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CESTAT Chennai Rules in Favor of M/s Zibal Exim: Classification and Valuation of Imported Black Sand Upheld



This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Introduction:

This case pertains to Customs Appeal No. 42037 of 2015 filed by M/s Zibal Exim against the Order-in-Appeal No. 118/2014-TTN(CUS) dated 14.10.2014, which upheld the Order-in-Original No. 40/2013 dated 07.11.2013. The dispute arose over the classification, valuation, and eligibility for concessional duty of 106 tons of "Black Sand" imported by the appellant from Sierra Leone.

The Customs Department classified the goods as Quartz Sand under CTH 2505 1020, denied the concessional duty under Notification No. 12/2012, enhanced the value of the goods, and imposed fines and

penalties. The appellant contested these findings, asserting that the goods were Rutile-bearing sand and should be classified under CTH 2614 0090 as Titanium Ore.

Legal Principles Adopted by the Tribunal:

1. Classification of Goods:

- The Tribunal analyzed the Customs Tariff Act, 1975, and the General Rules for Interpretation (GIR) of the First Schedule. Rule 1 of the GIR emphasizes that classification should be determined by the terms of the headings and relevant section/chapter notes.
- Chapter Heading 2505 explicitly excludes "Metal Bearing Sands," which are classified under Chapter 26. The Tribunal referred to the Harmonized System of Nomenclature (HSN) Explanatory Notes, which state that Rutile-bearing sands fall under Chapter 26.
- The Tribunal concluded that the imported Black Sand, containing 25-30% Rutile, qualifies as a metal-bearing sand and should be classified under CTH 2614 0090.

2. Valuation of Goods:

- The Tribunal held that the transaction value declared by the importer must be accepted unless proven incorrect with independent evidence. The Department's reliance on contemporaneous imports lacked supporting documentation and failed to establish comparability in terms of quality, quantity, and country of origin.
- The Tribunal emphasized that mere reference to NIDB data or contemporaneous imports without proper evidence violates the principles of natural justice.

3. Judicial Precedents:

- The Tribunal relied on several judicial precedents to reinforce its findings:
 - **Ganpati Overseas [2023 (10) TMI 364 - Supreme Court]:** Held that in cases of undervaluation, the burden of proof lies on the Department, and the benefit of doubt must go to the importer if no evidence is provided.
 - **M/s. Sree Rajendra Textiles [2023 (8) TMI 265 - CESTAT Chennai]:** Reiterated that transaction value cannot be rejected without evidence.
 - **M/s. New Era Traders [2024 (1) TMI 1087 - CESTAT Chennai]:** Highlighted the importance of providing evidence for contemporaneous imports.
 - **M/s. Albany Molecular Research Hyderabad Research Centre Pvt. Ltd. [2024 (10) TMI 465 - CESTAT Chennai]:** Stated that NIDB data alone cannot justify rejection of transaction value.
 - **Commissioner of Central Excise, Delhi-IV Vs. Anushka Overseas [2011 (274) ELT 546]:** Held that rejection of transaction value requires independent evidence.
 - **Commissioner of Customs, New Delhi vs. Marble Art [2013 (289) ELT 346 (Tri. - Del.)]:** Emphasized the need for detailed evidence to reject transaction value.
 - **M/s. Atlantis Trading Company Vs. Commissioner of Customs, Tuticorin [2023 (11) TMI 178 - CESTAT Chennai]:** Reiterated that NIDB data alone is insufficient for valuation enhancement.

Order Passed by the Tribunal:

1. The Tribunal ruled in favor of the appellant, M/s. Zibal Exim, and held that the imported Black Sand should be classified under CTH 2614 0090 as Rutile-bearing sand.
2. The enhancement of transaction value by the Department was deemed unsustainable due to the lack of evidence and violation of natural justice.
3. The confiscation of goods, imposition of fines, and penalties were set aside.
4. The Order-in-Appeal No. 118/4-TTN(CUS) dated 14.10.2014 was quashed, and the appeal was allowed with consequential relief as per the law.

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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Customs Appeal No. 42037 of 2015

(Arising out of Order-in-Appeal No. 118/2014-TTN(CUS) dated 14.10.2014 passed by Commissioner of Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

M/s. Zibal Exim

No. 1-1-113, Sai Nagar,
Malkajgiri,
Hyderabad – 500 047.

...Appellant

Versus

Commissioner of Customs

Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

...Respondent

APPEARANCE:

For the Appellant : Mr. M. Karthikeyan, Advocate
For the Respondent : Ms. O.M. Reena, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40869 / 2025

DATE OF HEARING : 09.04.2025
DATE OF DECISION : 02.09.2025

Per Mr. VASA SESHAGIRI RAO

This Customs Appeal No. C/42307/2015 has been filed by M/s. Zibal Exim (hereinafter referred to as the 'Appellants') assailing the Order in Appeal No. 118/2014-TTN (CUS) dated 14.10.2014 passed by the Commissioner of

Customs (Appeals), Tiruchirappalli who has upheld the Order-in-Original No. 40/2013 dated 07.11.2013 of the Additional Commissioner of Customs, Tuticorin. The Original Adjudicating Authority has ordered for classification of the imported Black Sand under CTH 2505 1020 as Quartz Sand, rejected the transaction value declared, confiscated the imported goods and imposed redemption fine of Rs.2,00,000/- under Section 125 of the Customs Act, 1962, demanded the duty payable as Rs.5,07,136/- on enhanced value of Rs.54,20,436/-, adjusted the duty amount of Rs.1,57,737/- paid and imposed a penalty of Rs.1,24,000/- under Section 112(a)(iii) of the Customs Act, 1962 for mis-declaring the description of the goods with an intention to avail exemption under Customs Notification No. 12/2012 dated 17.03.2012 (S.No. 117).

2. The facts of the case are the Appellants had imported 106 Tons (2680 bags) of "Black Sand" from Sierra Leone (West Africa) *vide* Bill of Entry No. 8531780 dated 20.11.2012 and have classified the same under Customs Tariff Heading (CTH) 26140090. The Appellant sought to avail the benefit of concessional rate of Basic customs duty @2.50% in terms of Sl.No. 117 of Notification No. 12/2012 Customs dated 17.03.2012.

3. A representative sample was drawn and sent to Regional Ore Dressing Laboratory, Bengaluru (the lab) for the purpose of testing and *vide* report No. k-26011/5/2012/BNG-ODL dated 26.12.2012, the lab stated that the sample mainly consists of Quartz and Rutile with minor amounts of limonite/goethite, leucoxene, staurolite, tourmaline, Zircon and amphibole. The test report is extracted below for ready reference: -

Mineral	Percentage
Quartz	55 -60
Rutile	25 - 30
Limonite / goethite	5 - 7
Leucoxene	2 - 3
Staurolite	2 - 3
Tourmaline	Traces
Zircon	Traces
Amphibole	Traces

For the queries raised by this Custom House as below: -

1. Composition of the Cargo?
2. Whether is it ore?

The testing authorities have pointed out that: -

- i. The sample appears to be natural sand sample and
- ii. This is Rutile bearing sand.

4. Considering the above test report, the Original Adjudicating Authority issued the Show Cause Notice No.

08/2013 in C.No./VIII/10/14/2013-ADJN dated 19.03.2013 to the appellant *inter alia* seeking to: -

- i. To classify imported Black Sand as Quartz Sand under CTH 2505 1020 and not under CTH 2614 0090 as classified by the Appellants.
- ii. Why the exemption claimed under Sl.No. 117 of Notification No. 12/2012 should not be denied.
- iii. That the declared value of the said cargo i.e., 325 USD PMT should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and value should not be redetermined at 834 USD PMT being the contemporary value available for similar goods, in terms of the provisions of the Rule 4(1)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007 and why the appropriate duty should not be demanded on the enhanced value along with interest under Section 28AA of the Customs Act, 1962.
- iv. Why the subject goods *viz.* 106 tons (2680 bags) of sand should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962 for contravening the provisions of Section 46(4) of Customs Act read with Section 17(4) of the Customs Act, 1962 and,

v. Why penalty under Section 112(a)(iii) of the Customs Act, 1962 should not be imposed on the importer for mis-declaring the description of goods with an intention to avail ineligible exemption under Sl. No. 117 of Notification No.12/2012 - Customs dated 17.03.2012.

5. The Appellant filed their reply to the above Show Cause Notice and raised the following grounds: -

- i. That the report of Regional Ore Dressing Laboratory, Bangalore is erroneous as the report gives the percentage of the constituents in a wide range and therefore it appears that Regional Ore Dressing Laboratory is not fully equipped to conduct detailed examination of the sample.
- ii. That the report confirms that imported item as natural sand and as Rutile bearing sand and thus confirms the presence of Rutile (25% to 30%) which is undisputedly ore for Titanium.
- iii. That the reliance on the report for treating the major content as quartz and thereby reclassifying the product as Quartz sand is incorrect.
- iv. That the rejection of value on the basis of contemporary imports is without any logic as the comparison lacks clarity as to the quantity of import, country of import, whether under a contract, etc.

6. After the due process of adjudication, the Original Adjudicating Authority has confirmed the allegations made in the Show Cause Notice on the following grounds: -

- i. That the Regional Dressing Ore Laboratory is well equipped with sophisticated equipment for providing region wise facilitation for carrying out R&D studies in the field of mineral beneficiation and mineral characterization and analysis of environmental studies.
- ii. The report provides that predominant element available is Quartz and rutile bearing is only 25-30%. Further, no evidence has been provided to substantiate that titanium ore can be extracted from the said material.
- iii. Further, for the purpose of classification, weight and usage of the predominant element needs to be duly considered, which in the present situation appears to be Quartz.

7. Being aggrieved by the order, the Appellant preferred an appeal against the above order before the Commissioner Appeals, Tiruchirappalli, who rejected the appeal and upheld the classification, denial of concessional rate and valuation as proposed in the Order-in-Original dated 07.11.2013.

8. Thus, the Appellant has filed the present appeal before this Tribunal. The Ld. Advocate Mr. M. Karthikeyan appeared and argued for the Appellant, and his submissions are as follows: -

- i. The test report clearly indicates that "This is a rutile bearing sand and hence the same is specifically covered under heading 2614 and excluded from CTH 2505.
- ii. That they had also done an independent testing of the said material to substantiate the same but the same was rejected by the original adjudicating authority.
- iii. That they had earlier imported the same goods through Tuticorin Customs house vide Bills of Entry no 8109763 dated 03.10.2012 and 7358896 dated 16.09.2012 wherein the goods have been classified under Chapter 2614 as Titanium ore, and no dispute has been raised by the Department on the same.
- iv. Further, they have also imported the said goods through ICD, Sanathnagar Hyderabad *vide* Bill of Entry no.8551167 dated 21.11.2012 wherein also they had classified the goods under chapter 2614. The customs office had drawn samples *vide* test memo no 154/2012 dated 12.12.2012 and had sent the sample to Geological Survey of India for testing who *vide* their report dated 19.12.2012 had stated that most

minerals found in the sample are rutile and ilmenite (ores of titanium) and hence the goods were finally assessed under Chapter 2614.

v. That Original Adjudicating Authority has merely gone by the quartz sand composition and applied the rule of predominance provided under Rule 3(b) of General rules for interpretation to classify the product under Chapter 25 which is not legally sustainable as Chapter 25 specially excludes metal bearing sands.

vi. That the enhancement of value based on contemporaneous imports cannot be accepted owing to lack of supporting documents/documentary evidence to the effect that the same/similar goods were imported and there were no means to verify the Country of origin, commercial quantity, etc. In this regard, reliance is placed on the ruling of Supreme Court in the case of *Ganapati Overseas [2023 (10) TMI 364]* wherein it was held that in case of undervaluation where there are no supporting documents/evidence then the benefit of doubt must go to the importer. The said decision has been followed by Chennai CESTAT in the following decisions: -

- i. *M/s. Rajendra Textiles [2023 (8) TMI 265]*
- ii. *M/s. New Era Traders [2024 (1) TMI 1087]*
- iii. *M/s. Albany Molecular Research Hyderabad Research Centre [2024 (10) TMI 465]*

- vii. Since there is no misclassification, confiscation and penalty are not imposable and prayed for setting aside the impugned order.
9. *Per Contra*, the Ld. Authorized Representative Ms. O.M. Reena appearing for the Revenue, re-iterated the findings in the order in appeal and submitted the appeal is liable to be rejected.
10. Heard both sides and considered the rival submissions including the evidence available on appeal records and the case laws relied upon.
11. The issues that arise for consideration are: -
- i. Whether the classification of the Black sand imported merits classification under CTH 2614 0090 as claimed by the Appellant or merits classification as Quartz Sand under CTH 2505 1020 as determined by the Department? and,
 - ii. Whether the Original Adjudicating Authority is correct in rejecting the value declared by the importer on the basis of a contemporaneous import?
12. Regarding the first question, it would be pertinent to analyze the respective entries from the Customs Tariff Act, 1975.

2505	NATURAL SANDS OF ALL KINDS WHETHER OR NOT COLOURED, OTHER THAN METAL-BEARING SANDS OF CHAPTER 26			
2505 10	- Silica sands and quartz sands:			
	- Silica sands:			
2505 10 11	- Processed (white)	kg	5%	-
	-			
2505 10 12	- Processed (brown)	kg	5%	-
	-			
2505 10 19	- Other	kg	5%	-
	-			
2505 10 20	- Quartz sands	kg	5%	-
	-			
2505 90 00	- Other	kg	5%	-
	-			
2614	- TITANIUM ORES AND CONCENTRATES			
2614 00	- Titanium ores and concentrates:			
2614 00 10	- Ilmenite, unprocessed	kg	2.5%	-
	-			
	-			
2614 00 20	- Ilmenite, upgraded (beneficiated ilmenite including ilmenite ground)	kg	2.5%	-
	-			
	- Rutile:			
	-			
	-			
2614 00 31	- Rare earth oxides including rutile Sand	kg	2.5%	-
	-			
	-			
2614 00 39	- Other	kg	2.5%	-
	-			
	-			
2614 00 90	- Other	kg	2.5%	-
	-			

13. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-

headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product.

14. Since the section notes or chapter notes do not explicitly provide for inclusion or exclusion, reference is made to HSN Explanatory Notes issued by World Customs Organization.

15. Under the specific heading 2505, it is clearly stated that the heading does not include Metal Bearing Sands. In terms of explanatory Notes to HSN, Gold bearing or Platinum bearing sands, Zircon sands, Rutile sands etc., are classified under Chapter 26. The relevant extract of the same is reproduced below: -

"On the other hand, this heading does not include gold-bearing or platinum-bearing sands, zircon sands, rutile sands and ilmenite sands, nor monazite sands (monazite!) which are classified as thorium ores; all these fall in Chapter 26. Nor does the heading cover tar sands or "asphaltic sands" (heading 27.14)"

16. The significance and weightage enjoyed by HSN Notes was expounded by the Hon'ble Supreme Court in the case of *Wood Craft Products Ltd (1995 (77) ELT 23]* as follows: -

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to 'reduce disputes on account of tariff classification'. Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred".

17. In view of the specific exclusion of Metal Bearing Sands in the HSN Explanatory notes under heading 2505, we agree that Appellant's have correctly classified the goods under Chapter 26 and under Tariff Item 26140090. The Black Sand imported consists of 25% to 30% Rutile and other Minerals like Limonite / Goethite, Leucoxene, Staurolite, Tourmaline, zircon, etc., to be characterized as Mineral Sand / Ore. The essential

characteristic of ore is given by 'Rutile' to the imported goods and in terms of Rule 3(b) of the General Rules for Interpretation of the Customs Tariff, imported goods are to be classified under Chapter Heading 2614. Rule 3(b) of the GIR reads as follows: -

"3.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

Further, Chapter Heading 2505 specifically excludes Metal Bearing Sands of Chapter 26. Quartz Sands are classifiable under Chapter Heading 2505 but exclude Metal Bearing Sands. So, the Adjudicating Authority has arrived at erroneous conclusion in respect of classification of imported Mineral Bearing Black Sand. It is also to be noted that for the queries raised by the Custom House, the testing authorities have answered that the sample appears to be natural sand sample and is Rutile Bearing Sand.

As such, the issue of classification of imported goods is decided in favour of the Appellant.

18. With regard to the second question, on perusal of records, we find that the Department has not provided

sufficient justification for rejection of value. The issue is no longer *res-integra* and has been squarely covered by various judgments of Higher Judicial fora. The declared transaction value was rejected and the value was redetermined taking the basis of Quartz Sand imported @834 USD FOB per Metric Ton in respect of the Bill of Entry No. 8044762 dated 25.09.2012. The details of the import by whom from where and in what quantity have not been communicated to the importer thus violating the principles of natural justice. The Appellant has submitted that the enhancement of value based on one contemporaneous import cannot be accepted owing to lack of supporting documents. He submitted that the Department has failed to produce any documentary evidence to the effect that same/similar goods were imported as relied upon Bill of Entry and there were no means to verify the Country of Origin, commercial quantity, etc. In this connection, the Ld. Advocate placed his reliance on *Ganpati Overseas [2023 (10) TMI 364 - SUPREME COURT]* wherein it was held by the Hon'ble Apex Court that in cases where the charge of undervaluation cannot be supported by Department either by evidence or information about comparable imports, the benefit of doubt must go to the importer. Therefore, the onus lies on the Department to prove that identical imports of "Black Sand" have been done at higher rates with documentary evidence. In the absence

of any such documents submitted by the Department, the allegation is not sustained. The above ratio has been squarely followed by this Bench in the following decisions as relied upon by the Appellant: -

- i. M/s. Sree Rajendra Textiles [2023 (8) TMI 265 - CESTAT CHENNAI]*
- ii. M/s. New Era Traders [2024 (1) TMI 1087 - CESTAT CHENNAI]*
- iii. M/s. Albany Molecular Research Hyderabad Research Centre Pvt. Ltd. [2024 (10) TMI 465 - CESTAT CHENNAI]*

Moreover, when the imported goods are not Quartz Sand but rutile sand and which merits classification under Chapter 26, there is no scope for enhancement based on the value of imported quartz sand. Accordingly, enhancement of value ordered for in the impugned order is legally not sustainable.

19. In this connection, we refer to the case of *M/s. Albany Molecular Research Hyderabad Research Centre Pvt. Ltd. Versus Commissioner of Customs, Chennai III Commissionerate 2024 (10) TMI 465 - CESTAT CHENNAI* wherein it was held that: -

"10. *It is a well-settled law that the transaction value has to be admitted as the assessable value unless proved to be incorrect. For such purpose, proving the value to be wrong, independent evidence is required and mere reference to NIDB data is not sufficient. It is held by various Courts that NIDB data cannot be made the sole basis for enhancement of the value. Tribunal has also considered similar issues in a number of earlier decisions and has held that adoption of NIDB Data, without any other*

evidence on record to establish the transaction value as incorrect, is not proper and justified. For the above proposition, the Ld. Advocate has drawn our attention to various decisions of the Tribunal which have been reproduced below for convenience: -

(i) Commissioner of Central Excise, Delhi-IV Vs. Anushka Overseas [2011 (274) ELT 546]: -

"5.----- Further, the reliance on the NIDB data by the original adjudicating authority cannot be held to be in accordance with declaration of law and the Tribunal's decision in the case of M/s. Gaitri Export refers (supra) would be fully applicable to the facts of the case. Furthermore, we also find that there is no allegation, much less any allegation to the effect that any additional payments were made by the respondent to their foreign supplier. In the absence of the same and in view of our foregoing discussion, we find no infirmity in the order of Commissioner (Appeals), in respect of the valuation aspect. We find that the Commissioner (Appeals) has rightly applied the precedent decisions to the facts of the case and has rightly rejected the Revenue's stand on the assessable value of the goods. Accordingly, we reject the appeal filed by the Revenue".

(ii) In Commissioner of Customs, New Delhi vs. Marble Art [2013 (289) E.L.T. 346 (Tri. - Del.)] it was held as given below: -

"3. On going through the order of Commissioner (Appeals), we find that he has set aside the order of the original adjudicating authority enhancing the value of the imported rough marble blocks from different countries. The said enhancement was done by the Assistant Commissioner on bill of entry itself. The appellate authority had observed that no reasons stands given by the Assistant Commissioner for enhancing the value and no reasons stand given by him for rejection of the transaction value as such, by following the Tribunal's decision in the case of M/s. Prasad Enterprises, Order Nos. 1329-36/04-NB dated 21-11-2004 also by following the Supreme Court decision in the case of Eicher Tractors, 2004 (41) RLT 621 = 2000 (122) E.L.T. 321 (S.C.), he has held that transaction value has to be

accepted in the absence of any other evidence to show that the said transaction value was not correct and there existed special relationship between the supplier of the goods and the importer. As such, he has held that the department had discarded the transaction value without any basis which is contrary to provisions of law.

4. Revenue in their memorandum of appeal have submitted that enhancement was done on the basis of NIDB data of contemporaneous imports of identical goods. However, we find no merits in the above plea of the Revenue. First of all, to adopt the value of the contemporaneous imports, the transaction value is required to be rejected as incorrect/false on the basis of same evidence. Secondly, the contemporaneous imports value is required to be picked up after establishing that the goods match in the quality, quantity and country of origin and time period. There is nothing on record to reflect upon such facts and as such we find no merit in the Revenue's appeal and same is accordingly rejected."

(iii) In the case of M/s. Atlantis Trading Company Vs. Commissioner of Customs, Tuticorin [2023 (11) TMI 178-CESTAT Chennai] it has been ruled that: -

"7.1 It is the settled position of law that NIDB data cannot be the only basis for rejection of the declared value, which has been reiterated by various CESTAT Benches, including the Chennai Bench, in the case of M/s. Almaa Traders v. Commissioner of Customs (Export), Chennai [Final Order No. 40898 of 2023 dated 11.10.2023 in Customs Appeal No. 40935 of 2014 – CESTAT, Chennai], wherein it was held as under: -

"7.3 Moreover, the officer has relied on alleged contemporaneous imports which were never put across to the appellant for rebuttal, but however, that such reliance on the contemporaneous imports itself has been doubted by the adjudicating authority when he holds that the value of the imported goods could not be determined under Rule 4 and Rule 5 due to variable factors like numerable types of descriptions, grades, country of origin, etc.; Rules 7 and 8 also could not be applied for want of quantifiable data at the place of exportation and importation respectively. By this, the approach of the assessing officer in comparing the import value with that of the contemporaneous imports stood diluted. In other words, on the one hand the officer says that the value of contemporaneous imports were higher, but on the other hand he refers to various

factors like numerable types of descriptions, grades, country of origin, place of exportation and importation, etc., which would apply in equal force in respect of the value of the imported goods as well.

7.4 The quantity of import is much higher than the quantity of import in respect of the contemporaneous imports. Hence, so-called contemporaneous imports were in fact in comparables, due to which the rejection of the value of import as declared by the appellant is without any basis.

8. In view of the above, we are satisfied that the re-determination of the import value by the Revenue is without any basis and certainly not in accordance with the spirits of law, for which reasons the same deserves to be set aside.”

7.2 A similar view was also expressed by this Bench in the case of M/s. Shah B Impex v. Commissioner of Customs (Imports), Chennai [Final Order No. 40917 of 2023 dated 12.10.2023 in Customs Appeal No. 40823 of 2014 – CESTAT, Chennai], the relevant portion of which is reproduced below: -

“4.1 We have perused the table reproduced by the original authority at paragraph 6 of her order, but however, what is conspicuously missing is as to why and how the appellant had under-valued its imports. There is also no discussion as to the quantity of import, commercial level and other data insofar as the NIDB data referred to is concerned, nor do we find anywhere as to any discussion by the original authority as to how the same were comparable with the impugned goods on hand, imported by the appellant. There is no discussion also as to the quality, thickness, etc., in the goods referred to in the NIDB data.

4.2 We find that the Tribunal Benches across India have held that the NIDB data alone cannot be the basis for rejection of the transaction value. There is a reference to under-valuation way back in 2000, no specific reference to the appellant’s case, no reference ever made to the price being at arm’s length, nor is there any allegation that the transaction was between related parties. In the case on hand, the Revenue has not alleged anything other than relying on NIDB data.

4.3 Also, the Revenue has nowhere held that the transaction value declared by the appellant was incorrect or unbelievable, to reject the same. It is also the settled position of law that the transaction value cannot be rejected just because identical goods are imported at a higher price. For this, the Revenue has to first establish that the goods imported and contemporaneous goods are identical in the first place before proceeding further, which exercise has not at all been done by the Revenue in the case on hand. The Hon’ble Apex Court in its latest judgement in the case of Commissioner of Customs (Imports), Mumbai v. M/s. Ganpati Overseas [Civil Appeal Nos. 4735-4736 of 2009 dated

06.10.2023] has held that the legal position is that transaction value can be rejected if the invoice price is not found to be correct but it is for the Department to prove that the invoice price is not correct.”

8. We are therefore prima facie satisfied that the Revenue has not made out a case firstly, for the rejection of the declared value and secondly, no case is either made out justifying re-determination of the same. We find that the decisions/orders relied upon by the appellant support our above view, and hence, we hold that the adjudicating authority was clearly in error in rejecting the declared value and then re-determining the same; and hence, the impugned order is clearly unsustainable for the above reasons. Hence, we set aside the impugned order.”

20. After appreciating the facts and in compliance to following the judicial discipline, we are of the considered view that there is no justification for enhancement of the transaction value, that too without determining how the imported goods are comparable and contemporaneous in terms of quality, quantity and country of origin and other commercial factors which affect the transaction value. Neither there was any communication of the reasons to the Appellant as to how the declared transaction value is doubted in terms of the Customs Valuation Rules, 2007. As such, there is no legal basis for enhancement of the transaction value of the imported Black Sand.

21. In view of the above findings, the confiscation of impugned goods and imposition of fine and penalty is not sustainable and so, ordered to be set aside.

22. Consequently, the impugned Order-in-Appeal No. 118/2014-TTN(CUS) dated 14.10.2014 is set aside. Thus, the appeal is allowed with consequential relief, if any, as per the law.

(Order pronounced in open court on 02.09.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)