

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

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 41866 of 2016

(Arising out of Order-in-Original No.14/2015 dated 06.07.2016 passed by Commissioner of Customs, Custom House, Tuticorin 628 004.)

M/s.Tirupati Chemicals

No.7/7, Sushila Road,
1st Cross, Doddamavalli,
Bengaluru 560 004.

.... Appellant

VERSUS

The Commissioner of Customs

Custom House,
New Harbour Estate,
Tuticorin 628 004.

... Respondent

WITH

(2) Customs Appeal No. 41867 of 2016 (M/s.Shyam Petrochem Industries Vs CC Tuticorin)

(3) Customs Appeal No. 41868 of 2016 (M/s.Gokulka Trade Links Pvt. Ltd. Vs CC Tuticorin)

(4) Customs Appeal No. 41869 of 2016 (Mr.Anurag Agarwal Vs CC Tuticorin)

(Arising out of Order-in-Original No.14/2015 dated 06.07.2016 passed by Commissioner of Customs, Custom House, Tuticorin 628 004.)

APPEARANCE :

Shri Gururaj B.N., Advocate for the Appellant

Shri Sanjay Kakkar, Authorized Representative for the Respondent

CORAM :

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

FINAL ORDER Nos.41334-41337/2025**DATE OF HEARING : 29.05.2025****DATE OF DECISION : 18.11.2025****Per: Shri P. Dinesha**

These Appeals are filed against the common impugned order and hence, all the Appeals are considered for common disposal. Summary of issue as tabulated appeal-wise, is reproduced for convenience:

(1) Appeal No. C/41866/2016 - Ms/ Tirupati Chemicals:

Period of dispute	2010 to 2011
Demand of duty on ten finally assessed B/Es	Rs.29,41,792/-
Demand on four provisionally assessed B/Es.	12,26,456/-
Redemption fine	Rs.29,00,000/-
Penalties:	
under Section 112	Rs.18,29,595/-
under Section 114A	Rs.29,41,792/-
under Section 114AA	Rs.5,00,000/-
Duty paid against provisionally assessed B/Es.	Rs.16,75,085/-
Interest under Section/s 28AA	Unquantified.

(2) Appeal No. C/41867 / 2016 - M/s. Shyam Petrochem Industries:

Period of dispute	October 2011
Demand of duty on provisionally assessed B/E No. 4904777, dated 13.10.2011.	Rs.3,68,456/-
Redemption fine	Rs.7,80,000
Penalty Under Section 112	Rs.5,20,937/-
Under Section 114AA	Rs.5,00,000/-
Duty paid already paid and appropriated	4,33,247/-
Interest under Section/s 28AA	Unquantified.

(3) Appeal No. C/41868 / 2016 - M/s. Gokulka Trade Links Pvt Ltd:

Period of dispute	12/2011 to 5/2013
Demand of duty on Bills of Entry No. 5520022, dated 21.12.2011 provisionally assessed, and 2253638, dated 28.05.2013 finally assessed.	Rs.16,21,748/-
Penalties: under Section 112	Rs.8,81,047/-
under Section 114A	Rs.2,85,113/-
under Section 114AA	Rs. 5,00,000/-
Redemption fine	Rs.13,00,000/-.
Interest under Section 28AA	Unquantified.
Duty already paid and appropriated.	Rs.8,85,549/-.

(4) Appeal No. C/41869/2016 -
Mr.Anurag Agarwal:

Penalty under Section 112(b) – Rs.16,00,000/-

Penalty under Section 114AA – Rs.5,00,000/-

2. Brief and relevant facts as could be gathered upon hearing both the sides and as available in the impugned order are as under:

2.1 Appellants No. 1 to 3 are engaged in the business of importing calcium grease, residual wax and slack wax. Appellant No. 4 is the Partner in the firm-Appellant No.1 On 28.09.2011, the DRI, Bangalore investigated the imports made by Appellants 1 to 3. During the search and seizure operations, the investigators appear to have seized many documents including a CPU. The residence of Appellant 4 was also searched and a CPU seized. Two years later, on 19.11.2013, it appears that the DRI Chennai and Bangalore together conducted another search and seizure operation wherein, they appear to have seized the laptops and iPhones belonging to the partners. In this search also, large number of files were seized from Appellant Nos. 1-3.

2.2 It appears that between the two search & seizures, the 1st Appellant had imported ten consignments of calcium grease, all of which were finally assessed. However, it was claimed that no alert was issued by the DRI against the clearance of these consignments of wax. Soon thereafter, it appears that four more imports made after the second search came to be provisionally assessed. The import made by the 3rd Appellant was also provisionally assessed to duty. With respect to the import made by the 3rd Appellant, Bill of Entry No. 5520022 dated 21.12.2011 was provisionally assessed and Bill of Entry No. 2253638 dated 28.05.2013 came to be finally assessed.

