CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT No. I

Customs Appeal No. 40988 of 2024

(Arising out of Order-in-Original No. 109388/2024, dated 23.09.2024 passed by the Commissioner of Customs, Chennai II (Import), No.60, Rajaji Salai, Customs House, Chennai 600 001)

M/s. Sino Import and Export Pvt Ltd., **.... Appellant**
No.385, 4th Floor, RMV 2nd Stage
2nd Block, 80 FT Road, Sanjaynagar
Bangalore 560 094

VERSUS

Commissioner of Customs **...Respondent**
Chennai II Imports
Custom House,
No.60 Rajaji Salai,
Chennai – 600 001.

AND

Customs Appeal No. 40251 of 2025

(Arising out of Order-in-Original No. 109388/2024, dated 23.09.2024 passed by the Commissioner of Customs, Chennai II (Import), No.60, Rajaji Salai, Customs House, Chennai 600 001)

Shri S Amarish **.... Appellant**
Flat No.72, 7th Floor, Tower 6
Febble Bay, 1st Main Road
RMV II Stage Dollars
Colony 3rd Block
Bangalore 560 094

VERSUS

Commissioner of Customs **...Respondent**
Chennai II Imports
Custom House,
No.60 Rajaji Salai,
Chennai – 600 001.

APPEARANCE :

Mr. V.M. Doiphode, Advocate for the Appellant
Ms. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM :

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER No.41460-41461/2025

DATE OF HEARING: 13.08.2025
DATE OF DECISION:11.12.2025

Per Mr. Ajayan T.V.

These two appeals preferred by Sino Import and Export Private Ltd. and Shri S. Amarish, the appellants herein, being interconnected and arising out of the same impugned order in original are taken up for hearing together and is disposed of by this common order.

2. Brief facts are that Sino Imports and Exports Pvt. Ltd. (referred to as the importer) is engaged in the import of Mulberry raw silks, Dupion silk, Tussah silks falling under CTH 5002, from China, Uzbekistan and Vietnam. The importer has availed the benefit of duty exemption under the Asean India Free Trade Agreement (AIFTA) in terms of the Notification no.46/2011-Cus. dated 01.06.2011.

3. Based on intelligence that the goods imported by the importer by declaring as originated from Vietnam have actually originated in China and Uzbekistan and was routed from these countries to Vietnam and then from Vietnam to India, the Directorate of Revenue Intelligence conducted an investigation, in the course of which, search various premises were searched and statements were recorded from various persons including Shri S Amarish, a Director of the Importer. From the analysis of the documents / evidences recovered, the department was of the view that the importer has imported goods with the description "Raw silk in hanks (not thrown) Art no.429 Uzbekistan Origin", "Raw silk (not thrown) in hanks Art no.310 Uzbekistan Origin", "Raw silk (not thrown) in hanks Art no.429" etc – from various manufacturers of Uzbekistan, where the supplier is primarily M/s. Grain Will Ltd. Hongkong, by third country invoicing thereby misdeclaring the origin of the goods for the wrongful availment of benefit of Notfn. No.46/2011-Cus dated 01.06.2011.The complete description of the goods as per the bills of entry were detailed in Annexures A & B of the Show Cause Notice. The department has also noticed that, on the comparison of the documents submitted by the importer to the Indian Customs Authorities

and the documents submitted by the consigner / exporter, M/s. Grain Will Ltd., to the Uzbekistan Customs Authorities, the values declared in the bills of entry by the importer are lower than the values declared by the Uzbek consigner / exporter. The export documents submitted to the Uzbekistan Customs Authorities were forwarded to DRI by the Embassy of India in Moscow. The department therefore formed an opinion that the value declared by the importer in respect of 8 bills of entry imported from M/s. Grain Will Ltd., Uzbekistan is not the correct transaction value and liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules 2007, (Valuation Rules, 2007), read with Section 14 of the Customs Act, 1962. Since it was observed that the invoice terms in these bills of entry are on CIF basis, and as per Section 14 of Customs Act, the transaction value shall also include the insurance cost, therefore the department was of the view that insurance value also needs to be added to the final assessable value. As Shri S Amarish had admitted to the under valuation in import of the raw silk from Uzbekistan for the above mentioned 8 bills of entry, the department formed an opinion that the price which was disclosed / declared by exporter / supplier from Uzbekistan plus the insurance value should be considered the correct transaction value under Rule 3 read with Rule 10 of the Valuation Rules, as detailed in Annexure A to the Show Cause Notice.

