ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 21.06.2025

CESTAT Chennai Rejected Customs Valuation and MIP Allegations

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Chennai, has set aside a total penalty of ₹60 crores imposed on M/s. Sindhu Lakshmi Impex, its partners, and an associate entity, M/s. BNM Global Ventures, in a high-profile case concerning the import of black pepper from Sri Lanka. The tribunal quashed the Commissioner of Customs' Order-in-Original dated 20.11.2020, which had imposed penalties and declared the imports as "prohibited" under customs law.

Background of the Case

- **Imports in Dispute**: 10,79,000 Kgs of Black Pepper imported under various Bills of Entry.
- **Allegations**: The Department alleged overvaluation of imports from a related party in Sri Lanka (Lakshmi Export and Import), intended to circumvent the Minimum Import Price (MIP) of ₹500/kg imposed by DGFT Notification No. 21/2015–20 dated 25.07.2018.
- **Key Charges**: Improper imports, misdeclaration of value, and violation of Sections 111(m), 111(o), 112, and 114AA of the Customs Act, 1962.

Commissioner's Order (Now Set Aside)

The Order-in-Original had:

- Rejected the declared transaction value under Rule 3(1) and Rule 9 of the Customs Valuation Rules, 2007.

- Held the imports as "prohibited" due to alleged circumvention of MIP.
- Imposed penalties totaling ₹60 crores, including:
    - ₹20 crores on M/s. Sindhu Lakshmi Impex (Sections 112 & 114AA)
    - ₹20 crores on Partner
    - ₹15 crores on of BNM Global Ventures

Arguments by the Appellants

- The imports were duly assessed under self-assessment and accepted by the proper officer at the time of import.
- The declared CIF value was above the MIP, and customs duty as well as IGST were paid.
- Overvaluation allegation led to higher tax collection, not evasion.
- The DGFT Notification does not mandate price control on domestic sales, hence undervaluation of sale price post-import is irrelevant.
- The Revenue failed to seek pricing evidence from the foreign supplier, undermining the charge of overvaluation.

CESTAT's Key Observations

1. **No Absolute Prohibition**: The Tribunal held that the import policy for black pepper is conditionally free above ₹500/kg CIF. Since the import was above this threshold, the goods could not be declared "prohibited".
2. **No Loss to Exchequer**: The Department's own findings admitted no under-invoicing. Instead, the appellants had paid more duty, ruling out loss or intent to defraud.
3. **Rule 9 Misapplied**: The Commissioner wrongly invoked Rule 9 (residual valuation method) without sequentially applying Rules 4–8 as required under Rule 12 of the Valuation Rules.
4. **No Misdeclaration**: There was no misdeclaration or post-import condition breach to justify confiscation under Sections 111(m) or 111(o).
5. **No Justification for Penalties**: The Tribunal held that invocation of Sections 112 and 114AA was legally unsustainable, especially in the absence of loss, concealment, or mens rea.

Final Order

"We are of the clear view that the declared assessable value of the impugned goods did not warrant any interference… the impugned order cannot sustain. Consequently, there cannot be any room also to impose any penalties under Sections 112 & 114AA of the Customs Act."

The appeals were allowed in toto with all penalties and findings set aside.

Implications of the Ruling

This judgment is a significant reaffirmation of:

- The sanctity of transaction value under Customs Valuation Rules.
- The conditional, not absolute, nature of DGFT policy restrictions.
- The legal principle that higher declared value leading to more duty payment does not automatically equate to fraud.
- The requirement for precise and substantiated allegations before penalizing importers.

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 Chennai

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

(1) Customs Appeal No. 40082 of 2021

(Arising out of Order-in-Original No.TUT-CUSTM-PRV-COM-007-20-21 dated 20.11.2020 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628 004)

Shri Saravanan Palaniappan, Partner, **...Appellant**
M/s. Sindhu Lakshmi Impex,
Sl. No.15/8, Kasturi Rangan 1st Street,
Poes Garden, Teynampet,
Chennai-600 018.

Versus

Commissioner of Customs **...Respondent**
Custom House,
New Harbour Estate,
Tuticorin-628 004.

WITH

(2) Customs Appeal No. 40083 of 2021

(Arising out of Order-in-Original No.TUT-CUSTM-PRV-COM-007-20-21 dated 20.11.2020 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628 004)

Shri Malav Rajen Shah **...Appellant**
M/s. BNM Global Ventures
No.401, Laxmi CHS,
17, Wachha Gandhi Road,
Gamdevi,
Mumbai 400 007.

Versus

Commissioner of Customs **...Respondent**
Custom House,
New Harbour Estate,
Tuticorin-628 004.

