



## ***ALO Law Office- IDT Tax | Arbitration | Litigation***

**Date: 18.4.2025**

### **CESTAT Kolkata Rejected Customs attempt to apply two different transaction values**

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata Bench (Court No. 2) has dismissed the Revenue's appeal against M/s Kiran Trading Company, thereby upholding the order of the Commissioner (Port), Kolkata, which had dropped proceedings initiated under a DRI show cause notice.

#### **Case Background:**

- The Revenue appealed against the Order-in-Original dated 23.10.2018, which dropped charges of mis-declaration of value and evasion of Anti-Dumping Duty (ADD) on imports of Chinese-origin Melamine by M/s Kiran Trading Company.
- The Directorate of Revenue Intelligence (DRI) alleged over-invoicing to evade ADD, based on investigations and analysis of import patterns.

#### **Respondent's Defense:**

- Transactions were conducted through banking channels via Letters of Credit.
- Imports included Melamine from various countries (Japan, Qatar, Indonesia, New Zealand) at similar price levels, indicating fair valuation.
- The declared import value exceeded the threshold value of USD 1681.49/MT as per Notification No.10/2010-Customs (ADD), negating the need for ADD.
- The DRI's reliance on NIDB and ICIS data lacked direct evidence, such as parallel invoices or communication proving mis-declaration.

### **Tribunal's Observations:**

- The Department failed to provide cogent evidence to substantiate claims of mis-declaration or suppression of value.
- Suspicion alone cannot replace proof; direct evidence like parallel invoices or illegal money transfers was absent.
- The adoption of two different transaction values for Basic Customs Duty and ADD was deemed arbitrary and illegal under Section 14 of the Customs Act, 1962.

### **Adjudicating Authority's Findings:**

- Payments were made through banking channels, and no evidence of deliberate overvaluation or manipulation was found.
- The use of NIDB and ICIS data was insufficient without direct evidence.
- The charges lacked explicit and real evidence to sustain the demand of Rs.1.82 Crore.

### **Final Decision:**

- The Tribunal upheld the lower authority's decision to drop the charges.
- The Revenue's appeal was dismissed, and the rejection of declared value was deemed illegal and arbitrary.

### **Legal Precedents Cited:**

- Case laws emphasized that price negotiation and transaction value are key determinants unless contradicted by direct evidence.

### **Conclusion:**

The Tribunal found no substantiation in the Department's case and dismissed the appeal, maintaining the lower authority's order.

*This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

**Source: CESTAT Kolkata**

Write to us at [office@aadrikaalaw.com](mailto:office@aadrikaalaw.com)

Tel: +91-11-4999 2707 | +91-9999005379

[www.aadrikaalaw.com](http://www.aadrikaalaw.com)

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**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Customs Appeal No.75416 of 2019**

(Arising out of Order-in-Original No.Kol/Cus/Commissioner/Port/73/2018 dated 23.10.2018 passed by Commissioner of Customs (Port), Kolkata)

**Commissioner of Customs (Port), Kolkata**  
(15/1, Strand Road, Kolkata-700001)

**Appellant**

*VERSUS*

**M/s Kiran Trading Company**  
(31, Giri Babu Lane, 2<sup>nd</sup> Floor, Kolkata-700012)

**Respondent**

**APPEARANCE :**

Shri S.Chakraborty, Authorized Representative for the Appellant  
Shri P.R.Chowdhury, Consultant for the Respondent

**CORAM:**

**HON'BLE SHRI R.MURALIDHAR, MEMBER (JUDICIAL)**  
**HON'BLE MR.RAJEEV TANDON, MEMBER (TECHNICAL)**

**FINAL ORDER NO.75901/2025**

DATE OF HEARING : 03 APRIL 2025

DATE OF DECISION : 16 APRIL 2025

**Per Rajeev Tandon :**

The Revenue is in appeal against the Order-in-Original No.Kol/Cus/Commissioner/Port/73/2018 dated 23.10.2018 passed by Commissioner of Customs (Port), Kolkata, whereby he dropped the charges levelled vide Show-Cause Notice No.DRI/KZU/ENQ-20/2014 (Pt.II) dated 16.12.2016.

2. The facts of the case are that the DRI investigated certain imports of Melamine of Chinese Origin suspecting them to be mis-declared in value for the purposes of avoidance of Anti Dumping Duty (ADD) of

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Customs leviable vide Section 9A of the Customs Tariff Act, 1975 in pursuance of Notification No.10/2010-Customs(ADD) dated 19.02.2010.

2.1 DRI conducted a PAN India investigation, which culminated in the issue of the subject Show-cause notice against the present respondent. DRI vide its Show-cause notice alleged the mis-declaration of the value of Chinese Origin Melamine imported by over invoicing to evade payment of incidence of ADD.

2.2 During the course of investigation, DRI recorded the statements of the proprietor of the Respondent's Firm under the suspicion that the said Firm acted with Third country suppliers based in Malaysia & Hong Kong suppressing actual value of Melamine of Chinese Origin imported by the respondent.