4. Given that the importer had undervalued the goods, department felt that the importer had not declared the correct transaction price for the remaining import of raw silk from M/s. Grain Will Ltd, Uzbekistan and is therefore liable for rejection under Rule 12 of the valuation Rules 2007 read with Section 14 of the Customs Act. It is also stated that due to non-availability of data, Rule 4 and Rule 5 of the Valuation Rules, 2007 cannot be invoked in the instant case. It was further stated that though Rule 6 provides that if the value of the imported goods cannot be determined under the provisions of Rules 3, 4 and 5, the value shall be determined under Rule 7 or Rule 8: however, due to non-availability of data Rule 7 and Rule 8 cannot be invoked in the instant case. Therefore, since it appeared to the department that the importer had undervalued the imports and since the exporter / consigner invoices were not available for all the remaining

bills of entry from Uzbekistan, it appeared that the assessable value is determinable @ 10.93% higher and the same should be considered as the correct transaction value under Rule 9 of the valuation Rule 2007. The department therefore redetermined the final assessable value in respect of 18 bills of entry as detailed in Annexure B to Show Cause Notice.

5. The department further observed that on scrutiny of the import data of the importer in comparison with the import unit price of other Indian importers for imports of similar goods from China, it appeared that the importer had also under valued the import of raw silk from China. Therefore, finding the transaction value in respect of the import of raw silk from China liable for rejection under Rule 12 of the Customs valuation Rule 2007, the same was redetermined as per Rule 5 of the Customs Valuation Rules, 2007 as detailed in Annexure C to Show Cause Notice for 12 such bills of entry. Like-wise in respect of import of Tussah silk from China, the department indicated the redetermined value as per Rule 5 of the Valuation Rules *ibid* as detailed in the Annexure D to Show Cause Notice. The department therefore vide the Show Cause Notice no.02/2024 dated 03.01.2024 alleged that the importer has wilfully suppressed the material facts of the true transaction value of the Raw Mulberry Silk and Tussah Silk imported by them with an intent to evade payment of Import Duty applicable on Silk. The importer had violated the provisions of Section 46(4) of the Customs Act, 1962, which requires the importer to subscribe to a declaration as to the truth and correctness of the declarations made in the Bill of Entry. However, the said entity appeared to have mis-declared and suppressed the true transaction value, with an intention to evade payment of applicable customs duty during the period from Jan 2019 to November 2022, in respect of the Raw Mulberry Silk and Tussah Silk imported by them and therefore, the goods are liable for confiscation under Section 111 of the Customs Act, 1962 rendering the importer also liable for penal action under Section 112, and 114A of the Customs Act, 1962. It was also alleged that for the above-mentioned acts of omission and suppression, Shri. S Amarish, Director of M/s Sino, is also liable for imposition of penalty under Sections 112 and 114AA of the Customs Act, 1962.The Show Cause Notice called upon the importer to show cause as to why the declared assessable values

in respect of the goods imported should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of imported goods) Rules 2007 read with the Section 14 of the Customs Act, 1962 and should not be re-determined as per the applicable provisions of the Valuation Rules ibid and the consequential duty short paid should not be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon under Section 28AA of the Customs Act, 1962. The Notice proposed appropriation of Rs.60,00,000/- (Rupees Sixty Lakhs Only) paid during the course of investigation towards the differential duty and interest liabilities, as mentioned above and also proposed holding the imported goods liable for confiscation under Sections 111(m) of the Customs Act, 1962. Penalty under Section 112 and 114A of the Customs Act ibid was also proposed to be imposed. The SCN also called upon Shri S Amarish, Director of M/s Sino Import & Exports Private Limited, to show cause as to why penalty should not be imposed on him under Section 112 and Section 114AA of the Customs Act, 1962 for his role of evasion of appropriate duties of customs.

6. Consequent to the replies filed by the appellants inter-alia denying the allegations and seeking compliance with the mandate of Section 138B of the Customs Act, 1962 as well as contending that the mandate of Section 138C has not been complied and also producing data of contemporaneous imports as well as contending that the entire demand pertaining to annexure D is time barred. After due process of law, the Ld. Adjudicating Authority vide the impugned order in Original No.109388/2024, dated 23.09.2024 confirmed the demands totalling to Rs. Rs.1,10,21,861/- as proposed in the Show Cause Notice and ordered for appropriation of Rs.60 lakhs paid by the importer towards the differential duty interest and liabilities. The Ld. Adjudicating Authority also held the goods imported vide the bills of entry detailed in Annexure A, B, C and D liable for confiscation under Section 111 (m) of the Customs Act. As these goods were already cleared redemption fines as detailed in the order were also imposed, A penalty equivalent to the total differential duty amounting to Rs.1,10,21,861/- along with applicable interest was imposed on the importer under Section 114 A. A penalty of Rs.10.0 lakhs was imposed on

Shri S Amarish under Section 112 (a) of the Customs Act along with a penalty of Rs.20.0 lakhs under Section 114 AA of the Customs Act. Aggrieved by impugned order in original, and having preferred these appeals, the appellants are now before this Tribunal.

