* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 27 August 2024**
Judgment pronounced on: 27 November 2024

\+ CUSAA 26/2022 & CM APPL 22868/2022 (stay)
NIRAJ SILK MILLS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 27/2022 & CM APPL. 22870/2022 (stay)
HANUMAN PRASAD AND SONS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.
Mr. Krishnamohan Menon, Ms. Parul Sachdeva, Advs. for Intervenor.

\+ CUSAA 90/2022 & CM APPL. 34838/2022 (stay)
NIRAJ SILK MILLS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD)
PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 91/2022 & CM APPL 34841/2022 (stay)

NIRAJ SILK MILLS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ
NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 92/2022 & CM APPL. 34911/2022 (stay)

NIRAJ SILK MILLS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ
NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 93/2022 & CM APPL. 34914/2022 (Interim Stay)

NIRAJ SILK MILLS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ
NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 94/2022 & CM APPL. 34917/2022 (Interim Stay)
NIRAJ SILK MILLS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 95/2022 & CM APPL. 34920/2022 (Interim Stay)
NIRAJ SILK MILLS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 96/2022 & CM APPL. 34923/2022 (Interim Stay)
NIRAJ SILK MILLS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 97/2022 & CM APPL. 34926/2022 (Interim Stay)
HANUMAN PRASAD AND SONS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 98/2022 & CM APPL. 35014/2022 (Interim Stay)
HANUMAN PRASAD AND SONS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 99/2022 & CM APPL. 35019/2022 (Interim Stay)
NIRAJ SILK MILLS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 100/2022 & CM APPL. 35028/2022 (Interim Stay)
HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 102/2022 & CM APPL. 35103/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 103/2022 & CM APPL. 35108/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 104/2022 & CM APPL. 35113/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 105/2022 & CM APPL. 35679/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 107/2022 & CM APPL. 35731/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 108/2022 & CM APPL. 35734/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 109/2022 & CM APPL. 35737/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 110/2022 & CM APPL. 35897/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 111/2022 & CM APPL. 35901/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 112/2022 & CM APPL. 35904/2022 (Interim Stay)
HANUMAN PRASAD AND SONS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 114/2022 & CM APPL. 36495/2022 (Interim Stay)
HANUMAN PRASAD AND SONS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 115/2022& CM APPL. 36501/2022 (Interim Stay)
HANUMAN PRASAD AND SONS ..... Appellant
Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 116/2022 & CM APPL. 36498/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 117/2022, CM APPL. 36552/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 118/2022, CM APPL. 36555/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 120/2022, CM APPL. 36561/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 121/2022, CM APPL. 36564/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 123/2022, CM APPL. 36924/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 124/2022, CM APPL. 36934/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 125/2022, CM APPL. 36943/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 126/2022, CM APPL. 37373/2022 (Stay)

MANAVI EXIM PVT. LTD. ..... Appellant

Through: Mr. Tarun Gulati, Sr. Adv. with Mr. Prem Ranjan Kumar, Ms. Shruti, Advocates.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS ..... Respondent

Through: Mr. Harpreet Singh, SSC with Ms. Suhani Mathur, Mr. Jatin Kumar, Advs.

\+ CUSAA 127/2022, CM APPL. 38033/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 128/2022, CM APPL. 38036/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUSAA 129/2022, CM APPL. 38041/2022 (Interim Stay)

HANUMAN PRASAD AND SONS ..... Appellant

Through: Mr. Yogendra Aldak, Mr. Sumit Khadaria, Mr. Agrim Arora and Ms. Purvi Sinha, Advocates.

versus

COMMISSIONER OF CUSTOMS (ICD) PATPARGANJ NEW DELHI ..... Respondent

Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

\+ CUS.A.C. 1/2023, CM APPL. 42196/2023 (Interim Stay)

AGGARWAL TRADERS ..... Appellant

Through: Mr. Subhash Chawla, Mr. Vikash Kumar, Advs.

versus

COMMISSIONER OF CUSTOMS ..... Respondent
Through: Mr. Aditya Singla, SSC for CBIC with Mr. Ritwik Saha, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

Table of Contents

I. Background 13

II. The power of reassessment: a brief overview 33

III. The submissions addressed 46

IV. Evaluation of the Court 82

A. Declared values and the power of reappraisal 82

B. Exploring the concepts of abandonment and waiver 104

C. Rejection of declared values: Assessing its validity 119

D. Value enhancement on the basis of NIDB data 122

V. Disposition 137

YASHWANT VARMA, J.

I. BACKGROUND

1. The instant appeals raise a challenge to the decision rendered by the **Customs Excise & Service Tax Appellate Tribunal**[1] holding that the appellants, having conceded to the valuation undertaken by the proper officer as contemplated under Section 17(5) of the **Customs**

[1] CESTAT

Act, 1962[2], would have no right to question or assail such assessment and would also be deemed to have waived their right to question that decision by resorting to the statutory remedies otherwise available under the Act. The lead appeal CUSAA 27/2022 came to be admitted by us on 03 August 2022 on the following question of law:

> "Whether the Tribunal misdirected itself in holding that the appellants in the above-mentioned matter could not question the enhancement made concerning the valuation of the imported goods, once the appellants had given up their right to seek issuance of a show cause notice and/or speaking order under Section 17 of the Customs Act, 1962?"

2. In the course of hearing this batch, we had also designated CUSAA 126/2022 as one of the appeals which would be examined and pursuant to which learned counsels for respective sides had also addressed elaborate submissions on the said appeal. We thus, for the purposes of disposal of this batch, deem it appropriate to notice the facts as they obtain in the aforenoted two appeals.

3. The appellant in CUSAA 27/2022 had imported polyester knitted fabrics of different weights during the period November 2018 to April 2019. Those imports were affected on the basis of 27 **Bills of Entry**[3] which were submitted. The respondents appear to have disputed the 'declared value' of the imported goods on the basis of contemporaneous import data obtained from the **National Import Database**[4]. It is the case of the appellant that since the clearance of the goods was being inordinately delayed, it was compelled to pay differential customs duty on the enhanced value as computed by the proper officer. It is further alleged that the appellant was compelled and coerced into voluntarily

[2] Act
[3] BoE
[4] NIDB

relinquishing its right to receive a speaking order as contemplated under Section 17(5) of the Act.

4. Post the BoE being reassessed, the appellant preferred first appeals before the Commissioner of Customs (Appeals). The first appellate authority by a common order disposed of 27 appeals filed by the appellant holding that the mere clearance of goods at a higher value would not deprive the assessee of the right to institute a statutory appeal and that NIDB data alone could not have constituted the basis for enhancing the value of the imported goods. It was this order of the first appellate authority which was challenged by the respondents before the CESTAT.

5. The CESTAT in terms of the order impugned has essentially held that once the appellant had come to accept the enhanced valuation of the imported goods and waived its right of adjudication, it could not have challenged the reassessment by preferring appeals before the first appellate authority. It has consequently proceeded to set aside the order of the first appellate authority dated 26 April 2019 and allowed the appeals that were preferred by the respondents.

6. The facts of CUSAA 126/2022 proceed along similar lines. The appellant in that appeal had filed 8 BoE between 8 February 2019 and 15 February 2019 in respect of the import of two lots of polyester knitted fabrics and non-textured polyester fabric. The 'declared value' as appearing on those BoE came to be doubted by the proper officer. Since the appellant was desirous of obtaining delivery of those goods and was incurring demurrage charges, it addressed various communications calling upon the respondents to expedite the valuation exercise and stating that it was ready and willing to pay additional

customs duty on the enhanced value of goods under protest. It accordingly requested the respondents to clear the consignments at the earliest.

7. Since those communications would have some bearing on the issue which stands raised, we deem it apposite to extract some of those communications hereinbelow:

"Date: 11.02.2019

To,
The Assistant Commissioner of Customs
lCD Palwal,
Village Janouli-Baghola,
Haryana-121102.

Subject: Customs Clearance of goods imported vide 5 Bills of Entries.

Dear Sir,

We would like to inform you that we have filed the following bills of entry for customs clearance, but the same has not been yet assessed.

S.#	Bill of Entry No. & Date	Item
1.	9990292 dated 08.02.2019	Lot of Polyester Knitted Fabric.
2.	9990355 dated 08.02.2019	Lot of Polyester Knitted Fabric.
3.	9990356 dated 08.02.2019	Lot of Polyester Knitted Fabric.
4.	9990359 dated 08.02.2019	Lot of Polyester Knitted Fabric.
5.	9990360 dated 08.02.2019	Lot of Polyester Knitted Fabric.

The containers are incurring detention and demurrage on daily basis. In this regard we would like to request you if your goodself is going to enhance the value of goods, we have no objection for that we are ready to pay custom duty on enhance value under protest.

We request you to clear our consignments at the earliest to save us financial losses of detention and demurrage.

Yours truly,
For Manavi Exim Pvt Ltd
Auth. Signatory

xxxx xxxx xxxx

Date: 15.02.2019

To,
The Assistant Commissioner of Customs
lCD Palwal,
Village Janouli-Baghola,
Haryana-121102.

Subject: Customs Clearance of goods imported vide 2 Bill of Entry

Dear Sir,

We would like to inform you that we have filed the following bills of entry for customs clearance, but the same has not been yet assessed.

S.#	Bill of Entry No. & Date	Item
1.	2054909 dated 14.02.2019	Lot of Non textured Polyester PA Coated Fabric.
2.	2054913 dated 14.02.2019	Lot of Non textured Polyester PA Coated Fabric.

The containers are incurring detention and demurrage on daily basis. In this regard we would like to request you if your goodself is going to enhance the value of goods, we have no objection for that we are ready to pay custom duty on enhance value under protest.

We request you to clear our consignments at the earliest to save us financial losses of detention and demurrage.

Yours truly,
For Manavi Exim Pvt Ltd
Auth. Signatory

xxxx xxxx xxxx

Date: 16.02.2019

To,
The Assistant Commissioner of Customs
lCD Palwal,
Village Janouli-Baghola,
Haryana-121102.

Subject: Customs Clearance of goods imported vide 1 Bill of Entry

Dear Sir,

We would like to inform you that we have filed the following bills of entry for customs clearance, but the same has not been yet assessed.

S.#	Bill of Entry No. & Date	Item
1.	2065083 dated 15.02.2019	Lot of Non textured Polyester PA Coated Fabric.

The containers are incurring detention and demurrage on daily basis. In this regard we would like to request you if your goodself is going to enhance the value of goods, we have no objection for that we are ready to pay custom duty on enhance value under protest.

We request you to clear our consignments at the earliest to save us financial losses of detention and demurrage.

Yours truly,
For Manavi Exim Pvt Ltd
Auth. Signatory"

8. The aforesaid request as embodied in those letters was reiterated with respect to the other lot which had been imported by the appellant as would be evident from the contents of those communications which were addressed to the respondents as follows:

"Date: 18.02.2019

To
The Assistant Commissioner of Customs
lCD Palwal,
Village Janouli-Baghola,
Haryana-121102.

Subject: Customs Clearance of goods imported vide 5 Bill of Entry

Dear Sir,

With reference to our letter dated 13.02.2019 for each Bill of Entry's. We would like to inform you that we have filed the following bills of entry for customs clearance, but the same has not been yet assessed.

S.#	Bill of Entry No. & Date	Item
1.	9990350 dated 08.02.2019	Lot of Polyester Knitted Fabric
2.	9990356 dated 08.02.2019	Lot of Polyester Knitted Fabric
3.	9990292 dated 08.02.2019	Lot of Polyester Knitted Fabric
4.	9990360 dated 08.02.2019	Lot of Polyester Knitted Fabric

2024:DHC:9149-DB

5.	9990355 dated 08.02.2019	Lot of Polyester Knitted Fabric.

The containers are incurring detention and demurrage on daily basis. In this regard we would like to request you if your goodself is going to enhance the value of goods, we have no objection for that we are ready to pay custom duty on enhance value under protest. If the assessment of goods are going to take time then we request you to clear our goods provisionally we are ready to submit PD Bond and Bank Guarantee for 30% of the differential customs duty.

We request you to clear our consignments at the earliest to save us financial losses of detention and demurrage.

Yours truly,
For Manavi Exim Pvt Ltd
Auth. Signatory

xxxx **xxxx** **xxxx**

Date: 20.02.2019

To
The Assistant Commissioner of Customs
lCD Palwal,
Village Janouli-Baghola,
Haryana-121102.

Subject: Customs Clearance of goods imported vide 5 Bill of Entry

Dear Sir,

With reference to our letter dated 15-16.02.2019 for each Bill of Entry's. We would like to inform you that we have filed the following bills of entry for customs clearance, but the same has not been yet assessed.

S.#	Bill of Entry No. & Date	Item
1.	2065083 dated 15.02.2019	Lot of Non Textured Polyester Fabric.
2.	2054913 dated 14.02.2019	Lot of Non Textured Polyester Fabric.
3.	2054909 dated 14.02.2019	Lot of Non Textured Polyester Fabric.

The containers are incurring detention and demurrage on daily basis. In this regard we would like to request you if your goodself is going to enhance the value of goods, we have no objection for that we are ready to pay custom duty on enhance value under protest. If the

assessment of goods are going to take time then we request you to clear our goods provisionally we are ready to submit PD Bond and Bank Guarantee for 30% of the differential customs duty.

We request you to clear our consignments at the earliest to save us financial losses of detention and demurrage.

Yours truly,
For Manavi Exim Pvt Ltd
Auth. Signatory"

9. The requests as made in the aforementioned communications was then again addressed in a letter dated 26 February 2019 and in terms of which the appellant took the following stand:

"Date: 20.02.2019

To
The Assistant Commissioner of Customs
lCD Palwal,
Village Janouli-Baghola,
Haryana-121102.

Sir,

Subject:- Acceptance of enhancement of value of goods covered under Bills of Entry No.9990355 dated 08.02.2019 Reg.

Please refer to your query on EDI System in respect of value enhancement of the goods i.e. **'Lot of Polyester Knitted Fabric'** covered under **Bills of entry No.9990355 dated 08.02.2019.**

In this regard, it is submitted that we have gone through the details narrated by you including its grounds of rejection of declared value under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

We have also gone through and understood the details of contemporaneous imports of similar/identical goods and we accept that the value declared by us is significantly lower than the value at which identical/similar goods imported at or about the same time in comparable quantities in comparable commercial transactions were assessed at other ports of the country.

We fully agree that the value of goods declared by us is liable to be rejected by Customs Authorities under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Thereafter, the value of the goods imported by us under the said Bill

of Entry is liable to be re-determined from the declared value **US$ 1.03 per kg.** to **US$1.94 per kg.** on the basis of data of contemporaneous import of similar/identical goods in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and the duty payable is liable to be enhanced accordingly under Section 17 (5) of the Customs Act, 1962.

Accordingly, as we are in agreement with the proposed enhancement of value/duty, we do not want any show cause notice or speaking order in the matter, as we have to fulfil the commitments to our customers therefore, You are requested to redetermine the value and re-assess the duty in accordance with the value/duty as proposed so that we can clear the goods asap to save us from the financial burden of detention and demurrages.

Yours Sincerely

For Manavi Exim Pvt. Ltd.

Authorised Signatory"

10. After having obtained clearance on payment of additional customs duty on the enhanced value as determined, the appellant proceeded to file appeals contemplated by Section 129A of the Act. Those appeals when taken up for consideration by the first appellate authority came to be allowed with that authority observing that the challenge was liable to be answered in favour of the appellants in light of its decision in **C.C., Noida vs. VSM Impex Pvt. Ltd.**[5] and where the CESTAT had taken the view that a statutory obligation stands cast upon the adjudicating authority to pass a speaking order if it were to choose to reassess a BoE. The CESTAT in *VSM Impex* also distinguished the decisions rendered by it in **M/s Advanced Scan Support Technologies vs. C.C., Jodhpur**[6] and **M/s Vikas Spinners vs. C.C., Lucknow**[7] for reasons which are recorded in paragraph 10 of the order of the first appellate authority in CUSAA 126/2022, and

[5] Order No. 70976/2018 dated 22 May 2018
[6] 2015 SCC OnLine CESTAT 2046
[7] 2000 SCC OnLine CEGAT 1940

which is reproduced hereinbelow:

> "10. Having considered the rival contentions and after perusal of the records, we find that the issue here is no longer res-integra. Under similar facts and circumstances on import of similar goods by the M/s VSM Impex Pvt. Ltd., this Tribunal referring to Section 17(5) read with Section 17(4), concluded that the adjudicating authority is required to pass a speaking order within fifteen days of the re-assessment of the Bills of Entry. Section 17(5) does not make any whisper that the assessee/ importer is required to make a request or to seek an order under Section 17(5) of the Act. Further, this Tribunal observed that the reliance placed by Revenue on the ruling of **Advanced Scan support Technologies vs, CC, Jodhpur- 2015 (326) ELT 185 (Tri. Delhi)** and **Vikas Spinners vs. CC, Lucknow - 2001 (128) ELT 143 (Tri. Delhi)**, that in these decisions, there is no issue of passing an order under Section 17(5) of the Act, after passing of Bills of entry within fifteen days, hence these decisions are distinguishable and not applicable."

11. It was this decision which came to be subjected to challenge before the CESTAT. The CESTAT in CUSAA 27/2022 as well as CUSAA 126/2022 had taken an identical view. It has principally held that once the importer concedes to the reassessment undertaken by the proper officer in terms of Section 17(4) and gives up its right to question the same, the authority would be justified in finalizing the assessment based on the opinion so formed and that it would not be open for the importer thereafter to resile from the concession so made. This becomes evident from a reading of paragraph 23 of the order impugned in CUSAA 27/2022 which is extracted hereinbelow:

> "23. In the present case, as noticed above, the proper officer doubted the truth or accuracy of the value declared by the importer for the reason that contemporaneous data had a significantly higher value. It was open to the importers to require the proper officer to intimate the grounds in writing for doubting the truth or accuracy of the value declared by them and seek a reasonable opportunity of being heard, but they did not do so. On the other hand, the importers submitted in writing that though they had declared the value of the imported goods at 1.20 USD per kg., but on being shown contemporaneous data, they have agreed that the value of the goods should be enhanced to 1.80 USD per kg for Hanuman Prasad and to 1.94 USD

per kg. for Niraj Silk. The importers also specifically stated that they did not want to avail of the right conferred on them under section 124 of the Customs Act and, therefore, they did not want any show cause notice to be issued to them or personal hearing to be provided to them. The importers also specifically stated that they did not want a speaking order to be passed on the Bills of Entry. It needs to be noted that section 124 of the Customs Act provides for issuance of a show cause notice and personal hearing, and section 17(5) of the Customs Act requires a speaking order to be passed on the Bills of Entry, except in a case where the importer/exporter confirms the acceptance in writing."

12. The CESTAT has proceeded to also negate the contention of the appellants addressed in light of the provisions made in the **Customs Valuation (Determination or Value of Imported Goods) Rules, 2007**[8]. It has in this respect held as follows:

> "30. The very fact that the importers had agreed for enhancement of the declared value in the letters submitted by them to the assessing authority, itself implies that the importers had not accepted the value declared by them in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importers had accepted the enhanced value, it was really not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under rule 3(1) for the reason that the declared value has been rejected under sub rule 2, that the value of the imported goods is required to be determined by proceeding sequentially through rule 4 to 9. As noticed above, the importers had accepted the enhanced value and there was, therefore, no necessity for the assessing officer to determine the value in the manner provided for in rules 4 to 9 of the Valuation Rules sequentially."

13. The CESTAT has essentially followed its decisions rendered in *Advanced Scan Support* and *Vikas Spinners* as would be evident from a reading of paragraphs 31 and 32 of the judgment impugned before us:

> "31. In this connection, it would be useful to refer to a decision of this Tribunal in **Advanced Scan Support Technologies vs Commissioner of Customs, Jodhpur**, wherein the Tribunal, after

[8] 2007 Rules

making reference to the decisions of the Tribunal in **Vikas Spinners vs Commissioner of Customs, Lucknow and Guardian Plasticote Ltd. v. CC (Port), Kolkotta**, held that as the Appellant therein had expressly given consent to the value proposed by the Revenue and stated that it did not want any show cause notice or personal hearing, it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring no further investigation or justification. Paragraph 5 of the decision is reproduced below:

> "5. We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by Revenue and expressly stated that it did not want any Show Cause Notice or personal hearing. Even the duty was paid without protest. By consenting to enhancement of value and thereby voluntarily foregoing the need for a Show Cause Notice, the appellant made it unnecessary for Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put Revenue in an impossible situation as the goods are no longer available for inspection and Revenue rightly did not proceed to further collect and compile all the evidences/basis into a Show Cause Notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no Show Cause Notice, could/would have invited allegation of harassment and delay in clearance of goods. When Show Cause Notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail as with the goods not being available and valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so reassessment of value in the absence of goods will not be possible. The case of Eicher Tractors v. Union of India (supra) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value."
>
> **[emphasis supplied]**

32. In **Vikas Spinners**, the Tribunal dealing with a similar situation, observed as under :

> "**7**. In our view in the present appeal, the question of

loading of the value of the goods cannot at all be legally agitated by the appellants. Admittedly, the price of the imported goods declared by them was US $ 0.40 per Kg. but the same was not accepted and loaded to US $ 0.50 per Kg. This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 7-5-1999. After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008/- on 19-5-1990. Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally estopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in Sounds N. Images, (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/Special Attorney and paid the duty thereon accordingly."

14. The CESTAT has ultimately proceeded to record the following conclusions:

"35. The following position emerges from the aforesaid decisions of the Tribunal:

(i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation;

(ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and

(iii) The burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntarily accepted."

15. It appears that in the course of the prosecution of those appeals, the decisions of the Supreme Court in **Eicher Tractors Ltd. vs. Commr. of Customs**[9] as well as **Century Metal Recycling (P) Ltd. vs. Union of India**[10] were also cited for the consideration of the CESTAT. However, both those decisions have been distinguished with the CESTAT observing as follows:

> "45. The Supreme Court observed in **Eicher Tractors Ltd.**, which decision has also been relied upon by the learned counsel for the Respondent, that it is only when the transaction value under rule 4 of the Valuation Rules is rejected that the transaction value is required to be determined by proceeding sequentially through rules 5 to 8. The decision of the Supreme Court in **Century Metal Recycling** also holds that if the declared transaction value is rejected, then it has to be determined in accordance with the procedure prescribed in rules 4 to 9. These decisions of the Supreme Court, for the reasons stated above, do not help the respondent."

16. Yet another contention which appears to have been urged before the CESTAT was whether the NIDB data could have constituted a valid basis for the rejection of the transaction values as disclosed in the BoE. This question came to be answered in the affirmative by the CESTAT as would be evident from the following:

> "46. Learned counsel for the respondent has also emphasized that NIDB data cannot be the sole basis to reject the transaction value without any cogent reasons. As seen above, the importers had in writing accepted the transaction value and it is perhaps for this reason that they did not require any show cause notice to be issued to them or a personal hearing to be granted to them. The respondent is, therefore, not justified in asserting that the transaction value has been determined on the basis NIDB data. It was their acceptance of the value that formed the basis for determination of the value. The decisions relied upon by the respondent to support the contention sought to be raised are, therefore, of no benefit to them.
>
> 47. The general observations made the Commissioner (Appeals) in the impugned order that the value declared in the Bills of Entry were being enhanced uniformly by the Department for a considerable

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[9] (2001) 1 SCC 315
[10] (2019) 6 SCC 655

> period of time was uncalled for. The Commissioner (Appeals) completely failed to advert to the crucial aspect that the importers had themselves accepted the enhanced value. The Commissioner (Appeals) in fact, proceeded to examine the matter as if the assessing officer had enhanced the declared value on the basis of other factors and not on the acceptance by the importers. This casual observation is not based on the factual position that emerges from the records of the case."

17. The appeals in the case of Manavi Exim, the appellant in CUSAA 126/2022, also came to be allowed on identical reasoning. This is evident from the following observations appearing in the order of the CESTAT:

> "13. The Commissioner (Appeals), despite a categorical statement made by the importers that they did not desire a speaking order to be passed, observed "an obligation was cast on the assessing authority to pass a speaking order disclosing the grounds for rejecting the declared value and only then the assessing officer could have enhanced the value ." This finding of the Commissioner (Appeals) is perverse as it is clearly contrary to the specific statement made by the importers in the letters submitted by them to the assessing officer. What has also to be kept in mind is that section 17(5) of the Customs Act permits the importers to waive this right.
>
> 14. It is seen from a perusal of section 17(4) of the Customs Act that the proper officer can re-assess the duty leviable, if it is found on verification, examination or testing of the goods or otherwise that the self-assessment was not done correctly. Sub-section (5) of section 17 provides that where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer, the proper officer shall pass a speaking order on the re-assessment, except in a case where the importer confirms his acceptance of the said reassessment in writing.
>
> 15. In the present case, as noticed above, the proper officer doubted the truth or accuracy of the value declared by the importers for the reason that contemporaneous data had a significantly higher value. It was open to the importers to require the proper officer to intimate the grounds in writing for doubting the truth or accuracy of the value declared by them and seek a reasonable opportunity of being heard, but they did not do so. On the other hand, the importers submitted in writing that though they had declared the value of the imported goods at a particular value, but on being shown contemporaneous data, they agreed that the value of the goods should be enhanced. The importers also specifically stated that they did not want to avail of the right conferred on them under section 124 of the Customs Act

and, therefore, they did not want any show cause notice to be issued to them or personal hearing to be provided to them. The importers also specifically stated that they did not want a speaking order to be passed on the Bills of Entry. It needs to be noted that section 124 of the Customs Act provides for issuance of a show cause notice and personal hearing, and section 17(5) of the Customs Act requires a speaking order to be passed on the Bills of Entry, except in a case where the importers/exporters confirm the acceptance in writing."

It is the correctness of the aforesaid view expressed by the CESTAT which is questioned before us in this batch of appeals.

18. On 02 August 2023, we had briefly taken note of the rival submissions in order to identify the principal questions which could be said to arise. That order is extracted hereinbelow:

"1. This batch of appeals question the correctness of the view taken and expressed by the Customs Excise and Service Tax Appellate Tribunal [CESTAT] in the orders impugned and revolve upon the construction to be accorded to the concession which may be submitted by an importer as contemplated under Section 17(5) of the **Customs Act, 1962** [the Act].

2. Section 17 of the Act reads as follows: -

"**17. Assessment of duty**

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

PROVIDED that the selection of cases lor verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

3. As would be manifest from a reading of the aforesaid provision, importers initially follow a process of self-assessment and declaration of the transaction value. In terms of sub-section (2) the proper officer is entitled to examine the veracity of the self-declaration that is made. To assist it in that exercise, Section 17(3) empowers the proper officer to call upon the importer or the exporter, as the ease may be, to produce further document or information whereby the correct duty leviable on the imported or exported goods could be ascertained.

4. Section 17(4) pertains to a situation where the proper officer on verification, examination/testing of goods or otherwise harbors doubts with respect to the correctness of the declared transaction value and undertakes an exercise to reassess the duty leviable on such goods.

5. The scope of Section 17(4) and the exercise which is liable to be undertaken by the proper officer must also be appreciated in the backdrop of Rule 12 of the **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** which 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 misdeclaration 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."

6. The scope and ambit of Rule 12 has been lucidly explained by the Supreme Court In **Century Metal Recycling Private Limited & Anr. vs. Union of India & Ors.** as follows: -

"**14.** Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish

further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (*iii*) of Explanation to Rule 12 states that the proper officer can on "certain reasons" raise doubts about the truth or accuracy of declared value. "Certain reasons" would include conditions specified in clauses (*a*) to (*f*) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade, etc. and fraudulent or manipulated documents. Grounds mentioned in (*a*) to (*f*) however are not exhaustive of "certain reasons" to raise doubt about the truth or accuracy of the declared value. Clause (*ii*) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (*i*) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

15. Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

16. The requirements of Rule 12, therefore, can be summarised as under:

16.1. 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.

> **16.2.** Proper officer must ask the importer of such goods further information which may include documents or evidence.
>
> **16.3.** 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.
>
> **16.4.** When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.
>
> **16.5.** 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.
>
> **16.6.** 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 sub-clauses (*a*) to (*f*) in clause (*iii*) of the Explanation.
>
> **16.7.** 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.
>
> **16.8.** 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."

7. The instant batch of cases however pertain to eases where the importer had submitted its consent contemplated in terms of Section 17(5). The Tribunal has taken the view that once the importer concedes to a re-assessment being undertaken by the Proper Officer in terms of sub-section (5), it loses the right to question the result of that assessment either by way of an appeal or to even question the quantification of additional duty that may be payable.

8. The appellants would contend that the concession which is spoken of in sub-section (5) essentially appears to stand restricted to a reassessment being undertaken by the proper officer and the formation of opinion contemplated under Section 17(4) or Rule 12 not being questioned. However, that concession would not detract from the right of the importer to question the correctness of the assessment undertaken and which right otherwise stands protected under different provisions of the Act. According to the appellants, while the concession submitted in terms of Section 17(5) may deprive the importer of the right to question whether there was material which would constitute sufficient ground for the proper officer to harbor a "reason to believe" and doubt the transaction

value, the same would not take away the right of the importer to question the final assessment itself.

9. We also bear in consideration the submission of the respondents

who contend that the scheme of sub-sections (4) and (5) of Section 17 clearly suggests that a reassessment has already been undertaken and completed by the proper officer and which establishes the incorrectness of the self-declaration being a precursor to the importer submitting the concession. This flows from Section 17(5) which commences with the phrase "*Where any reassessment done….*" and proceeds to speak of the importer "*confirming his acceptance of the said re-assessment in writing*".

10. On a preliminary examination of the scheme of Section 17 we are also of the view that while it may be open for an importer to proceed in terms of Section 17(5), the same would not detract from the obligation of the proper officer to have formed the requisite belief to doubt the transaction value and record reasons in respect thereof on the file before proceeding to invite the importer in terms as contemplated under Section 17(5).

11. The right of the importer to reagitate or question the result of the re-assessment would have to be examined in the aforesaid light. 12. In order to enable Mr. Singla, learned counsel to address submissions in the aforesaid light, let the matter be called again on 18.09.2023."

II. THE POWER OF REASSESSMENT: A BRIEF OVERVIEW

19. Before we proceed to record the submissions that were advanced by and on behalf of respective sides, it would be appropriate to take note of and extract the relevant statutory provisions on the basis of which the question as posited would be liable to be answered. The subject of valuation of goods is firstly dealt with in Section 14 of the Act. The said provision reads thus:

"**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.

(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).]”

20. As is evident from a reading of Section 14, the value of imported and exported goods is recognized to be the transaction value and which expression is explained to mean the price actually paid or payable for those goods when sold for export to India or for export from India for delivery at the time and place of exportation. The Proviso to Section 14(1) then stipulates that the transaction value would include various additional components such as amounts paid or payable for costs and services, design work, royalties, license fees and others to be determined in the manner specified by statutory rules which may be made in that regard. The Second Proviso thereafter proceeds to identify some of the aspects which could be regulated by way of those rules.

21. Sections 15 and 16 of the Act deal with the date with reference to which the rate of duty and tariff evaluation of imported or exported goods is to be determined. Those provisions are extracted hereunder:

“**15. Date for determination of rate of duty and tariff valuation of imported goods**.—

(1) [The rate of duty [* * *] and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—

(*a*) in the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(*b*) in the case of goods cleared from a warehouse under Section 68, on the date on which [a bill of entry for home consumption in respect of such goods is presented under that section];

(*c*) in the case of any other goods, on the date of payment of duty:

[PROVIDED that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft [or the vehicle] by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

(3) [* * *]

16. Date for determination of rate of duty and tariff valuation of export goods.—

[(1) The rate of duty and tariff valuation, if any, applicable to any export goods, shall be the rate and valuation in force,—

(*a*) in the case of goods entered for export under Section 50, on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation under Section 51.

(*b*) in the case of any other goods, on the date of payment of duty.]

(2) The provisions of this section shall not apply to baggage and goods exported by post."

22. The principal provision with which we are concerned is Section 17 and which relates to 'assessment of duty'. Section 17 reads as follows:

"**17. Assessment of duty**.—

(1) An importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify [the entries made under Section 46 or Section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

[PROVIDED that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

[(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

> (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter [* * *] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.
>
> (6) [* * *]
>
> *Explanation*.—For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under Section 46 or an exporter has entered any export goods under Section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of Section 17 as it stood immediately before the date on which such assent is received.]"

23. By virtue of Section 18 of the Act, an importer or exporter is statutorily enabled to seek clearance of goods upon a provisional assessment of duty. That provision stands framed in the following terms:

> "**18. Provisional assessment of duty**.—
>
> [(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of Section 46 [and Section 50],—
>
> (*a*) where the importer or exporter is unable to make self-assessment under sub-section (1) of Section 17 and makes a request in writing to the proper officer for assessment; or
>
> (*b*) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
>
> (*c*) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
>
> (*d*) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry, the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.]
>
> [(1-A) Where, pursuant to the provisional assessment under sub-

section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.]

(2) When the duty leviable on such goods is assessed finally [or re-assessed by the proper officer] in accordance with the provisions of this Act, then—

(*a*) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty [finally assessed or re-assessed, as the case may be] and if the amount so paid falls short of, or is in excess of, [the duty [finally assessed or re-assessed, as the case may be]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(*b*) in the case of warehoused goods, the proper officer may, where the duty [finally assessed or re-assessed, as the case may be] is in the excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

[(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order [or re-assessment order] under sub-section (2), at the rate fixed by the Central Government under Section [28-AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (*a*) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally [or-re-assessment of duty, as the case may be], there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under Section 27-A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

(*a*) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(*b*) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(*c*) the duty and interest, if any, paid on such duty borne by the

buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(*d*) the export duty as specified in Section 26;

(*e*) drawback of duty payable under Sections 74 and 75.]"

24. The 2007 Rules have been framed in order to give effect to the statutory mandate of Section 14. The words 'computed value', 'deductive value', 'similar goods' and 'transaction value' are defined by Rule 2 as under:

"**2. Definitions**.—

(1) In these rules, unless the context otherwise requires,—

(*a*) "computed value" means the value of imported goods determined in accordance with Rule 8;

(*b*) "deductive value" means the value determined in accordance with Rule 7;

xxxx xxxx xxxx

(*f*) "similar goods" means imported goods—

(*i*) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(*ii*) produced in the country in which the goods being valued were produced; and

(*iii*) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(*g*) "transaction value" means the value referred to in sub-section (1) of Section 14 of the Customs Act, 1962…"

25. The procedure for the determination and identification of an appropriate method of valuation is regulated by Rule 3 and which reads

thus:

"**3. Determination of the method of valuation**.—

(1) Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that—

(*a*) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which—

(*i*) are imposed or required by law or by the public authorities in India; or

(*ii*) limit the geographical area in which the goods may be resold; or

(*iii*) do not substantially affect the value of the goods;

(*b*) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(*c*) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10 of these rules, and

(*d*) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3)(*a*) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(*b*) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(*i*) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(*ii*) the deductive value for identical goods or similar goods;

(*iii*) the computed value for identical goods or similar goods:

PROVIDED that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 10 and cost incurred by the seller in sales in which he and the buyer are not related.

(*c*) Substitute values shall not be established under the provisions of clause (*b*) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rules 4 to 9."

26. Rules 4 and 5 prescribe the procedure for the determination of the transaction value of identical and similar goods. Those two rules read as under:

"**4. Transaction value of identical goods**.—

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

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

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

(*c*) Where no sale referred to in clause (*b*) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

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

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods.—

(1) Subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to

India and imported at or about the same time as the goods being valued:

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

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

27. In terms of Rule 6, if the value of imported goods is found to be indeterminable in accordance with Rules 3, 4 and 5, the value is liable to be determined in accordance with the provisions made in Rules 7 and 8. Those rules are extracted hereinbelow:

"**6. Determination of value where value cannot be determined under Rules 3, 4 and 5**.—

If the value of imported goods cannot be determined under the provisions of Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that rule, under Rule 8:

PROVIDED that at the request of the importer, and with the approval of the proper officer, the order of application of Rules 7 and 8 shall be reversed.

7. Deductive value.—

(1) Subject to the provisions of Rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions:—

(*i*) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(*ii*) the usual costs of transport and insurance and associated costs incurred within India;

(*iii*) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods

being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3)(*a*) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(*b*) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (*i*) to (*iii*) of sub-rule (1).

8. Computed value.—

Subject to the provisions of Rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:—

(*a*) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(*b*) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(*c*) the cost or value of all other expenses under sub-rule (2) of Rule 10."

28. The residual method of valuation stands embodied in Rule 9 and which reads as follows:

"**9. Residual method**.—

(1) Subject to the provisions of Rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India:

PROVIDED that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of—

(*i*) the selling price in India of the goods produced in India;

(*ii*) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(*iii*) the price of the goods on the domestic market of the country of exportation;

(*iv*) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Rule 8;

(*v*) the price of the goods for the export to a country other than India;

(*vi*) minimum customs values; or

(*vii*) arbitrary or fictitious values."

29. Rule 11 stipulates the declarations which an importer is liable to make and reads thus:

"**11. Declaration by the importer**.—

(1) The importer or his agent shall furnish—

(*a*) a declaration disclosing full and accurate details relating to the value of imported goods; and

(*b*) any other statement, information or document including an invoice of the manufacture or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules."

30. The power of the proper officer to reject 'declared value' and the circumstances in which that power may be wielded is then elaborately spelt out in Rule 12. The said provision is extracted hereinbelow:

"**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 rules 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 inquiry 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 misdeclaration 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."

It is against the backdrop of the aforenoted statutory provisions that

arguments were canvassed before us.

III. THE SUBMISSIONS ADDRESSED

31. Leading submissions on behalf of the appellants, Mr. Gulati, learned senior counsel addressed the following submissions. It was at the outset submitted that the view as expressed by the CESTAT is, *ex facie,* unsustainable when tested on the basis of the salient principles which came to be laid down by the Supreme Court in *Century Metal Recycling* and the enunciation of the legal position which appears therein. Mr. Gulati submitted that the facts as brought on our record in CUSAA 126/2022 would establish beyond a measure of doubt that the importer was compelled and constrained to submit concessions before the proper officer in order to expedite clearance of the imported goods and to avoid spiralling costs of warehousing and demurrage.

32. Mr. Gulati submitted that the appellant, Manavi Exim had ultimately, and left with no option, stated that it would be ready and willing to accept the enhanced value suggested by the proper officer and pay additional customs duty on the basis thereof in order to seek expedited clearance of goods. Those communications, according to Mr. Gulati, evidence the importer having chosen to proceed along those lines solely in light of the burgeoning detention and demurrage charges which it was facing as a consequence of the consignment having been illegally detained. Notwithstanding the above, Mr. Gulati submitted that Manavi Exim had throughout maintained the position that it had paid the customs duty under protest. According to learned senior counsel, the communications which were addressed to the proper officer would also establish that the importer had also expressed a desire for the goods being released provisionally subject to appropriate security being

provided.

33. All of the above, according to Mr. Gulati, is evidence of Manavi Exim having been clearly coerced into accepting the enhanced valuation and to pay the additional customs duty in order to expedite the clearance of the imported goods. It was those constraints, according to learned senior counsel, which weighed upon Manavi Exim to ultimately give up its right to a speaking order being passed by the proper officer and to submit a request for goods being reassessed, it being permitted to deposit additional customs duty and thus avoid the financial burden of warehousing and demurrage.

34. Mr. Gulati submitted that even if it were assumed that the importer had conceded to the proper officer proceeding to re-determine the transaction value, the same could have clearly not been read as detracting from its right to question and impugn the assessment at a later stage. According to Mr. Gulati, the concession, even if assumed to have been made, could have neither deprived the importer of the right to assail the reassessment at a later stage nor could it have operated as estoppel or debarred it from pursuing a statutory remedy which the Act itself conferred.

35. The harassment faced by importers as a result of declared value being mechanically and invariably rejected, according to Mr. Gulati, was an aspect which had fallen for adverse comment of the Supreme Court itself in *Century Metal Recycling*. Mr. Gulati drew our attention to the following paragraphs of that judgment and which, according to him, lucidly enunciate the statutory position:

> "**8.** This Court in *Sanjivani Non-Ferrous Trading (P) Ltd.* [*CCE* v. *Sanjivani Non-Ferrous Trading (P) Ltd.*, (2019) 2 SCC

378] , while interpreting the provisions of Section 14 and Rules 3, 4 and 12 of the 2007 Rules, had held as under : (SCC p. 383, para 10)

"*10*. The law, thus is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of "deemed value" of such goods. Therefore, normally, the assessing officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the assessing officer. This principle of arriving at transaction value to be the assessable value applies. This is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the bills of entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the assessing officer to give reasons as to why the transaction value declared in the bills of entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which assessing officer arrives at his own assessable value."

The Division Bench has quoted the following sub-paragraph from *Commr. of Customs* v. *South India Television (P) Ltd.* [*Commr. of Customs* v. *South India Television (P) Ltd.*, (2007) 6 SCC 373] : (SCC p. 380, para 13)

> "*13*. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

14. Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the

declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (*iii*) of Explanation to Rule 12 states that the proper officer can on "certain reasons" raise doubts about the truth or accuracy of declared value. "Certain reasons" would include conditions specified in clauses (*a*) to (*f*) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade, etc. and fraudulent or manipulated documents. Grounds mentioned in (*a*) to (*f*) however are not exhaustive of "certain reasons" to raise doubt about the truth or accuracy of the declared value. Clause (*ii*) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (*i*) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

16. The requirements of Rule 12, therefore, can be summarised as under:

16.1. 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.

16.2. Proper officer must ask the importer of such goods further information which may include documents or evidence.

16.3. 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.

16.4. When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

16.5. 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.

16.6. 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 sub-clauses (*a*) to (*f*) in clause (*iii*) of the Explanation.

16.7. 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.

16.8. 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."

36. Proceeding further to explain the circumstances in which a proper officer could initiate a valuation under the 2007 Rules, the Supreme Court in *Century Metal Recycling* rendered the following pertinent observations:

"**17.** Proper officer can therefore reject the declared transactional value based on "certain reasons" to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (*iii*) of the Explanation appended to Rule 12 which sets out some of the conditions when the "reason to doubt" exists. The instances mentioned in sub-clauses (*a*) to (*f*) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.

18. The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a precondition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word "doubt" refers to uncertainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on "certain reasons".

19. The expression "proof beyond reasonable doubt" in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge "beyond reasonable doubt". In *Ramakant Rai* v. *Madan Rai* [*Ramakant Rai* v. *Madan Rai*, (2003) 12 SCC 395 : 2004 SCC (Cri) Supp 445] referring to the expression "reasonable doubt" in criminal law it was held as under : (SCC p. 405, para 24)

> "*24.* Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.""

37. The Supreme Court had also adverted to the procedure of provisional assessment as embodied in Section 18 and explained its significance in the following words:

> "**22.** The significance of Section 18 of the Act can be understood in the light of the above provisions. Section 18 provides for provisional assessment of duty in cases specified in sub-section (1) of the section. Clause (*c*) of sub-section (1) deals with cases where the importer or exporter has produced necessary documents and furnished full information for assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty. However, clause (*d*) is wider and would apply when the importer or exporter does not produce necessary documents or furnish information. In all cases covered under clauses (*a*) to (*d*), the proper officer may direct provisional assessment of the duty leviable on the imported goods. Where duty is assessed provisionally, the importer or exporter has to furnish security as the proper officer deems fit for payment of deficiency, if any, between the duty provisionally paid and the duty finally assessed.
>
> **23.** On interpreting Section 18 of the Act, it is held that when there is a dispute between the Customs Authorities and the importer as regards the valuation of the imported goods, on satisfaction of the conditions enumerated in sub-section (1), the Authorities should make provisional assessment of customs duty under Section 18 of the Act. This expedites clearance, pending final adjudication on merits which may take time. This is also the mandate of the Board

Circular No. 38/2016 dated 22-8-2016. Any insistence and compulsion by the Authorities that the importer should disclaim and forego his statutory right under Section 18 of the Act would not be correct. Neither would it be right to reject the valuation as declared by the importer without reasonable doubt for certain reasons."