AND

(3) Customs Appeal No. 40084 of 2021

(Arising out of Order-in-Original No.TUT-CUSTM-PRV-COM-007-20-21 dated 20.11.2020 passed by Commissioner of Customs, Custom House, New Harbour Estate, Tuticorin-628 004)

M/s. Sindhu Lakshmi Impex **...Appellant**
Sl. No.15/8, Kasturi Rangan 1st Street,
Poes Garden, Teynampet,
Chennai-600 018.

Versus

Commissioner of Customs **...Respondent**
Custom House,
New Harbour Estate,
Tuticorin-628 004.

APPEARANCE:

Shri A. Ashwini Kumar, Advocate for the Appellant
Shri Hari Radhakrishnan, Advocate for the Appellant

Shri Anoop Singh, Authorised Representative
for the Respondent
Shri Harendra Singh Pal, Authorised Representative
for the Respondent

CORAM:

HON'BLE SHRI P. DINESHA, MEMBER (JUDICIAL)
HON'BLE SHRI M. AJIT KUMAR, MEMBER(TECHNICAL)

FINAL ORDER Nos.40216-40218/2025

DATE OF HEARING: 23.01.2025
DATE OF DECISION:14.02.2025

Per : Shri P. Dinesha

The issue involved in these appeals being identical arising out of common impugned order, they were heard together and are being disposed of by this common order.

2. These appeals are filed against the common Order-in-Original passed by the Commissioner of Customs, Tuticorin dated 20.11.2020 whereby the Commissioner has *inter alia* rejected the declared transaction value in respect of 10,79,000 Kgs. of Black Pepper imported *vide* various Bills of Entry and re-determined the same as ₹30,12,86,095/- in terms of Rule 3(1) and Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act 1962. In the said order, the Commissioner has also declared the Black Pepper which is imported/impounded here, in these appeals, as 'Prohibited', had therefore been improperly imported and hence, liable for confiscation under Sections 111(m) and (o) of the Act *ibid*. The specific demands as could be seen from the order portion of the OIO are as under:

(i) I hereby impose a Penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on M/s.Sindhu Lakshmi Impex, Chennai under Section 112 of the Customs Act, 1962.

(ii) I hereby impose a Penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on M/s.Sindhu Lakshmi Impex, Chennai under Section 114AA of the Customs Act, 1962.

(iii) I hereby impose a penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on Shri Saravanan Palaniappan, Partner, M/s.Sindhu Lakshmi Impex under Section 112 of the Customs Act, 1962.

(iv) I hereby impose a Penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on Shri Saravanan Palaniappan, Partner, M/s.Sindhu Lakshmi Impex, Chennai under Section 114AA of the Customs Act, 1962.

(v) I hereby impose a penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on Shri Malav Rajen Shah, Director, M/s.BNM Global Ventures under Section 112 of the Customs Act, 1962.

(vi) I hereby impose a penalty of Rs.5,00,00,000/- (Rupees Five Crores only) on Shri Malav Rajen Shah, Director, M/s.BNM Global Ventures under Section 114AA of the Customs Act, 1962.

It is against these demands that the present appeals have been filed before Tribunal.

3. In the impugned order, the Commissioner has observed that the main appellant viz. M/s. Sindhu Lakshmi Impex had imported Black Pepper from its related entity in Sri Lanka, namely M/s. Lakshmi Export and Import [**LEI** for short] to circumvent the Minimum Import Price (MIP) *vide* DGFT Notification No. 21/2015–20 dated 25.07.2018 as per which, the import of Black Pepper falling under CTH 090411 is

"Prohibited" ***if the CIF value is below ₹500 per Kg***. It appears that on the basis of an intelligence input, the DRI initiated investigation and conducted research operations at various locations, as could be seen at para 3 of the Order-in-Original and these facts are not in dispute. From the information gathered during investigation and also from the statement/s recorded during investigation, it is concluded that the importer had made imports only from the related party; it was found during investigation that the *per unit* cost of Black Pepper imported from LEI declared by the importer to the Customs was much higher than the actual transaction price; the importer had overvalued the Black Pepper imported from the said LEI, Sri Lanka; the fact of overvaluation was confirmed by the importer selling the imported Black Pepper at a *less price range to non-related entities in India as evidenced by the invoices* raised by entities controlled by the partner, namely Shri Saravanan Palaniappan who is the partner of the importer Firm.