7. Shri V.M. Doiphode, the Ld. Advocate appearing for both the appellants contented that the impugned order is unsustainable. The Ld. Commissioner has in para 18 to para 24.9 of the impugned order merely reproduced the contents of the Show Cause Notice and held that the appellants had undervalued the goods. The Adjudicating Authority has not analysed the admissibility of the documents without production of certificate as mandated under Section 138 C of the Customs Act. The Adjudicating Authority has based his findings in respect of Annex A entirely on the statement of Shri S. Amarish who was not examined during the adjudication proceedings. The submissions made by Shri S Amarish that the price declared were for bulk purchase and are comparable to others was not considered. The letter dated 12.05.2023 Shri S Amarish denying the under valuation, as well as the contemporaneous data provided by the appellant pertaining to the period of the bill of entry Annexure A were ignored. As regards the 18 bills of entry detailed in Annexure E to the Show Cause Notice the Adjudicating Authority has erred in invoking Rule 9 of the Customs Valuation Rules 2007 when there were contemptuous imports from Uzbekistan during the same period. The Commissioner ought to have applied Rule 4 or 5 and adopted the lowest transaction value considering the quantity imported by the appellant was much larger. The Adjudicating Authority could not have invoked extended period in the case of imports in Annexure B as there was no admission about the under valuation especially when others have imported at US$ 30, 30.2 during the same period. Further, enhancement of value was not done by taking the lowest transaction value and instead an average price has been adopted. The Ld. counsel submits that in respect of imports from China at Annexure C & D, the Adjudicating Authority has referred to table, data for average unit price for all other Indian importers is taken as the basis. This is contrary to the valuation rules. The data provided in Annexure E & F of the Show Cause Notice itself gives prices declared by other importer which is

almost the same, despite the quantity imported by others being less in respect of the same items imported from China in respect of Annexure C & D. There is no admission of under valuation and hence no question of invoking the extended period. The Adjudicating Authority has erred in relying on evidence unsupported by certificates under Section 138 C and placing reliance on an unsigned invoice showing unit price of USD 40. The appellant had produced signed invoices in reply to order in appeal during assessment itself showing the unit price as US $ 30 raised by JVLLC and ANDIJAN silk of M/s. Grain Will Ltd. duly signed by the exporter. The Adjudicating Authority has also not provided the documents such as correspondence with Govt. of Uzbekistan and letter from Govt. of Uzbekistan to Embassy of India in Moscow. The Adjudicating Authority has also not distinguished judgements relied upon by the appellant, pertaining to noncompliance of Section 138 C and the tribunal decision in the case of Junaid Judia and others relied on the appellant has since been affirmed by the Apex Court in Commissioner of Customs, Mumbai Imports Vs. Junaid Kudia, 2024 (388 ELT) 529 SC which is also being relied upon. Ld. Counsel submits that the impugned order is liable to be set aside.

8. Ms. Anandalakshmi Ganeshram, Ld. AR reiterated the findings of the Ld. Adjudicating Authority in the impugned order in original. She submitted that the importer had admitted to the under valuation. That in the era of self-assessment the onus was on the importer to declare the correct classification and to avail the correct notification benefit. Reliance is placed on the decisions in ***M/s. Shivam Marketing and Gaurav Kushwaha Partner – 2025 (6) TMI 1898 – CESTAT, New Delhi – LB, T.N.Malhotra & S.R.Bristle Products 2024 (6) TMI 202, CESTAT, New Delhi and Powercon Electricals – 2021 (376) ELT 540 (Tri. Bang.)***

9. We have heard the rival submissions, perused the appeal records and the case laws submitted.

10. The issues that arise for our determination in these appeals are whether, the rejection of the declared transaction value of the imported goods for the purported wilful undervaluation, their redetermination and consequent

demand of differential duty as well as attendant liability to confiscation and penalties found imposable in the impugned order, are tenable.

