

**CUSTOMS EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
NEW DELHI  
PRINCIPAL BENCH-COURT NO. 4**

**CUSTOMS APPEAL NO. 51766 OF 2021  
WITH  
CUSTOMS CROSS APPLICATION NO. 50232 OF 2022**

[Arising out of Order-in-Appeal No. CCA/CUSTOMS/D-I/EXP./NCH/689-690/2020-21 dated 23.10.2020 passed by the Principal Commissioner of Customs, ACC(Import), New Delhi and Commissioner of Customs, ACC(Export) New Delhi]

**PRINCIPAL COMMISSIONER, CUSTOMS -NEW  
DELHI (ACC IMPORT)**

Commissionerate,  
New Custom House,  
New Delhi-110037

**Appellant**

Vs.

**M/S WALL STREET IMPEX**

H. No. 541/542/64, J Block  
Bhai Randheer Singh Nagar,  
Ludhiana, Punjab-141012

**Respondent**

**AND**

**CUSTOMS APPEAL NO. 50065 OF 2022**

[Arising out of Order-in-Appeal No. CC(A)/CUS/D-I/EXP./NCH/687-688/2020-21 dated 23/10/2020 passed by the Principal Commissioner of Customs ACC, (Import) New Delhi and Commissioner of Customs ACC, (Exports) New Delhi]

**PRINCIPAL COMMISSIONER, CUSTOMS -NEW  
DELHI (ACC IMPORT)**

Commissionerate,  
New Custom House,  
New Delhi-110037

**Appellant**

Vs.

**M/S FOREVER IMPORT & EXPORT CO**

Mohi, Dhaipai Ling Road,  
VPO Khandoor,  
Distt. Ludhiana-141103

**Respondent**

**Appearance:**

Present for the Appellant : Shri V Saharan, Authorised Representative  
Present for the Respondent: Shri Sansar Chand, Consultant

**CORAM:**

**HON'BLE MR P. V SUBBA RAO, MEMBER(TECHNICAL)  
HON'BLE DR. RACHNA GUPTA, MEMBER(JUDICIAL)**

**FINAL ORDER NOS. 51188-51189 /2022**

**Date of Hearing : 11/10/2022**

**Date of Decision: 15/12/2022**

**P V SUBBA RAO:**

These two appeals have been filed by the Revenue assailing the Orders-in Appeal.

2. **Appeal No. 51766 of 2021** is filed to assail Order-in-Appeal dated 23.10.2020 passed in respect of M/s. Wall Street Impex. Cross objections 50232 of 2022 is filed by M/s. Wall Street Impex in this appeal. **Appeal No. 50065 of 2021** is filed to assail Order-in-Appeal dated 23.10.2020 passed in respect of M/s. Forever Import and Export Co.

3. In both these cases, the Show Cause Notices were issued by officers of Directorate of Revenue Intelligence<sup>1</sup>. However, learned consultant for the Respondents specifically submitted that he was not pressing on the competence of the officers of DRI to issue the SCN as that issue is pending before the Supreme Court in a Review Petition filed by the Revenue. He prayed that the appeals may be decided on merits.

4. Officers of DRI received intelligence and suspected that the goods imported by the Respondent importers were mis-declared, undervalued, imported in violation of the restrictions on imports imposed by the Ministry of Electronics and Information Technology<sup>2</sup> and initiated investigations and issued Show Cause Notices<sup>3</sup> proposing to:

---

<sup>1</sup> DRI

<sup>2</sup> MEITY

<sup>3</sup> SCN

- a) reject the declared values of the imported goods under Rules 12 of the Customs Valuation (Value of imported goods) 2007<sup>4</sup> and re-determine it under Rule 7;
- b) confiscate the goods under sections 111(d) and 111(m) for violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007<sup>5</sup>;
- c) confiscate the goods under sections 111(d) and 111(m) for importing the goods without obtaining an NOC from Wireless Planning and Coordination wing of MEITY; and
- d) impose penalties under section 112(ii) and 114AA of the Act.

