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CESTAT Delhi Upholds Correct Classification and Valuation of Imported Goods



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In a landmark decision, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), New Delhi, Principal Bench, has ruled in favor of M/s Simpex Industries in Customs Appeal No. 50071 of 2025. The appeal challenged the order dated 08.05.2024 passed by the Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi, which had reclassified imported goods and rejected their declared value. The Tribunal's decision, pronounced on 06.10.2025, is a significant victory for importers and reinforces the importance of judicial discipline and adherence to procedural requirements.

Background of the Case

M/s Simpex Industries, a regular importer of photographic equipment, filed an appeal against the Principal Commissioner's order that:

1. Reclassified their imported goods (LED continuous lighting equipment) from Customs Tariff Heading (CTH) 9006 99 00 (photographic flashlights) to CTH 9405 40 10 (lamps and lighting fittings).
2. Rejected the declared value of Rs. 22.68 crore and re-determined it as Rs. 27.94 crore, citing alleged undervaluation.

The appellant argued that the goods were correctly classified under CTH 9006 99 00 and that the declared value was accurate. They relied on previous favorable orders passed by the Commissioner (Appeals) and the Joint Commissioner, which had been accepted by the department.

Key Issues in the Appeal

The appeal revolved around two primary issues:

1. **Classification of Goods:** Whether the imported LED continuous lighting equipment should be classified under CTH 9006 99 00 or CTH 9405 40 10.
2. **Valuation of Goods:** Whether the declared value of the goods was accurate or required re-determination under the Customs Valuation Rules, 2007.

CESTAT's Observations and Findings

1. Classification of Goods

The Tribunal noted that previous orders dated 07.06.2022 (Commissioner of Customs Appeals) and 01.12.2022 (Joint Commissioner) had classified the same goods under CTH 9006 99 00. These orders were accepted by the department, and no appeal was filed against them. The Principal Commissioner's decision to discard these orders was deemed unjustified.

The Tribunal emphasized that:

- The goods met the criteria for classification under CTH 9006 99 00 as photographic flashlights, producing bright light for short durations.
- CTH 9405 covers lamps and lighting fittings with permanently fixed light sources, which the imported goods did not possess.

The Tribunal concluded that the Principal Commissioner's reclassification was contrary to judicial discipline and the Supreme Court's decision in *Birla Corporation Ltd. vs. Commissioner of Central Excise*.

2. Valuation of Goods

The Tribunal rejected the Principal Commissioner's findings on undervaluation, citing procedural lapses and lack of credible evidence. Key observations included:

- **Statement under Section 108 of the Customs Act:** The Tribunal ruled that the revised stock statement submitted during the investigation could not be relied upon as the mandatory procedure under Section 138B of the Customs Act was not followed.
- **Price List from Supplier:** The Tribunal found that the price list dated 04.07.2022 relied upon by the department was fake, as confirmed by the supplier's subsequent email dated 22.04.2023.
- **Market Survey:** The Tribunal held that the market survey conducted in a different state and behind the appellant's back lacked evidentiary value.
- **Chartered Accountant's Certificate:** The Tribunal stated that the CA-certified value of Rs. 6.27 crore should have been accepted, as no cogent reason was provided for its rejection.

The Tribunal concluded that the declared value was accurate and could not be rejected under Rule 12(1) of the Customs Valuation Rules, 2007.

Final Decision

The Tribunal set aside the Principal Commissioner's order, holding that:

1. The goods were correctly classified under CTH 9006 99 00.
2. The declared value of the goods was accurate and did not warrant re-determination.

The appeal was allowed, marking a significant victory for M/s Simpex Industries.

Implications of the Judgment

This decision underscores the importance of judicial discipline and adherence to procedural requirements in customs matters. It serves as a reminder to adjudicating authorities to respect previous rulings and ensure that evidence relied upon is credible and admissible. For importers, the judgment reinforces their right to challenge arbitrary reclassification and valuation decisions.

Conclusion

The CESTAT's ruling in favor of M/s Simpex Industries is a testament to the principles of fairness and justice in customs adjudication. By setting aside the Principal Commissioner's order, the Tribunal has upheld the appellant's rightful classification and valuation of goods, providing much-needed clarity and relief to importers facing similar challenges. This case will undoubtedly serve as a precedent for future disputes in customs classification and valuation.

Source: CESTAT Delhi

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**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50071 OF 2025

(Arising out of Order-in-Original No. 35/2024/VCG/Pr. Commissioner/ICD-Import/TKD dated 08.05.2024 passed by the Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi)

M/s Simpex Industries

B-62, G.T Karnal Road,
Industrial Area,
North-West Delhi

.....Appellant

versus

**Principal Commissioner of
Customs (Import)**

ICD, Tughlakabad,
New Delhi

.....Respondent

APPEARANCE:

Shri Alok Agarwal and Shri Prachit Mahajan, advocates for the Appellant

Shri Rakesh Kumar, authorized representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 10.07.2025

DATE OF DECISION: 06.10.2025

FINAL ORDER NO. 51512/2025

JUSTICE DILIP GUPTA:

M/s Simpex Industries¹ has filed this appeal to assail the order dated 08.05.2024 passed by the Principal Commissioner of Customs. The order rejects the declared value of the imported goods covered under various Bills of Entry filed during the period from 10.03.2018 to 31.03.2022 under rule 12(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007² and re-determines the value under rule 3 (1) read with rule 9 of the 2007 Valuation Rules. The order also upholds the classification of the goods covered by 321 Bills of Entry out of

-
1. the appellant
 2. the 2007 Valuation Rules

the 432 Bills of Entry, but rejects the classification of the goods covered by the remaining 111 Bills of Entry under CTI 9006 99 00 and re-classifies them under CTI 9405 40 10. In respect of ICD TKD, the Principal Commissioner determined the differential duty amount with interest under 28AA of the Customs Act, 1962³ and imposed penalties under section 114AA of the Customs Act. The Principal Commissioner also determined the differential duty amount with interest in respect of ICD Patparganj and Air Cargo (Import) Delhi and imposed penalties. The Principal Commissioner also appropriated the amount deposited during investigation.

2. The appeal, therefore, involves two issues. The first issue relates to classification of the imported goods and the second issue relates to valuation of the imported goods.

Classification

3. The goods imported by the appellant were LED continuous lighting equipment and they were classified by the appellant under Customs Tariff Heading⁴ 9006 as photography flashlights on which basic customs duty was paid @ 10%. According to the department, the goods should have been classified under CTH 9405 as lamps and lighting fittings, for which basic customs duty would be payable @ 25%.

4. The appellant contends that 47 of the Bills of Entry involved in the appeal were covered by an earlier order dated 01.12.2022 passed by the Joint Commissioner of Customs in the case of the appellant that held that the classification of the same imported goods would be under CTI 9006 99 00. The appellant also contends that the same view was earlier taken in the order dated 07.06.2022 passed by the Commissioner of Customs

3. **the Customs Act**

4. **CTH**

(Appeals) in the case of the appellant in respect of the same goods, which order had been accepted by the department. This order dated 07.06.2022 was relied upon by the Joint Commissioner in the order dated 01.12.2022.

5. This submission of the appellant was considered and rejected by the Principal Commissioner in the following manner:

"6.8.2 ** The Noticee has relied upon heavily on OIA dated 07.06.2022 passed by Commissioner of Customs (Appeals) and OIO Dated 01.12.2022 passed by Joint Commissioner of Customs, ICD-Import, TKD in their own case stating that the same have been accepted by the Competent Authorities.** Based on that, the Noticee has contended that proposing re-classification of such item is self-contradictory. In this regard, it is observed that the Bills of Entry covered under the said OIA and OIO are covered in Annexure-D-4. **As observed above, it is clear that the Noticee has not produced any evidence to prove that the goods covered under Annexure-D-4 fulfills the criteria of CTH 9006 as discussed in detail above. It is further observed that the OIO Dated 01.12.2022 passed by Joint Commissioner of Customs, ICD-Import, TKD has relied upon the OIA dated 07.06.2022 to arrive at the conclusion. Further, the OIA dated 07.06.2022 has not discussed any evidences to suggest that the goods covered therein are eligible to be covered under CTH 9006.** As such, it appears that the notice had misrepresented the facts of items not having Flash light features in garb of other items having Flash light features involved in subject O-I-O & O-I-A.
*****"

