, the Hon'ble Supreme Court in the recent judgement dated 26<sup>th</sup> August 2022 of Sundaresh Bhatt, in Civil Appeal No. 7667 of 2021 held as under:-

*“54. On the basis of the above discussions, following are our conclusions:*

- i) Once moratorium is imposed in terms of Sections 14 or 33(5) of the IBC as the case may be, the respondent authority only has a limited jurisdiction to assess/determine the quantum of customs duty and other levies. The respondent authority does not have the power to initiate recovery of dues by means of sale/confiscation, as provided under the Customs Act.*
- ii) After such assessment, the respondent authority has to submit its claims (concerning customs dues/operational debt) in terms of the procedure laid down. in strict compliance of the time periods prescribed under the IBC. before the adjudicating authority.*
- iii) In any case, the IRP/RP/liquidator can immediately secure goods from the respondent authority to be dealt with appropriately, in terms of the IBC.*

*55. Resultantly, we allow the appeal and set aside the impugned order and judgment of the NCLAT. There shall be no orders as to costs.”*

19. For the reason of aforesaid NCLT order in the appellant case and the above cited Apex Court judgments, the dues of the Government, including the present dues, if any, is not prima facie recoverable. However, since we decide this appeal on its merit and fact of the case, we do not incline to give conclusive finding on the basis of NCLT order.

20. As per our above discussion and findings, the impugned order passed by the Commissioner (Appeals) cannot be sustained. Accordingly, the impugned order is set aside and the appeals are allowed with consequential relief, if any arise, in accordance with law.

(Pronounced in the open court on 12.12.2022)

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**

Neha