5. On the four issues the original authority decided as follows:

- a) He accepted the transaction value in some Bills of Entry.
- b) In other Bills of Entry, he rejected the transaction value and re-determined it under Rule 7 as proposed in the SCNs based on Chartered Engineer's certificate.
- c) He dropped the charge of violation of IPR Rules and this finding is not assailed before us and therefore, this issue has attained finality;
- d) The charge of violation of the restrictions imposed by MEITY rendering the imported goods was upheld and the goods were held to be liable for confiscation under section 111(m) and he allowed their redemption under Section 125 on payment of fine but only for export.
- e) He also imposed penalties.

6. The importers (Respondents herein) assailed the order of the lower authority before the Commissioner (Appeals) on the Valuation, confiscation and quantum of penalties imposed. Revenue appealed against the order assailing the acceptance of the declared value in some Bills of Entry and non- imposition of penalty on the Customs

---

<sup>4</sup> Rules

<sup>5</sup> IPR Rules

Brokers. The Commissioner (Appeals) rejected the Revenue's appeal. He partly allowed the appeal by the importers directing the values to be re-determined on the basis of contemporaneous imports and reducing the fine and penalties.

7. Revenue filed these appeals before us assailing:

- a) acceptance of the declared value in the case of some Bills of Entry; and
- b) Directing the lower authority to determine value based on contemporaneous imports instead of upholding the values determined as per the certificate of the Chartered Engineer.

8. According to the Respondent importers, the orders of the Commissioner (Appeals) call for no interference and must be upheld.

9. The questions to be answered by us in these two appeals are:

- a) Was the Commissioner (Appeals) correct in upholding the acceptance of the declared assessable value by the Adjudicating authority in respect of some Bills of Entry?
- b) Was the Commissioner (Appeals) correct in remanding the matter to the Adjudicating authority in respect of other Bills of Entry with a direction to determine the value based on contemporaneous imports instead of determining it on the basis of the Chartered Engineer's certificate under Rule 7 ?

10. The Bills of Entry in question in each of the two Appeals are as follows:

**Appeal No. 51766 of 2021 of Wall Street Impex**

<b>Bill of Entry where the transaction value was accepted by</b>
--

Commissioner (Appeals)			
S.No.	Bill of Entry Number and date	Original authority	Commissioner (Appeals)
1	5369883 dated 26.2.2018	Accepted the transaction value	Accepted the transaction value

Bills of Entry where the transaction value was rejected and matter was remanded for determining the value based on contemporaneous imports by Commissioner (Appeals)			
S.No.	Bill of Entry Number and date	Original authority	Commissioner (Appeals)
1	5186126 dated 13.2.2018	Re-determined value under Rule 7	Remanded with direction to re-determine duty on the basis of contemporaneous imports
2	5185599 dated 13.2.2018	Re-determined value under Rule 7	Remanded with direction to re-determine duty on the basis of contemporaneous imports

Appeal No. 50065 of 2021 of Forever Exports

Bills of Entry where the transaction value was accepted by Commissioner (Appeals)			
S.No.	Bill of Entry Number and date	Original authority	Commissioner (Appeals)
1	5348229 dated 24.2.2018	Accepted the transaction value	Accepted the transaction value
2	5370039 dated 26.2.2018	Accepted the transaction value	Accepted the transaction value
3	5378202 dated 27.2.2018	Accepted the transaction value	Accepted the transaction value
4	5348504 dated 24.2.2018	Accepted the transaction value	Accepted the transaction value

Bills of Entry where the transaction value was rejected and matter was remanded for determining the value based on contemporaneous imports by Commissioner (Appeals)			
S.No.	Bill of Entry Number and date	Original authority	Commissioner (Appeals)
1	518602 dated 13.2.2018	Re-determined value under Rule 7	Remanded with direction to re-determine duty on the basis of contemporaneous

			imports
--	--	--	---------

11. It would be necessary to refer to the relevant legal provisions to answer these questions. Duties of Customs are levied on goods imported into or exported out of India (Section 12 of the Customs Act, 1962<sup>6</sup>) at the rates set forth in the Schedules to the Customs Tariff Act, 1975. On some goods, the levy is based on quantity (specific duty), and other goods it is based on value (ad valorem). If the duty is to be levied based on value, valuation for the purpose has to be done as per Section 14 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007<sup>7</sup>. 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:**

