ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 23.04.2025

CESTAT Ahmedabad Held that value cannot be re-determined on weight when units price were declared and invoiced

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Ahmedabad – Court No. 3, has allowed two appeals filed by ISGEC Heavy Engineering Ltd., setting aside penalties and redemption fine imposed by customs authorities on the grounds of alleged misdeclaration of weight in multiple Bills of Entry.

Case Overview:

- The case pertained to import of engineering components including:
  - Carbon Steel Forged Hemi (ASME SA266 GR2)
  - Proof Machined Low Alloy Steel Spool
  - Test Plates
- Customs claimed excess weight in three shipments totaling over 13.37 MTS more than declared.
- Alleged misdeclaration valued at approx. ₹31.45 lakhs with total differential duty of approx. ₹9.48 lakhs.

Department's Stand:

- Customs held that ISGEC misdeclared the weight to evade duty.

- Goods were assessed under RMS but re-examined on request.
- Enhanced values accepted by importer; hence, customs claimed transaction value stood revised.
- Adjudicating authority imposed:
    - Redemption Fine: ₹60,000
    - Penalty: ₹18,000 under Section 112(a) of the Customs Act
- Commissioner (Appeals) upheld the above orders.

Appellant's Grounds for Appeal:

1. Goods were priced per unit, not per weight.
2. No remittance of additional value to supplier was made.
3. Valid Certificates of Origin were provided.
4. Clerical error in weight cannot constitute misdeclaration.
5. Cited several precedent cases including:
    - Nilkamal Ltd. [2019 (370) ELT 923]
    - Grasim Industries Ltd. [2007 (217) ELT 590]
    - Symrise Pvt. Ltd. and VST Industries Ltd.

CESTAT Observations:

- Weight not relevant for transaction valuation when invoicing is done per piece.
- No evidence of over-invoicing or excess foreign remittance.
- Acceptance of enhanced value during clearance does not bar refund or appeal, citing:
    - CISCO Systems India Pvt. Ltd. [2023 ACR 26, Delhi HC]
- Clerical errors without malafide intent cannot attract confiscation.

Final Verdict:

- CESTAT quashed the redemption fine and penalty.
- Found no justification to treat excess weight as misdeclaration.
- Held that value cannot be re-determined merely on physical weight when units were declared and invoiced.
- Appeals allowed with consequential reliefs.

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 or on his Mobile +91-9999005379.

Source: CESTAT Ahmedabad

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Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 13008 of 2018- DB

(Arising out of OIA-MUN-CUSTM-000-APP-244-245-18-19 dated 16/10/2018 passed by Commissioner (Appeals) Customs -AHMEDABAD)

Isgec Heavy Engineering Ltd **.....Appellant**
A-5, Sector-63,
Noida, Uttar Pradesh

VERSUS

Commissioner of Customs -Mundra **.....Respondent**
Office of the Principal Commissionerate of Customs,
Port User Bulding Custom House Mundra, Mundra
Kutch, Gujarat- 370421

WITH

Customs Appeal No. 10080 of 2019- DB

(Arising out of OIA-MUN-CUSTM-000-APP-244-245-18-19 dated 16/10/2018 passed by Commissioner (Appeals) Customs -AHMEDABAD)

Isgec Heavy Engineering Ltd **.....Appellant**
A-5, Sector-63,
Noida, Uttar Pradesh

VERSUS

Commissioner of Customs -Mundra **.....Respondent**
Office of the Principal Commissionerate of Customs,
Port User Bulding Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:
Shri Manish Jain, Advocate for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10254-10255/2025

DATE OF HEARING: 05.03.2025
DATE OF DECISION: 21.04.2025

SOMESH ARORA

The brief facts of the case are that the appellant imported cargo declared as Carbon Steel Forged Hemi Conf. to Specn. AME SA266 GR2 Machined Carbon Steel Forged Test Plate Conf. to Specn. ASME SA266 GR2' vide Bills of Entry No. 3854651 dated 3.11.2017 and No. 3951777dated 10.11.2017. The appellant had also imported cargo declared as Proof Machined Low ALLOY Steel spool Conf and 'production test coupon conf vide Bill of Entry No.

4041182 dated 17.11.2017. The B/Es have been assessed at first through RMS and the same had been recalled on request of their letter dated 28.11.2017 and the cargo were examined under the supervision of Docks Examination Section in the presence of authorized person of Custom Broker. The goods were found to be as per declaration in the Bills of Entry but total weight of the cargo was found to excess as comparision to that mentioned in the above said Bills of Entry.