(emphasis supplied)

6. It is seen that the order dated 01.12.2022 passed by the Joint Commissioner has been discarded by the Principal Commissioner for the reason that it placed reliance upon an earlier Order-In-Appeal dated 07.06.2022, which order had not discussed any evidence to hold that the

goods were covered under CTH 9006. A conclusion has, therefore, been drawn by the Principal Commissioner that the appellant had misrepresented the items.

7. It would, therefore, be useful to reproduce the relevant portion of the order dated 01.12.2022 passed by the Joint Commissioner in respect of the appellant for the same goods and it is as follows:

"1. M/s. Simpex filed various Bills of Entry, as detailed in Table-A, for import of goods declared as "Simpex Light Round (Photographic Equipment) etc." The importer classified the said items under Customs Tariff Heading (hereinafter called in short "CTH") 9006 99 00 and paid BCD@10%, Social Welfare Surcharge@10% and IGST@18% (as per Sr. No. 411B of Schedule III of IGST Notification No. 001/2017-Integrated Tax (Rate) dated 28.06.2020).

2. As per the Customs Tariff Act, 1975, "Lamps and Lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included" are classified under tariff heading 9405 (including ceiling or wall lamps, electric table, desk bedside or floor standing lamps, LED lamps and others).

14.5 I find that the noticee has also relied upon the OIA dated 07.06.2022 passed by the Commissioner of Customs (Appeals), New Customs House, Delhi vide CC(A)/Customs/D-11/IMP/ICD/TKD/649/2022-23, in the identical matter of the same party which has been decided in their favor. I also find that the issue involved in both the cases is of import of Studio Light Mini (Photographic Equipment). Simpex Ring Studio Light (Photographic Equipment) etc.. I also note that vide letter C. No. VIII/ICD/TKD/Rev/Imp/OIA/55/2022 dated 14.11.2022 has also informed this office that the said OIA has been accepted by the department and no appeal has been preferred

with CESTAT on the said matter. I now proceed to adjudicate the case.

15.1 From the allegations levelled by the department and the defense submissions made by the noticee, I find that it is not under dispute that the flashlight fall under CTH 9006 or not, but that the impugned goods are flashlight apparatus or not.

15.2 I further find that Explanatory Note II of HSN to CTH 9006 under the heading Photographic Flashlight Apparatus and Flashbulbs states that this group covers photographic flashlight apparatus and flashbulbs, which are used for professional or amateur photography. photographic laboratories or in photogravure work. It further states that "these devices produce very bright light for a very short duration (flash) and are thus distinguished from photographic lighting equipment of CTH 9405. **I find that a photographic flashlight device which is used for professional or amateur photography and produces a flash for a very short duration and merits to be classified under CTH 9006 and cannot be classified under CTH 9405.**

15.3 I further find that General Explanatory Note (3) to Chapter 94, states that the chapter covers "Lamps and lightning fittings and parts thereof, not elsewhere specified or included, of any material (excluding those of materials described in Note 1 to Chapter 71), and illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or include (CTH 9405), It is seen from a bare perusal of the said explanatory note that CTH 9405 only includes lamps and lighting fittings which have a permanently fixed light source. I also find that the HSN Explanatory Note to Chapter 9405 categorically excludes Photographic flashlight apparatus (including electrically ignited photographic flashbulbs of CTH 9006).

16. From all the discussions above, the product catalogue and other documents submitted by the noticee, I find that the impugned goods

possess the characteristics of photographic flash lights. They produce bright light for a very small duration (a fraction of a second) and are not permanent source of light in the studio. I find that the allegations of the department are based upon the description of the goods declared in bills of entry. However, I find that no contrary evidence other than that has been provided by the department. Therefore, at this stage where the impugned goods are not available for inspection and examination, the contention of the noticee that impugned goods are flash lights has to be accepted and impugned goods are properly classified under CTH 9006 only.

17. I find that the impugned goods produce flash or bright light for a very short duration of 1/2800 secs 1/3000 secs every 3-5 seconds and do not have a permanently fixed light source. Hence, subject goods are categorically excluded from CTH 9405 and expressly included under Chapter Heading 9006 and thus cannot be classified under CTH 9405 9900.

18. Further, being bound by the axiom of judicial discipline as discussed above, I am constrained to hold that the subject impugned goods are expressly included under Chapter heading 9006 and thus cannot be classified under CTH 9405 9900 under any circumstances. Hence the classification declared by the noticee was correct and needs no interference."

(emphasis supplied)

8. It would also be useful to reproduce the relevant portion of the earlier order dated 07.06.2022 passed by the Commissioner (Appeals) in the matter of the appellant in respect of the same product and it is as follows:

"5.2 I find that the issue before me is whether goods i.e 'Studio light mini (photographic equipment)', 'Simpex ring studio light (photographic equipment)', etc imported

by the Appellant are to be classified under CTH 9006990 or under CTH 94054090.

5.3 I note that goods imported by the Appellant have been described as 'Studio light mini (photographic equipment)', 'Simpex ring studio light (photographic equipment)', etc. However, from the product catalogue and other documents submitted by the Appellant along with the Appeal, I note that these lights are photographic flash lights. They are producing bright light for a very small duration (a fraction of a second) and are not permanent source of light in the studio. I note that the Adjudicating Authority has not recorded any contrary finding on the similar submissions made by the Appellant at adjudication stage. The Adjudicating Authority rather rejected the catalogues stating that these cannot be correlated with the impugned goods as no specific model numbers were mentioned in the bills of entry. However, no evidence to counter submission of the Appellant that his goods were flash lights has been produced. Apparently, the Audit contention and findings of the Adjudicating Authority are based upon the description given in bills of entry and is without any contrary evidence. Thus the contention of the Appellant that impugned goods are flash lights has to be accepted. The Appellant are regular importers and their past consignments have been cleared on number of occasions after examination. Thus, to allege that goods were not flash lights is not proper.

5.5 Admittedly, the impugned goods produce flash or bright light for a very short duration of 1/2800 secs-1/3000 secs every 3-5 seconds and do not have a permanently fixed light source. Hence, subject imported goods are categorically excluded from Chapter 9405 and expressly included under Chapter Heading 9006 and thus cannot be classified under CTH 9405 99 00 under any circumstance. The classification declared by the Appellant was correct and needs no interference."

(emphasis supplied)

9. It needs to be noted that the order dated 01.12.2022 passed by the Joint Commissioner notices that the order dated 07.06.2022 passed by the Commissioner (Appeals) had been accepted by the department.

10. When these two orders passed by the Commissioner (Appeals) and the Joint Commissioner were in respect of the same products and in matters pertaining to the appellant and the order passed by the Commissioner (Appeals) had been accepted by the department, the Principal Commissioner could not have discarded these orders and re-classified the goods from CTI 9006 99 00 to CTI 9405 40 10. It was not open to the Principal Commissioner to comment that the order dated 07.06.2022 passed by the Commissioner (Appeals) does not discuss any evidence to hold that the goods were covered under CTI 9006 99 00. The Principal Commissioner could not have taken a different view, more particularly in view of the decision of Supreme Court in **Birla Corporation Ltd. vs. Commissioner of Central Excise**⁵.

11. This apart, when 47 Bills of Entry out of the total Bills of Entry involved in appeal were already covered by the order dated 07.06.2022 passed by the Joint Commissioner, a different view regarding classification could not have been taken by the Principal Commissioner for the remaining Bills of Entry.

Valuation

12. The second issue that arises for consideration in this appeal relates to valuation of the goods. The show cause notice proposes to reject the declared value of Rs. 22,68,71,481/- of the goods covered under the Bills of Entry filed during the period from 10.03.2018 to 31.03.2022 and proposes to re-determine the same as Rs. 27,94,39,196/. The Principal

5. **2005 (186) E.L.T. 266 (S.C.)**

Commissioner has rejected the declared value and enhanced the same for the following reasons:

- (i)** During the search of the premises on 30.03.2022, the importer had furnished a stock statement in which the value of the imported branded goods was shown as Rs. 6,20,05,173/-. He, however, agreed to furnish the actual stock position after ascertaining the same;
- (ii)** During the recording of the statement under section 108 of the Customs Act on 18.04.2022, Pankaj Verma submitted a revised stock statement of imported branded goods in which the value was revised to Rs. 7,84,23,087/-. He also stated that this revised value was arrived by taking into account the undervaluation adopted by Simpex;
- (iii)** The importer had declared the value of the branded goods as Rs. 6,27,38,434/- at the time of imports;
- (iv)** The value of the branded goods is Rs. 7,84,23,087/- as per the revised stock statement provided on 18.04.2022 and not Rs. 6,27,38,434/- as per the Chartered Accountants Certificate 23.04.2024;
- (v)** A division of M/s Vivitar (Asia Ltd.) namely, M/s Yiyou Company Ltd., furnished the price list dated 04.07.2022 by e-mail dated 04.07.2022. Though Pankaj Verma, in his statement recorded on 14.09.2022, stated that this price list was for the products manufactured or supplied by M/s Vivitar (Asia Ltd.), but as this e-mail dated 04.07.2022 of M/s Yiyou Company Ltd. was addressed to the importer, he should have objected but he did not; and
- (vi)** On 23.09.2022, a market survey was conducted to ascertain the dealer price of comparable goods which also shows undervaluation.

13. The relevant portion of the order passed by the Principal Commissioner in respect of valuation is reproduced below:

"**7.1 ******* I observe that this proposal for re-determination of value of these goods has been made on the following grounds:

(i) That in the impugned matter, during search of the premises of the Noticee on 30.03.2022 at B-62, G.T. Karnal Road, Industrial Area, North West Delhi, Delhi, 110033; it was found that the importer had stored the imported goods in two godowns at B-36/6 and B-36/10 in the same locality i.e., G.T. Karnal Road, Industrial, North-West Delhi, Delhi, 110033. While inquiring about the status of imported goods, the importer has furnished a stock statement of the imported goods totally valued at Rs. 12,74,40,832/- and the same consisted of different types of imported goods i.e., flash lights, LED Continuous Lights etc. Shri Pankaj Verma, Managing Partner of Simpex stated that as per the stock statement available with them, the value of imported branded goods stored in the said godown is Rs.6,20,05,173/- and value of unbranded imported goods is Rs. 6,54,35,660/-. Shri Pankaj Verma furnished undertaking letter dated 30.03.2022 to keep the stored goods in his safe custody and agreed to furnish the actual stock position after ascertaining the same. It is further observed that during recorded in his statement dated 18.04.2022, Shri Pankaj Verma submitted revised stock statement of imported goods bearing the brand names - Godox, Vivitar & Nissin present at the warehouses/godowns at B-36/6 and B-36/10, G.T. Karnal Industrial Area, Delhi-33 which is an updated version of the stock statement submitted on 30.03.2022 vide panchanama dated 30.03.2022. On scrutiny of the same, it was noticed that the revised statement contained the unit price, total value of the imported goods bearing the brand names Godox, Vivitar & Nissin (Rs. 6,27,38,434/-) declared to the customs at the time of import and the revised value of the goods bearing the brand names - Godox, Vivitar & Nissin is Rs. 7,84,23,087/-; that the revised value of such goods has been arrived by taking into account of undervaluation adopted by Simpex. The imported goods bearing the brand name viz. Godox, Vivitar & Nissin valued at Rs. 7,84,23,087/- (revised value) lying in stock at the premises of Simpex were seized vide Seizure Memorandum dated 18.04.2022

under Section 110 of the Customs Act, 1962 and handed over to Shri Pankaj Verma under Supurdnama dated 18.04.2022 for safe custody of seized goods. **It is also observed simultaneously that the Noticee submitted to the DRI a Chartered Accountant's certificate dated 23.04.2022 wherein the value of such seized goods have been declared as Rs. 6,27,38,434/- only.**

(ii) The Noticee has contended that the revised stock statement dated 18.04.2022 relied in the SCN is legally not acceptable as correct as the same had never been supplied to the Noticee and it has not been signed. That the stock statement dated 30.03.2022 duly signed by Sh. Pankaj (Managing Partner in M/s Simpex Industries), is part of panchnama, hence the same can't be discarded. The Noticee further referred to their e-mail dated 26.04.2022 whereby they submitted a CA certified correct stock statement dated 23.04.22 which is affirmation with the actual stock statement dated 30.03.23.

(iii) In this regard, it is observed that the stock statement dated 30.03.2022 duly signed by Sh. Pankaj (Managing Partner in M/s Simpex Industries) was submitted to the DRI but it was also accepted by him in his statement that he would furnish the actual stock position after ascertaining the same. It is further observed that the revised statement contained the unit price, total value of the imported goods bearing the brand names - Godox, Vivitar & Nissin (Rs. 6,27,38,434/-) declared to the customs at the time of import and the revised value of the goods bearing the brand names - Godox, Vivitar & Nissin amounting to Rs. 7,84,23,087/- was submitted by Shri Pankaj Verma at the time of his statement dated 18.04.2022. On careful examination of this revised stock statement; it is observed that the same contains details of the price declared to the Customs, actual purchase price and original value of the goods. It is but obvious that these detailed values cannot be arrived at without actual database present with the Noticee. **On the other hand, on perusal of the CA certificate dated 23.04.22 submitted by the Noticee on 26.04.2022; it is observed that the same has declared the value of such goods as Rs. 6,27,38,434/- which is the equal value of the seized goods in the impugned matter and which was submitted as tentative value of such goods at the time of search proceedings in the impugned matter.** Further, it is not clear from the said CA certificate as to how the prices referred therein has been arrived at. **Therefore, it is observed that the value of the impugned seized**

goods is Rs. 7,84,23,087/- as per revised stock statement dated 18.04.2022 and not Rs. 6,27,38,434/- as per CA Certificate dated 23.04.2022.

(iv) It is observed that Shri Vicky Xu, International Sales Department Photography Division M/s. Yiyou Co Ltd [A division of M/s. Vivitar (Asia) Limited] vide e-mail dated 04.07.2022, furnished their price list dated 04.07.2022 of photographic products supplied to Simpex. The same has been relied upon in the impugned matter as RUD-A-15. It is observed that Shri Pankaj Verma, during his statement dated 14.09.2022; was shown this price list. Shri Pankaj Verma identified the same and stated that this price list is for the products manufactured or supplied by M/s Vivitar (Asia) Limited, parent company of M/s Yiyou Co Ltd. That the Company M/s Yiyou CO Ltd also procures wide range of photography equipment from other manufacturers and sells them worldwide. That M/s Yiyou Co Ltd also makes custom made products for their own brand simpex; that few of the items mentioned in the said list were imported by them by way of undervaluation. The Noticee; in their written submissions as above, has contended that the price list of supplier vide e-mail dated 04.07.2022 relied upon by revenue is not admissible since goods had been already imported prior to said price list. Further, the Noticee has also stated that the same supplier has intimated them vide e-mail dated 22.04.2023 stating that their official e-mail address is sales@yiyou.asia and price list relied in the SCN is fake. In this regard, it is observed that the e-mail dated 04.07.2022 of M/s Yiyou Co Ltd was addressed to the Noticee also and it was not objected to by the Noticee at the relevant time itself. Further, if the list provided with this e-mail was not correct, the correct list of the price of photographic products supplied by M/s Yiyou Co Ltd should have been supplied by the Noticee to counter the list provided by M/s Yiyou Co Ltd vide their e-mail dated 04.07.2022.