**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

<sup>6</sup> Act  
<sup>7</sup> Valuation Rules

presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

**Explanation .** - For the purposes of this section -

(a) rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b)"foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)

12. The non-obstante clause in sub-section 2 of section 14 gives the Board the power to fix tariff values for any class of goods and if fixed, the tariff value will be the value to determine the duty. This sub-section is not relevant to this case. In all other cases, the value to be reckoned for calculating the Customs duty shall be the transaction value subject to five conditions:

- a) Buyer and seller are not related.
- b) Price is for delivery at the time and place of importation, i.e., all costs up to the point of import are to be included. For instance, if the sale is on Free on Board basis, the costs of transportation to the place of import, transit insurance, etc. will have to be added.
- c) Price is the sole consideration for sale.
- d) Some amounts indicated in the first proviso to sub-section 1 of section 14 must be included.
- e) Valuation will be as per any other conditions as may be specified in the Rules.

13. Thus, the default position is that the value shall be the transaction value. The first proviso to sub-section 1 of section 14

provides for some additions to the transaction value which are not relevant for the present case. The second proviso to this sub-section provides for Rules to be made in this behalf to provide for:

- a) the circumstances in which **the buyer and the seller shall be deemed to be related;**
- b) the manner of determination of value in respect of goods **when there is no sale,**
- c) the manner of determination of value in respect of goods if **the buyer and the seller are related,**
- d) the manner of determination of value in respect of goods where **price is not the sole consideration for the sale;**
- e) the manner of determination of value in respect of goods in **any other case;** and
- f) 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.

14. The Valuation Rules were framed as per the second proviso to sub-section 1 of section 14. It has 13 Rules in all of which Rules 1 and 2 are Preliminary rules. Rule 3 states that subject to Rule 12, the value shall be the transaction value adjusted according to Rule 10. Rule 10 provides for certain costs to be included in the transaction value. Rule 12 provides for the proper officer to reject the transaction value if he has reason to doubt its truth and accuracy. **Thus, unless the proper officer rejects the transaction value under Rule 12, the valuation has to be based on transaction value as per Rule 3 with some additions, if necessary, as per Rule 10.**



15. Rule 3 further provides that if the valuation cannot be done under that Rule, i.e., as per the transaction value with additions as per Rule 10, then **it must be done sequentially under Rules 4 to 9**. In other words, if the transaction value is rejected under Rule 12 valuation must be done sequentially under Rules 4 to 9.

16. **Rule 4** provides for the valuation to be done on the basis of **identical goods**. **Rule 5** provides for the valuation to be done on the basis of the value of **similar goods**. Rule 6 states if value cannot be determined as per Rules 4 and 5 then it must be determined as per Rule 7 and thereafter Rule 8 but this sequence can be reversed at the option of the importer. In other words, if the importer so chooses, Rule 8 can be applied directly instead of Rule 7. It needs to be noted that this choice of applying Rule 8 before Rule 7 is with the importer and not with the assessing officer. **Rule 7** provides for a **deductive method of valuation** on the basis of prices of similar or identical goods sold in India and after making some deductions from such prices. **Rule 8 provides for a computed value**, i.e., based on the cost of raw material, cost of manufacture, reasonable profit, etc. **Rule 9 is the residual method** which provides for determining the value where it cannot be determined under Rules 3 to 8. Rule 10, as already discussed, provides for some costs to be added to the transaction value if the valuation is done as per Rule 3. Rule 11 requires the importer to make a declaration. Rule 12 lays down the provision for rejection of transaction value. Rule 13 provides for interpretative notes for the Rules.