4. The overvaluation of imported Black Pepper by the importer from LEI, Sri Lanka, which is the Branch office of its related entity, namely M/s. Kallal Trading Co. LLP appeared to have been done with an intention to circumvent MIP; such import by resorting to the apparent over-valuation resulted in improper import and such improperly imported black pepper became 'prohibited' as they failed to meet MIP condition set out in the above DGFT Notification.

5. The above facts led to the issuance of SCN dated 29.04.2020 under Section 11 and Section 124 of the Customs Act, 1962, to many noticees alleging various violations,

thereby proposing to demand/levy applicable duty/penalty as the case may be, on the respective noticees/persons. It appears from the record that all the noticees filed their respective replies to the above SCN seriously refuting the allegations levelled against them and thereby justifying the import price *vis-à-vis* the declared value. The main contention of such replies are: (i) from the Bill of Entry the proper officer had approved the classification and assessed the Bill of Entry on self-assessment by the importer during which time the proper officer could have examined the validity of the import in the context of MIP; the importer/Revenue had not considered the fact of the assessment, whether the assessment by the proper officer himself or by the self-assessment is an appealable order for which, reliance was placed on the decision of Supreme Court in the case of **ITC Limited – Vs CCE, Kolkata** - 2019 (368) ELT 216 (SC)

(ii) In the light of the above decision of in **ITC Ltd**. *supra*, the Revenue cannot propose to redetermine or confiscate or impose any penalty through a SCN and therefore, the SCN without disturbing the assessment/self-assessment order is *void ab-intitio*.

6. It is also urged that the issue revolved around whether the importer had contravened the MIP price fixed by the DGFT Notification (supra) or not; it is contended in this regard that the importation of Black Pepper involved cost apart from freight, insurance and other overheads along with miscellaneous expenses which cumulatively made the value of the imported goods over and above the MIP, which has not been considered by the Department. Further, it was urged that the DGFT Notification did not prescribe any manner in which

the price was to be charged for domestic clearance/sale and in any case, in business parlance there were multiple factors for consideration while fixing the sale value like quality of goods, demand, supply, financial obligations, etc.

7. When the DGFT Notification did not impose any restriction and when no specific or unconditional prohibition exists for import of the goods in question and admittedly, the CIF was above ₹500 per Kg. on which the importer had paid Customs duty on the declared/transaction value and had also discharged IGST, which stands accepted on the MIP as fixed by the above Notification, there cannot be any allegation as to any violation much less to any conditions of the above Notification and therefore, impugned goods cannot be termed as 'Prohibited'.

8. The Ld. Advocate *inter alia* contended that the allegation on the appellants is that they have overvalued the imported goods which show that they have paid more Customs duty as well as IGST. Therefore, there is no loss to the exchequer and the Revenue has enriched itself with more tax/duty. Also, there was no undue benefit on their side at the cost of exchequer; therefore, the basic allegation of the Department on overvaluation of import does not have any legal sanctity under the Customs provisions.

8.1 The allegation on them is that they have overvalued the goods to circumvent the Minimum Import Price which seems to be baseless on the count that Department have not enquired or investigated or obtained any statement or information from the Overseas Supplier with regard to the price of the pepper

sold by the Foreign Exporter. There is no legal backing and hence on this count alone the impugned order is liable to be set aside.

8.2 With regard to the proposal for confiscation of the goods it is contended that Section 111 (m) of the Customs Act, 1962 is invokable only when there is a mis-declaration with reference to import documents, the proper officer must examine the declaration with reference to Foreign Trade Policy and then only he can examine the correctness of classification and rates of duty claimed.

8.3 It is also contended that the appellants were under the bonafide impression that the value to be declared in the Bill of Entry should be in terms of Section14 of Customs Act, 1962 read with Customs Valuation Rules, and not according to the Minimum Import Price. The duty has been paid on the value as per the provisions which factual position is not disputed in the SCN and also not objected to in SCN. Therefore, invocation of Section 111 (m) of the Customs Act, 1962 is untenable and legally unsustainable.

8.4 Section 111(o) of the Customs Act, 1962 is not invokable as there is no post-import condition in the Minimum Import Price Policy which has not been complied with. In this regard, they placed reliance on the decision arrived in the case of **Indu Nissan OXO Chemical Industries Vs Commissioner of Customs, Kandla** – 2013 (290) ELT 299 (Tri. -Ahmd.).