2.3 On the basis of its investigation conducted with the respondents associated persons concerned in the trade and the documents recovered from the premises of the importers, DRI noticed that the respondent had imported Melamine of several different Country of Origin. It is the case of the DRI that the respondent imported Chinese Origin Melamine from China under invoices raised directly by the suppliers and manufactures till January, 2013. Subsequently, in 2013 and 2014,, the respondent imported Chinese Origin Melamine under third country invoices raised by the suppliers based out of Malaysia and Hong Kong. It noted that during the period, the respondent did not undertake any supply of Chinese Origin Melamine under direct financial transaction with the Chinese suppliers. Likewise, there was no import of Chinese Origin Melamine in the year 2015 as well.

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2.4 These premises and analysis of DRI are the basis of its suspicion in the matter and the genesis to make out a case against the respondent.

3. The Id.Consultant for the respondent, submits before us that they have always undertaken the transactions with the foreign suppliers through Banking Channels by way of a Letter of Credit. He submitted that they have been regularly importing various kinds of chemicals for trading purposes and do not have any manufacturing activity of their own. The respondent submits that they have been importing Melamine of different country of origins, like, Japan, Qatar, Indonesia and New Zealand. The import of such Melamine is on the same price level as that of Chinese origin and therefore, it can be safely inferred there-from that the price of their imports of Chinese Origin Melamine were fair and acceptable.

3.1 In so far as the Department's plea of a pattern in the assessee not having imports of Chinese Origin Melamine sometime from 2013 directly from China, is suspected for reasons of avoidance of ADD, it is their contention that after, 2013, the noticee was driven by the commercial considerations including the rate available for supply of such goods from Malaysia & Hong Kong.

3.2 The Id.Consultant vehemently submits that as their import value of Chinese Origin Melamine from third country exceeded the threshold value of USD 1681.49 per MT [Refer Notification No.10/2010-Customs (ADD) dated 19.02.2010], they were not required to pay ADD. He submits that the import price of those consignments were in the range of USD 1550 per MT (CIF).

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3.3 He further submits that the DRI adopted a strange pattern, which is completely unknown to the statute for valuation of the subject goods. Thus, while the Department accepted the Basic Customs duty on the declared value of the imported goods, in respect of ADD, the Department chose to levy the same on the re-determined value. The respondents have also questioned the adoption of methodology, based solely on NIDB Data, pointing out that they were not provided with the actual documentation of the NIDB Data. The show-cause notice issued also did not disclose material facts, like, port of loading, contractual quantities, date of contract, terms of payment etc. of the comparative NIDB shipments. The respondents, therefore, pointed out that the Revenue's case is entirely based on surmises and had no justifiable basis for enhancement of the value. Under the circumstances, the transaction value as declared by them cannot be discarded on the plea of lower value for contemporaneous exports. Further, there is nothing on record to substantiate that the sale between the respondent and their suppliers was not an arm length sale and the same was of no relevance between the buyers and the suppliers [referred to Rule 2(2) of CVR, 2007]. They finally submitted that the Department has not been able to indicate even a single case of payment being made beyond banking channels through Letter of Credit as contracted between two parties.

3.4 In support of its defence, the respondent has relied on certain case laws to submit that the price list itself is no evidence for import of goods at prices mentioned. They rely on the following case laws :

- (i) Noble International Vs. CCE : 2001 (127) ELT 754 (CEGAT);

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(ii) Wavein India Vs. CCE : 2001 (137) ELT 257 (CEGAT) ;

(iii) Apar Industries Limited Vs. Commissioner of Customs, Kandla : 2009 (246) ELT 0340 (Tri.-Ahmd.), wherein it has been held that "the price depends on negotiation."

3.5 Finally, the Id.Consultant submits that no charge of suppression/mis-declaration can be made out against them in view of the aforesaid circumstances.

4. We note that while Revenue may have initiated the case based on all India information and intelligence collected on ADD evasion. However, no case can rest on conjectures and surmises. The Department has woefully failed to co-relate their presumption by way of cogent evidence of mis-declaration of value and suppressing the same for the purposes of avoidance of ADD.

5. At the outset, we are puzzled to note that the Department adopted two different transaction values, viz. :

(i) - for the purposes of levy of Basic Customs Duty and

(ii) - for the purposes of levy of Anti Dumping Duty.

There is nothing on record to suggest that the respondent had resorted to under valuation and deliberately suppressed real transaction value of Melamine of Chinese origin imported by them, under third country invoices, raised by the suppliers based out of Malaysia and Hong Kong. The fact that the respondent has claimed that the price of Melamine imported by them from other countries like, Japan, Qatar, Indonesia and New Zealand, were also in the same bandwidth has not been disputed by the Department. The Revenue has not been able to controvert the arguments in respect of the market forces and