2.3 A common SCN dated 16.01.2015 was issued to all Appellants directing them to show-cause against the proposals contained therein for demanding differential duty based on the allegation of undervaluation of imported goods along with interest, and proposals to impose penalties, redemption fine. It appears that the SCN was issued based on the investigation conducted by DRI, Chennai Zone in respect of one M/s. Abhishek International, Mehta Industries, Savo Polymers & Petro Products Pvt Ltd, Bilal Match Works, Sivakasi. It is the case

of the Appellants that the two searches and seizures conducted at the Appellants' offices and residences did not yield any incriminating material and accordingly, they filed detailed replies to the SCN and asserting *inter-alia* that the demand based on third party depositions and price databases were legally not valid; that the burden of proof undervaluation rests on Revenue which cannot be shifted to the importer; that the finally assessed Bills of Entry could not be reopened without conducting review under Section 129D and filing Appeal before the Appellate Authority; that the redetermination of value was not in accordance with the valuation Rules; that at worst, deductive method of valuation under Rule 7 should have been adopted; that extended period of limitation could not have been invoked for provisionally assessed Bills of Entry. The Appellants also appeared to have contested the proposed penalties, confiscation and redemption fines, apart from challenging the levy of penalty under Section 114AA since, according to them, the same was inapplicable inasmuch as the Appellants had not knowingly made any false or incorrect declaration or used such documents, while transacting the Customs business.

3. The Adjudicating Authority/Commissioner after affording an opportunity of personal hearing and after considering the replies, passed the common impugned Order-in-Original No.14/2015 dated 06.07.2016 thereby confirming all the proposals in the show-cause notice and it is against the said common OIO that these Appeals have been filed before this forum.

4. Heard Shri B.N. Gururaj, Id. Advocate for the Appellants and Sri Sanjay Kakkar, Id. Deputy Commissioner for Revenue who defended the impugned order.

5. It is the case of the Appellants that as many as ten Bills of Entries in Appeal No. C/41866/2016 have been finally assessed and therefore, without a review under Section 129D or filing Appeal, these assessed Bills of Entry could not have been re-opened by issuing show-cause notice under Section 28(4). Further, there was no material gathered by the DRI that the imports under these Bills of Entry were also undervalued. SCN has merely extrapolated the results of current investigation to the past imports.

6. In spite of two searches spaced two years apart, the DRI neither found any evidence in support of undervaluation,

nor could obtain any inculpatory statement from the deponents. Not a single document seized from the Appellants was relied on either in the SCN or in the impugned order. Entire case is based on the material gathered in another investigation of other importers. Hence, the impugned order which rejects these objections is bad in law.

7. The Appellants also submitted that the Respondent-Commissioner ought to have considered the deductive method of valuation under Rule 7 of the Valuation Rules, 2007, they had sold the imported goods domestically and had obtained refund of SAD under Notification No. 102/2007-Cus. The sale prices were not unreasonably high, as would have been the case had additional consideration been paid over and above the declared price. It was thus contested that the Commissioner had unjustifiably rejected this defence on the ground that it does not help determine the price of impugned goods which is based on international price, which is clearly in contrast with Rule 7 of Customs Valuation Rules 2007 which permits this method of redetermination of value. They also contended that past imports were clearly barred by the limitation of one

year under Section 28(1) of the Act and instead of confining the investigation to the seized consignments, DRI has unreasonably included past one year's imports, despite there being no material to support the inference that these consignments too had been undervalued.

8. With regard to invocation of larger period of limitation, it was argued that the DRI had dragged on the investigation for over two years and taken another year and a quarter to issue the notice, which was prejudicial to the Appellants inasmuch as the same has resulted in additional interest liability on the duty demanded.

9. *Per contra*, Id. Dy. Commissioner supported the findings of the Adjudicating Authority. He also invited our attention to the specific paras wherein the Adjudicating Authority has discussed at length the reasons for rejecting the transaction value and the reliance placed on the report of CRCL. He would thus pray for upholding the OIO.

10. We have carefully considered the contentions of both the parties and perused the documents placed on record, we have also gone through the judicial decisions relied upon during the course of arguments before us. After

considering the rival contentions, the following issues arise for our consideration:

1. Whether the Adjudicating Authority was justified in rejecting the transaction value and re-determining the customs duty?
2. Whether Larger period of limitation is invocable in the facts and circumstances of the case ?
3. Whether order of confiscation and imposition of redemption fine in lieu of confiscation is sustainable ?
4. Whether penalties under Section 112(a), 114A/114AA imposed on the Appellant Nos. 1 to 3 are sustainable ?
5. Individual penalties 112 (b) & 114A imposed on Appellant No.4 is sustainable ?

11. The impugned order relies on the revised prices of the other importers who have been investigated. Such prices, not being price actually paid or payable, do not constitute contemporaneous import price. It was contended by the Id. Advocate that some of them admitted to the price manipulation and making payments through *hawala* channels, but we do not propose to get into this issue as there is no such allegation against these Appellants.

12. Revenue's case appears to have been triggered by the 'valuation alert' issued by the DG of Valuation, perhaps based on the monitoring of valuation trends of sensitive commodities. But in the impugned order, we find that the Adjudicating Authority has considered evidences collected against some other importers who are not the parties in these Appeals and what is missing is as to the evidence against these Appellants; hence it could be that there was no evidence against the Appellants herein. Hence, a mere sweeping allegation that '*all the importers dealing with similar/identical goods are indulging in same modus operandi as the importers who have been questioned by the DRI investigators..*' ipso facto would not suffice.