(v) It is observed that on 23.09.2022, Market Survey was conducted at M/s Visual Point India Pvt Ltd. Chennai & M/s. F. Stop, Chennai (dealers of photography flash light & LED continuous lights) to ascertain the dealer price of comparable goods of flash lights & continuous lights; and also to compare the dealer price (selling price) followed by M/s. Delhi Photo Store (wholesaler) with the dealer price (selling price) followed by other wholesalers for the comparable goods sold to M/s Visual Point India Pvt Ltd, Chennai & M/s. F. Stop, Chennai. The details

of such market survey are mentioned at Para 2.12 above and not being reproduced for the sake of brevity. It is observed that the Noticee has contended that the market survey has no evidentiary value since they were not made part of the same. However, it is served that the Noticee; vide their letter date 25.02.2023 stated that they do not have a published price list, retail price list and dealer price list for the goods sold from Simpex to M/s Delhi Photo Store and acknowledged the market survey dated 23.09.2022.

7.2. In view of the discussions above, I find that the transaction value declared by the importer under the provisions of Section 14 of the Customs Act 1962 read with Customs Valuation Rules, 2007, is unacceptable. Therefore, the value declared before the Customs Authorities for clearance of the imported goods under various Bills of Entry filed from 10.03.2018 to 31.03.2022 cannot be considered as representing true transaction value under Rule 3 of CVR and the same is liable for rejection under Rule 12 of CVR. In view of the above, the declared invoice value is rejected under Rule 12 of the Customs Valuation Rules, 2007 and the said value thus needs to be redetermined by following the procedure prescribed in CVR by sequentially applying Rule 4 to Rule 9 of the Customs Valuation Rules, 2007."

(emphasis supplied)

14. Learned counsel for the appellant made the following submissions:

- (i)** The statement said to have been made by Pankaj Verma under section 108 of the Customs Act on 18.04.2022 cannot be considered as relevant as the provisions of section 138B of the Customs Act were not followed. In this connection, reliance has been placed on the decision of the Tribunal in **M/s Surya Wires Pvt. Ltd. Vs. Principal Commissioner, CGST, Raipur⁶**;

6. **Excise Appeal No. 51148 of 2020 decided on 01.04.2025**

- (ii)** For the same reason, the revised statement said to have been provided by Pankaj Verma during the course of his statement on 18.04.2022 showing the revised value of branded goods as Rs. 7,84,23,087/- instead of Rs. 6,27,38,434/- cannot be considered as relevant;
- (iii)** The appellant had provided a Chartered Accountant Certificate dated 23.03.2022 in which the value of the imported goods was declared as Rs. 6,27,38,434/-, but the said certificate has been discarded without giving any cogent reason;
- (iv)** The price list dated 04.07.2022 said to have been sent by e-mail by M/s Yiyou Company Ltd. cannot be relied upon in view of the subsequent mail sent by M/s Yiyou Company Ltd. on 22.04.2023. Even otherwise, the demand pertains to imports made from 10.03.2018 to 31.03.2022, but the price list is dated 04.07.2022;
- (v)** The IP address of the e-mail dated 04.07.2022 is of a location in Mumbai in the State of Maharashtra, whereas the supplier is located in China; and
- (vi)** Reliance placed on the market survey conducted on 23.09.2023 is misplaced as the said survey was conducted behind the back of the appellant and was also conducted in a different State.

15. Learned authorized representative appearing for the department, however, supported the findings recorded in the impugned order.

16. The submissions made by the learned counsel for the appellant and the learned authorized representative appearing for the department in the matter of undervaluation have been considered.