38. Mr. Gulati also drew our attention to the following observations rendered by the Supreme Court in *Century Metal Recycling*:

> "**24.** We would *ex facie* for the reasons recorded below reject the contention of the respondents predicated on the letter of the appellants dated 6-3-2017 that the appellants did not seek provisional assessment of the bill of entry and had accepted and paid duty on the valuation done by the Customs Authorities. This letter exposits the predicament faced by the appellants as it states that the appellants were in urgent requirement and wanted clearance of the goods. Pertinently, the appellants had earlier written several letters, including communications dated 22-12-2016 and 4-3-2017 requesting for clearance of the imported consignment of aluminium scrap on the declared transaction value pointing out therein that on account of delay in the clearance of the imported consignments, the appellants and its sister concern had been compelled to pay excess duty of over Rs 25 crores from August 2013 onwards. It is unfortunate and has to be accepted that the respondent authorities had compelled and forced the appellant to furnish the letter dated 6-3-2017 thereby waiving of its right to provisional assessment and accepting valuation in terms of Rules 4 to 10.
>
> **25.** As per sub-rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared."

39. Mr. Gulati submitted that the Supreme Court had pertinently observed that the power to doubt the declared value would have to be guided by the statutory provisions comprised in Rule 12. It was thus submitted that the power to reject declared value was clearly

recognized by the Supreme Court as not being liable to be invoked on the basis of arbitrary considerations or the whims and fancies of the proper officer.

40. Mr. Gulati pointed out that the fact that the decision to initiate reassessment would have to be founded on justiciable grounds was an aspect which was also duly highlighted by the Supreme Court in **Tata Chemicals Ltd. vs. Commr. of Customs**[11] when it had observed:

> "**14.** In our opinion, the expression "deems it necessary" obviously means that the proper officer must have good reason to subject imported goods to a chemical or other tests. And, on the facts of the present case, it is clear that where the importer has furnished all the necessary documents to support the fact that the ash content in the coking coal imported is less than 12%, the proper officer must, when questioned, state that, at the very least, the documents produced do not inspire confidence for some good prima facie reason. In the present case, as has been noted above, the Revenue has never stated that Casco's certificate of quality ought to be rejected or is defective in any manner. This being the case, it is clear that the entire chemical analysis of the imported goods done by the Department was ultra vires Section 18(1)(*b*) of the Customs Act."

41. Mr. Gulati then invited our attention to the decision rendered by a Division Bench of this Court in **Commr. of Customs vs. CISCO Systems India (P) Ltd.**[12] *CISCO Systems* was principally concerned with the reckoning of the period of limitation for the purposes of refund. It was in that context also called upon to examine the correctness of the contention of the Revenue that since the assessee had initially paid the enhanced value as determined without protest, its claim for refund would be barred by virtue of Section 27 of the Act. Rejecting that contention, the Division Bench in *CISCO Systems* had held:

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[11] (2015) 11 SCC 628
[12] 2023 SCC OnLine Del 509

"**19.** In the aforesaid context, the only issue to be addressed is whether filing of an appeal against the Order-in-Original dated 25/26.08.2004 while at the same time paying the duty on the enhanced value, would amount to paying the same under protest.

20. The respondent claims that it was obvious that the additional duty was paid under protest as the respondent had appealed the Order-in-Original dated 25/26.08.2004 enhancing the declared value of the goods resulting in the increase in custom duty. The Revenue contends that since no formal protest had been lodged while paying the duty, the benefit of second proviso to Section 27(1) of the Customs Act is not available to the respondent.

21. It is difficult for this Court to accept that the payment of custom duty imposed pursuant to an order while appealing the same can be construed as payment of duty without protest. The very act of filing an appeal against an order imposing customs duty is a protest against the duty as assessed. The entire purpose of such an appeal is to seek reduction of the levy. It is, thus, obvious that the assessee does not accept the said levy and, payment of the same would necessarily have to be construed as payment under protest.

22. The learned Tribunal had relied on the Constitution Bench decision of the Supreme Court in the case of *Mafatlal Industries Ltd.* v. *Union of India* (supra) and referred to the following passage from the said decision:

> **"83. It** is then pointed out by the learned Counsel for the petitioners-appellants that if the above interpretation is placed upon amended Section 118, a curious consequence will follow. It is submitted that a claim for refund has to be filed within six months from the relevant date according to Section 11B and the expression "relevant date" has been defined in Clause (B) of the Explanation appended to subsection (1) of Section 11B to mean the date of payment of duty in cases other than those falling under Clauses (a), (b), (c), (d) and (e) of the said Explanation. It is submitted that Clauses (a) to (e) deal with certain specific situations whereas the one applicable in most cases is the date of payment. It is submitted that the appellate/revision proceedings, or for that matter proceedings in High Court/Supreme Court, take a number of years and by the time the claimant succeeds and asks for refund, his claim will be barred; it will be thrown out on the ground that it has not been filed within six months from the date of payment of duty. We think that the entire edifice of this argument is erected upon an incomplete reading of Section 11B. The second proviso to Section 11B (as amended in 1991) expressly provides that "the limitation of six months shall not apply where any duty has been paid under protest". **Now, where a person proposes to contest his**

> **liability by way of appeal, revision or in the higher courts, he would naturally pay the duty, whenever he does, under protest. It is difficult to imagine that a manufacturer would pay the duty without protest even when he contests the levy of duty, its rate, classification or any other aspect. If one reads the second proviso to subsection (1) of Section 118 along with the definition of "relevant date", there is no room for any apprehension of the kind expressed by the learned Counsel."**
>
> (emphasis supplied)
>
> **23.** In view of the authoritative decision of the Supreme Court in *Mafatlal Industries Ltd.* v. *Union of India* (supra), the question whether payment of duty while appealing its imposition, is required to be construed as payment under protest, is no longer *res integra*. Although the said decision was rendered in the context of Section 11B of the Central Excise Act, 1944, the second proviso to Section 11B of the Central Excise Act, 1944 is *pari materia* to second proviso of Section 27(1) of the Customs Act.
>
> **24.** We concur with the decision of the learned Tribunal that the duty paid by the respondent on the enhanced value of the goods is required to be accepted as duty paid under protest."

42. A lucid explanation of the scope of the 2007 Rules and the manner in which the individual rules are to be deployed is found in the decision of the Supreme Court in *Eicher Tractors*, a judgment which was cited for our consideration by Mr. Gulati. It would be appropriate to extract the following passages from that decision:

> "**6.** Under the Act customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are *ordinarily sold*, or offered for sale, for delivery at the *time* and *place of importation* — in the course of international trade. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale …". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under

Section 14(1-A) in accordance with the Rules framed in this behalf.

7. The Rules which have been framed are the Customs, Valuation (Determination of Price of Imported Goods) Rules, 1988. The Rules came into force on 16-8-1988. Under Rule 3(*i*) "the value of imported goods *shall* be the transaction value". "Transaction value" has been defined in Rule 2(*f*) as meaning the value determined in accordance with Rule 4. Rule 4(1) in turn states:

"4. (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these Rules."

8. Reading Rule 3(*i*) and Rule 4(1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2) namely:

> "4. (2)(*a*) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which—
>
> > (*i*) are imposed or required by law or by the public authorities in India; or
> >
> > (*ii*) limit the geographical area in which the goods may be resold; or
> >
> > (*iii*) do not substantially affect the value of the goods;
>
> (*b*) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;
>
> (*c*) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these Rules; and
>
> (*d*) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below."

9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

10. The respondent's submission is that the phrase "the transaction value" read in conjunction with the word "payable" in Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained on the basis of data other than the price actually paid for the goods. This, according to the respondent, would be in

keeping with the overriding effect of Section 14(1). We cannot agree.

11. It is true that the Rules are framed under Section 14(1-A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly relatable to Section 14(1). Both Sections 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2).

12. Rule 4(1) speaks of *the* transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "*the* particular transaction" and payability in respect of *the* transaction envisages a situation where payment of price may be deferred.

13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7-A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule 4 were not limited to the particular transaction then the other rules which refer to other transactions and data would become redundant.

14. It is only when *the* transaction value under Rule 4 is rejected, that under Rule 3(*ii*) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely, if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent rules.

15. The Assistant Collector in this case determined the value of the imported goods under Rule 8. The question is whether he should have determined the transaction value under Rule 4 at the price

actually paid by the appellant for the 1989 bearings. Naturally, if Rule 4 applies to the facts of this case, the Assistant Collector's reasoning under Rule 8 must, by virtue of the language of Rule 3(*ii*), be set aside.

16. The Assistant Collector appears to have proceeded on the law as it was prior to the 1988 Rules when "special considerations" on the basis of which a transaction was held not to be an ordinary sale in the course of international trade within the meaning of Section 14(1), had not been statutorily particularised.

17. As to what would constitute such "special consideration" has been considered in several decisions of this Court. For example, a special quotation for the importer singling him out from other importers in India was held to be a special consideration in *Padia Sales Corpn.* v. *Collector of Customs* [1993 Supp (4) SCC 57] justifying the rejection of price paid as the transaction value. On the other hand in *Basant Industries* v. *Addl. Collector of Customs* [1995 Supp (3) SCC 320 : (1996) 81 ELT 195] a special quotation for an "old and valued customer" was upheld as not being a special circumstance.

18. The decision in *Sharp Business Machines (P) Ltd.* [(1991) 1 SCC 154 : 1991 SCC (Cri) 114] relied upon by the respondent is another case where the transaction value was rejected. In that case, the importer had wrongly misdescribed the imported goods and sought to defraud the Revenue by attempting to surreptitiously import items prohibited under the import policy. It was found that there was justification, in the circumstances, for rejecting the price shown in the invoice. The transaction value having been rejected, assessment of value was made on the basis of the price list of the foreign vendor.

19. Both the decisions, *Padia Sales Corpn.* [1993 Supp (4) SCC 57] and *Sharp Business Machines (P) Ltd.* [(1991) 1 SCC 154 : 1991 SCC (Cri) 114] were distinguished subsequently in *Mirah Exports (P) Ltd.* v. *Collector of Customs* [(1998) 3 SCC 292 : (1998) 98 ELT 3] . As the facts of this case are somewhat similar to the case before us, it is dealt with in some detail.

20. Mirah Exports Pvt. Ltd. along with other importers had imported bearings at high rates of discount. The declared value was rejected by the Customs Authorities on the basis of the price list of the vendors. This Court set aside the decision of the respondent Authorities accepting the argument that a discount is a recognised feature of international trade practice and that as long as those discounts are uniformly available to all and based on logical commercial bases, they cannot be denied under Section 14. It appears from the judgment that a distinction was drawn between a discounted price special to a particular customer and discounts available to all customers.

21. As already noted, all these cases dealt with imports made prior to the coming into force of the Rules in 1988. Now the "special considerations" are detailed statutorily in Rule 4(2).

22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a misdescription of the goods imported as was the case in *Padia Sales Corpn.* [1993 Supp (4) SCC 57] It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1)."

43. From the compilation of judgments which was submitted for our consideration by Mr. Gulati as well as Mr. Aldak who appeared for the appellant Hanuman Prasad & Sons, we find that the benches of the CESTAT appear to have taken a somewhat inconsistent or divergent view on both the scope of Section 17(5), the nature of the contemporaneous data that could be borne in consideration as well as the impact of the concession submitted by importers. This we note notwithstanding the majority of those decisions taking a position affirming the right of an importer to question a re-evaluation that the adjudicating officer may have undertaken in terms of Section 17 of the Act. For the sake of completeness, we propose to notice some of those decisions hereinafter.

44. In **CMR Nikkei India (P) Ltd. vs. Commr. of Customs**[13]**,** the Ahmedabad Bench of the CESTAT, while faced with a contention identical to that which was advanced by the respondents before us, had succinctly observed as follows:

> "8. Heard both sides and perused the records. We find that the dispute in the present case is regarding the valuation of the goods imported by the Appellant. The Assessing Authority re-assessed the imported goods at values higher than what was declared by the Appellant in the Bills of Entry for self-assessment. The Appellant accepted the enhanced value by submitting the consent letter. In spite of the acceptance before the Assessing Authority, the Appellant challenged the valuation/assessment of goods by filing appeals. The learned Commissioner (Appeals) upheld the impugned reassessment. The Commissioner (Appeals) has observed in the impugned orders that the Appellant had given their written acceptance of the enhanced value and thereby has forgone his right to speaking order under Section 17(5) of the Customs Act. We noticed that in view of such admission, no speaking order was issued as per requirements for Section 17(5) of the Customs Act, 1962.
>
> 9. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step-by-step methodology to be adopted for re-determination of the assessable value in certain cases. The primary requirement for re-determination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the sis for arriving at the assessable value.
>
> 10. Perusal of the records of the case indicates that the only reason cited for re-assessment of value is that the Appellant has accepted the enhanced value. No doubt acceptance of the enhanced value in writing waives the requirement of the issue of speaking order under Section 17(5) ibid. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming from the record of the case that what is the basis for such re-assessment.
>
> 11. Revenue has vehemently argued that the department were justified in enhancement of value since the importer had accepted such enhancement. We note that in the present matter, other than the admission on the part of the importer, no basis for the adoption of the

[13] 2022 SCC OnLine CESTAT 2765

enhanced value is given. We find that the Appellant in their grounds of Appeals also submitted that the assessment orders have been passed in complete defiance of the provisions of Section 14 of the Customs Valuation Rules, 2011. Neither the provisions of Section 14 of the Customs Act dealing with "Valuation of Goods" nor the provisions of Customs valuation Rules, 2011 have been followed while assessing the impugned bills of entry. The assessment orders do not assign any reason for discarding the transaction value nor do then mention under which rule of Customs Valuation Rules, the value has been determined.

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

45. The CESTAT in **Commissioner of Central Excise vs. Hingora Industries Ltd.**[14] had proceeded to summarily dismiss the appeal of the customs authority rejecting the argument of the assessee being precluded from challenging the reassessment observing as follows:

"**S.S. Kang, Vice-President**:— Heard both sides. Revenue filed this appeal against the impugned order passed by Commissioner (Appeals). The only contention of Revenue is that at the time of clearance of goods, the respondent accepted the loading of the value of the goods once the loading of the value of the goods is accepted by the respondent and duty has been paid without any protest they cannot challenge the assessment order hence setting aside the assessment order by Commissioner (Appeals) is not sustainable.

2. The contention of respondent is that to avoid demurrage charges, the respondent accepted the enhanced value and thereafter filed appeal.

3. Respondent relied upon the decision in the case of *Laxmi Colour Lab* v. *Collector of Customs* reported in 1992 62 E.L.T. 613 (Tribunal).

4. We find that in this case, value of the goods was enhanced by the Customs Authorities and goods were assessed at the enhanced value. Thereafter respondent filed appeal and the same was allowed. The only contention of Revenue is that value of goods was enhanced which was accepted by the respondent. We find that in the *Tribunal's case Laxmi Colour Lab* (supra) after relied upon the decision of the Hon'ble Supreme Court in the case of *Dunlop India Ltd. & Madras*

[14] 2008 SCC OnLine CESTAT 1232

Rubber Factory Ltd. v. *Union of India* reported in 1983 13 E.L.T. 1566 (S.C.), held as under:—

> "There is no estoppel in law against a party in taxation matter. If a party, in order to clear the goods for customs, has given the classification in accordance with the wishes of the authorities or even under some misapprehension, and if the law allows it a right to ask for refund on proper appraisement and which is actually applied for the party cannot be estopped from making such application and ask for such refund."

5. In view of the above decision, we find no merit in the appeal, the same is dismissed.

(Dictated and pronounced in open court)"

46. This very question fell for consideration of the Principal Bench of the CESTAT at New Delhi in **Commr. of Customs vs. M/s Artex Textile Private Limited**[15]. The aspect of importers being left with no option but to concede to a reappraisal of declared value fell for adverse comment as would be evident from the following observations appearing in that decision of the CESTAT:

> "6. Opposing the appeal learned Counsel for respondent Shri Prem Ranjan Kumar urges that the importer was under pressure to take the delivery of the goods to mitigate losses, including demurrage charges, etc. In case of prayer for provisional assessment, the adjudicating authority are reluctant to grant the same and it leads to delay in getting out of charge, resulting in demurrage charges. It is further urged that the loaded values as per NIDB data, are not the declared value, but the same are loaded value. Thus, the loaded value is not the proper value or the contemporaneous value for the purpose of assessment. Further, it is evident from the facts on record that the assessing officer was left with no choice, but to make enhancement under the direction(s) of their superiors through circulars, direction etc. Thus, there is no illegality or impropriety in the impugned order and prays for dismissing the appeal by Revenue.
>
> 7. Having considered the rival contentions, we find that assessing officer have been making enhancement in a routine manner and the respondent who are regular importers are left with no choice but to sign on the dotted line for taking delivery of their goods to carry on their business, and also save the demurrage charges if the consignment is delayed in the port for want of clearance. Relying on

[15] Final Order No. 50769-50825/2020 dated 14 September 2020.

the precedent Final Order No. 63455- 63456/2018 dated 25.10.2018 of this Tribunal and also in view of the Order-in-Appeal No. CC(A)/CUS/D-II/ICD/788-1083/2014 dated 31.12.2014 had been accepted in respondent own case, we uphold the impugned common order(s) in appeal. Accordingly, these appeals by Revenue are dismissed being without merit.

The stay applications also stand disposed of accordingly."

47. A similar view was expressed by the Principal Bench of the CESTAT in **ACC (Import), TKD vs. AAA Impex**[16]. This emerges from the following paragraphs of that decision:

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

13. Revenue has vehemently argued that the Customs Authorities were justified in enhancement of value since the importer had accepted such enhancement. They have also relied upon the recent decision in which the Tribunal has taken the view that admitted facts need not be proved. In the case of *Sodagar Network* (supra), the Tribunal upheld the enhancement of value. The importer had specifically admitted the basis for re-determination of value in his statement. He had also specifically waived the issue of the show cause notice before the Adjudicating Authority. It is to be noted that re-assessment was done by the process of adjudication at the level of Additional Commissioner, and the value was re-determined as per Rule 7 of the Customs Valuation Rules. And the basis for such enhancement was shown to the importer and his concurrence recorded by means of statement. The facts are also similar in the case of *DJP Inbternational* (supra). In contradistinction to the facts in these cases, we note that in the present appeal, other than the admission on the part of the importer, we find no basis for the adoption of the enhanced value.

14. We are of the view that, in spite of the admission on behalf of the importer, the Revenue is required to satisfy the requirements prescribed under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation. It has been

[16] 2019 SCC OnLine CESTAT 2523

argued by Revenue before us that the Revenue did not record the basis for such enhancement since the requirement of speaking order was waived by importer.

15. In view of the above discussion, the matter is required to be remanded to the Original Assessing Authority for sharing the basis for such re-assessment with the importer. Thereafter he will pass the speaking order after extending an opportunity to the representative of the importer to rebut the basis for such enhancement. To facilitate this, we set aside the impugned order."

48. A similar controversy again arose for consideration of the Principal Bench in **River Side Impex vs. Commr.**[17] By a detailed judgment rendered by the CESTAT in this matter and on a consideration of the relevant provisions of the Act as well as the 2007 Rules, the following pertinent observations were rendered:

"**11.** Proper officer can therefore reject the declared transactional value based on 'certain reasons to doubt the truth or accuracy' of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out above-mentioned conditions when the 'reason to doubt' exists. These instances are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared. The expression "reason to doubt" cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.

12. The expression 'reasonable doubt' has been explained by Hon'ble Supreme Court in In *Ramakant Rai* v. *Mad an Rai*, (2003) 12 SCC 395 as under:

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt

[17] 2023 SCC OnLine CESTAT 924

based upon reason and common sense. It must grow out of the evidence in the case."

13. It is therefore held that in the context of the proviso to Section 14 read with Rule 12 and clause (iii) of Explanation to the 2007 Rules, the doubt must be reasonable and based on 'certain reasons'. The proper officer must record 'certain reasons' specified in Clause (a) to (f) Rule 12 or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable.

xxxx **xxxx** **xxxx**

20. We observe that the Adjudicating Authority has mentioned the market survey report to be based on contemporaneous import data, but no such data has been mentioned in the order. It is rather coming as an admitted fact that few shops in the wholesale market were visited and the samples which was drawn at the time of examination of impugned imported goods were shown to the different vendors. The original Adjudicating Authority in its order has observed that the imported goods were observed to be of cheaper quality and many of the shop keepers expressed to not to have similar items with them. It is only one shop keeper who has similar items, as were imported vide the impugned Bill of Entry. But there is no evidence brought on record by the department that the said shop keeper also had imported the goods. These observations of the Adjudicating Authority are sufficient for us to hold that the Department has not followed the statutory procedure nor has produced the cogent evidence while confirming the allegations of under valuation and while confirming the differential duty.

21. It appears that the sole ground for the confirmation is the admission of the authorized representative of the appellant in his statement dated 20.01.2017. The said statement is perused vide which the said authorized representative has accepted the reassessed value and offered to pay differential duty along with the applicable

fine and penalty. He also opted for not being served with any show cause notice or the opportunity of personal hearing with the request to dispose of the case at the earliest. However, we perused that the statement of said authorized representative was recorded a date prior also i.e. on 19.01.2017, wherein he had mentioned that the appellant's firm is engaged in the business of import of sanitary goods including the impugned goods, in bulk. The appellant provided the purchase order only when personally visited to China after due negotiations and the impugned goods are imported on piece basis. He also stated that assessment was done per piece based, hence, the weight found in excess than the declared weight has no relevance. The excess weight otherwise includes the weight of packaging boxes and other packaging material also. He specifically stated that the appellant had declared the correct import value of the impugned goods. He also stated that the reason for the value as declared in the impugned bill of entry is that the gods are imported directly from the manufacture in China, that too in bulk quantity and pursuant to their personal negotiations with the said manufacture. Hence, he re-asserted on 19.01.2017 that the rate declared in the bill of entry are correctly mentioned by them. Appellants therefore have no reason to be concerned about the actual selling price of the impugned goods in the retail market. He also conveyed vide the said statement that their supplier i.e. manufacturer in China is not related to them except that they have continuous business relations with the said manufacturers. In the light of this statement, we are not convenience to accept the statement of the appellant made the very next day as a cogent admission. We observe that in the original submissions made on behalf of the appellant, it is mentioned that to avoid any delay and the demurrage charges, in case the consignment is held by the Customs Authority, that the appellant opted to pay the differential amount demanded by them. The voluntary payment hence cannot be called as admission of the appellant towards alleged mis-declaration for value from the above discussion. Since it is apparent that the Department has not followed the statutory procedure nor there was any mis-declaration of quantity as alleged, the mere acceptance of the reassessed value and payment thereof will not be sufficient to confirm the allegations of under valuation. The burden was still on the Department to prove the allegations levelled. The said burden has not been discharged."