1.1 The Importer vide their letter dated 18.12.2017 requested for waiver of The Show Cause Notice and Personal Hearing and to decide the matter on merit. On examination, the gross weight of cargo against B/E no. 4041182 dated 17-11-2017 was found to be 21.160 MTS as against declared gross weight of 19.114 MTS. The importer thus as per the department has mis-declared the quantity of the goods to evade Customs duty. The importer mis-declared the quantity of goods to the tune of 2.046 MTS valued at Rs 6,13,630/-assessed at Unit Price C & F 217.009 USD PMT. The duty involved in the mis-declared goods is Rs. 1,85,034/. Further, on examination, the gross weight of cargo against B/E no. 3854651 dated 03-11-2-17 was found to be 40.420 MTS as against declared gross weight of 34.490 MTS. The importer has mis-declared the quantity of the goods to the tune of 5.930 MT to evade the Customs duty. The value of 5.930 MTS comes to Rs. 12,89,380/- assessed at Unit Price C & F 217.009 USD PMT on which duty involved is Rs. 3,88,800/-. Further, the gross weight of cargo against B/E No. 391777 dated 10-11-2017 was found to be 35.540 MTS as against declared gross weight of 30.142 MTS. The importer has mis-declared the quantity of goods to the tune of 5.398 MTS valued at Rs. 12,41,838/-assessed at Unit Price C & F 229.170 USD PMT on which the duty involved is Rs. 3,74,464/

1.2 Accordingly, the adjudicating authority found that the importer has mis-declared the quantity of goods and violated the provisions of Section 40(4) of the Customs Act, 1962 read with the provisions of Section 111(m) of the Customs Act, 1962. The adjudicating authority vide O-I-O No. MCH/ADC/GPM/100/2017-18 dated 19.12.2017 ordered confiscation of mis-declared goods and gave an option to the importer to redeem the same on payment of redemption fine of Rs.60,000/- under Section 125 of Customs Act, 1962 and imposed penalty of Rs.18,000/- on the importer under Section 112(a) of Customs Act, 1962.

1.3 Being aggrieved, the appellant filed appeals before the Commissioner (Appeals) who had vide impugned order dt.16.10.2018 also confirmed the R.F. and penalty imposed by the Adjudicating Authority. Against the said OIA applicant has filed this appeal.

2. Learned Advocate for the appellants pleads with the help of various case laws as follows: -

- Weight is not a criterion to determine Assessable Value under Customs Act, 1962. Reliance in this regard was placed on following decisions:-
  - Nilkamal Ltd. v. Commr. of Cus. (Import), Nhava Sheva-2019 (370) E.L.T. 923 (Tri.-Mumbai).
  - Arebeen Star Maritime Agencies Pvt. Ltd. v. Commissioner of Customs, Raigad- 2006 (201) E.L.T. 106 (Tri.-Mum.)
  - Grasim Industries Ltd v. CCE, Rajkot- 2007 (217) E.L.T. 590 (Tri.-Del.)
  - Binani Cement Ltd. v. Commissioner of Customs, Ahmedabad- 2004 (165) E.L.T. 533 (Tri.-Del.)
  - Binani Zinc v. Commissioner of Customs, Cochin-2001 (135) E.L.T. 563 (Tri.-Chennai) as affirmed in 2002 (139) E.L.T. A97 (S.C.)

- Abhiman Impex v. Commissioner of Cus. (Import), Nhava Sheva- 2019 (369) E.L.T. 1255 (Tri.-Mumbai)

- In the absence of evidence to show remittance above the invoice value to foreign supplier, the transaction value of the subject goods cannot be rejected, reliance in this regard was placed on Final Order No. A/11675/2023 dated 08.08.2023 passed in the case of Hindalco Industries Ltd. v. C.C. Ahmedabad.
- In the presence of valid Certificate of Origin, benefit to the extent of Basic Customs Duty may be availed by the Appellant. Reliance in this regard was placed on decisions in the case of-
  - Nirlon Ltd v. CCE, Mumbai-2015 (320) E.L.T. 22 (S.C.)
  - Ashima Dyecot Ltd. v. CCE, Ahmedabad-2010 (262) E.L.T. 946 (Tri.-Ahmd.)
- Mere Clerical error does not amount to misdeclaration. Reliance in this regard was placed on:-
  - Symrise Pvt. Ltd. v. Commissioner of Customs- 2009 (248) E.L.T. 418 (Tri.-Chennai)
  - VST Industries Ltd. v. CC, Mumbai- 2007 (207) E.L.T. 513
- Impugned goods are not liable for confiscation and consequently no redemption fine is imposable. Reliance in this regard was placed on:-
  - Bhagyanagar Metals Ltd. v. Commissioner of C. Ex., Hyderabad-II-2016 (333) E.L.T. 395 (Tri.-LB)
  - Hindalco Industries Ltd. v. Commissioner of Customs, Ahmedabad- 2024 (389) E.L.T. 224 (Tri.-Ahmd.)