17. **To sum up, valuation has to be done sequentially** as follows:

- a) If a **tariff value** is fixed by the Board, it is the value (sub-section 2 of Section 14);
  - b) If no tariff value is fixed by the Board, valuation is as per the **transaction value, if necessary, with some additions** (as per the first proviso to sub-section 1 of section 14 and as per Rule 10);
  - c) If the transaction value is rejected as per Rule 12 by the proper officer, valuation has to be done as per the **value of identical goods** (Rule 4);
  - d) If transaction value is rejected and there is no value of identical goods, then it must be as per the **value of similar goods** (Rule 5);
  - e) If transaction value is rejected and there is no value of identical goods or similar goods, value must be determined through **Deductive method** (Rule 7)
  - f) If transaction value is rejected and there is no value of identical goods or similar goods and it is not possible to determine value following deductive method, then value must be determined through **computation** (Rule 8)
  - g) If the importer so chooses, computational method may be adopted without examining the deductive method first (Rule 7).
  - h) If the transaction value is rejected and there is no value of identical goods or similar goods and if it is also not possible to determine the value through deductive method or computational method, then value may be determined through the **residual method** by the officer following the above principles (Rule 9).
18. The next question which arises is when can the proper officer reject the transaction value. Rule 12 reads as follows:

**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) themis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

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

(f) the fraudulent or manipulated documents.

19. Thus, if the officer has **reason to doubt** the truth and accuracy of the transaction value, he can call for information including documents and evidence. If the information and evidence is presented and after examining it or if no information or evidence as called for is presented, if the proper office has **reasonable belief** then it shall be

deemed that the value cannot be determined as per Rule 3 (i.e., based on transaction value with additions, if necessary). While the **officer can, in the first place call for information and evidence if he has reason to doubt, at the second stage, he should have not just some reason to doubt but a reasonable doubt.** If he has such reasonable doubt, then the transaction value can be rejected. The grounds on which the proper officer may raise doubts about the truth and accuracy of the transaction value have been illustrated in explanation 1 (iii) to Rule 12. The list is inclusive and not exhaustive.

20. Thus, if **the proper officer has reasonable doubt** about the truth or accuracy of the value declared, it can be rejected. If this threshold is crossed or is undisputed, then we need to examine which of the Rules 4, 5, 7, 8 or 9 should be applied and if the sequence in which these Rules must be applied has been correctly followed.

21. In these two appeals, in respect of some Bills of Entry as indicated above, the original authority and the Commissioner (Appeals) have not rejected the transaction value under Rule 12. The case of the Revenue is that they should have rejected the transaction value in respect of these Bills of Entry as proposed in the SCN. The original authority found that none of the conditions which constrain the authorities to raise any doubt on the transaction value were present and therefore, he accepted the transaction values.

22. The Commissioner (Appeals) upheld the acceptance of transaction value relying on the judgment of the Supreme Court in **Century Metals<sup>8</sup>** in which the requirements have been laid down for rejection of the transaction value and found that none of those

---

<sup>8</sup> 2019(367) ELT 3 (SC)

conditions were fulfilled in these imports and therefore, the transaction values could not be rejected.

23. The grounds on which the acceptance of the transaction value is assailed by the Revenue in the appeals are as follows:

- a. The Commissioner (Appeals) does not emphasize that, prima facie, on examination, it was found that there were multiple violations including under-valuation.
- b. The Commissioner(Appeals) was not correct in accepting the transaction values in some cases while rejecting them in some other cases.
- c. The value should be determined as per the Certificate of the Chartered Engineer under Rule 7.

24. Having considered the rival submissions with respect to these Bills of Entry, we find that the requirements for rejection of transaction value have been laid down by the Supreme Court in **Century Metals** as follows:

- (a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.
- (b) Proper officer must ask the importer of such goods further information which may include documents or evidence;
- (c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.
- (d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.
- (e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.
- (f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.
- (g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

25. Both the lower authorities have found that the grounds for rejection of transaction values in respect of some Bills of Entry were absent in the case. We do not find anything in the appeal which convinces us that there was indeed not only a reason to doubt but also reasonable doubt which would warrant rejection of the transaction value under Rule 12. The fact that DRI officers had obtained a certificate from the Chartered Engineer is irrelevant to the case. The Chartered Engineer's certificate determines value through Deductive method (as per Rule 7). Valuation under Rule 7 becomes relevant only if the requirements for rejection of the transaction value under Rule 12 are first met and then it is also found that the value cannot be determined as per Rules 4 and 5. We, therefore, uphold the decision of the Commissioner (Appeals) in this regard.