11. We notice that although searches were conducted at various premises, neither the impugned order, nor the SCN, detail or place reliance on any incriminating evidence found consequent to these searches that would substantiate the alleged undervaluation by the importer. It is also seen that while the investigation is stated to have commenced on the basis of intelligence developed that the goods imported by the importer by declaring as originated from Vietnam have actually originated in China and Uzbekistan and was routed from these countries to Vietnam and then from Vietnam to India, that appears to have been incorrect. The Ld. Adjudicating Authority has found that the electronic devices of the importer, stated to have been voluntarily submitted by Shri. S. Amrish and whose copies were made by the forensic expert for investigation, upon examination did not result in the recovery of any incriminating evidence that indicate the routing of non-Vietnamese origin goods through Vietnam to avail the benefit of the AIFTA duty exemption notification. Further, efforts to verify the Certificates of Origin indicated that the Country of Origin Certificates sent for verification, as detailed in the OIO, were found to be authentic and genuine by the Vietnamese issuing authority and has met the requirements to get the preferential treatments under the AIFTA. The Ld. Adjudicating Authority has also concluded that the suspicion that the goods imported from Vietnam were of non-Vietnamese origin, cannot be corroborated by direct evidences and it thus appeared that no direct evidences are available to establish the allegation of wrong availment of the duty exemption under the AIFTA under notification 46/2011-Cus.

12. We find that the demands of differential duties on the imported goods have been confirmed as quantified in Annexures A, B, C and D of the SCN. The evidence in this regard in so far as the demand on the raw silk imported from Uzbekistan as at Annexure A ibid is the purported admission in the statements of Mr. Amrish recorded under Section 108 and the export documents stated to have been submitted to the Uzbekistan Customs Authorities by the Consignor/Exporter which were purported to be forwarded to DRI by the Embassy of India in Moscow and the demand was

quantified invoking Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Valuation Rules, 2007). In as much as from the imports at Annexure A it appeared that the actual transaction values were higher in the range of 10.93% to 32.23%, it was held that all the imports from Uzbekistan by the importer are not as per the correct transaction value and hence Rule 9 of the Customs Valuation Rules, 2007 were invoked to quantify the duty liability in respect of 18 Bills of entry pertaining to the imports of raw silk from Uzbekistan as quantified in Annexure B. Quantification of duty demand in respect of raw silk imported from China as at Annexure C and in respect of Tussah Silk imported from China as at Annexure D were made by invoking Rule 5 of the Customs Valuation Rules, 2007 . The basis for concluding that these imports were undervalued was upon a comparison of the average unit price declared by the importer in these imports with the average import unit price of other Indian importers for import of similar goods from China and the resultant finding that the average unit price declared by the other importers were found to be at variance with the average unit price declared by the importer in multiple instances and on the lower side and thus the transaction value declared by the importer is not correct and cannot be accepted.

13. We find that the export documents stated to have been submitted to the Uzbekistan Customs Authorities by the Consignor/Exporter which were purported to be forwarded to DRI by the Embassy of India in Moscow, although relied upon by the Adjudicating Authority, has neither been provided to the Importers, despite their requests nor reasons for any impediment to provide them stated. Further, the commercial invoice No.15 dated 24.12.2019 stated to be issued by the Uzbek Supplier (JV LLC Andijan Silk) and stated to have been submitted to Uzbek Customs indicating a higher unit price is evidently unsigned. We are unable to countenance any presumption of undervaluation raised on the basis of an unsigned invoice and while the unsigned invoice itself renders its evidentiary value suspect, we are also at a loss to understand what prevented the Department from providing duly authenticated copies of the export documents from the Uzbekistan Customs Authorities, including the letters indicating their proper chain of transfer and custody, to the importer,

as requested. It hardly needs to be emphasised that even if unrequested, it was incumbent upon the Department to supply these documents, especially when the Department seeks to place reliance on the same to substantiate the allegation of undervaluation. It is also surprising that the Ld. Adjudicating Authority has also found nothing unconscionable about such reliance on documents not supplied to the importer which is opposed to elementary principles of fairness and justice. If, as the Ld. Adjudicating Authority states, the documents have been obtained as per the agreement between the Government of the Republic of Uzbekistan and the Government of the Republic of India regarding mutual assistance between customs administrations under Section 151B of the Customs Act, read with Notification No.58/2021-Customs (N.T), it is all the more reason to be transparent and supply the documents showing the chain of transfer and custody. It is also inconceivable that such documents would not be authenticated. We find that the reliance placed by the Adjudicating Authority on these documents is wholly untenable. We find that the reliance placed by the Appellant on the decision of the Hon'ble Apex Court in ***Commissioner of Customs (imports) v. Ganapati Overseas, 2023 (386) ELT 802 (SC)*** as well as the decision of this this Tribunal in ***Autocreaters v Commissioner of Customs, Chennai, 2020 (273) ELT 681 (Tri-Chennai)*** has been speciously distinguished by the adjudicating authority and are in fact apposite in this context.