3. Learned AR on the other hand, reiterating the findings of the lower authority, pleaded that the goods under the Customs Tariff, have to be declared in Kg but appellant had showed than in number of pieces/ units and therefore, he evaded customs duty. Further, the appellant had accepted enhance value and paid the duty accordingly and had requested for waiver of

the Show Cause Notice and Personal hearing in the matter. Once the importer accepts the enhanced value of goods without any protest or objection, he cannot be permitted to deny its correctness. In support thereon the learned AR relies upon the decision of Sukhdev Exports Overseas Vs. Commissioner of Customs (Preventive), New Delhi as reported in 2023 (384) ELT 573 (Tri. - Delhi), to indicate that consented value becomes the declared value and importer thereafter cannot have the right to protest the same. He in particular relies upon Para 23 of the decision, which is reproduced below: -

> ***"23.*** *The very fact that the importer had agreed for enhancement of the declared value in the statements made under by Section 108 of the Customs Act, itself implies that the importer had not accepted the value declared in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importer 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 sub-rule (1) of Rule 3 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 Rules 4 to 9. As noticed above, the importer 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."*

4. In rejoinder, learned Advocate places reliance on the decision of High Court New Delhi in the matter of Principal Commissioner of Customs (Import & General) Vs. CISCO Systems India Pvt. Ltd 2023 ACR 26 wherein, Hon'ble Delhi High Court, vide its order dated 25.01.2023, held that filing of an appeal by an aggrieved person against enhancement of duty, will itself be considered as protest to later on seek refund of excise duty paid. We find that decision in CISCO Systems is of later date than the final order in the matter of Sukhdev Exports Overseas (cited supra) and therefore, was not taken cognizance of while authoring the judgment by the Principal Bench in the matter of M/s.

Sukhdev Exports (cited supra). The relevant part i.e. paras 11 to 16 of the decision in CISCO Systems (supra) are reproduced below: -

> ***"11.*** *In the aforesaid context, the only issue to be addressed is whether filing of an appeal against the Order-in-Original dated 25/26-8-2004 while at the same time paying the duty on the enhanced value, would amount to paying the same under protest.*
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> ***12.*** *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 25/26-8-2004 enhancing the declared value of the goods resulting in 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.*
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> ***13.*** *It is difficult for this Court to accept that 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 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.*
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> ***14.*** *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 sub-section (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 sub-section (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)

15. *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 material to second proviso of Section 27(1) of the Customs Act.*

16. *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."*

5. Therefore, we agree with the Advocate on the point that filing of an appeal itself can be taken as a protest thereby uprooting the consented value which might have been given at the time for taking clearance of goods. Of course, this will be with the caveat that the value which has been consented is contested further, as per law, before the higher Judicial fora.

6. On the other issue regarding the effect of declaring units and therefore the variation in weight being detected and its consequences, we find that the decision in the case of Nilkamal Ltd. Vs. Commissioner of Customs (import), Nhava Sheva as reported in 2019 (370) ELT 923 (Tribunal- Mumbai), held that when the goods are in excess for items which are assessable as units and not by weight and excess weight, noticed at the time of physical verification

of import by Customs authorities, could not be considered as requiring change in the transaction value disclosed in invoices.

7. Further, we also find that Grasim Industries Ltd Vs. Commissioner of Central Excise, Rajkot as reported in 2007 (217) ELT 590 (Tri. - Delhi) and other decisions quoted as above, by the learned Advocate, have clearly brought out that weight cannot be considered to be influencing the transaction value. When purchase order was given on per piece basis. We also agree that there is nothing on record to show that there was any excess remittance made for the excess weight which was found at the time of examination in impugned goods which were Proof Machined Low Alloy Steel Shell Belt, Carbon Steel Forged Hemi, Machined Carbon Steel Forged Test Plate. The very nature of the goods indicate that they are sold in the market by units and not by weight. Accordingly, agreeing with the submissions made by the Learned Advocate, we are inclined to allow the appeals with consequential relief.

8. Appeals are allowed.

(*Order Pronounced in the open court on 21.04.2025*)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha