CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Appeal No.41155 of 2016

(Arising out of Order-in-Appeal No.49/2016-TTN (CUS) dated 19.04.2016 passed by Commissioner of Customs & Central Excise (Appeals-2), Tiruchirappalli.)

M/s. Rajeshwari Copper Products, **....Appellant**
Shed D.No.79, Industrial Suburb,
Yeshwanthpur,
Bangalore-560 022.

Versus

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

APPEARANCE:

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41402/2025

DATE OF HEARING: 29.10.2025
DATE OF DECISION: 28.11.2025

Per: Shri P. Dinesha

The present Appeal is filed by M/s. Rajeshwari Copper Products, aggrieved by the impugned Order-in-Appeal No.49/2016 dated 19.04.2016 passed by Commissioner of Customs & Central Excise (Appeals-2), Tiruchirappalli.

2. By this Appeal, the Assessee-Appellant is questioning the rejection of Transaction value declared by it upon import of Copper Scrap-druid *vide* Bill of Entry dated 29.10.2014; the Appellant had admittedly declared the unit price @ 1.25 U.S. Dollars per kg. A perusal of Order-in-Original No.945/2015 dated 25.05.2015 reveals that samples were drawn under a test memo on the same day and sent for testing at Customs House Laboratory, Tuticorin to ascertain the classification and the said Authority has accordingly reported the composition of the goods in question *vide* Report dated 07.11.2014 as under :

> Report:-
>
> The sample is in the form of a cut length of cable. It consists of insulation plastic material composed of High Density Polyethylene greased woven fabrics, paper, yarns, metallic

sheet composed of galvanized Iron, metallic wire composed of copper, metallic sheet composed of copper, metallic wire and sheet composed of Aluminium.

% of galvanized Iron = 43.1
% of Copper = 19.4
% of Plastic = 17.8
% of Aluminium = 12.5
% of woven fabric = 3.5
% of paper = 3.5

Balance is yarn. 99.8

Remnant may be collected from the laboratory within a fortnight.

3. Para 4 of the OIO reveals the comparison of the goods in question with *'prevalent contemporaneous import value assessed for similar items…'*. The Proper Officer *viz*. Assistant Commissioner of Customs appears to have noticed *inter-alia* that the unit price declared was low, the same cannot be accepted under Rule 3 of the said Rules for the purpose of assessment, is liable to be rejected under Rule 12 ibid and the same was to be re-determined in terms of Rules 3 & 4 ibid.

4. Yielding perhaps to business pressure, it appears that the Appellant *vide* letter dated 14.11.2014 agreeing with the report which ONLY indicated the composition of the goods imported, challenged the valuation proposed by the officer, also agreeing to pay

the differential duty under protest, with a further request to release the goods.

5. In the meantime, it appears that the Adjudicating Authority had passed the OIO on 25.05.2015 wherein he had rejected the declared value and re-determined the same as indicated by him. Aggrieved by the above, it appears that the Appellant challenged the same before the First Appellate Authority and the First Appellate Authority after affording an opportunity of being heard, however, rejected the Appeal thereby upholding the demands in the OIO *vide* OIA No.49/2016 dated 19.04.2016; the said OIA has been assailed by the Appellant in this Appeal.

6. Heard Shri Hari Radhakrishnan, Ld. Advocate for the Appellant and Shri N. Satyanarayana, Ld. Assistant Commissioner for the Respondent who defended the impugned order.

7. We have to observe, at the outset, the strange functionality of the Adjudicating Authority here, in this case; the Appellant files an application under RTI

[dated 13.07.2015] and *vide* reply dated 04.06.2015, the Assistant Commissioner (CPIO) forwards a copy of the Speaking Order-in-Original to the Appellant and more than this, the officer *vide* communication dated 13.07.2015 has further asserted as under:

> *"When an order raising a certain demand is passed against an Assessee, it is well known under law that it is incumbent on the officer passing such on order to serve the same at the earliest, to enable the sufferer to file an Appeal within the time allowed under the Statute. Enclosing a copy of the order in reply to the RTI is unheard of and hence unusual."*

8. Be that as it may; at para 9 of the OIO, the officer refers to Rule 12(1) *ibid*., to highlight his power as *'reason to doubt the truth and accuracy of the value declared…'* and thereafter at para 10 of the OIO reproduces 'NIDB' data of contemporaneous imports and finally orders rejection of declared value, thereby re-determining the same by making an enhancement. The said view has been approved and upheld in the impugned OIA by the First Authority. The same is in fact seriously questioned by the Appellant here, in this Appeal on the ground that in both the orders of Lower Authorities, there is no discussion on the applicability of Rule 12 or adherence to the provisions in *stricto senso*

and that the Authorities have also not followed the mandatory requirements prescribed for rejection of the declared value.

9. We have heard the rival contentions and we have carefully perused the orders of both the Lower Authorities.

10. Section 14 of the Customs Act provides for determination of transaction value, which shall be *the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation or as the case may be, for export from India for delivery at the time and place of export, where are the buyer and seller of the goods are not related and price is the sole consideration*. Further, Rule 3 of the Customs Valuation [Determination of Value of Imported Goods] Rules, 2007 prescribes the determination of method of valuation and Rule 12 *ibid* prescribes rejection of declared value. Cumulative reading of the above provisions implies that Section 14 has to be read with Rule 12 of the 2007 Rules; Rule 3(1) of 2007, Rules states that value of the imported

goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 *aid*, which in fact deals with the costs and services which are to be added to the price actually paid or payable. Rule 3(1) however, is subject to Rule 12 and therefore it gives primacy to Rule 12; Rule 3(2) states that value of the imported goods under sub-rule (1) shall be accepted by the Customs Authorities, they provide different clauses (a) to (d) setting out the preconditions for accepting value of the imported goods. Thus, Rule 12 which enjoys the pivotal position applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods, which envisages two–step verification and examination exercise. The proper officer in the first place must ask and call upon the importer to furnish further information, including documents to justify the declared transactional value, the proper officer may accept the transactional values declared, where such officer is not satisfied and has reasonable doubt about the truth or accuracy of the values so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub – Rule (1) of Rule (3) ibid.

Clause (iii) of Explanation to Rule 12 states that the proper officer can on certain reasons, raise doubts about the truth or accuracy of declared value; certain reasons would include conditions specified in clauses (a) to (f). Grounds mentioned in (a) to (f), however are not exhaustive of certain reasons to raise doubt about the truth or accuracy of the declared value. Further, Rule 12(2) prescribes that on request of an importer, the proper officer shall intimate to the importer in writing grounds, i.e., the reason for doubting the truth or accuracy of the value declared in relation to the imported goods.

11. In essence, the Proper Officer could reject the declared transactional value based on certain reasons to doubt the truth or accuracy of the declared value in which event, he is entitled to make assessment in terms of Rules 4 to 9 of the 2007 Rules; grounds for doubting have been elucidated in explanation 3 to Rule 12. In the judgement of ***Century Metal Recycling Private Limited vs. Union of India*** [2019 (367) ELT 3 (SC)], the Apex Court had an occasion to consider the relevance and importance of conditions

under Rule 12 in the context of Section 18 of the Act and while analyzing from the above context, the court has held as under:

> *'…On interpreting Section 18 of the Act, it is held that when there is a dispute between the customs authorities and the importer as regards the valuation of the imported goods, on satisfaction of the conditions enumerated in sub-section (1), the authorities should make provisional assessment of customs duty under Section 18 of the Act. This expedites clearance, pending final adjudication on merits which may take time. This is also the mandate of the Board Circular No.38/2016 dated 22nd August, 2016. Any insistence and compulsion by the authorities that the importer should disclaim and forgo his statutory right under Section 18 of the Act would not be correct. Neither would it be right to reject the valuation as declared by the importer without reasonable doubt for certain reasons.*
>
> *20….*
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> *As per sub Rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.*
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> *21. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, albeit it has been read by us by implication in Rule 12. Being conscious that this mandate it applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case to case basis, depending upon the factual matrix and*

considerations like whether the importer has asked for 'certain reasons', whether the reasons were not communicated, whether certain t reasons' can be deciphered from the assessment/valuation order, whether misdescription or false f declaration was apparent, etc.

22……

23. 23. We would now refer to the findings of the order in original in the present case which observes that the appellants had declared value of the aluminium scrap as 81.31 per kg, albeit the contemporaneous import data in the form of different bills of entry had indicated aluminium scrap values between 83.26 to ₹ 120.897 per kg. The said portion of the order refers to at least four bills of entries declaring assessable value of less than 85 per kg. Interestingly, the order in original also records that the imported goods being aluminium scrap was not a homogeneous commodity and therefore, cannot be evaluated on the basis of the samples or lab testing. Further, the order holds that it was very difficult to find any identical/ similar goods imported in India having same chemical and physical composition and that the values of aluminium scrap identical/similar to the imported goods in nature and specification were not available. Without commenting on correctness of the said statements, we would observe that the aforesaid reasoning for rejection of the transactional value, would not meet the mandate of Section 14 and the Rules as elucidated in M/s Sanjivini Non-Ferrous Trading Pvt. Ltd. (supra) wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry. We have also elaborated and explained the legal position with reference to Rule 12 of the 2007 Rules.

24. Therefore, in the facts and circumstances of the present case, it has to be held that the adjudication order in original is flawed and contrary to law for it does not give cogent and good reason in terms of Section 14(1) and Rule 12 for rejection of the transaction value as declared in the bill of entry. The order in original is not in accordance with Section 14 and Rules 3 and 12

> *as the mandate of these provisions has been ignored. The Assistant Collector has rejected the transaction value as declared in the bill of entry which, as noticed above, is clearly and fundamentally erroneous besides being contradictory. In the aforesaid circumstances, we do not think that the order in assessment dated 7th April, 2017 can be sustained and upheld. It is set aside and quashed.*

12. The Hon'ble Supreme Court has in very clear terms expressed the mandate of adherence to the provisions of section 14 with reference to Rule 12 (*supra*) which, according to us, has not been followed; the reasons for rejection has not been made known to the Assessee and nor do we find from the OIO any reasons recorded in terms of Section 14 (1) and Rule 12 for rejection of the transaction value as declared in the Bill of Entry. We say so because when we look at the so called NIDB data referred to at page 3 para 10 of the Order-in-Original the items are clearly different, except in respect of two Bills of Entry. But the fact remains that there is no specific mention about the country of origin and the quantity imported is also nowhere near. It is a different matter that the letter dated 13.07.2015 issued by the CPIO did specifically admit that even they did not have the copies of any of those Bills of Entry.

13. In view of the above, the impugned order is not sustainable as being flawed and hence, we have no hesitation in setting aside the same, which we hereby do.

(Order pronounced in open court on 28.11.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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