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chemical/technical considerations driving imports of Chinese Origin Melamine through Malaysia and Hong Kong. It is on record that the seller of Malaysia and Hong Kong of subject consignments were not related to the respondent and all payments were made to suppliers by them through Letter of Credit/through Banking Channels. There is no evidence for payment of extra sums over and above the declared values. Thus it does not come out that the invoice price was not the sole commercial consideration. The Department has not produced even a single piece of evidence to suggest any parallel invoicing to prove that the goods were misdeclared to evade ADD or the backflow of the alleged variation in prices made to overseas suppliers. The fact of analyzing import data of melamine post and prior to levy of ADD across the commodity, or that in respect of the respondent over a period of time, or that with imports of melamine from across the world can alone not establish the charge of suppression and misdeclaration. To establish the same cogent, tangible and documented evidence is a pre-requisite. Suspicion howsoever grave is no substitute for proof. It is settled law that published price data like Price List or a Financial Journal is no ground to justify valuation and is required to be buttressed by hard evidence in respect of contemporaneous import data at the same level of comparable commercial parlance. Notification of prices is a well accepted norm in international trade but serves as a mere guide the real test being invoice value, in the absence of any other evidence to contradict it. Mere reliance of NIDB Data for valuation of imported melamine cannot be the sole consideration for fixing and burdening the respondent for payment of ADD. Further,

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non-supply of hardproof of NIDB Data, also vitiates the case of the Revenue. We find that the re-determination of the value of the subject goods imported under cover of 17 Bills of Entry during the relevant period and imposing ADD of Rs.1,81,87,239/- is completely unsubstantiated. In order to establish its contention of suspected over-valuation, direct evidence by way of parallel invoice or any authentic communication between the importer and the suppliers to the said effect or proof of squaring up of accounts etc. is necessary.

6. The respondent has relied on the contemporaneous import value, mentioning that the landed cost of goods as per the Department's Data Base itself that will hold good to undo the charges of misdeclaration. We find that there is no certain, clear and direct evidence for the rejection of the declared assessable value, under the control of the Department. Moreover, the fact of adopting two different assessable values for levy of different duties itself dismisses the contention of the Revenue. Having accepted the declared assessable value for the purposes of quantifying Basic Customs Duty, the same cannot be rejected while imposing ADD on the basis of re-determined. As per Section 14 of the Customs Act, 1962, there is only one transaction value which is the basis for all assessment related requisites assessable value. The law does not behove of such situation. When there is no justification for the enhancement and re-determination, the charge of mis-declaration and the question of suppression does not arise. Be as it may, the entire information in respect of said imports was in the knowledge of the Department. No mis-declaration and suppression can be based out of modus of other importers and competitors in trade.

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Knowledge or the lack of it in respect of another case, cannot be imputed to other rival trading partner. Suppression has to be established by way of positive action and not merely presumption, specific and explicit averments are required in order to establish the same. In the present case, there is no such finding by the Department.

7. On the whole, we find sufficient merit in the following finding of the adjudicating authority :

*"32. I find that the amount of USD 1681.49/MT which is the threshold value as per Notification No.10/2010-Customs dated 19.02.2010 for imposition of anti-dumping duty has been exceeded in all cases of subject imports by M/s. Kiran Trading Co. All the payments were made through letter credit through banking channels on the export Invoices. The DRI has not found any direct evidence to prove deliberate overvaluation in the form of parallel invoices or communication to that effect between this importer and the foreign suppliers/sellers. Instead it had relied on contemporaneous import values indicating lower landed values as well as ICIS data. They have applied Rule 5 of the Valuation Rules accordingly for redetermination of values. Rule 12 of the Valuation Rules allows for the proper officer to doubt the declared value, if among other things, there were similar imports at significantly higher value/s and if so, the declared value can be rejected. The other grounds for rejection of declared value/s involve suspicions of undervaluation, mis-declaration and manipulation of documents. In the subject case, though there are grounds for suspecting mis-declaration of value as ICIS data did show lesser values during the relevant period (2013 & 2014) and the import landed values of M/s. Kiran Trading Co. just about exceeded the threshold value i.e. USD 1681.49/MT, however, there is no clear and direct evidence to reject the declared values. It is also noted that DRI while applying the Valuation Rules, did not apply it for redetermination of BCD but only applied it for determining the*

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*anti-dumping duty. As has been pointed out by the defense, this is not maintainable under Section 14 of the Customs Act. DRI could have had a case if direct evidences were found like parallel invoices showing lesser value/s and that would have allowed for rejection of the declared values and applied as actual transaction value in this case. However, no such evidences were found. In such circumstances, there is no ground for applying the Valuation Rules. The use of NIDB and ICIS data therefore do not make good for lack of incriminating direct evidences in this case. There is an assumption made that there would have been illegal money transfers carried out for the difference in values, but again no evidences forth coming. The charges made being serious and involving demand of Rs.1.82 Crore (approx) required explicit and real evidences to sustain, not assumptions made and incorrect application of Valuation Rules.”*

8. In view of the aforesaid reasons discussed supra, we find that there is no substantiation in the case of the Department and the Id.Commissioner (Port) has rightly dropped the impugned show-cause notice. The rejection of declared value is ex-facie illegal and arbitrary and not sanctioned in law. We find no contravention of Rule 3 (2) of CVR, 2007.

9. Under these circumstances, the order of the lower authority is maintained and the appeal filed by the Revenue is dismissed.

(Pronounced in the open court on **16.04.2025**)

**(R.Muralidhar)**  
**Member (Judicial)**

**(Rajeev Tandon)**  
**Member (Technical)**