17. Much emphasis has been placed by the Principal Commissioner on the statement made by Pankaj Verma under section 108 of the Customs Act on 18.04.2022. It is alleged that during the course of the statement made under section 108 of the Customs Act he submitted a revised statement showing the value of the imported branded goods as Rs. 7,84,23,087/-.

18. The issue that arises for consideration is whether a statement made under section 108 of the Customs Act can be considered as relevant. This issue was examined by a Division Bench of this Tribunal in **M/s. Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**. The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

"21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the

Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.”

19. After examining various judgments of the High Courts and the Tribunal, the Tribunal observed as follows:

“28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply

with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.”

20. The revised statement is said to have been produced by Pankaj Verma during the course of his statement made under section 108 of the Customs Act. For the reasons contained in the decision of the Tribunal in **M/s Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur**, the revised statement cannot be relied upon.

21. Emphasis has also been placed by the Principal Commissioner on the e-mail sent by M/s Yiyou Company Ltd. on 04.07.2022 enclosing the Price List dated 04.07.2022. The appellant has brought on record the e-mail dated 22.04.2023 sent by the same supplier stating that the e-mail dated 04.07.2022 is fake and it was not sent through the official e-mail address. This e-mail dated 22.04.2023 is reproduced below:

“Dear Mr. Verma

I acknowledge the receipt of the e-mail dated 22-04-2023. In this regard, I am surprised to see the price list forwarded by you. It is informed that the correct e-mail address to communicate to us is the e-mail from which you have sent the e-mail i.e. sales@vivou.asia

It is also informed that we supply the goods as per your request and of Simpex brands only. **We have never supplied any other brand to you & also we have never supplied any goods related to M/s Vivitar (Asia) Limited. It is a well-known**

fact in the photography industry that M/s Vivitar (Asia) Limited has been out of business for about 10 years. We are nowhere associated with Vivitar (Asia)
As per your request you we get the said price list checked & it looks fake & it appears to be provided by some competitors of ours to derail our business.

Vicky Xu
Sales head
Yivou Co. Ltd.
Shenzhen China"

22. This e-mail dated 22.04.2023 sent by the supplier clearly establishes that the earlier e-mail dated 04.07.2022 was not sent by the supplier.

23. This apart, the IP address of the e-mail dated 04.07.2022 is of a location at Mumbai in the State of Maharashtra, whereas the supplier is located in China.

24. In such circumstances, the Principal Commissioner was not justified in placing reliance upon the Price List dated 04.07.2022 for the purpose of valuation of the goods.

25. The Principal Commissioner has also placed reliance upon the market survey said to have been conducted in a different State on 23.09.2023. This market survey was conducted behind the back of the appellant and, therefore, no reliance can be placed.

26. The certificate provided by the Chartered Accountant which mentions the value of the branded goods as Rs. 6,27,38,434/- could not have been discarded.

27. Thus, the valuation declared by the appellant could not have been rejected under rule 12(1) and re-determined under rule 9(1) of the 2007 Valuation Rules.

28. The aforesaid discussion leads to the inevitable conclusion that the appellant had correctly classified the goods under CTI 9006 99 00 and had also correctly declared the value of the goods in the Bill of Entries.

29. The order dated 08.05.2024 passed by the Principal Commissioner of Customs, therefore, cannot be sustained and is set aside. The appeal is, accordingly, allowed.

(Order Pronounced on **06.10.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

Kritika,

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 50071 OF 2025

(Arising out of Order-in-Original No. 35/2024/VCG/Pr. Commissioner/ICD-Import/TKD dated 08.05.2024 passed by the Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi)

M/s Simpex Industries

B-62, G.T Karnal Road,
Industrial Area,
North-West Delhi

.....Appellant

versus

Principal Commissioner of Customs (Import)

ICD, Tughlakabad,
New Delhi

.....Respondent

APPEARANCE:

Shri Alok Agarwal and Shri Prachit Mahajan, advocates for the appellant
Shri Rakesh Kumar, authorized representative for the department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING: 10.07.2025
DATE OF DECISION: 06.10.2025**

ORDER SHEET

Order Pronounced.

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)**

Kritika