

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

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 41070 of 2015

(Arising out of Order-in-Original No.35511/2015 dated 27.02.2015 passed by Commissioner of Customs, Chennai-II, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s. Larsen & Toubro Ltd. **... Appellant**
L&T Construction,
Legal Department, Post Box No.979,
Mount Poonamallee Road,
Manapakkam,
Chennai 600 089.

VERSUS

The Commissioner of Customs, **... Respondent**
Chennai-II
60, Rajaji Salai, Custom House,
Chennai 600 001..

WITH

(2) Customs Appeal No.41072 of 2015 (E. Murugan Vs CC Chennai-II)

(3) Customs Appeal No.41073 of 2015 (B. Ashok Vs CC Chennai-II)

(4) Customs Appeal No.41074 of 2015 (K. Nagarajan Vs CC Chennai-II)

(5) Customs Appeal No.41152 of 2015 (CC Chennai-II Vs Larsen & Toubro Ltd.) [with C/Cross/40817/2015-by Importer]

(Arising out of Order-in-Original No.35511/2015 dated 27.02.2015 passed by Commissioner of Customs, Chennai-II, Custom House, No.60, Rajaji Salai, Chennai 600 001)

APPEARANCE :

Shri P.R. Renganath, Advocate for the Appellant/Importer
Shri Sanjay Kakkar, Authorized Representative for the Revenue

CORAM :

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

FINAL ORDER Nos.41227-41231/2025

DATE OF HEARING : 05.05.2025
DATE OF DECISION : 03.11.2025

Per: Shri P. Dinesha

Heard Shri P.R. Renganath, Ld. Advocate for the Appellant/Importer and Shri Sanjay Kakkar, Id. Deputy Commissioner for the Respondent/Revenue.

2. These appeals arise out of a common impugned Order-in-Original No.35511/2015 dated 27.02.2015 passed by Commissioner of Customs, Chennai-II. A common Show Cause Notice dated 08.10.2014 was issued to the Appellants/Importer herein and the short point in the SCN is that the 1st Appellant i.e. M/s.Larsen & Toubro Ltd. (M/s.L&T Ltd., for short) have suppressed the actual freight and other charges upon importation of used machinery from

M/s.Sharaf Foundations, Dubai. It was thus alleged that the freight and other charges paid to their overseas supplier by M/s.L&T Ltd. had been declared in the import documents to the effect that freight was paid by supplier M/s.Sharaf Foundations, Dubai. The above was followed up with investigation during the course of which, statements of several persons appear to have been recorded. The SCN thus proposed redetermination and reassessment of the declared value by invoking Rule 9 read with Rule 10 of Customs Valuation Rules, 2007 (CVR, 2007, for short), read with Section 14 of the Customs Act, 1962; demand of differential duty under the provisions of Section 28 ibid apart from interest, confiscation and penalties under Section 112 (a), Section 114A and Section 114AA ibid. It appears that the main Appellant/Importer filed a very comprehensive explanation justifying its stand. During the course of hearing in adjudication, it appears that the Appellant/Importer took serious objection to the issuance of notice under Section 28 thereby denying any suppression of material facts with an intent to evade any duty liability; it was also pointed out that they having filed their reply in terms of Section 28(5) ibid, the proceedings initiated under the above SCN should come to an end. In this context, it

was also explained that Appellant/Importer had paid duty not only on freight but also with reference to overhead expenses as well as yard charges. In this regard, a worksheet along with written submissions was placed before the Adjudicating Authority. It was thus submitted by the Appellant/Importer in the written submissions that as per Section 28 (5) *ibid* when an application is filed under the above Section and the officer is not accepting stand of the Appellant/Importer, the officer has to necessarily follow the mandate up Section 28 (6) *ibid* and as on the date of written submission/date of hearing which is 19.01.2015, when there is no such notice issued under Section 28(6) *ibid*, the proceedings initiated under the SCN should be treated to have come to an end.

3. The Adjudicating Authority having considered the reply as well as the written explanation filed, however, vide the impugned Order-in-Original No.35511/2015 dated 27.02.2015 proceeded to confirm the proposed demands in the SCN. In so far as the application of Section 28 (5) and 28 (6) are concerned, the officer has only tried to defend his inaction in not issuing the required / mandatory notice under Section 28 (6) despite recording the specific contention in

this regard of the Appellant. Relevant observation of the Adjudicating Authority at para-21 of OIO is as under :

“...However, I find that the duty amount calculated by the importer is at variance with the extant valuation rules and hence, I am of the opinion that the importers have not been truthful and just in calculating the differential duty amount which is against the spirit of the Section 28 (5)...”

4. Section 28 (6) specifically mandates the issuance of notice, if the proper officer is of the opinion that there is any short payment of duty or penalty or variation in the payment and it is not an empty formality. The non-issuance of mandatory notice by the Revenue has only rendered the above provision *otiose* and hence, the very purpose of the said provision is rendered futile. Further, in the very same paragraph 21 the officer records that *“...The difference is not purely due to calculation variation but because of interpretation issues also...”*. This also gives an impression that it is not the factual issue which was involved but it also involved interpretational issues, which means that the allegation of suppression would not stand. The Adjudicating

Authority himself is admitting it and hence, the very basis of the allegation of suppression of facts appears to be on a very shaky ground.

5. A perusal of the SCN reveals that several Bills of Entry were filed, as extracted at **Table-II** below at para 10.6 therein and the last of such Bills of Entry is dated 26.04.2012, for which, a SCN issued [dated 08.10.2014], which is clearly beyond the normal period and the only allegation in the SCN is non-compliance with the Board's Circular No.42/2005-Customs dated 24.11.2005 as amended by Circular No.29/2010-Customs dated 20.08.2010 by which the importers were considered as highly compliant and that the Appellant/Importer in spite of their status chose to misdeclare the values of the used machinery which, according to the officer, amounted to misdeclaration and suppression; the same, however, is not held to be "**with intent to evade duty**". This, according to us, does not automatically lead to the triggering of provisions of Section 28 since Section 28 lays down specific conditions for pressing the said section into service.

6. In view of the above, we are satisfied that Revenue has not been able to establish its case (i) for non-issuance of mandatory notice under Section 28 (6); and (ii) invoking the extended

period of limitation, which are sufficient to set aside the demand raised by invoking the larger period of limitation, for which reason the impugned order cannot sustain. The same is, accordingly, is set aside and the Appeals filed by Appellants/Importer are allowed on this ground with consequential benefits, if any , as per law.

7. In the Department Appeal No.**C/41152/2015**, the Revenue is aggrieved by a part of actual finding in the impugned order, by the Original Authority, but however as we have held that the impugned order itself as unsustainable on limitation, the grievance of the Revenue merges with the impugned order and hence, would not require any independent deliberation by us and the same is treated as disposed. The Cross objections **[C/Cross/40817/2015]** filed by the Importer also stands disposed of.

(Order pronounced in open court on 03.11.2025)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)