13. Rejection of transaction value is not in accordance with the Valuation Rules, 2007 as the procedure prescribed in Rule 12 *ibid* has not been followed. It was claimed that the Appellants did not pay any additional consideration to their foreign supplier, luckily for the Appellants there is no whisper about this in the SCN. In these circumstances, the burden of proof was on the Revenue to substantiate its allegations. Appellants' claim that they are into this business of imports since 1997 from the same supplier and their claim that the

rate of import depended on negotiations with their supplier have remained undenied/undisputed by the Revenue and it is also not even the case of the Revenue that during the period of imports under dispute, the supplier was different.

14. We further find that the enhanced value is not based on contemporaneous imports, but on Petrosil database alone, which admittedly a compilation of data of statistics like price, report, etc. of global petroleum industries which is nothing to do with transaction value. There is also nothing placed on record to suggest that these data represented the actual contemporaneous transaction value as prescribed under Valuation Rules, 2007, but in any case, the Adjudicating Authority admits at para 41 of the impugned order that the same was compared with the shipping prices of 'Abhishek India Ltd.', but how the same applies to these Appellants has remained undiscussed. That reliance on someone's statement was a most appropriate case for the Appellants to seek cross-examination but the same appears to have been turned-down which, according to us, is highly unjustified. The price information from data bases which have been relied upon does not, according to us, represent

contemporaneous import price as per Rules 4 or 5 of the Valuation Rules, 2007.

15. Quiet apparently, the valuation in the OIO has not been made on the basis of any approved methods, at para 44 the Adjudicating Authority records Appellant's objections as regards the differences in mineral content and colour of the goods in their Bills of Entry *vis-à-vis* the goods proposed to be compared, there is also a further remark that the CRCL reports are inconclusive but the same are not taken to their logical ends. These would point out that there is nothing that was suppressed and hence, at the threshold, proviso to Section 28(1) would not apply and nor would it amount to an act resulting in confiscation. Fact that despite most of the Bills of Entry having been finally assessed and goods released to the Appellants, the Revenue chose to have a re-look after a lapse of 4-years is itself a sufficient ground to discard the allegation of suppression and hence, the OIO deserves to be set aside on the ground of limitation alone.

16. On merits, reliance placed on the *ratio* of the judgment of the Hon'ble Supreme Court in ***Century Metal Recycling Pvt. Ltd. Vs. Union of India*** [2019 (367) ELT 3 (SC) =

2019-TIOL-215-SC-CUS-LB] is very apt. Some of the observations of the Hon'ble Apex Court are:

“14. Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value 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 of the 2007 Rules. 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) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. 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. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

.....

17. The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the

expression “reason to believe” or “satisfaction” or such other positive terms as a pre-condition on the part of the proper officer. The expression “reason to believe” which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression “reason to doubt” as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word ‘doubt’ refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on ‘certain reasons’.

18..... The proper officer must record ‘certain reasons’ specified in (a) to (f) or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable. Reasonable doubt will exist if the doubt is reasonable and for ‘certain reasons’ and not fanciful and absurd. A doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere perception not founded on reasonable and ‘certain’ material. It should be based and predicated on grounds and material in the form of ‘certain reasons’ and not mere *ipse dixit*. Subjecting imports to detailed enquiry on mere suspicion because one is distrustful and unsure without reasonable and certain reasons would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of imported goods.

... ..

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.”

From a perusal of the impugned order, we find that the above ratio of Hon'ble Supreme Court has remained unsatisfied and hence, the very rejection of transaction value itself is on a shaky ground.

17. Penalty under Section 112 can follow only when there is liability to confiscation of goods under Section 111. The Adjudicating Authority has imposed penalty under Section 112, perhaps penalty under Section 114A was inapplicable to provisionally assessed Bills of Entry. The Revenue has not proved undervaluation and hence, the penalty imposed on Appellants Nos. 1 to 3 is clearly unsustainable.

18. Penalty imposed under Section 114A with respect to the finally assessed Bills of Entry is equally bad in law inasmuch as Section 28(4) does not apply to the facts of this case.

19. Penalty under Section 114AA could be imposed if any person intentionally uses information or documents which he knows are false. A perusal of the SCN indicates no allegation as to violation of this provision, only the operating part of the SCN has invoked Section 114AA. Interestingly, the impugned OIO also does not give any finding with respect to this provision, rather Section 114AA is merely recited along with other penal provisions. In the absence of any such allegation or finding, penalty under this provision appears to have been imposed in a routine manner, which is unsustainable.

20. In view of the above discussion, Appellants have made out a case and therefore the transaction value as enhanced by the Revenue cannot sustain. Accordingly, the we set aside the impugned order and allow the Appeals with consequential benefits, if any, as per law.

(Order pronounced in open court on 18.11.2025)

sd/-

(M. AJIT KUMAR)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)