26. As far as the remaining Bills of Entry are concerned, the original authority has accepted the proposal in the SCN and rejected the transaction value under Rule 12 and re-determined it under Rule 7 (Deductive Method) based on the certificate of the Chartered Engineer. The Commissioner (Appeals) remanded the matter to the original authority to determine the value as per the value of contemporaneous imports. The rejection of transaction value under Rule 12 in respect of these Bills of Entry is not assailed by either side. Importer Respondents also support the decision of the Commissioner (Appeals) that the value should be re-determined on the basis of value of contemporaneous imports. Revenue is aggrieved by the order of the Commissioner (Appeals) and submits that he erred in holding that the

values should be re-determined on the basis of contemporaneous data because on verification with the contemporaneous data, it was found that data is only in respect of mobile accessories which consist of approximately 25% of the imported goods in question. The remaining 75% of the imported goods in question are basic mobile game hard massager, Decon Copper, Zabra Wireless Buds, Air Humid-diffuser/Air-diffuser and Laptop bag, etc. for **which no contemporaneous data has been provided by the importer**. It has been recorded by the investigating authority in paragraph 16 of the Show Cause Notice that no data of contemporaneous import of impugned goods were available for these items, therefore, valuation provided by the Chartered Engineer ought to have been considered by the Commissioner (Appeals).

27. We find that as per Rule 3(2), if the value cannot be determined based on the transaction value (with adjustments as per Rule 10), then the value should be determined sequentially through Rules 4 to 9. The only exception to this sequentially determination is provided in Rule 6 according to which, at the option of the importer, Rule 8 can be resorted to before Rule 7. It needs to be pointed out that this option is with the importer and not with the assessing officer.

28. As per Rule 4 the value shall be value of contemporaneous imports of identical goods and if such a value is not found, then as per Rule 5, the value shall be the value of contemporaneous imports of similar goods. Only if neither is available, Rules, 7 can be resorted to. The submission of the Revenue in their appeals is that **the importer has not provided any contemporaneous data and that the investigating agency has already recorded in paragraph 16 of the SCN that no contemporaneous data was available**.

29. **We find it strange that the Customs department which has access to all the import data in its system requires the importer, who has no such access to provide contemporaneous import data.** We also find it extremely unlikely that nobody else in the country has imported the goods either identical or similar to the goods imported in these Bills of Entry which include such common items as multi-cable chargers and laptop bags.

30. **We also do not agree with the Revenue's submission that because the investigating officer indicated in the SCN that there is no contemporaneous data on imports and instead obtained a certificate from the Chartered Engineer, it means that there is no contemporaneous data and the Commissioner (Appeals) should not even remand the matter to the original authority directing valuation based on contemporaneous data.**

31. We cannot accept the submission of the Revenue that there were no contemporaneous imports of either identical goods or of similar goods as no evidence has been produced before us, such as, say, a report from the Customs EDI system that the disputed goods including such common goods such as 'laptop bags', 'chargers', etc. or similar goods were not imported by anyone else except the respondents in these appeals. Therefore, there was no ground to not follow Rules 4 and 5 and directly move to Rule 7 in the factual matrix of this case. The Commissioner (Appeals) was correct in holding that the value should be determined based on contemporaneous imports and for that purpose remanding the matter to original authority.

32. For all the above reasons, we find that the impugned orders in both these appeals must be sustained. The impugned orders are upheld and Revenue's appeals are rejected. The Cross objection 50232



of 2022 filed in Appeal No. 51766 of 2021 praying to uphold the  
impugned order is also disposed of accordingly.

[Order pronounced on **15.12.2022**]

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

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

Tejo