8.5 It is further argued that there is no contravention of Section 111 (m) and 111 (o) of the Customs Act, 1962 and

therefore penalty cannot be imposed under Section 112 of the Act *ibid.* It is alleged that Section 112 has been invoked without any whisper of any clause or provision and is contrary to a settled principle. They relied on the decision of the Supreme Court in the case of **Amrit Foods Vs CCE**, **U.P** – 2005 (190 ELT 433 (SC) wherein it has been categorically held that the notice should be precise as to the provision which has been contravened under the Customs Act, 1962. Therefore invocation of Section 112 of the Customs Act, 1962 cannot be pressed in the present case and further in the absence of revision of the order of assessment, no notice *per se* can be issued even for imposition of penalty.

8.6 It is emphasized that Section 114A of the Customs Act, 1962 can be imposed only in case of short-levy, non-levy, erroneous refund or interest. Further in the instant case, Section 28 of the Customs Act, 1962 has not been invoked and therefore the invocation of Section 114A of the Customs Act, 1962 is legally unsustainable and further in the absence of any revision of the order of assessment, no notice per se can be issued even for imposition of penalty.

8.7 It is asserted that Section 114AA can be imposed only in the case of export goods or any loss to the exchequer. Since there is no export or any loss to the exchequer the imposition of penalty under Section 114AA of the Customs Act, 1962 cannot be warranted in the present case.

9. Shri Ashwini Kumar, ld. Advocate, appeared and argued for Appellants; Shri Anoop Singh, ld. Joint Commissioner and

Shri Harendra Singh Pal, ld. Asst. Commissioner appeared and argued for the Respondent.

10. Upon considering the rival contentions, we find that the following issues arise for our consideration:

(1) Whether the Commissioner is justified in rejecting the declared assessable value of the imported goods viz., Black Pepper, by holding the same as 'prohibited' and the consequential re-determination of transaction value by the Commissioner, is in order?

(2) Whether the penalty-imposed under Sections 112 & 114AA of the Act on all the Appellants, is in order?

11. The Adjudicating Authority/Commissioner has invoked Rule 9 *ibid* to determine the value of imported goods but however, at para 51, he holds that the value declared in the Bills of Entry and the related invoices by LEI, Sri Lanka were not correct, should be rejected and re-determined as per Rule 3(1) read with Rule 9 *ibid*; and thus, proceeds to do so. For ease of understanding, Rule 9 *ibid* which is the Residual Method, is reproduced below:

> **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.

12. There is no dispute that in terms of Explanation (1) (i) to Rule 12 *ibid*, when the proper officer has reason to doubt the declared value and '…. *where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9'*.

13. The next question is, *is the goods imported, a prohibited goods in India*? Our answer is a firm NO since, firstly the DGFT Notification No. 21/2015-2020 (supra) though prohibits the import as a policy, however the policy condition is not absolute. The same is subject to the condition that '… ***import is free if CIF is above Rs. 500/- per Kg***.' So, the subject goods is made 'prohibited', once again in a grave defiance of the condition of a guiding Rule/Circular issued in this regard, by ignoring that the prohibition is only a conditional one and not an absolute one.

14. Further, it was the case of the appellants that they had pleaded that the goods in question were imported under

preferential rate of duty under SAFTA, which benefit was also denied to the importer. References were made to clause (d)/para 2 of Article III, Article 5 of the SAFTA, apart from Article III of GATT, to highlight that Free Trade Agreements are part of International Law, accordingly the Govt. of India had granted concessional rate of Basic Customs Duty (BCD) for the impugned goods, but unfortunately, the Commissioner is only enforcing non-tariff restriction in the guise of MIP by treating the goods in question as 'prohibited'.

15. Sri Anoop Singh also drew our attention to relevant portion of the discussions in the OIO as to the relationship between the parties, but we do not find any rationale behind the rejection of declared value; it could have been a different matter altogether had it been the case of under-valuation, which is not so. The relevant discussions in the impugned order appears to treat the 'relationship' between the parties as itself a sufficient ground to reject the transaction value.

16. It is not the case of the Revenue that by promptly paying customs duty and CGST on import, the appellants have caused serious injury/loss to the revenue. Further, it is also not the case of the Revenue that the Notification (supra) or by virtue of any law applicable at the relevant time, there was restriction in place insofar as the selling price of the imported goods was concerned, to attribute any violations.

17. In view of the above discussions, we are of the clear view that the declared assessable value of the impugned goods did not warrant any interference, much less any re-determination as done by the proper officer in the impugned

order and hence, the impugned order cannot sustain. Consequently, there cannot be any room also to impose any penalties under Sections 112 & 114AA of the Customs Act, 1962 on the Appellants.

18. We therefore set aside the same in *toto* and allow the Appeals with consequential benefits if any, as per law.

(Order pronounced in Open Court on 14.02.2025)

sd/-
(M. AJIT KUMAR)
MEMBER(TECHNICAL)

sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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