49. The last of the decisions which toed a similar line and which would merit being noticed is yet another judgment handed down by the Ahmedabad Bench of the CESTAT in **Kunj Bihari Textiles vs. C.C.**[18] The CESTAT on this occasion took note of the salient principles which

[18] 2023 SCC OnLine CESTAT 246

had come to be identified in an earlier decision in **M/s Sedna Impex India (P) Ltd. vs. C.C.-Mundra**[19] and held:

> "**2.** The issue in the instant case pertains to import of mix lot of Polyester Knitted Fabrics. The revenue had sought to revise the assessable value by rejecting the declared assessable value. It is noticed that identical issue has been decided by Tribunal in the case of *Sedna Impex India P. Ltd.* -2023 (3) TMI 1080 (CESTAT-Ahmd), wherein Tribunal has observed as follows:
>
> > *"4.3 The dispute in the present case is regarding the valuation of the goods imported by the Appellants. The Assessing Authority re-assessed the imported goods at values higher than what was declared by the Appellants in the Bills of Entry. The revenue enhanced value as per NIDB data. We observed that the transaction value declared by the importer should form the basis of assessment unless the same is rejected, for the reasons set out in Rules of the Customs Valuation Rules. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step-by-step methodology to be adopted for re-determination of the assessable value in certain cases. The primary requirement for re-determination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the basis for arriving at the assessable value. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming from the record of the case from which the basis for such re-assessment can be made out. Rejection of declared value on Bill of Entry is a serious affair and the same could have been rejected on the basis of cogent examination of evidences and justifiable reasons. Hon'ble Supreme Court has in case of* Eicher Tractors *[(2000) 122 ELT 321 (S.C.)] laid down very categorical as follows…*
> >
> > **xxxx** **xxxx** **xxxx**
> >
> > *4.6 We noticed that in present matter no effort was made by the adjudicating authority to ascertain quality, quantity, characteristics of the goods of contemporaneous import. In the present import without carrying out any test to the fact that goods of contemporaneous import and the goods in*

[19] Final Order No. A/10397-10407 / 2023 dated 06 March 2023

question in present case are identical or similar, enhancement of the value is not legal and correct. It is also observed that other than contemporaneous import data, there is no other evidence to show that the assessee have suppressed the value.

4.7 We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. Tribunal in the case of Neha Intercontinental Pvt. Ltd. *v.* Commissioner of Customs, Goa *[(2006) 202 ELT 530 (Tri.-Mum.)] has held in the absence of rejection of transaction value, invoice value requires acceptance and when the contemporaneous import of similar goods is not established, value cannot be enhanced. In the case of* Commissioner of Customs *v.* Modern Overseas *[(2005) 184 ELT 65 (Tri.-Del.)] NIDB data was held to be insuffient, in the absence of clarity about various parameters. List of such decisions is unending and it is sufficient to say that NIDB data has been held to be insufficient for enhancement of value, in the absence of any other independent evidence. Admittedly in the present cases, there is no such evidence produced by the Revenue except reference to the NIDB data. In view of the discussions above, we hold that in the present case, the enhancement of value on the basis of NIDB data cannot be accepted.*"

50. The view taken by the CESTAT in the judgments impugned before us in this set of appeals, however, principally proceeds on the basis of its decisions in *Advanced Scan Support* and *Vikas Spinners*. In *Advanced Scan Support*, the CESTAT had taken note of the contention of the importer that there was no misdeclaration and that the entire case as set up by the customs authorities was based on material with which the importer had never been confronted with. While dealing with the aforesaid challenge, the CESTAT in *Advanced Scan Support* had held:

"**5.** We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by the Revenue and expressly stated that it did not want any show-cause notice or personal hearing. Even the duty was paid without protest. By consenting to enhancement of

value and thereby voluntarily foregoing the need for a show-cause notice, the appellant made it unnecessary for the Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put the Revenue in an impossible situation as the goods are no longer available for inspection and the Revenue rightly did not proceed to further collect and compile all the evidence/basis into a show-cause notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no show-cause notice, could/ would have invited allegation of harassment and delay in clearance of goods. When show-cause notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail of as with the goods not being available and the valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so reassessment of value in the absence of goods will not be possible. The case of Eicher Tractors Ltd. v. Commissioner of Customs (2000) 122 ELT 321 (SC) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value.

6. We find that the Customs, Excise and Service Tax Appellate Tribunal's judgment in the case of Vikas Spinners v. Commissioner of Customs (2001) 128 ELT 143 (Trib.-Delhi), dealing with a similar situation, held as under :

> "7. In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants. Admittedly, the price of the imported goods declared by them was US $ 0.40 per kg. but the same was not accepted and loaded to US $ 0.50 per kg. This loading in the value was done in consultation with Shri Gautam Sinha, the representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the bill of entry dated May 7, 1999. After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008 on May 19, 1990. Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally estopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that

> they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the apex court in Sounds N. Images (2000) 117 ELT 538 (SC), is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their representative/special attorney and paid the duty thereon accordingly."
>
> (emphasis added)

Similarly, in the case of Guardian Plasticote Ltd. v. Commissioner of Customs (2008) 223 ELT 605 (Trib.-Kol), has held as under :

> "4. The learned advocate also cites the decision of the Tribunal in the case of Vikas Spinners v. Commissioner of Customs (2001) 128 ELT 143 (Trib.-Delhi) in support of his arguments. We find that the said decision clearly holds that enhanced value once settled and duty having been paid accordingly without protest, importer is estopped from challenging the same subsequently. It also holds that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden of the Department to establish declared value to be incorrect. In view of the fact that the appellants in this case have not established that they had lodged any protest and on the contrary their letter dated April 21, 1999 clearly points to acceptance of the enhanced value by them, the cited decision advances the cause of the Department rather than that of the appellants contrary to the claim by the learned counsel."

Thus, the valuation has to be upheld in the present case.

7. However, it is a fact that nothing has been brought out in the impugned order which shows that the appellant misdeclared the goods or declared a value which was different from the amount which was actually paid to the suppliers. The appellant even submitted a chartered engineer's certificate from Japan in support of the valuation. It has also to be noted that although it gave consent to the valuation and gave up its right for the show cause notice or personal hearing the fact remains that it was so done to avoid delay in clearance and accumulation of demurrage charges. Thus, it is simply a case of valuation dispute devoid of any mens rea on the part of the appellant. Consequently, it is a case for demand of differential duty on account of valuation rather than a case warranting confiscation and/or penalty. As has been held by the Supreme Court in the case of Handtex v. Commissioner of Customs every change

made by the assessing officer during the course of assessment whether relating to rate of duty or value need not lead to an inference of misdeclaration by the importer.

8. It is also pertinent to note that the appellant never consented for confiscation and penalty and did not forego its right for a show-cause notice/personal hearing with regard thereto. Therefore, confiscation and penalty have to be held to have been ordered in violation of the principles of natural justice and for that reason also they cannot be sustained."

51. Since the CESTAT in *Advanced Scan Support* has essentially followed the reasoning on which *Vikas Spinners* was based, this would constitute an appropriate juncture to examine that decision in some detail. It becomes pertinent to note that the importer in *Vikas Spinners* had, apart from questioning the valuation of the goods, also assailed the confiscation action and the imposition of penalties. Insofar as the issues pertaining to confiscation are concerned, the same came to be answered on facts against the importer. Proceeding then to the question of valuation of goods, the CESTAT in *Vikas Spinners* significantly found that the loading in the value as declared by the importer was undertaken in consultation and with due notice to that entity. It further found on facts that the Special Attorney of the importer had signed a document accepting the loaded value of the goods on the BoE itself. It was in the aforesaid backdrop that the CESTAT had observed as follows:

"**7.** In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants. Admittedly, the price of the imported goods declared by them was US $ 0.40 per Kg. but the same was not accepted and loaded to US $ 0.50 per Kg. This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 7-5-1999. After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008/- on 19-5-1990. Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally estopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest that

> the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in *Sounds N. Images*, (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/Special Attorney and paid the duty thereon accordingly.
>
> **8.** Similarly the ratio of the law laid down in *Kushiram Beharilal* and *Globe International Agencies* (supra) referred by the appellants in their written submission is of no avail to them for the simple reason that there is nothing on the record to show that they accepted the loaded value only for the purpose of clearance of the goods and reserved their right to challenge the same at a subsequent stage. The payment of duty was not made by them under protest on the loaded value of the goods. Their own Attorney/Representative agreed to the loaded value of the goods and signed the affirmation on the back of the Bill of Entry even and that is why no show cause notice in this regard was issued to them. The show cause notice in the instant case was issued to them only for the confiscation of the goods and imposition of penalty on them due to misdeclaration of nature of goods and import of the same without specific licence."

52. *Vikas Spinners* was thus a case where the BoE as submitted by the importer had itself acknowledged the loading suggested by the customs authorities over and above the value of the importer goods as declared. It was this BoE which ultimately came to be accepted and formed the primary basis of the import itself. This becomes apparent from the CESTAT having categorically found that *"There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods."* It is thus evident that *Vikas Spinners* essentially proceeded and revolved upon its own special facts and in any case was one which was

concerned with an actual assessment made in the course of examination of the self-assessed declarations made. The aforesaid decision thereafter appears to have been followed in *Advanced Scan Support* based on a perceived understanding of its implication and de hors what was found on the facts which obtained therein. Thus, and in our considered opinion, neither *Advanced Scan Support* nor *Vikas Spinners* are liable to be viewed as authorities for the proposition that a concession made for the purposes of expeditious clearance of goods would amount to a waiver or abandonment of a right to contest the reassessment subsequently.

53. The argument of the appellants that NIDB data could not form the solitary basis to reject declared value also came to be rejected with the CESTAT observing that once the importer had accepted the suggested revision, there existed no obligation on the respondents to undertake any further adjudicatory exercise nor was there any justification for the CESTAT to rule on any of the other contentions that were urged before it. Insofar as the determinative value of NIDB data is concerned, the CESTAT has in *Hanuman Prasad & Sons* taken a view which clearly appears to be contrary to a host of precedents which had held to the contrary and this becomes apparent from the discussion which ensues.

54. Without unnecessarily burdening this judgment with a reiteration of what had been held in this regard by a string of past precedents rendered by different benches of the CESTAT itself, it would be sufficient to take note of the following decisions. Learned counsels for the appellants, in light of the question of whether enhancement or re-appreciation of the 'declared value' could proceed merely on the basis

of the data available on the NIDB, brought to our notice the decision of the Hyderabad Bench of the CESTAT in **Agarwal Foundries (P) Ltd. vs. Commissioner of Customs**[20] and where it was succinctly observed as under:

> "**6.2)** In all these cases, the imported goods are MS Steel (turning shredded scrap). The Customs Department has taken the view that the declared import values cannot be relied upon since they are based on invoices issued by traders and not at the manufacturers of such scrap. Based on this premise, the declared import values have been rejected and enhanced to higher level on the basis of purported contemporary import values found in the NIDB data. This enhancement is the bone of contention in all these appeals.
>
> **6.3)** MS Steel (turning shredded scrap) is generated in the course of manufacture of finished goods eg; machinery. Appellants, right from the beginning, have been crying hoarse that such scrap is disposed of by concerned manufacturers to traders and that they have to necessarily buy such scrap only from the traders at the prevalent market rate. This assertion has not been disproved or proved incorrect by Customs.
>
> **6.4)** Department has also not backed up their allegations that the manner of purchase of the impugned goods from the traders and not from manufacturers, is not as per practice normally followed in the course of international trade in the said item. This being the case, we are of the opinion that Department cannot reject the invoices issued by traders the declared import values only for the reason that the accompanying invoices have not been issued by the manufacturers themselves. In any case, in our view, it is not as if the manufacturers concerned have set out or conduct their activities with the sole intention of manufacturing such "shredded scrap". Obviously the impugned goods are but shreds and turnings which have emerge during the manufacture of goods by the concerned manufacturers. There can be no dispute that these metal shreds and turnings would not be in very huge quantities vis-'-vis the actual goods manufactured. It also appears to reason that the manufacturers would prefer to dispose of such shredded scrap to the traders instead of expending time and energy selling them directly worldwide.
>
> **6.5)** Viewed in this light, the invoices issued by the traders from countries like Belgium, Malaysia, Singapore etc. cannot be dismissed peremptorily unless there are justifiable reasons not to accept the genuineness or authenticity of such invoices. In any case, the declared values can be rejected only in terms of statutory

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[20] 2018 SCC OnLine CESTAT 1411

provisions and rules governing valuation of imported goods.

6.6) Be it as it may, in all these cases, enhanced values have been adopted based on NIDB data only. The appellants have contended that the contemporary values on which the department intended to enhance the import values have not been provided to them. We find merit in these arguments. It is now well settled that NIDB data cannot be made the basis for enhancement of declared import values. The case laws relied upon by the appellant fully exemplify this ratio.

6.7) For example, the Tribunal in the case of *Commissioner of Customs, New Delhi v. Nath International* as reported at [2013 (289) ELT 305 (Tri.-Del.)] has laid down the following ratio:

> "7. 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 evidences 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. Commissioner (Appeals) has relied upon various decisions of the Tribunal for holding any enhancement in assessment value, the transaction value to be first rejected based on legal permissible ground as indicated in the valuation Rules. He has also referred to Hon'ble Supreme Court decision in the case of Eicher Tractors Ltd. v. CC, 2000 (122) ELT 321 (S.C) in support of his finding that transaction value cannot be rejected without clear and cogent evidence produce by the department with regard to quality, import of origin and place and time of import.
>
> We find that in their memo of appeal, Revenue has not advance any such evidences to support their case, inasmuch as, no evidence of rejection of transaction value stands produced by the authority, we find no reason to interfere with the impugned order of Commissioner (Appeals). Mere reference to Commissioner Mumbai guidelines to enhance the value of ball bearings, without first assessing the quality of the goods is not justified. It stands accepted that the ball bearings were mix and not of uniform sizes. As such, Revenue's appeal has no merits".

6.8) In the case of *Topsia Estates Pvt. Ltd. v. CC (Import-Seaport) Chennai* as reported at [2015 (330) E.L.T 799 (Tri.-Chennai)], the Tribunal held as under:

> "7. After hearing both sides and on perusal of the records,

> we find from the adjudication order that the adjudicating authority observed that the unit price declared appears to be very low compared to the contemporaneous import value available in NIDB data. The appellant imported PU Coated Fabrics of various thickness and different qualities from China. It is seen from the Table as reproduced in the adjudication order that the declared unit price varies from 0.90 MT to 1.60 MT and the value was enhanced from 1.24 per MT to 2.04 per MT. We have also noticed that the appellant imported the same goods from Kolkata Port also. The appellant in the written submission before the Commissioner (Appeals) submitted copies of the various orders passed by the Commissioner (Appeals) under which it was accepted. There is no evidence of higher value of contemporaneous import from same sources. There is no allegation of mis-declaration of the goods.

6.9) In a recent decision, in *Sarda Energy and Minerals Ltd. v. CCE*, Raipur, [2018 (359) E.L.T 262 (Tri.-Del.)], the above ratio was once again reiterated by Tribunal as follows:

> "In this connection, we have perused the provisions of Rule 12, which enables the rejection of declared assessable value. The said rules provide for proper officer seeking clarification from the importer to provide further information to satisfy the correctness of the declared assessable value. In the present case, the appellants did submit the invoice, purchase order and supporting contract documents with reference to the impugned consignments. Nothing more is required with the importer to further substantiate the value. In such situation, it is for the assessing officer to discount the documents with valid reasons in order to reject the declared value and thereafter to proceed with the re-assessment, after due enhancement. Explanation (1)(i)(iii)(a) in Rule 12 appears to be applicable 5 Customs Appeals Nos. 50503- 50504/2017 and 50519-50520/2017 to the present case. In other words, the assessing officer having noticed higher value of contemporaneous import raised the doubt regarding the correctness of declared value. The legal provisions mentioned in the Explanation clearly stipulates that the contemporaneous value should be significantly higher for identical or similar goods at or about the same time, in a comparable commercial transaction. We find in the present case due examination about this crucial aspect has not been done by the assessing officer and comparison based on the contemporaneous import is not proper. Further, the contractual arrangements and invoices should not be rejected in the absence of any evidence to question their

> authenticity. As submitted by the appellants, NIBD data is a guidelines and an indicator for the assessing officer and it cannot be a substitute for assessable value. The assessable value for imported items has to be invariably arrived at applying Section 14 read with Customs Valuation Rules, 2007.
>
> 7. We also note that the reliance placed by the appellant on the decision of the Tribunal in the case of *Topsia Estates Pvt. Ltd. v. CC, Chennai*, 2015 (330) ELT 799 (Tribunal-Chennai) is appropriate to the facts of the present case. The observation of the Tribunal is as below:—
>
> > "We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be very low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. It is noticed that the value of impugned goods varies widely on the basis of quality, size, quantity, etc., and it is contended by the appellant before the lower appellate authority that the declared value of the same goods were accepted by the 6 Customs Appeals Nos. 50503-50504/2017 and 50519-50520/2017 Department at Kolkata Port. We also find force in the submission of the learned Advocate that in this particular situation, Rule 9 of the Valuation Rules would not be invoked".
>
> 8. In view of the discussions and analysis, we find that the impugned orders cannot be legally sustained. Accordingly, the same are set aside. The appeals are allowed with consequential relief".
>
> **6.10)** We find that the above decisions will apply on all fours to the present appeals before us. We also find merit in the appellant's contention that Department has not brought out any other material to demolish the transaction value and has also not brought any evidence to prove that the overseas supplier has been paid consideration higher than the amount indicated in the invoices which have been paid through bank channels.
>
> **7)** In the event, we hold that all the impugned orders relating to these 14 appeals cannot sustain and will have to be set aside which we hereby do. Appeals are therefore allowed with consequential benefits, if any, as per law."

55. Proceeding further, learned counsels for the appellants then cited for our consideration the judgment handed down by the Ahmedabad

Bench in **Guru Rajendra Metalloys India (P) Ltd. vs. C.C.**[21]. After noticing the judgments of the Supreme Court in **CCE vs. Sanjivani Non-Ferrous Trading (P) Ltd.**[22], as well as *Century Metal Recycling*, the CESTAT had in that decision observed:

> "**4.8** As regard the entire reliance of the Revenue that the appellant has given a consent letter, we find that this Tribunal in the case of *Andrew Telecommunications Pvt. Ltd.* (supra) categorically held as under:
>
> > **5.** *The assessing authority places reliance on the price of the base metal published in bulletin of the London Metal Exchange and the consent of the importer to adopt that as the base for re-determination. However, it cannot be lost sight of that the clearance was ordered to be held up on the basis of raw material prices in the said bulletin when the goods under import were manufactured products. The rationale for the comparatively low prices was claimed to lie in the supply contracts to which importers had drawn the attention of the assessing officer who, however, chose to disregard these. We find that the resort to prices of base metal to reject the declared price of manufactured goods, particularly, in the light of an explanation offered and not disputed is not in accordance with Section 14 of Customs Act, 1962. Consent at gun-point is no consent and consent of any sort cannot condone deviation from the law.*
>
> **4.9** This issue was also decided by a principal bench of this Tribunal at Delhi in the case of *Ankit Electronics* wherein the following order was passed:
>
> > *Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We propose to dispose of the stay petition as also appeal by a common order as a short issue is involved.*
> >
> > 2. *As per facts on record, the respondents filed thirteen Bills of Entry on various dates for the clearance of Ferrite magnet & Ferrite magnet rings declaring the value based upon the invoices raised by the supplier. The assessing authority did not agree with the declared value and enhanced the same. The Bill of Entry was accordingly assessed.*
> >
> > 3. *The said assessment was challenged by the respondents before Commissioner (Appeals), who observed that*

[21] 2020 SCC OnLine CESTAT 3871
[22] (2019) 2 SCC 378

inasmuch as the assessing authority has not passed a speaking order giving reasons for rejection of the declared price, he set aside the assessment order and directed the assessing authority to pass speaking order within a period of 15 days.

4. *Being aggrieved with the said order, Revenue has challenged the same on the ground that value was enhanced as per instructions of C.B.E. & C. vide Circular No. 91/2003-Cus., dated 14-10-2003 which are as follows:*

> *"at the request of the importer, the proper officer is required to intimate in writing, the grounds for doubting the truth the accuracy of the declared value and provide a reasonable opportunity of being heard, before taking a final decision. However, it may not be necessary to issue speaking orders in all such cases where enhancement of value has been resorted to with the consent of the importers"*

Accordingly the Revenue has contended that inasmuch as the appellants cleared the goods on enhanced value, they were precluded from contesting the same.

5. *We however, do not agree with the above contention of the Revenue. The said circular itself makes it clear that proper officer is required to intimate in writing the grounds for enhancing the value and a reasonable opportunity is required to be given to the importer before the final decision is taken. It is only in those cases where both the sides agree to resort to enhancement of value. That no orders are required to be passed. Merely because the importer has cleared the goods at enhanced value to save the demurrage charges or otherwise, by itself, does not mean that the importer is consenting to enhance the value. It is right of the importer to contest the enhancement and fact of clearance of goods, cannot preclude the importer from exercising the right of appeal. As such, we find no merit in the Revenue's appeal.*

6. *Inasmuch as the Commissioner (Appeals) has remanded the matter to the original adjudicating authority for deciding the assessable value of the imported goods, by following the principles of natural justice, we upheld the impugned order and direct the original adjudicating authority to do the needful.*

7. *Stay petition as also appeal gets disposed of in the above manner.*

4.10 We find that both the lower authorities, they have not accepted that the prices are based on DGOV circular. However, the

calculations shown by the Learned consultant, it is clear that the enhancement of the value is not on the basis of contemporaneous imports data but clearly on the basis of DGOV circular. This Tribunal dealing with identical case in the case of *Bharathi Rubber Lining & Allied Services P. Ltd.* clearly held that DGOV circular cannot override the provisions of Valuation Rules. Invoice price is not sacrosanct but before rejecting the invoice price the department has to give cogent reasons for such rejection. Assessing Authority has to examine each and every case on merit for deciding its validity. He could not form the view to reject all transaction only on the basis of same general criteria based on DGOV circular. It was, however, held that if contemporaneous import were not noticed, Rules 5 and 6 of Customs Valuation Rules, 1988 could not be applied, the question of rejecting the transaction valued under the Rule 10(A) does not arise at all.

4.11 In the case of *Modern Manufacturers* (supra) this Tribunal dealing with identical issue held that enhancement of value of imported goods based on NIDB data and circular issued by DGOV without rejecting declared value under Rule 12 of Customs Valuation Rules, 2007. Redetermination of value based on NIDB data and DGOV circular is not sustainable. In the present case, no exercise of rejecting the declared value under Rule 12 and process of applying valuation rules sequentially were followed. Therefore, the value declared by the appellant has to be accepted."

56. Learned counsels for the appellants thereafter relied on the decision of the Ahmedabad Bench of the CESTAT and which too had an occassion to deal with the issue of a perceived concession and its negative impact on the right of an importer to assail a reassessment made on the basis of NIDB data in **AK Fashions vs. C.C.-Jamnagar (Prev)**[23]. The Bench after noticing the judgments rendered by different Benches of the CESTAT including in **Commr. of Customs vs. M/s Hanuman Prasad & Sons**[24] and which is impugned before us, *Advanced Scan Support*, *Vikas Spinners* and **Guardian Plasticote Ltd. vs. Commr. of Customs (Port)**[25] ultimately held as follows:

[23] Final Order No. A/11104-11106/2023 dated 03 May 2023
[24] Final Order No. 51584-51619/2020 dated 20 October 2020
[25] 2007 SCC OnLine CESTAT 772

"2.6 Reliance has also been placed on the decision of Tribunal in the case of Advance Scan Support -2015 (326) ELT 185 (Tri.-Del.), wherein it has been held that once express consent to the value proposed by the revenue has given and the appellant has consented to waive SCN or personal hearing than it is not necessary for revenue to establish the value any further. Reliance is also been placed on the decision of Tribunal in the case of M/s. Vikas Spinners

reported at 2001 (128) ELT 143 (Tri.-Del.), wherein following has been observed:

> *"In our view in the present appeal, the question of loading of the appellants. This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 07.05.1999 having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally stopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in Sounds N. Images. (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/ Special Attorney and paid the duty thereon according."*

* Reliance was also placed on the decision of Tribunal in the case of M/s. Gandian Plasticote Ltd.- 2008 (223) ELT 605 (tri.-Kol.) wherein following has been observed:

> *"The learned Advocate also cited the decision of the Tribunal in the case of M/s Vikas Spinners V. CC., Lucknow 2001 (128) ELT. 143 (Tri-Del) in support of his arguments. We find that the said decision clearly holds that enhanced value once settled and duty having been paid accordingly without protest, importer is stopped from challenging the same subsequently. It also hold that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden the department to establish declared value to be incorrect. In view of the fact that the Appellants in this case have not*

established that they had loaded any protest and as per systems report clearly points to acceptance of the enhanced value by them, the cited decision advances the cause of the department rather than that of the Appellants contrary to the claim by the learned Counsel."

2.7. In the instant case, we notice that the appellant has replied to the query of the Assessing officer in following terms:

"Value declared as per transaction price u/s 14(1) of Customs Act 1962. You may load the value as per CVR 2007 on the basis of contemporaneous import of identical/similar goods at your port. We agree to assess the value as per group practice to save from demurrage and detention charges."

<u>From the above declaration it is apparent that the revised valuation has been accepted under duress just in order to save detention charge. It cannot be treated as a voluntary consent. In this circumstances the right of appellant challenge the assessment cannot be disputed. It is seen that the case law relied by the Commissioner (Appeal) in the impugned order is only in respect of cases where there was voluntary acceptance of the enhancements of value. The said case laws cannot be applied to the facts of the case where there is apparent protest. From the impugned order, it is noticed that it has not examined the contemporaneous NIDB data, but relies solely on various letters of different authorities, like directorate of valuation, DRI or DC (SIIB). Such reports cannot be any basis of rejection of declared value in terms of rule 12 of the Customs Valuation Rules, 2007. The rejection can only be done on the basis of data of contemporaneous imports."</u>

57. In view of the above, learned counsels for the appellants contended that the respondent's decision to enhance the declared values lacked proper substantiation and relied exclusively on data from the NIDB and which was insufficient to justify such enhancement. Consequently, they sought the setting aside of the enhancement of the declared values as it did not meet the standards of fairness or adequate reasoning required in valuation matters.

IV. <u>EVALUATION OF THE COURT</u>

A. Declared values and the power of reappraisal

58. Before we proceed to analyse Section 17 of the Act and its application to the appeals before us, it would be pertinent to preface the discussion by acknowledging the statutory position as it exists. An entity intending to import goods is firstly required to self-assess the duty which would be leviable. This obliges the importer to comply with the prescriptions set out in Section 46 of the Act. As that provision stands in its present avatar, the importer of any goods is required to electronically present on the customs automated system, the BoE for the consideration of the proper officer. The BoE is to include all particulars required in terms of the provisions made in the Act and corresponding rules. In addition to the presentation of a BoE, the importer is also statutorily obliged to submit a declaration as to the truthfulness of the contents of such BoE and in support thereof produce before the proper officer the invoice and other documents relating to the imported goods as may be prescribed. In terms of sub-section (4A) of Section 46, the importer who presents a BoE is to ensure that the said document is accurate and complete in respect of the information disclosed therein, the authenticity and validity of documents filed in support thereof and the import itself being compliant with any restriction or prohibition imposed in relation to those goods by law.

59. Upon the proper officer being satisfied that the goods entered for home consumption are not prohibited and import duty has been paid, it would pass an order permitting clearance of those goods for home consumption. This flows from a reading of Section 47 of the Act. In terms of Sections 48 and 49, an importer is also entitled to warehouse the imported goods after the same have been unloaded at a customs station or even transhipped within 30 days therefrom. The goods can

thereafter remain in the warehouse pending clearance for removal.

60. Undisputedly, a self-assessed BoE which is submitted by an importer, if accepted and endorsed by the proper officer, would be deemed to have been duly assessed. This clearly flows from the manner in which the word 'assessment' has been defined in Section 2(2) of the Act and is in any case, an issue that is no longer *res integra*, bearing in mind the decision of the Supreme Court rendered in the matter of **ITC Ltd. vs. CCE**[26] and where it was observed:

> "**29.** The first question for consideration is whether in the case of self-assessment without passing a speaking order, it can be termed to be an order of self-assessment. It was urged on behalf of the assesses that there is no application of mind and merely an endorsement is made by the authorities concerned on the bill of entry which cannot be said to be an order much less a speaking order.
>
> **xxxx xxxx xxxx**
>
> **31.** <u>It is apparent from the aforesaid discussion that the endorsement made on the bill of entry is an order of assessment. It cannot be said that there is no order of assessment passed in such a case. When there is no *lis*, speaking order is not required to be passed in "across the counter affair"</u>.
>
> **32.** Coming to the procedure of assessment of duty as prevailed before the amendment of the Act prior to the amendment made in Section 17(1) by the Finance Act of 2011, the imported goods or exported goods were required to be examined and tested by the proper officer. After such examination, he had to make an assessment of the duty, if any, leviable on these goods. Under sub-section (3) of Section 17, the proper officer was authorised to require the importer, exporter or any other person to produce any contract, broker's note or any other document as specified in the proviso and to furnish any required information. Notwithstanding that the statements made in the bill of entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it was found subsequently on examination or testing of the goods or otherwise that any statement in such bill of entry or document or any information so furnished was not true, he could have proceeded to reassess the duty. Where the assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of the goods, classification, exemption or concession,

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[26] (2019) 17 SCC 46

speaking order shall be passed within 15 days from the date of assessment of the bill of entry or the shipping bill as the case may be as provided in Section 17(5).

33. Under the provisions of Section 17 as amended by the Finance Act of 2011, Section 17(1) has provided to self-assess the duty, if any, leviable on such goods by importer or exporter, as the case may be. Self-assessment is an assessment as per the amended definition of Section 2(2). It is further provided that proper officer may verify the self-assessment of such goods, and for this purpose, examine or test any imported goods or exported goods or such part thereof as may be necessary. The power to verify self-assessment lies with the proper officer and for that purpose under Section 17(3), he may require the importer, exporter or any other person to produce such document and furnish such information, etc. If the proper officer on verification has found on examination or testing of the goods or as part thereof or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under the Act, may proceed to reassess the duty leviable on such goods. Section 17(5) of the Act as amended provides that where reassessment done under Section 17(4) is contrary to the assessment done by the importer or exporter regarding the matters specified therein, the proper officer has to pass a speaking order on the reassessment, within 15 days from the date of reassessment of the bill of entry or the shipping bill, as the case may be. The Explanation to amended Section 17 has clarified that import or export before the amendment by the Finance Act, 2011 shall be governed by the unamended provisions of Section 17.

xxxx **xxxx** **xxxx**

43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression "Any person" is of wider amplitude. The Revenue, as well as the assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of reassessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. The reasoning employed by the High Court is that since there is no *lis*, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in *Escorts* [*Escorts Ltd.* v. *Union of India*, 1994 Supp (3) SCC 86] .

> **44.** The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the bill of entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or reassessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, reassessment is not permitted nor conditions of exemption can be adjudicated. Reassessment is permitted only under Sections 17(3), (4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or reassessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In *Hero Cycles Ltd.* v. *Union of India* [*Hero Cycles Ltd.* v. *Union of India*, 2009 SCC OnLine Bom 801 : (2009) 240 ELT 490 (Bom)] though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in *Priya Blue Industries Ltd.* [*Priya Blue Industries Ltd.* v. *Commr. of Customs*, (2005) 10 SCC 433 : (2004) 172 ELT 145]"

61. By virtue of sub-section (2) of Section 17, the proper officer is empowered to verify the disclosures made and embodied in the BoE and for that purpose also entitled to examine or test any imported goods. In terms of the Proviso which came to be inserted in Section 17(2) by the Finance Act, 2018, the selection of cases for verification can be accomplished on the basis of risk evaluation criteria that may have been adopted. Section 17(3) then postulates that the proper officer for purposes of verification is statutorily empowered to require the importer to produce such further document or information which may be appropriate and germane to the issue of duty liable to be paid on the imported goods. It is only when the proper officer in the course of

verification, examination or testing of goods comes to form the opinion that the self-assessment was not done correctly that the power to reassess duty is triggered. Sub-section (5) of Section 17 then proceeds further to stipulate that where a reassessment undertaken in terms contemplated under sub-section (4) is at variance with the self-assessment undertaken by the importer, unless such a reassessment is accepted by the importer in writing, the proper officer would be obliged to pass a speaking order in support of the reassessment.

62. Prior to the amendments that were made in Section 17 by the Finance Act, 2018, the proper officer also stood conferred under sub-section (6) with the authority to undertake an audit with respect to the assessment of duty on imported goods even in a case where a reassessment may not have been undertaken or a speaking order not passed. Sub-section (6), however, came to be deleted by Finance Act, 2018 and which also introduced a power of audit independently and which now stands encompassed in Section 99A of the Act. Of critical significance are sub-sections (4) and (5) of Section 17 and which we propose to notice hereinafter.

63. As we read sub-section (4), it is manifest that before the proper officer commences the process of reassessment, it must come to form an opinion that basis the verification, examination or testing of goods mentioned in the self-assessed declarations as submitted by the importer, are incorrect. It is only on the formation of that opinion that it proceeds to reassess the duty leviable on the imported goods. It is thus evident that before the procedure as contemplated under sub-section (5) is undergone, the proper officer would have come to form a prima facie opinion that the self-assessed declaration is incorrect. It is this

preliminary formation of opinion that forms the basis for the process of reassessment being commenced. The reasons for reassessment as well as the opinion formed under sub-section (4) thus constitutes the foundation for further action that may be taken by the proper officer under sub-section (5). The formation of opinion contemplated under Section 17(4), however, is neither unguided nor left totally unregulated.

64. That formation of opinion is guided by the 2007 Rules. Rule 3 postulates that the value of imported goods shall be the transaction value adjusted in accordance with Rule 10. In terms of Rule 3(2), the value of imported goods as declared is liable to be accepted subject to the Proviso and which regulates the exercise of power by the proper officer. Rule 3(3) then deals with contingencies where the buyer and seller are related parties. Here too, that rule prescribes that a transaction value shall be accepted subject to examination of the circumstances surrounding the sale of the imported goods being found not to have been influenced by the relationship of parties. This underlying principle in respect of sale between related parties is then further amplified by clause (b) of Rule 3(3) and which states that the transaction value shall be accepted in cases where the importer is able to demonstrate that the declared value of the goods “closely approximates to” the transaction value, the deductive value or the computed value of identical or similar goods.

65. The subject of transaction value is then regulated by Rules 4 and 5. The 2007 Rules also provision for contingencies where the value of imported goods cannot be determined under the provisions of Rules 3, 4 and 5 under Rule 6. If the proper officer thus comes to the conclusion that the transaction value of imported goods is not determinable under

the aforenoted provisions, it stands empowered to firstly invoke Rule 7 and which is concerned with deductive value and failing even that method being applicable, to proceed further in terms of Rule 8 and which deals with computed value. Rule 9 enshrines the residual method, and which would be triggered in case the value of imported goods is found to be incapable of being determined in accordance with the methods prescribed by the preceding rules.

66. However, of significance is the prefatory part of Rule 3 and which commences by using the phrase "*Subject to rule 12…*". It is Rule 12 which thus becomes the pivotal provision in the scheme of reassessment, and which regulates the power vested in the proper officer to reject declared value. Rule 12 throws light on the contingencies and situations in which the proper officer would be justified in rejecting the value of imported articles as declared. It provides in unequivocal terms that an exercise of reassessment would be predicated upon the proper officer having reasonable doubt as to the truthfulness or accuracy of the value as declared in relation to the imported goods. The *sine qua non* for commencement of reassessment, therefore, is the existence of reasonable doubt as to the declaration as made by the importer. What we seek to emphasise is that it is the formation of this opinion that forms the bedrock for the proper officer treading down the path constructed by Section 17(4) of the Act.

67. In terms of Rule 12, upon the proper officer having formed a reasonable doubt with respect to the truthfulness and accuracy of the declarations made, it would call upon the importer to furnish such further information, documentation and evidence in support of the declaration as made. It is only if, after receipt of such information, the

proper officer still harbours a reasonable doubt about the truthfulness or accuracy of the value declarations made that it would come to hold that the transaction value cannot be determined in terms envisaged by Rule 3. The doubt which lingers and clouds the declaration made by the importer even after the submission of further documentation and evidence and consideration thereof triggers a deeming fiction incorporated in Rule 12(1) and which bids us to assume that upon formation of that opinion, the transaction value is liable to be rejected and despite the importance conferred thereon by Rule 3, the proper officer then undertaking a determination of the duty leviable.

68. Of equal significance are the provisions contained in Rule 12(2). As is manifest from a reading of that provision, the proper officer is liable, at the request of the importer, to intimate them in writing the grounds on the basis of which it had come to doubt the truthfulness or accuracy of the declarations as made. It also obliges the proper officer to provide a reasonable opportunity for the importer to be heard as well as to represent before a final decision is taken in terms of Rule 12(1). Thus, it is evident that before the legal fiction kicks into play and as envisaged in Rule 12(1), there would be in existence a record of the reasons which would have weighed upon the proper officer to come to the conclusion that the value declarations as made by the importer are incorrect.

69. A conjoint reading of Section 17(4) alongside Rule 12 thus reinforces our conclusion that reasons in support of the formation of opinion that the self-assessment declarations are incorrect must exist and stand duly recorded. Before one would proceed to evaluate the portend of Section 17(5), it would be expected that the basis for

rejecting the transaction value as declared is informed by cogent reasons which support the formation of opinion. The statute has incorporated salutary provisions of guidance even in this respect and has thus ensured that even this discretion which is placed in the hands of the proper officer is not left unguided or unregulated. This becomes further evident from the Explanation which stands inserted in Rule 12(2) and which in clause (i) in mandatory terms places the proper officer on caution and requires it to bear in mind that Rule 12 is not liable to be construed as embodying a method for determination of value but laying in place the mechanism and procedure for rejection of declarations made in cases where it were to reasonably doubt and form the opinion that the value as declared does not represent the accurate transaction value.

70. The proper officer is further cautioned by virtue of clause (ii) of the Explanation when it provides that the declared value shall be accepted and a final decision in respect of assessment taken only after the completion of an inquiry undertaken by the proper officer in consultation with the importer. Clause (iii) thereafter spells out the factors which would be pertinent and germane for the customs authority raising a doubt with respect to the truthfulness and accuracy of the declarations made. Those factors are the following:

> "(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 misdeclaration 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."

71. On an overall consideration of the statutory scheme governing the valuation of imports and reassessment, it becomes clear that the reasonable doubt which is spoken of in Rule 12 is indelibly connected to the aspect of the valuation of imported goods and the identification of the transaction value which is spoken of in Section 14. Section 14 introduces a deeming fiction when it provides that the value of the imported goods *"shall be the transaction value"* and which is ordained to be the price actually paid or is payable for the goods when sold. The 2007 Rules themselves owe their genesis to the identification of transaction value and which subject is principally regulated by Section 14 of the Act.

72. As was noticed by us in the preceding paragraphs and becomes evident from our understanding of the statutory scheme, the doubt that may be harboured by the proper officer is not left to its whims or caprices. The reasonable doubt which could be harboured would have to necessarily be informed by the factors enumerated in sub-clauses (a) to (f) as spelt out in the Explanation to Rule 12(2) and could also include such other factors which may be considered as germane and relevant for the purposes of identifying the correctness and accuracy of the declared value. A reading of sub-clauses (a) to (f) sheds light on the factors which could be said to be relevant and may weigh upon the proper officer to raise a doubt as to the declared value. The factors so enumerated are themselves hinged on empirical standards and circumstances and which thus undoubtedly convince us to hold that the doubt with respect to truth and accuracy of declared value cannot be the outcome of an uncanalised or capricious exercise of power.

73. A combined reading of Section 17 alongside Rule 12 would establish that the enquiry by the proper officer is essentially two-tiered. The first stage comprises of the proper officer forming the opinion that the declared value is liable to be reviewed, basis reasonable doubt being harboured with respect to its truthfulness or accuracy. Upon arriving at that preliminary conclusion, the proper officer is obliged to convey their opinion to the importer and elicit further information and documents to aid and assist it in the adjudicatory process. It is at this stage that the importer is entitled to call upon the proper officer to provide the grounds for doubting the declared value in writing so as to enable it to respond. The obligation to supply the reasons and to provide a reasonable opportunity of representation to the importer is clearly mandatory in light of the language employed by Rule 12(2) and which uses the phrase *"...before taking a final decision under sub-rule (1)"*. If the doubt persists even after consideration of the response as submitted by the importer or where it fails to respond to the notice issued, the proper officer would proceed to record its decision that the value of the goods cannot be determined in accordance with Rule 3(1). This constitutes the second tier of the adjudicatory process. Thus, it is evident that it is only after the response of the importer has been considered and the proper officer finds no justification to deviate from the initial opinion which was formed that the process of determination of the true transactional value would commence. This is in light of Rule 12(1) providing that if the proper officer *"still has reasonable doubt about the truth or accuracy of the value so declared"* and the deeming fiction of valuation under Rule 3(1) coming into play.

74. Both Section 17 as well as Rule 12, in our considered opinion,

are liable to be interpreted as mandatorily requiring the reasons in support of the *"reason to doubt"* existing on the record of the proper officer. Construed in any other manner would lead to arbitrary consequences since it could result in the proper officer not even documenting the grounds on which it came to doubt the declared value in the first instance. Reasons, as is well settled, are a harbinger of the constitutional requirement of fairness which must imbue every decision-making process. This obligation, indisputably, flows from the overarching requirements of Article 14 of the Constitution itself. The consent or concession of the importer and on which much emphasis was laid by the respondents cannot possibly be construed as relieving the proper officer from documenting the reasons which formed the basis for it doubting the declared value. The statutory provisions, if interpreted in any other manner, would lead to pernicious consequences with it becoming well neigh impossible to adjudge whether the decision of the proper officer was fair, reasonable and valid in law. It would also deprive courts of the power to effectively discharge their constitutional obligation of judicial review itself. The consequence of accepting the line as canvassed by the respondents in this respect would not only result in it being possible for the proper officer to conjure up any ground in support of its original decision to reject the declared value subsequently, but it would also permanently deprive the importer of the right to question and challenge that decision.

75. The imperative of reasons being recorded in support of the doubt with respect to declared value and the same being communicated to the importer were aspects on which due emphasis was laid by the Supreme Court in *Century Metal Recycling* as is evident from a reading of para

25 of the report. In fact, the Supreme Court pertinently observed that the aforenoted mandate of Rule 12(2) cannot be "ignored or waived". The statutory obligations flowing from Rule 12 in this regard were re-emphasized by the Supreme Court in that decision when their Lordships observed that the same would constitute the only manner in which the proper officer could proceed to make an assessment under Rules 4 to 9.The interplay between Sections 14 and 17, and the 2007 Rules was lucidly explained by the Supreme Court in *Century Metal Recycling* and where the Supreme Court was faced with a somewhat similar situation of an appellant who alleged that they had been coerced and intimidated into submitting a letter of consent conceding to the assessment and valuation exercise undertaken by the customs authorities compelled by the delay being caused in the clearance of imported articles and the continued levy of demurrage, warehousing charges and other liabilities. After noticing the language in which Rule 12 stood couched, the Supreme Court in *Century Metal Recycling* observed that while the expression *"reason to doubt"* may not be akin to a *"reason to believe"* or a subjective satisfaction being arrived at, it would clearly have to be reasonable and thus the doubt formed would have to be informed by a degree of objectivity.

76. The Supreme Court held that reasonable doubt on the basis of the factors enumerated in the Explanation to Rule 12(2) and sub-clauses (a) to (f) thereof, though not exhaustive, would shed light on the factors which the statute considers to be pertinent for the formation of a doubt with respect to the declared value. It then proceeded to observe that in terms of Rule 12(2), it would be incumbent upon the proper officer to intimate the importer, when requested, the grounds on the basis of

which it had a reason to doubt the truth or accuracy of the declared value of the imported goods in writing. It more significantly held that the doubt that may be harboured cannot be based on factors which are based merely on perception and not founded on material existing on the record of the proper officer. It further pertinently observed that reasonable doubt cannot be equated to mere suspicion or distrust with respect to the value as declared.

77. For the purposes of evaluating the challenge which stands raised in this batch and the submissions which were advanced before us, of critical significance is the observation of the Supreme Court when it held that the aforenoted mandate of Rule 12(2) can neither be ignored nor waived. The Supreme Court thus found that upon such a request being made, a statutory obligation stands cast on the proper officer to intimate the importer in writing the grounds on which the doubt is founded. It also held that although in terms of Rule 12, while there may not be a statutory mandate to record reasons at the second stage of the enquiry, the same must necessarily be read into those statutory provisions. Importantly, it also deprecated the insistence of customs authorities compelling importers to *"disclaim and forego"* the statutory right which the Act confers.

78. The key takeaways from the decision in *Century Metal Recycling* would thus be the reasonable doubt being based on empirical and legally justifiable factors illustratively spelt out in Rule 12, the mandate to record reasons in support of the formation of that opinion and the mandatory requirement of communicating that material to the importer upon request. This becomes evident from a reading of the following passages of *Century Metal Recycling*:

"**14.** Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (*iii*) of Explanation to Rule 12 states that the proper officer can on "certain reasons" raise doubts about the truth or accuracy of declared value. "Certain reasons" would include conditions specified in clauses (*a*) to (*f*) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade, etc. and fraudulent or manipulated documents. Grounds mentioned in (*a*) to (*f*) however are not exhaustive of "certain reasons" to raise doubt about the truth or accuracy of the declared value. Clause (*ii*) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (*i*) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

15. Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

16. The requirements of Rule 12, therefore, can be summarised as under:

16.1. 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.

16.2. Proper officer must ask the importer of such goods further information which may include documents or evidence.

16.3. 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.

16.4. When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

16.5. 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.

16.6. 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 sub-clauses (*a*) to (*f*) in clause (*iii*) of the Explanation.

16.7. 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.

16.8. 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.

17. Proper officer can therefore reject the declared transactional value based on "certain reasons" to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (*iii*) of the Explanation appended to Rule 12 which sets out some of the conditions when the "reason to doubt" exists. The instances mentioned in sub-clauses (*a*) to (*f*) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.

18. The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a precondition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word "doubt" refers to uncertainty and

irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on "certain reasons".

19. The expression "proof beyond reasonable doubt" in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge "beyond reasonable doubt". In *Ramakant Rai* v. *Madan Rai* [*Ramakant Rai* v. *Madan Rai*, (2003) 12 SCC 395 : 2004 SCC (Cri) Supp 445] referring to the expression "reasonable doubt" in criminal law it was held as under : (SCC p. 405, para 24)

"*24*. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

20. Proof beyond "reasonable doubt" is certainly not the requirement under the proviso to Section 14 of the Act and Rule 12 of the 2007 Rules, *albeit* the above quote draws a distinction between a simple doubt and a doubt which is reasonable. In the context of the proviso to Section 14 read with Rule 12 and clause (*iii*) of the Explanation to the 2007 Rules, the doubt must be reasonable and based on "certain reasons". The proper officer must record "certain reasons" specified in sub-clauses (*a*) to (*f*) or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable. Reasonable doubt will exist if the doubt is reasonable and for "certain reasons" and not fanciful and absurd. A doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere

perception not founded on reasonable and "certain" material. It should be based and predicated on grounds and material in the form of "certain reasons" and not mere ipse dixit. Subjecting imports to detailed enquiry on mere suspicion because one is distrustful and unsure without reasonable and certain reasons would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of imported goods.

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25. As per sub-rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.

26. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, *albeit* it has been read by us by implication in Rule 12. Being conscious that this mandate if applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case-to-case basis, depending upon the factual matrix and considerations like whether the importer has asked for "certain reasons", whether the reasons were not communicated, whether "certain reasons" can be deciphered from the assessment/valuation order, whether misdescription or false declaration was apparent, etc.

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28. We would now refer to the findings of the order-in-original in the present case which observes that the appellants had declared value of the aluminium scrap as Rs 81.31 per kg, albeit the contemporaneous import data in the form of different bills of entry had indicated aluminium scrap values between Rs 83.26 to Rs 120.897 per kg. The said portion of the order refers to at least four bills of entries declaring assessable value of less than Rs 85 per kg. Interestingly, the order-in-original also records that the imported goods being aluminium scrap was not a homogeneous commodity and therefore, cannot be evaluated on the basis of the samples or lab testing. Further, the order holds that it was very difficult to find any identical/similar goods imported in India having same chemical and physical composition and that the values of aluminium scrap identical/similar to the imported goods in nature and specification

were not available. Without commenting on correctness of the said statements, we would observe that the aforesaid reasoning for rejection of the transactional value, would not meet the mandate of Section 14 and the Rules as elucidated in *Sanjivani Non-Ferrous Trading (P) Ltd.* [*CCE* v. *Sanjivani Non-Ferrous Trading (P) Ltd.*, (2019) 2 SCC 378] wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry. We have also elaborated and explained the legal position with reference to Rule 12 of the 2007 Rules.

29. Therefore, in the facts and circumstances of the present case, it has to be held that the adjudication order-in-original is flawed and contrary to law for it does not give cogent and good reason in terms of Section 14(1) and Rule 12 for rejection of the transaction value as declared in the bill of entry. The order-in-original is not in accordance with Section 14 and Rules 3 and 12 as the mandate of these provisions has been ignored. The Assistant Collector has rejected the transaction value as declared in the bill of entry which, as noticed above, is clearly and fundamentally erroneous besides being contradictory. In the aforesaid circumstances, we do not think that the order in assessment dated 7-4-2017 can be sustained and upheld. It is set aside and quashed.

30. Before closing, we would observe that the valuation alerts, as also stated by the respondents, are issued by the Director General of Valuation based on the monitoring of valuation trends of sensitive commodities with a view to take corrective measures. They provide guidance to the field formation in valuation matters. They help ensure uniform practice, smooth functioning and prevent evasion and short payment of duty. However, they should not be construed as interfering with the discretion of the assessment authority who is required to pass an assessment order in the given factual matrix. Declared valuation can be rejected based upon the evidence which qualifies and meets the criteria of "certain reasons". Besides the opinion formed must be reasonable. Reference to foreign journals for the price quoted in exchanges, etc., to find out the correct international price of goods concerned would be relevant but reliance can be placed on such material only when the adjudicating authority had conducted enquiries and ascertained details with reference to the goods imported which are identical or similar and "certain reason" exists and justifies detailed investigation. These reasons are to be recorded and if requested, disclosed/communicated to the importer. Valuation alerts could be relied upon for default valuation computation under the Rules. [See *Varsha Plastics (P) Ltd.* v. *Union of India* [*Varsha Plastics (P) Ltd.* v. *Union of India*, (2009) 3 SCC

365] .]"

79. The statutory scheme which emerges from the aforesaid discussion could be summarised in the following words. Although the procedure for verification and ascertainment of the correctness of the declared value has been lucidly explained by the Supreme Court in *Century Metal Recycling*, we would for purposes of clarity break down that process in order to highlight the sequential steps which are contemplated thereunder. Undisputedly, Section 17(2) empowers the proper officer to verify the entries made in the self-assessed declarations. For the purposes of undertaking that verification exercise, the proper officer by virtue of sub-section (3) of Section 17 stands statutorily enabled to require the importer or any other person to produce documents and information so as to ascertain the correctness of the declarations made. It is only after the completion of that verification process and when the proper officer comes to conclude that the self-assessment has not been done correctly that it would proceed to reassess the duty leviable on the imported goods. This clearly flows from a perusal of Section 17(4) of the Act.

80. The provisions contained in Rule 12(1) are in essence an amalgam of the procedure prescribed and stipulated in sub-sections (3) and (4) of Section 17. Rule 12(1) amplifies the position to the extent of providing that it is only where a reasonable doubt continues to linger even after consideration of the information that may have been obtained from the importer or exporter in terms of sub-section (3) of section 17 that it would be deemed that the transaction value of those goods cannot be determined in accordance with the provisions of Rule 3(1).

81. Section 17(5) then proceeds further and constitutes the next fundamental step which the statute constructs in respect of reassessment. Shorn of unnecessary details, it prescribes that where the reassessment done under Section 17(4) is at variance with the self-assessment of the importer, the proper officer would proceed to pass a speaking order in support of such reassessment. A combined reading of sub-sections (4) and (5) of Section 17 thus leads one to the irresistible conclusion that a reassessment, provisional or preliminary, would already exist and would have been formulated prior to sub-section (5) getting triggered.

82. It is also important to bear in mind that Rule 12(2) is essentially concerned with the first limb of the reassessment exercise and is connected with Section 17(4). This would clearly appeal to reason since the information or documentation that may be elicited from the importer would have to be concerned with the reasonable doubt which the proper officer harbours and thus obliged to communicate to the importer upon request the grounds on the basis of which it doubts the truthfulness or accuracy of the value declared. It is also pertinent to note that sub-section (4) of Section 17 is prefaced by the use of the expression *"Where it is found on verification, examination or testing…"*. It is this verification exercise which would necessarily entail the importer being provided a reasonable opportunity to be heard before a final decision is taken. It is perhaps in the aforesaid light that *Century Metal Recycling* observed that neither the opportunity of questioning an opinion with respect to reassessment as formed nor an opportunity of hearing can be waived. In fact, it held that the aforesaid procedure would clearly be mandatory.

B. Exploring the concepts of abandonment and waiver

83. That then takes us to the concession which the importer could tender and which would require us to identify the subject in respect of which that concession may be made. When we examine this aspect on the anvil of Section 17(5), it becomes apparent that the statute speaks of the concession being with reference to the reassessment made under Section 17(4). It thus proceeds to provide that in a case where the importer confirms his acceptance of the reassessment in writing, the proper officer would stand relieved of the obligation of passing a speaking order in respect of such reassessment. In all other cases and where the reassessment is not acceded to, the proper officer is obliged to pass a speaking order. Thus, the waiver or concession is at best confined to the speaking order which the proper officer is obliged to frame in affirmation of the provisional opinion that it may have formed under Section 17(4).

84. We find ourselves unable to construe Rule 12(2) as contemplating any concession or waiver at least in explicit terms. All that Rule 12(2) stipulates is that the proper officer would intimate to the importer the grounds for doubting the declared value at its request. It is in the aforesaid context that we would thus have to adjudge whether the CESTAT was correct in holding that the exchange of communications amounted to a waiver or abandonment not just of the right to question and assail the reassessment but to impugn it in further proceedings in accordance with the procedure prescribed under the Act.

85. In our considered opinion, the perceived concession made in respect of the opinion harboured by the proper officer cannot possibly be interpreted or construed as detracting from or depriving the importer

of the right to question the decision of the proper officer in accordance with law. The right to question the correctness of the decision of the proper officer, be it with respect to the formation of opinion or even on merits, is one which is protected by statute. The question, which as a sequitur, arises is whether that right itself can be said to have been abandoned.

86. Way back in 1952, the Supreme Court in **Sha Mulchand & Co. Ltd. vs. Jawahar Mills Ltd.**[27] explained the concepts of abandonment and waiver succinctly in the following terms:

> "**12.** The appeal court, it will be observed, reversed the decision of the trial Judge and decided the appeal against the Company on two grounds only, namely, (*1*) that the Company had by the conduct of its two members abandoned its right to challenge the forfeiture; and (*2*) that the form of the order could not be supported as one validly made under Section 38 of the Companies Act. The learned Attorney General, appearing in support of this appeal, has assailed the soundness of both these grounds. The learned Attorney General contends, not without considerable force, that having, in agreement with the trial court, held that no plea of acquiescence, waiver or estoppel had been established in this case, the appeal court should not have allowed the Mills to raise the question of abandonment of right by the Company, inasmuch as no such plea of abandonment had been raised either in the Mills' affidavit in opposition to the Company's application or in the Mills, grounds of appeal before the High Court. Apart from this, the appeal court permitted the Mills to make out a plea of abandonment of right by the Company as distinct from the pleas of waiver, acquiescence and estoppel and sought to derive support for this new plea from the well-known cases of *Prendergast* v. *Turton* [*Prendergast* v. *Turton*, (1841) 1 Y & C Ch Cas 98 : 62 ER 807] , *Clarke & Chapman* v. *Hart* [*Clarke & Chapman* v. *Hart*, (1858) 6 HL Cas 633 : 10 ER 1443] and *Jones* v. *North Vancouver Land & Improvement Co.* [*Jones* v. *North Vancouver Land & Improvement Co.*, 1910 AC 317 (PC)] A perusal of the relevant facts set out in the several reports and the respective judgments in the above cases will clearly indicate that apart from the fact that some of them related to collieries which were treated on a special footing, those cases were really cases relating to waiver or acquiescence or estoppel. Indeed in *Clarke case* [*Clarke & Chapman* v. *Hart*, (1858) 6 HL Cas 633 : 10 ER

[27] (1952) 2 SCC 674

1443] while Lord Chelmsford referred to the decision in *Prendergast case* [*Prendergast* v. *Turton*, (1841) 1 Y & C Ch Cas 98 : 62 ER 807] as a case of abandonment of right, Lord Wensleydale read it as an instance of acquiescence and estoppel. Unilateral act or conduct of a person, that is to say act or conduct of one person which is not relied upon by another person to his detriment, is nothing more than mere waiver, acquiescence or laches, while act or conduct of a person amounting to an abandonment of his right and inducing another person to change his position to his detriment certainly raises the bar of estoppel. Therefore, it is not intelligible how, having held that no plea of waiver, acquiescence or estoppel had been established in this case, the appeal court could, nevertheless, proceed to give relief to the Mills on the plea of abandonment by the Company of its rights. If the facts on record were not sufficient to sustain the plea of waiver, acquiescence or estoppel, as held by both the courts, we are unable to see how a plea of abandonment of right which is an aggravated form of waiver, acquiescence or laches and akin to estoppel could be sustained on the self-same facts. Further, whatever be the effect of mere waiver, acquiescence or laches on the part of a person on his claim to equitable remedy to enforce his rights under an executory contract, it is quite clear, on the authorities, that mere waiver, acquiescence or laches which does not amount to an abandonment of his right or to an estoppel against him cannot disentitle that person from claiming relief in equity in respect of his executed and not merely executory interest. (See per Lord Chelmsford in *Clarke case* [*Clarke & Chapman* v. *Hart*, (1858) 6 HL Cas 633 : 10 ER 1443] at p. 657.) Indeed, it has been held in *Garden Gully United Quartz Mining Co.* v. *McLister* [*Garden Gully United Quartz Mining Co.* v. *McLister*, (1875) 1 AC 39 (PC)] that mere laches does not disentitle the holder of shares to equitable relief against an invalid declaration of forfeiture. Sir Barnes Peacock in delivering the judgment of the Privy Council observed at AC pp. 56-57 as follows:

> "There is no evidence sufficient to induce their Lordships to hold that the conduct of the plaintiff did amount to an abandonment of his shares, or of his interest therein, or estop him from averring that he continued to be the proprietor of them. There certainly is no evidence to justify such a conclusion with regard to his conduct subsequent to the advertisement of 30-5-1869. In this case, as in that of *Prendergast* v. *Turton* [*Prendergast* v. *Turton*, (1841) 1 Y & C Ch Cas 98 : 62 ER 807] , the plaintiff's interest was executed. In other words, he had a legal interest in his shares, and did not require a declaration of trust or the assistance of a court of equity to create in him an interest in them. Mere laches would not, therefore, disentitle him to equitable relief : *Clarke & Chapman* v. *Hart* [*Clarke & Chapman* v. *Hart*, (1858) 6 HL Cas 633 : 10 ER 1443] . It was upon the ground

of abandonment, and not upon that of mere laches, that *Prendergast* v. *Turton* [*Prendergast* v. *Turton*, (1841) 1 Y & C Ch Cas 98 : 62 ER 807] was decided."

13. Two things are thus clear, namely, (*1*) that abandonment of right is much more than mere waiver, acquiescence or laches and is something akin to estoppel if not estoppel itself; and (*2*) that mere waiver, acquiescence or laches which is short of abandonment of right or estoppel does not disentitle the holder of shares who has a vested interest in the shares from challenging the validity of the purported forfeiture of those shares. In view of the decision of the courts below that no case of waiver, acquiescence, laches or estoppel has been established in this case it is impossible to hold that the principles deducible from the judicial decisions relied upon by the appeal court have disentitled the Company to relief in this case. The matter does not rest even here. Assuming, but not conceding, that the principle of piercing the veil of corporate personality referred to in *Smith, Stone & Knight Ltd.* v. *Birmingham Corpn.* [*Smith, Stone & Knight Ltd.* v. *Birmingham Corpn.*, (1939) 4 All ER 116 (KB)] can at all be applied to the facts of the present case so as to enable the Court to impute the acts or conduct of Govindaraju Chettiar and Sundara Ayyar to the Company, we have yet to inquire whether those acts or conduct do establish such abandonment of rights as would, according to the decisions, disentitle the plaintiff from questioning the validity of the purported declaration of forfeiture. There can be no question that the abandonment, if any, must be inferred from acts or conduct of the Company as such or, on the above principles, of its two members subsequent to the date of the forfeiture, for it is the right to challenge the forfeiture that is said to have been abandoned. In order to give rise to an estoppel against the Company, such acts or conduct amounting to abandonment must be anterior to the Mills' changing its position to its detriment. The resolution for forfeiture was passed on 5-9-1941. The five thousand forfeited shares were allotted to 14 persons on 16-11-1941, and it is such allotment that made it impossible for the Mills to give them back to the Company. In order, therefore, to sustain a plea of abandonment of right or estoppel, it must be shown that the Company or either of its two members had done some act and/or had been guilty of some conduct between 5-9-1941 and 16-11-1941. No such act or conduct during such period has been or can be pointed out. On being pressed advocate for the Mills refers us to the conduct of Sundara Ayyar in opposing OP No. 10 of 1942 filed by the Mills and OP No. 11 of 1942 by the Income Tax Authorities for restoring the Company to the register of companies and it is submitted that such conduct indicates that Sundara Ayyar had accepted the validity of the forfeiture. This was long after the Mills had reallotted the forfeited shares. Further, a perusal of Para 9 of the affidavit in opposition filed by Sundara Ayyar in OP No. 10 of 1942 will clearly show that he not only did not accept the forfeiture as valid but

actually repudiated such forfeiture as wholly beyond the competence of the Board of Directors of the Mills. The reason for opposing the restoration of the Company may well have been that Sundara Ayyar desired, at all cost, to avoid his eventual personal liability as a shareholder and Director of the Company. In any case, Sundara Ayyar did make it clear that he challenged the validity of the purported forfeiture of shares by the Mills and in this respect this case falls clearly within the decision in *Clarke case* [*Clarke & Chapman* v. *Hart*, (1858) 6 HL Cas 633 : 10 ER 1443] relied upon by the appeal court. The only other conduct of Sundara Ayyar relied on by the learned advocate for the Mills in support of the appeal court's decision on this point is that Sundara Ayyar proceeded with his suit against Palaniappa Chettiar even after his suit as well as his appeal had been dismissed as against the Mills. In that suit Sundara Ayyar sued the Mills as well as Govindaraju Chettiar and the Official Receiver of Salem representing the latter's estate and Palaniappa Chettiar. In the plaint itself the validity of the forfeiture was challenged. The claim against Palaniappa Chettiar was in the alternative and it was founded on the agreement of 30-6-1939. The suit was dismissed as against the Mills only on the technical ground that Sundara Ayyar had no locus standi to maintain the suit. The contention of the Company that the forfeiture was invalid and the claim for rectification of the share register of the Mills by restoring the name of the Company cannot possibly have been affected by this decision. Sundara Ayyar's claim against Palaniappa Chettiar was based on the agreement of 1939 and it was formulated as an alternative personal claim. In view of the clear allegation in the plaint that the forfeiture was invalid and not binding on the Company, the continuation of the suit by Sundara Ayyar to enforce his personal claim against Palaniappa Chettiar cannot be regarded as an abandonment by Sundara Ayyar of the right of the Company. It must not be overlooked that the Company stood dissolved on that date and Sundara Ayyar had no authority to do anything on behalf of the Company. In our opinion, there is no evidence of abandonment of the Company's right to challenge the validity of the purported forfeiture."

87. In *Sha Mulchand & Co.*, the Supreme Court was essentially called upon to answer the question of whether the conduct of two members of the company could be viewed as an abandonment of its right to challenge the forfeiture of shares. Ruling on that question, the Supreme Court explained that abandonment must and would have to be more than mere waiver, acquiescence, or laches. It proceeded further to significantly observe that a mere waiver, acquiescence, or laches which

falls short of abandonment of the right itself would not disentitle the aggrieved party to question the forfeiture.

88. In a concurring opinion which was penned by Vivian Bose J., the concept of waiver was explained as follows:

> "**22.** In the first place, waiver and abandonment are in their primary context unilateral acts. Waiver is the intentional relinquishment of a right or privilege. Abandonment is the voluntary giving up of one's rights and privileges or interest in property with the intention of never claiming them again. But except where statutory or other limitations intervene, unilateral acts never in themselves effect a change in legal status because it is fundamental that a man cannot by his unilateral action affect the rights and interests of another except on the basis of statutory or other authority. Rights and obligations are normally intertwined and a man cannot by abandonment *per se* of his rights and interests thereby rid himself of his own obligations or impose them on another. Thus, there can be no abandonment of a tenancy except on statutory grounds (as, for example, in the Central Provinces Tenancy Act, 1920) unless there is acceptance, express or implied, by the other side. It may, for example in a case of tenancy, be to the landlord's interest to keep the tenancy alive; and so also in the case of shares of a company. It may be to the interests of the company and the general body of shareholders to refrain from forfeiture if, for example, the value of unpaid calls exceeds the market value of the shares. Such a position was envisaged in *Garden Gully United Quartz Mining Co.* v. *McLister* [*Garden Gully United Quartz Mining Co.* v. *McLister*, (1875) 1 AC 39 at p. 57 (PC)] . So also with waiver. A long catena of illustrative cases will be found collected in B.B. Mitra's *Indian Limitation Act*, 13th Edn., pp. 447 and 448."

89. The question of abandonment arose for consideration again before a Constitution Bench of the Supreme Court in **Bhau Ram vs. Baij Nath Singh**[28]. The issue itself arose in light of the stand of the respondents that the appellants upon withdrawing the pre-emption price would be deemed to have accepted the decree and thus being deprived of the right to assail or question the same. While answering that question, the Supreme Court pertinently observed as follows:

[28] 1961 SCC OnLine SC 292

"**4.** The view taken in the other cases proceeds on similar reasoning. But what has to be noted is that in all these cases the benefit conferred by the order was something apart from the merits of the claim involved in these cases. What we are called upon to decide is whether the appellant by withdrawing the pre-emption price can be said to have adopted the decree from which he had already preferred an appeal. The appellant did not seek to execute the decree, and indeed the decree did not confer a right upon him to sue out execution at all. The decree merely conferred a right upon the plaintiff-Respondent 1 to deposit the price of pre-emption and upon his doing so, entitled him to be substituted in the sale deed in place of the vendee. The act of the appellant in withdrawing the pre-emption price after it was deposited by the Respondent 1 cannot clearly amount to an adoption by him of the decree which he had specifically challenged in his appeal.

xxxx **xxxx** **xxxx**

7. It seems to us, however, that in the absence of some statutory provision or of a well-recognised principle of equity, no one can be deprived of his legal rights including a statutory right of appeal. The phrase "approbate and reprobate" is borrowed from Scots law where it is used to express the principle embodied in the English doctrine of election, namely, that no party can accept and reject the same instrument (per Scrutton, L.J. in *Verschures Creameries Ltd.* v. *Hull and Neitherlands Steamship Co. Ltd.* [(1921) 2 KB 608]). The House of Lords further pointed out in *Lissenden* v. *C.A.V. Bosch, Ltd.* [(1940) AC 412] that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument. In that case they held that the withdrawal by a workman of the compensation money deposited by the employer could not take away the statutory right of appeal conferred upon him by the Workmen's Compensation Act. Lord Maugham, after pointing out the limitations of the doctrine of approbate and reprobate observed towards the conclusion of his speech:

> "It certainly cannot be suggested that the receipt of the sum tendered in any way injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice." (pp. 421-422).

xxxx **xxxx** **xxxx**

12. It seems to us that a statutory right of appeal cannot be presumed to have come to an end because the appellant has in the meantime abided by or taken advantage of something done by the opponent under the decree and there is no justification for extending the rule in *Tinkler case* [154 English Reports, 1176 : 4 Exch 187] to cases like the present. In our judgment it must be limited only to those cases where a person has elected to take a benefit otherwise than on the merits of the claim in the lis under an order to which benefit he could

> not have been entitled except for the order. Here the appellant, by withdrawing the pre-emption price has not taken a benefit de hors the merits. Besides, this is not a case where restitution is impossible or inequitable. Further, it seems to us that the existence of a choice between two rights is also one of the conditions necessary for the applicability of the doctrine of approbate and reprobate. In the case before us there was no such choice before the appellant, and, therefore, his act in withdrawing the pre-emption price cannot preclude him for continuing his appeal. We, therefore, overrule the preliminary objection. The appeal will now be set down for hearing on merits. The costs of this hearing will be costs in the appeal."

90. In **M. Ramnarain (P) Ltd. vs. State Trading Corpn. of India Ltd.**[29], a question arose as to whether an application made by a party to a suit to be accorded the facility of liquidating the decretal amount prior to judgment being pronounced in instalments would amount to an abandonment of a right to appeal. The Supreme Court while examining that issue had taken note of the enunciation of the law in this regard as it appeared in Halsbury's Laws of England and would be evident from the following extracts of that decision:

> "**10.** Mr Nariman does not dispute that though the right of an appeal is a statutory right enjoyed by a party, the party in an appropriate case may lose his right of appeal. But he submits that a very strong case must be made out to establish that a party has forfeited his right to prefer an appeal. According to Mr Nariman, the right of appeal may be lost because of any provision of law and also in appropriate cases, the parties may lose his right of appeal because of his conduct. Mr Nariman contends that in the instant case, the present appeal is within time; and the provisions of the Code earlier referred to or the provisions of any other law do not have the effect of extinguishing the right of the appellant to prefer an appeal against the decree. Mr Nariman submits that the facts and circumstances of this case cannot justifiably lead to the conclusion that the appellant by his conduct has disentitled himself to file the present appeal against the decree. He argues that the conduct that can be attributed to the appellant is that he prayed for instalments, filed an appeal against the order regarding instalments and he has withdrawn the same. He reiterates that if the earlier appeal against the order regarding the instalments is held to be incompetent, the conduct of the appellant in withdrawing the incompetent appeal is indeed of no consequence. Mr Nariman

[29] (1983) 3 SCC 75s

argues that the prayer for instalments is made only on the basis that if the case of the appellant is not accepted and a decree is passed against him, the appellant may be granted instalments to pay the decretal amount and such a prayer when it is not known whether a decree will at all be passed against the appellant and if so, for what amount, can never be considered to amount to such conduct as to disentitle or preclude him from filing an appeal against the decree. Mr Nariman argues that it cannot be said that in the instant case the defendant-appellant has elected to exercise one of two alternative remedies and by virtue of such election he has deprived himself from exercising the other right, as the defendant-appellant has both the remedies open to him and no question of election on his part arises. Mr Nariman submits that in the facts and circumstances of this case it cannot legitimately be held that the appellant waived his statutory right to file an appeal against the decree and otherwise became estopped from exercising his right. In this connection Mr Nariman has referred to *Halsbury's Laws of England*, 4th Edn., Vol. 16, paras 1471, 1472, 1473 and 1474 at pp. 992 to 996 which read as follows:

> "1471. *Waiver.*—Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel, although, unlike estoppel, waiver must always be an intentional act with knowledge. A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration. Where the waiver is not express it may be implied from conduct which is inconsistent with the continuance of the right, without need for writing or for consideration moving from, or detriment to, the party, who benefits by the waiver; but mere acts of indulgence will not amount to waiver; nor can a party benefit from the waiver unless he has altered his position in reliance on it. The waiver may be terminated by reasonable but not necessarily formal notice unless the party who benefits by the waiver cannot resume his position, or termination would cause injustice to him. It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot

afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration.

Where the right is a right of action or an interest in property, an express waiver depends upon the same consideration as a release. If it is a mere statement of an intention not to insist upon the right it is not effectual unless made with consideration, but where there is consideration the statement amounts to a promise and operates as a release. Even where there is no express waiver the person entitled to the right may so conduct himself that it becomes inequitable to enforce it (this is sometimes called an implied waiver), but in such cases the right is lost on the ground either of estoppel or of acquiescence, whether by itself or accompanied by delay. Where it is claimed that the decision of a tribunal is a nullity, a party's right of action in the High Court is not waived by appeal to a higher tribunal whose decision is expressed by Parliament to be final.

1472. *Knowledge of rights essential.*— For a release or waiver to be effectual it is essential that the person granting it should be fully informed as to his rights. Similarly, a confirmation of an invalid transaction is inoperative unless the person confirming knows of its invalidity.

1473. *Estoppel and acquiescence.*— The term 'acquiescence' is used where a person refrains from seeking redress when there is brought to his notice a violation of his rights of which he did not know at the time, and in that sense acquiescence is an element in laches. Subject to this, a person whose rights have been infringed without any knowledge or assent on his part has vested in him a right or action which, as a general rule, cannot be delivered without accord and satisfaction or release under seal.

The term, is, however, properly used where a person having a right, and seeing another person about to commit it in the course of committing an act infringing upon the right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, a person so standing by cannot afterwards be heard to complain of the act. In that sense the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by

words or conduct, the principle of estoppel by representation applying both at law and in equity, although its application to acquiescence is equitable. The estoppel rests upon the circumstance that the person standing by in effect makes a misrepresentation as to a fact, namely, his own title; a mere statement that he intends to do something, for example, to abandon his right, is not enough. Furthermore, equitable estoppel is not applied in favour of a volunteer.

The doctrine of acquiescence operating as an estoppel was founded on fraud, and for the reason is no less applicable when the person standing by is a minor. As the estoppel is raised immediately by the conduct giving rise to it lapse of time is of no importance, and for the reason the effect of acquiescence is expressly preserved by statute.

1474. *Elements in the estoppel.*— When *A* stands by while his right is being infringed by *B* the following circumstances must as a general rule be present in order that the estoppel may be raised against *A:* (1) *B* must be mistaken as to his own legal rights; if he is aware that he is infringing the rights of another, he takes the risk of those rights being asserted; (2) *B* must expend money, or do some act, on the faith of his mistaken belief: otherwise, he does not suffer by *A's* subsequent assertion of his rights; (3) acquiescence is founded on conduct with a knowledge of one's legal rights, and hence *A* must know of his own rights; (4) *A* must know of *B's* mistaken belief; with that knowledge it is inequitable for him to keep silence and allow *B* to proceed on his mistake; (5) *A* must encourage *B* in his expenditure of money or other act, either directly or by abstaining from asserting his legal right. On the other hand there is no hard and fast rule that ignorance of a legal right is a bar to acquiescence in a breach of trust, but the whole of the circumstances must be looked at to see whether it is just that a complaining beneficiary should proceed against a trustee.""

91. It proceeded further on facts to hold as under:

"**28.** It is not in dispute that the defendant-appellant had filed an affidavit asking for postponement of payment of any money decree that may be passed and also for payment of the amount in instalments. The filing of an affidavit on the conclusion of hearing and before pronouncement of judgment cannot in the facts and circumstances of this case be considered to amount to such conduct on the part of the defendant-appellant as to disentitle him to file an appeal against any decree that may ultimately be passed against him.

In view of the provisions contained in Order 20 Rule 11(1) of the Code, the prayer for instalment has necessarily to be made before the pronouncement of the judgment and the passing of a decree, as the court after the passing of the decree can grant instalments only with the consent of the decree-holder in terms of the provisions contained in Order 20 Rule 11(2) of the Code. Till the very last stage of the hearing of the suit the defendant-appellant had seriously contested the claim of the plaintiff-respondent and had in fact pressed for a counter-claim against the plaintiff-respondent. Before the delivery of judgment the defendant-appellant could not possibly have known with any amount of certainty whether any decree against the defendant-appellant would be passed in the suit, and if so, for what amount. Under such circumstances it cannot be said that any party who in view of the provisions contained in Order 20 Rule 11(1) makes a prayer for postponement of payment of the decretal amount and asks for payment of the same in instalments makes any representation that he will accept any decree that may be passed against him and will not prefer any appeal against the same. A mere prayer for postponement of payment of the decretal amount or for payment thereof in instalments on the basis of the provisions contained in Order 20 Rule 11(1) of the Code at a time when the decision in the suit is yet to be announced can never be considered to amount to such conduct of the party as to deprive him of his right to prefer an appeal against any decree, if ultimately passed, and to disentitle him from filing an appeal against the decree. It is no doubt true that after the judgment had been pronounced and the decree had been passed it was open to the defendant-appellant to file an appeal against the decree. It may be noted that immediately after the pronouncement of judgment and the passing of the decree three separate precipes or requisitions had been filed on behalf of the defendant-appellant to the Prothonotary and Senior Master of the Bombay High Court and there was a specific requisition for a certified copy of the decree when drawn up, apart from requisitions for a certified copy of the judgment and also for certified copy of the minutes of the order. The immediate filing of the requisition for the certified copy of the decree and also of the judgment clearly manifests the intention of the defendant-appellant to prefer an appeal against the decree. It is common knowledge that in matters of litigation the litigant who is not expected to be familiar with the formalities of law and rules of procedure is generally guided by the advice of his lawyers. The statement of the lawyers recorded by the Division Bench in its judgment clearly goes to indicate that the lawyer had advised filing of the earlier appeal under a mistaken belief. The act done by the defendant-appellant on the mistaken advice of a lawyer cannot furnish a proper ground for depriving the defendant-appellant of his valuable statutory right of preferring an appeal against the decree. We have already held that the earlier Appeal No. 36 of 1981 against the provision regarding instalments

was incompetent and the filing of an incompetent appeal or the withdrawal of the same does not entail any legal consequences, prejudicing the right of the defendant-appellant to file a proper appeal against the decree. The question which still remains to be considered is whether the act of filing an appeal against the order regarding instalments and not filing an appeal against the decree, when it was open to the defendant-appellant to do so, can be regarded to constitute such conduct on the part of the defendant-appellant as to disentitle him to maintain the present appeal. The filing of an incompetent appeal on the mistaken advice of a lawyer cannot, in our opinion, reflect any such conduct on the part of the defendant-appellant. An appeal which is not competent is necessarily bound to fail, and in such a case the proper course for an appellant would be to file a valid and competent appeal. The filing of an incompetent appeal and the withdrawal of the same do not prejudice the right to file a proper appeal and cannot be held to constitute such conduct on the part of an appellant as to deprive him of his right to file a valid appeal. The filing of the earlier Appeal No. 36 of 1981 cannot in the facts and circumstances of this case be said to manifest any intention on the part of the defendant-appellant that he would not prefer an appeal against the decree and the same does not amount to any representation that he otherwise accepts the decree. In judging the conduct of the defendant-appellant to decide whether the defendant-appellant had abandoned, relinquished or waived his right of appeal against the decree, all the relevant facts and circumstances which have a bearing on the question have to be considered. The facts and circumstances of this case clearly go to indicate that the defendant-appellant had felt aggrieved by the decree and had not manifested any intention to accept the same and not to prefer an appeal against the decree. As we have earlier seen, the defendant-appellant had not only denied and disputed the case of the plaintiff-respondent but had also made a counter-claim in the suit against the plaintiff-respondent. The defendant-appellant had throughout contested the suit and the claim of the plaintiff-respondent with all seriousness. Immediately on the pronouncement of judgment the defendant-appellant clearly manifested its intention of preferring an appeal against the decree by causing the necessary requisition for the certified copy of the decree and judgment to be filed. The stakes involved in the suit of the defendant-appellant were very high and the judgment and the decree in the suit had gone against the defendant-appellant. In this background the filing of the earlier appeal on the mistaken advice of the lawyer cannot in our opinion, legitimately lead to the conclusion that the defendant-appellant had abandoned or relinquished his right to prefer the present appeal and that the defendant-appellant had become disentitled to file the same. The further fact that the earlier Appeal No. 36 of 1981 was withdrawn the very next day after the same had been filed at the stage of admission and the present appeal came to be filed just a

> week after the withdrawal of the earlier appeal clearly establishes that the defendant-appellant had never intended to relinquish or abandon its right to file an appeal against the decree. The earlier Appeal No. 36 of 1981 which was filed on January 20, 1981 and was withdrawn on January 21, 1981 at the time of admission, could not possibly have caused any prejudice to the plaintiff-respondent. The promptitude with which the present appeal was filed just after a week on January 29, 1981 indicates that the defendant-appellant had never intended to give up their right of appeal against the decree and they have acted with all promptness and earnestness on being properly advised as to the legal position and as to their legal rights. The filing of the earlier Appeal No. 36 of 1981 in the facts and circumstances of this case does not amount to any representation or promise on the part of the defendant-appellant to accept the decree on merits and not to prefer an appeal from the same. There is also no question of election on the part of the defendant-appellant in preferring an appeal against the order regarding the instalment and not against the decree on merits. It is not a case where a party is called upon to elect one of two alternative remedies, when by election of one of two alternative remedies he loses his right to pursue the other. In the instant case, the defendant-appellant has a statutory right to prefer an appeal against the decree and any question of election on his part does not arise."

92. As was explained in Halsbury's Laws of England, waiver is the abandonment of a right which may be deduced either in light of an expressed assertion or implied from conduct. Waiver, as explained, could be implied from conduct if it be found to be inconsistent with the continuance of the right. However, it was explained that for a release or waiver to be effective, it would be essential for the person being found to have conducted himself to that effect, even after having been fully informed of his rights. The Supreme Court further observed that abandonment, waiver, or acquiescence cannot be presumed if it were found that the person whose rights had been infringed had not been informed of his rights.

93. Tested on the aforesaid precepts, it becomes more than apparent that the assertion of abandonment and waiver of a right is clearly misconceived. The tone and tenor of the communications which were

addressed by the appellants cannot possibly be interpreted or construed as amounting to a conscious waiver of a right to question the reassessment further. Not only do those documents appear to be the submission of a *"without prejudice"* request tendered in order to facilitate expeditious clearance of goods, the same cannot possibly be viewed or interpreted as amounting to an abandonment of the right to institute an appeal itself.

94. When we revert to the view expressed by the CESTAT in CUSAA 126/2022, we find that there is a clear absence of consideration of the various communications which had been addressed by the appellant to the customs authorities and which had preceded the finalization of re-evaluation of declared value. The CESTAT thus appears to have proceeded on the premise that the importer had all along agreed to the enhancement of the declared value and raised no protest. The CESTAT thus appears to have incorrectly proceeded on the basis that the communications addressed itself implied that the importers had willingly accepted the value as suggested by the customs authorities and consequently, the respondents being relieved of undertaking any adjudication as contemplated under Section 17 of the Act in light of the abandonment and waiver of the appellant's right to challenge the reassessment.

95. The appellants had registered their protest on more than one occasion and had also sought expeditious clearance of goods subject to an exercise of provisional reassessment being undertaken. These facts and circumstances clearly detract from the argument of a conscious abandonment of the right to question the reassessment or to accept the re-evaluation exercise undertaken without reservation of a right to

challenge.

C. Rejection of declared values: Assessing its validity

96. On an overall conspectus of the facts of the present case viewed alongside the material which has been placed for our consideration, we find that there was an abject failure on the part of the proper officer to disclose or communicate the reasons on the basis of which a reasonable doubt came to be raised with respect to declared value. We were informed that the formation of reasonable doubt was based on the contemporaneous import data with which the importer was confronted. However, and before us, it was conceded that the contemporaneous data which is spoken of was merely the data as appearing on the NIDB portal**.** We had an occasion to notice the host of precedents which had consistently held that the NIDB data could not on a standalone basis constitute a valid ground to doubt the declared value. Suffice it to note that the entire action ultimately rested on the letters submitted by the appellants seeking expeditious evaluation of the pending BoE in order to avoid the accruing liability of demurrage and other charges. The appellants also appear to have addressed a prayer for the goods being cleared provisionally to avoid the financial burden of detention and demurrages, subject to the submission of indemnity bonds and bank guarantees. It was only after all those requests fell on deaf ears that the appellant submitted a letter consenting to the re-determination of the value in accordance with what had been proposed by the proper officer. Of equal significance are some of those communications addressed to the proper officer in which the importers while consenting to the proposed reassessment had also conveyed their readiness to pay customs duty at the enhanced value as suggested "*under protest*".

Therefore, these were not cases where the concession was either unqualified or without reservation of a right to question an assessment made by the proper officer.

97. By virtue of Section 17(5) of the Act, the proper officer stands relieved of the obligation to pass a speaking order only in cases where the importer confirms his acceptance of the reassessment in writing. However, and as was noted in the preceding parts of this decision, the different Benches of the CESTAT have consistently taken the position that letters of consent of the like submitted by the appellants in this batch cannot be viewed as a complete or abject surrender of the right to assail or question a reassessment. However, the host of past precedents rendered on this aspect have come to be overlooked and ignored by the CESTAT which has merely proceeded to toe the line taken in the *Advanced Scan Support* and *Vikas Spinners*. We have already taken note of the distinguishing features which inform the aforementioned two decisions.

98. Therefore, the proper officer could not be said to have been relieved of its obligation to pass a speaking order in terms of Section 17(5). The process of rejecting the declared value and reassessing the transaction value is statutorily required to be preceded by the proper officer having drawn an opinion of why the declared value was not liable to be accepted before consequently proceeding to reassess the value. While the said reassessment may not be framed in elaborate terms, it would necessarily have to be reflective of the reasons which weighed upon the respondent to form the opinion that the declared value was not liable to be accepted.

99. Significantly in **Commissioner of Customs vs. South India**

Television (P) Ltd.[30], the Supreme Court had underscored the fact that the burden of proving incorrect valuation lies on the Department. It held that before rejecting the transaction value declared in an invoice, the Department must provide cogent reasons and evidence. This includes identifying imports of identical or similar goods at higher prices around the same time. The Court emphasized that an invoice serves as evidence of the transaction value and mere suspicion or allegations of undervaluation are insufficient for rejection. The Department must, it held, conduct detailed inquiries, gather material evidence, or present information on comparable imports to substantiate its claim. If relying on declarations from the exporting country, the Department must explain how such declarations were obtained and establish their probative value, even in adjudication proceedings where strict rules of evidence do not apply. The Supreme Court further clarified that once the Department provides evidence of contemporaneous imports at higher prices the burden shifts to the importer to validate the declared invoice. The Supreme Court thus highlighted that without adequate evidence or comparable import data, the declared invoice value must be accepted and the benefit of doubt should favour the importer. This is evident from the following principles enunciated in that judgment:

> **"12.** However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1-A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value.

[30] (2007) 6 SCC 373

> Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods."

D. Value enhancement on the basis of NIDB data

100. Insofar as the aspect of whether the enhancement or re-evaluation of the 'declared value' can be based solely on the data available in the NIDB, in *Agarwal Foundries*, the Hyderabad Bench of the CESTAT had held that the customs authorities would be unjustified in enhancing the declared import values solely on the basis of NIDB data. It emphasized that transaction values cannot be rejected arbitrarily and that the authenticity of importer-issued invoices must be accepted unless discredited on the basis of cogent evidence. The CESTAT observed:

> "**6.2)** In all these cases, the imported goods are MS Steel (turning shredded scrap). The Customs Department has taken the view that the declared import values cannot be relied upon since they are based on invoices issued by traders and not at the manufacturers of such scrap. Based on this premise, the declared import values have been rejected and enhanced to higher level on the basis of purported contemporary import values found in the NIDB data. This

enhancement is the bone of contention in all these appeals.

6.3) MS Steel (turning shredded scrap) is generated in the course of manufacture of finished goods eg; machinery. Appellants, right from the beginning, have been crying hoarse that such scrap is disposed of by concerned manufacturers to traders and that they have to necessarily buy such scrap only from the traders at the prevalent market rate. This assertion has not been disproved or proved incorrect by Customs.

6.4) Department has also not backed up their allegations that the manner of purchase of the impugned goods from the traders and not from manufacturers, is not as per practice normally followed in the course of international trade in the said item. This being the case, we are of the opinion that Department cannot reject the invoices issued by traders the declared import values only for the reason that the accompanying invoices have not been issued by the manufacturers themselves. In any case, in our view, it is not as if the manufacturers concerned have set out or conduct their activities with the sole intention of manufacturing such "shredded scrap". Obviously the impugned goods are but shreds and turnings which have emerge during the manufacture of goods by the concerned manufacturers. There can be no dispute that these metal shreds and turnings would not be in very huge quantities vis-'-vis the actual goods manufactured. It also appears to reason that the manufacturers would prefer to dispose of such shredded scrap to the traders instead of expending time and energy selling them directly worldwide.

6.5) Viewed in this light, the invoices issued by the traders from countries like Belgium, Malaysia, Singapore etc. cannot be dismissed peremptorily unless there are justifiable reasons not to accept the genuineness or authenticity of such invoices. In any case, the declared values can be rejected only in terms of statutory provisions and rules governing valuation of imported goods.

6.6) Be it as it may, in all these cases, enhanced values have been adopted based on NIDB data only. The appellants have contended that the contemporary values on which the department intended to enhance the import values have not been provided to them. We find merit in these arguments. It is now well settled that NIDB data cannot be made the basis for enhancement of declared import values. The case laws relied upon by the appellant fully exemplify this ratio.

6.7) For example, the Tribunal in the case of *Commissioner of Customs, New Delhi v. Nath International* as reported at [2013 (289) ELT 305 (Tri.-Del.)] has laid down the following ratio:

> "7. 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 evidences 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. Commissioner (Appeals) has relied upon various decisions of the Tribunal for holding any enhancement in assessment value, the transaction value to be first rejected based on legal permissible ground as indicated in the valuation Rules. He has also referred to Hon'ble Supreme Court decision in the case of Eicher Tractors Ltd. v. CC, 2000 (122) ELT 321 (S.C) in support of his finding that transaction value cannot be rejected without clear and cogent evidence produce by the department with regard to quality, import of origin and place and time of import.

We find that in their memo of appeal, Revenue has not advance any such evidences to support their case, inasmuch as, no evidence of rejection of transaction value stands produced by the authority, we find no reason to interfere with the impugned order of Commissioner (Appeals). Mere reference to Commissioner Mumbai guidelines to enhance the value of ball bearings, without first assessing the quality of the goods is not justified. It stands accepted that the ball bearings were mix and not of uniform sizes. As such, Revenue's appeal has no merits".

6.8) In the case of *Topsia Estates Pvt. Ltd. v. CC (Import-Seaport) Chennai* as reported at [2015 (330) E.L.T 799 (Tri.-Chennai)], the Tribunal held as under:

"7. After hearing both sides and on perusal of the records, we find from the adjudication order that the adjudicating authority observed that the unit price declared appears to be very low compared to the contemporaneous import value available in NIDB data. The appellant imported PU Coated Fabrics of various thickness and different qualities from China. It is seen from the Table as reproduced in the adjudication order that the declared unit price varies from 0.90 MT to 1.60 MT and the value was enhanced from 1.24 per MT to 2.04 per MT. We have also noticed that the appellant imported the same goods from Kolkata Port also. The appellant in the written submission before the Commissioner (Appeals) submitted copies of the various orders passed by the Commissioner (Appeals) under which it was accepted. There is no evidence of higher value of contemporaneous import from same sources. There is no allegation of mis-declaration of the goods.

6.9) In a recent decision, in *Sarda Energy and Minerals Ltd. v. CCE*, Raipur, [2018 (359) E.L.T 262 (Tri.-Del.)], the above ratio was once again reiterated by Tribunal as follows:

> "In this connection, we have perused the provisions of Rule 12, which enables the rejection of declared assessable value. The said rules provide for proper officer seeking clarification from the importer to provide further information to satisfy the correctness of the declared assessable value. <u>In the present case, the appellants did submit the invoice, purchase order and supporting contract documents with reference to the impugned consignments. Nothing more is required with the importer to further substantiate the value. In such situation, it is for the assessing officer to discount the documents with valid reasons in order to reject the declared value and thereafter to proceed with the re-assessment, after due enhancement</u>. Explanation (1)(i)(iii)(a) in Rule 12 appears to be applicable 5 Customs Appeals Nos. 50503- 50504/2017 and 50519-50520/2017 to the present case. In other words, the assessing officer having noticed higher value of contemporaneous import raised the doubt regarding the correctness of declared value. The legal provisions mentioned in the Explanation clearly stipulates that the contemporaneous value should be significantly higher for identical or similar goods at or about the same time, in a comparable commercial transaction. We find in the present case due examination about this crucial aspect has not been done by the assessing officer and comparison based on the contemporaneous import is not proper. Further, the contractual arrangements and invoices should not be rejected in the absence of any evidence to question their authenticity. <u>As submitted by the appellants, NIBD data is a guidelines and an indicator for the assessing officer and it cannot be a substitute for assessable value. The assessable value for imported items has to be invariably arrived at applying Section 14 read with Customs Valuation Rules, 2007</u>.
>
> 7. We also note that the reliance placed by the appellant on the decision of the Tribunal in the case of *Topsia Estates Pvt. Ltd. v. CC, Chennai*, 2015 (330) ELT 799 (Tribunal-Chennai) is appropriate to the facts of the present case. The observation of the Tribunal is as below:—
>
> "<u>We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be very low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely</u>

> on the basis of NIDB data. It is noticed that the value of impugned goods varies widely on the basis of quality, size, quantity, etc., and it is contended by the appellant before the lower appellate authority that the declared value of the same goods were accepted by the 6 Customs Appeals Nos. 50503-50504/2017 and 50519-50520/2017 Department at Kolkata Port. We also find force in the submission of the learned Advocate that in this particular situation, Rule 9 of the Valuation Rules would not be invoked".
>
> 8. In view of the discussions and analysis, we find that the impugned orders cannot be legally sustained. Accordingly, the same are set aside. The appeals are allowed with consequential relief".

> **6.10)** We find that the above decisions will apply on all fours to the present appeals before us. We also find merit in the appellant's contention that Department has not brought out any other material to demolish the transaction value and has also not brought any evidence to prove that the overseas supplier has been paid consideration higher than the amount indicated in the invoices which have been paid through bank channels.
>
> **7)** In the event, we hold that all the impugned orders relating to these 14 appeals cannot sustain and will have to be set aside which we hereby do. Appeals are therefore allowed with consequential benefits, if any, as per law."

The Supreme Court in **Commissioner vs. Agarwal Foundries (P) Ltd.**[31] dismissed the appeal of the customs authority holding that it found no reason to interfere.

101. Similarly, the Ahmedabad Bench of the CESTAT in *Sedna Impex* ruled that it would be impermissible in law to make a value enhancement solely on the basis of NIDB data. The case involved the rejection of declared values for imported polyester fabrics from China, with the adjudicating authority re-determining the values based on NIDB data. Both the Commissioner (Appeals) and the original authority upheld the enhanced valuation, prompting the appellants to challenge those decisions. The CESTAT concluded that NIDB data alone, without supporting evidence or clarity on relevant parameters,

[31] 2020 (371) ELT A 295 (SC)

could not form the basis for for re-determining values and set aside the enhancement. On a consideration of the principles articulated by the Supreme Court in *Eicher Tractors*, the CESTAT had held:

> "**4.3** The dispute in the present case is regarding the valuation of the goods imported by the Appellants. The Assessing Authority re-assessed the imported goods at values higher than what was declared by the Appellants in the Bills of Entry. The revenue enhanced value as per NIDB data. We observed that the transaction value declared by the importer should form the basis of assessment unless the same is rejected, for the reasons set out in Rules of the Customs Valuation Rules. Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules outlines the step-by-step methodology to be adopted for re-determination of the assessable value in certain cases. The primary requirement for re-determination of the value is that the transaction value should be rejected for cogent reasons prescribed in the Customs Valuation Rules. If the transaction value is rejected, then the Customs Valuation Rules prescribes the basis for arriving at the assessable value. However, the requirement of Section 14 and the Customs Valuation Rules need to be satisfied for enhancement of value. Nothing is forthcoming from the record of the case from which the basis for such re-assessment can be made out. Rejection of declared value on Bill of Entry is a serious affair and the same could have been rejected on the basis of cogent examination of evidences and justifiable reasons.
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> Hon'ble Supreme Court has in case of Eicher Tractors [2000 (122) E.L.T. 321 (S.C.)] laid down very categorical as follows :
>
> > *"6. Under the Act customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation – in the course of international trade. The word 'ordinarily' necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale……….". Subject to these three conditions laid down in*

Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the rules framed in this behalf

7. The rules which have been framed are the Customs, Valuation (Determination of Price of Imported Goods) Rules, 1988. The rules came into force on 16th August, 1988. Under Rule 3(i) "the value of imported goods shall be the transaction value". "Transaction value" has been defined in Rule 2(f) as meaning the value determined in accordance with Rule 4. Rule 4(1) in turn states : "The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules."

8. Reading Rule 3(i) and Rule 4(1) together, it is clear that a mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value. But the mandate is not invariable and is subject to certain exceptions specified in Rule 4(2), namely :- (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which – (i) are imposed or required by law or by the public authorities in India; or (ii) limit the geographical area in which the goods may be resold; or (iii) do not substantially affect the value of the goods; (b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued; (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3)."

9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs authorities are bound to assess the duty on the transaction value.

10. The respondent's submission is that the phrase "the transaction value" read in conjunction with the word "payable" in Rule 4(1) allows determination of the ordinary international value of the goods to be ascertained

on the basis of data other than the price actually paid for the goods. This, according to the respondent, would be in keeping with the overriding effect of Section 14(1). We cannot agree.

11. It is true that the Rules are framed under Section 14(1A) and are subject to the conditions in Section 14(1). Rule 4 is in fact directly relatable to Section 14(1). Both Section 14(1) and Rule 4 provid.e that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2).

12. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India." If the phrase 'the transaction value' used in Rule 4 were not limited to the particular transaction then the other Rules which refer to other transactions and data would become redundant.

14. It is only when the transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules.

15. The Assistant Collector in this case determined the value of the imported goods under Rule 8. The question is whether he should have determined the transaction value under Rule 4 at the price actually paid by the appellant for the 1989 bearings. Naturally, if Rule 4 applies to the facts of this case, the Assistant Collector's reasoning under Rule 8 must, by virtue of language of Rule 3(ii), be set aside.

16. The Assistant Collector appears to have proceeded on the law as it was prior to the 1988 Rules when 'special considerations' on the basis of which a transaction was held not to be an ordinary sale in the course of international trade within the meaning of Section 14(1), had not been statutorily particularised.

17. As to what would constitute such "special consideration" has been considered in several decisions of this Court. For example, a special quotation for the importer singling him out from other importers in India was held to be a special consideration in Padia Sales Corporation v. Collector of Customs, Bombay (supra) justifying the rejection of price paid as the transaction value. On the other hand in Basant Industries v. Addl. Collector of Customs, Bombay – 1996 (81) E.L.T. 195 (S.C.), a special quotation for an "old and valued customer" was upheld as not being a special.

18. The decision in Sharp Business Machines Pvt. Ltd., relied upon by the respondent is another case where the transaction value was rejected. In that case, the importer had wrongly misdescribed the imported goods and sought to defraud the Revenue by attempting to surreptitiously import items prohibited under the import policy. It was found that there was justification, in the circumstances, for rejecting the price shown in the invoice. The transaction value having been rejected, assessment of value was made on the basis of the price list of the foreign vendor.

19. Both the decisions Padia Sales Corporation and Sharp Business Machines Pvt. Ltd. were distinguished subsequently in Mirah Exports Pvt. Ltd. v. Collector of Customs – 1998 (98) E.L.T. 3. As the facts of this case are

somewhat similar to the case before us, it is dealt with in some detail.

20. Mirah Exports Pvt. Ltd. along with other importers had imported bearings at high rates of discount. The declared value was rejected by the Customs authorities, on the basis of the price list of the vendors. This Court set aside the decision of the respondent authorities accepting the argument that a discount is a recognised feature of international trade practice and that as long as those discounts are uniformly available to all and based on logical commercial bases, they cannot be denied under Section 14. It appears from the judgment that a distinction was drawn between a discounted price special to a particular customer and discounts available to all customers.

21. As already noted all these cases dealt with imports made prior to the coming into force of the Rules in 1988. Now the 'special considerations' are detailed statutorily in Rule 4(2).

22. In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a misdescription of the goods imported as was the case in Padia Sales Corporation. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially acceptable measure, which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one time sale of 5 year old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to any one else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1).

> *23. In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was not the "ordinary" sale price of the bearings imported". Similar view has been expressed by the Apex Court again in case of Tolin Rubbers Pvt. Ltd. [2004 (163) E.L.T. 189 (S.C.)], South India Televisions [2007 (214) E.L.T. 3 (S.C.)], Motor Industries [2009 (244) E.L.T. 4 (S.C.)] etc.*

4.4 We find that in the present matter neither the adjudicating authority nor Commissioner (Appeals), have pointed to such special circumstances warranting the rejection of the declared transaction value by the appellant on Bills of Entry. Further, Rule 12 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 reads as below:

xxxx xxxx xxxx

From plain reading of the Rule 12 it is quite evident that the word "doubt" used in the rule has to be based on cogent reasons and evidences. No cogent evidence or reason has been put forth in the present case to justify the "doubt" of the assessing officer. Clearly, for rejection of the transaction value under Rule 12, there has to be a reasonable ground and it cannot be rejected merely on the ground that similar goods have been imported at higher value without examining the applicability of Rule 5 of Customs Valuation Rules, 2007.

4.5 The enhancement of the value done by the Customs department is only on the basis of value of contemporaneous imports. In this context we find that the relevant provisions for valuation under Customs Act are as below:

> ***Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.***
>
> ***Rule 12 – Explanation 1(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 imports at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
>
> ***Rule 5 – Transaction of value of Similar goods :-***
>
> *(l) Subject to the provisions of Rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued Provided that such transaction*

value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962.

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

From the above provisions, it is clear that if there is any doubt about the transaction value declared by the assessee, then if at all the value of contemporaneous import needs to be applied, the value of identical goods or similar goods should be applied. However, in the present case though the contemporaneous import goods were relied upon, but both the adjudicating authority failed to ascertain that whether the goods of contemporaneous imports is identical or similar to the goods of the assessee . Appellants have disputed the said comparable data on the ground that contemporaneous goods provided by the revenue is for Polyester Knitted Fabrics whereas goods imported by the appellant are of Mixed lot of Polyester Knitted Fabric (Rolls of Assorted Colors & Weight), the value of the above referred type of fabrics is low because the goods are mixed lot of fabrics of different colours and different weight and quality is not same as fresh quality polyester knitted fabrics.

4.6 We noticed that in present matter no effort was made by the adjudicating authority to ascertain quality, quantity, characteristics of the goods of contemporaneous import. In the present import without carrying out any test to the fact that goods of contemporaneous import and the goods in question in present case are identical or similar, enhancement of the value is not legal and correct. It is also observed that other than contemporaneous import data, there is no other evidence to show that the assessee have suppressed the value.

4.7 We find that in the present case, the adjudicating authority enhanced the value as the declared value appears to be low compared to value available in NIDB data, otherwise, there is no material available. The Tribunal consistently observed that the declared value cannot be enhanced merely on the basis of NIDB data. Tribunal in the case of Neha Intercontinental Pvt. Ltd. v. Commissioner of Customs, Goa [2006 (202) E.L.T. 530 (Tri.-Mum.)] has held in the absence of rejection of transaction value, invoice value requires acceptance and when the contemporaneous import of similar goods is not established, value cannot be enhanced. In the case of Commissioner of Customs v. Modern Overseas [2005 (184) E.L.T. 65 (Tri.-Del.)] NIDB data was held to be insuffient, in the absence of clarity about various parameters. List of such decisions is unending and it is sufficient to say that NIDB data has been held to be insufficient for enhancement of value, in the absence of any other independent evidence. Admittedly in the present cases, there is no such evidence produced by the Revenue except reference to the NIDB data. In view of the discussions above, we hold that in the

present case, the enhancement of value on the basis of NIDB data cannot be accepted."

102. Again, in **HS Chadha vs. Commissioner of Customs**[32], the Principal Bench of the CESTAT, New Delhi, held that the declared value of imported tyres must be accepted as the Revenue had failed to establish undervaluation. It noted that tyres are freely importable, and no contemporaneous import data or evidence was provided to justify discarding the transaction value. Citing the judgments of the Supreme Court in *Sanjivani Non-Ferrous Trading* and *South India Television*, the Tribunal emphasized that a charge of undervaluation requires proof of related-party transactions, extra payments, or deviations from authorized banking channels, none of which were demonstrated. Additionally, the Bench highlighted the failure to sequentially apply the 2007 Rules in determining the transaction value, as explained by the Supreme Court in *Eicher Tractors.* Thus, the redetermination of value was deemed unsustainable as would be evident from the following observations which came to be rendered:

> "**17.** Having considered the rival contentions, we find that tyres are not prohibited item under Exim policy, and can be imported freely. Further as the tyres are generally required all over the country there are several importers of identical/similar goods. We find that it is trite law that since the goods were assessed by proper officer based on transaction value, onus lies on the Revenue to prove undervaluation, which it has failed miserably to do so since it did not show any contemporaneous import data of identical or similar items or NIDB data to indicate undervaluation and therefore the invoice value is required be accepted and the transaction value itself and hence could not have been discarded, as held by various judgements of the Hon'ble Supreme Court like CCE Vs Sanjivani Non-Ferrous Trading Pvt Ltd (2019) 2 SCC 378 and CC Vs South India Television Pvt Ltd (2007) 6 SCC 373. We find that there is no allegation or finding that the buyer and seller being related or of any extra payment to the supplier beyond the normal authorized banking

[32] Final Order Nos. 50063-50066/2020 dated 09 January 2020

channels and thus undervaluation is not established as held by this tribunal in Kelvin Infotech Pvt Ltd (supra).

> **18.** We also find that there is no mention regarding which rule of the Customs Valuation Rules 2007 has been applied to arrive at the redetermined value and there is also no sequential application of Rules. We find that it is trite law that there has to be sequential application of rules to re-determine the value as has been held by the Hon'ble Apex Court in Eicher Tractors Pvt Ltd vs Commissioner of Customs Mumbai 2000 (122) ELT 321. Merely based on some emails, the transaction value cannot be disputed and negated without any cogent material."

103. The Chennai Bench of the Tribunal in **M/s Gypsie Impex vs. Commissioner of Customs**[33] addressed the limitations besetting the usage of NIDB data as the sole basis for re-determining transaction values. It is pertinent to note that Rule 10A of the **Customs Valuation (Determination of Price of Imported Goods) Rules, 1988**[34], as analysed by the CESTAT in this decision, was similar to Rule 12 of the 2007 Rules. The CESTAT ruled in favour of the appellant, holding that NIDB data alone would be insufficient for value reassessment without corroborative evidence or contemporaneous import comparisons. This decision underscored the importance of comprehensive evidence and procedural compliance in customs disputes, cautioning against arbitrary reliance on NIDB data. The CESTAT had on that occasion observed as follows:

> "**9.** After considering the submissions of both the parties and perusal of materials on record, we find that the goods imported by the appellant are, admittedly, not prohibited goods as per Rule 133 read with Rule 43-A of the Drugs and Cosmetics Rules, 1945 or any other law for the time being in force. We also find that representative samples of the imported goods were drawn and the Assistant Drug Controller has issued No Objection for the release of the said goods. Further, we find that the lower authorities have re-determined the value of the impugned goods based on the values declared by other importers without providing any basis for this decision and relying

[33] Final Order No. 40131/2024 dated 05 February 2024
[34] 1988 Rules

> on certain imports which are clearly not contemporaneous in as much as the Bills of Entry pertaining to those imports were filed during the period November 2010, whereas the impugned import is of the year February 2011 and there is no material produced by the department that amounts over and above the invoice value were paid with respect to transaction value in question. It has been consistently held by the Tribunal that NIDB data alone is not sufficient for re-determination of value. In this regard, we may refer to the decision of this Tribunal in the case of M/s.Shah B Impex Vs CC (Imports) Chennai vide Final Order No.40917/2023 dt 12.10.2023 (Customs Appeal No.40823 of 2014), wherein also the Chennai Bench of the Tribunal has rejected the re-determination of value simply on the basis of NIDB data. Therefore, we hold that the enhancing the transaction value on the basis of NIDB data is not sustainable in law and hence we set aside the enhancement. As far as the affixation of M.R.P and R.S.P price on the packages are concerned. We find that this defect is curable one and would not amount to contravention of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 as held in the case of ABB Ltd. and High Link Exporters Pvt. Ltd cited supra by the appellant. 10. As far as violation of the port restriction is concerned, we find that during the relevant time, the Tuticorin was not an authorized port for import of the impugned goods but subsequently, the said port has been authorized for import of the impugned goods. Therefore, there is a violation with regard to port restrictions. For that violation, we think it appropriate to impose a penalty on the appellant under Section 111 (d) of the Customs Act, 1962 amounting to Rs.1,00,000/- (Rupees One lakh only) and drop all other penalties and fine imposed by the impugned order. The present appeal is disposed of on above terms."

104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a valuation addition based solely on NIDB data would wholly unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. The legal position so articulated would ensure fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs

valuation and a deviation from declared values being founded on tangible and justiciable material. A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the aforenoted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences.

V. DISPOSITION

105. Accordingly, and for all the aforesaid reasons, we would answer the question framed in the affirmative and in favour of the importers. The appeals are consequently allowed and the impugned orders of the CESTAT set aside. The order of the Commissioner (Appeals) shall in consequence stand restored.

106. We would also allow CUS.A.C. 1/2023 and set aside the order of the CESTAT dated 14 February 2023 as well as the order of the Commissioner (Appeals) dated 01 September 2021. The appeal as instituted by that appellant before the Commissioner (Appeals) shall stand restored to be heard and considered afresh and in light of the legal position as enunciated in the present judgment.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

NOVEMBER 27, 2024/neha/RW