14. We also cannot countenance the justification placed by the Adjudicating Authority on the aforesaid Section 151B and Notification No.58/2021-Cus (N.T) to reject the appellant's contention that the said documents obtained have not been certified as required under Section 138C of the Customs Act, 1962. This Tribunal, in a catena of decisions, relying on Apex Court decisions have repeatedly emphasised the requirement to adhere to the provisions of Section 138C for the acceptability of the document being relied upon. In a recent decision of the Principal Bench in ***M/s. Composite Impex and Shri Rajiv Dhuper Versus Principal Commissioner of Customs, (Import), New Delhi,*** reported in ***2025 (5) TMI 1538 - CESTAT NEW DELHI,*** placing reliance Apex Court decisions as well as earlier decisions of the Tribunal, it was held that the printout taken from a

secondary evidence (namely the pen drive in that case) could not have been considered as evidence in the absence of a certificate under section 138C of the Customs Act. A coordinate bench of this Tribunal in the decision authored by one of us M. Ajit Kumar, Member (Technical), reported as ***M/s. Media Graphics v Commissioner of Customs, Chennai, 2024 (8) TMI 728-CESTAT CHENNAI***, has held that a certificate under Section 138C(4) is a *sine qua non* for admissibility of such evidence under the Customs Act, 1962. Similar decisions abound and we desist from listing them to avoid prolixity.

15. Furthermore, we find that the reliance placed on the statements of Mr. S. Amrish is opposed to law as the procedure prescribed under Section 138B of Customs Act, 1962 has not been adhered to. Non adherence to the mandated procedure has denuded the statements of their relevance, rendering any reliance placed on them untenable. This Tribunal, in benches across the country, placing reliance on various decisions including those of High Courts and Apex Courts, have consistently held that the test of relevancy of the statements made under Section 108, for reasons of the stipulations in the sub-section (2) of Section 138 has to be satisfied under the procedure stipulated in Section 138B(1), requiring the Adjudicating Authority to examine the deponent as a witness to prove the contents of the statement, to satisfy himself as to its voluntary nature and when intended to be relied on against the noticee/assessee, ought to be tested on the touchstone of cross examination. It is seen that a plethora of decisions bolster our aforesaid view. The decisions in ***Additional Director General (Adjudication) v. Its My Name Pvt Ltd, 2021 (375) ELT 545 (Del), Junaid Kudia v CC, Mumbai Import -II, (2024) 16 Centax 503 (Tri-Bom) affirmed in CC Mumbai Import-II v. Junaid Judia, (2024) 16 Centax 504 (SC), Jeen Bhavani International v CC Nhava Sheva-III, (2023) 6 Centax 11 (Tri-Bom) affirmed in Commissioner of Customs, Nhava Sheva-III v Jeen Bhavani International, (2023) 6 Centax 14 (SC), Suni Aidasani @ Vicky v. Principal Commissioner of Customs (Import), New Delhi, (2024) 18 Centax 321 (Del)*** and the decision of this Tribunal in ***M/s. Geetham Steels Pvt Ltd v. Commissioner of GST & Central Excise, Salem, 2025 (3) TMI 1098-CESTAT CHENNAI***, refer in this context. We find it egregious that the

Adjudicating Authority while placing reliance on the contested statements of Shri. S.Amrish, has at the same time chosen to be silent on the request for opportunity to cross examine the deponent. It is also disconcerting that despite the importer seeking compliance with the mandate of Section 138B of the Customs Act, 1962, the Adjudicating Authority has chosen at will not to adhere to this statutory prescription. The reliance placed on these statements without testing their relevancy on the anvil of Section 138B of the Customs Act, 1962 and without the deponent being offered for cross examination, being decidedly untenable, render the findings premised on the same unsustainable on this count too.

16. Given that the edifice of the allegation of undervaluation rests on such documents of unproven provenance, notwithstanding the purported reliance on the contested statements of the appellant Shri. Amrish, we have no hesitation in holding that the Department has failed in proving the undervaluation in so far as they pertain to the goods on which demand of differential duty has been raised in Annexure A. Since the premise of undervaluation of goods in so far as the imported goods listed in Annexure B also hinges on the presumption of purported undervaluation evidenced in Annexure A, for the aforesaid reasons, the demand of differential duty on this count in respect of the imported goods listed in Annexure B is also rendered untenable.

17. When we turn to the demand of differential duty made as indicated in Annexure C and D, it is seen that quantification of duty demand in respect of raw silk imported from China as at Annexure C and in respect of Tussah Silk imported from China as at Annexure D were made by invoking Rule 5 of the Customs Valuation Rules, 2007 . As stated supra, the basis for concluding that these imports were undervalued was upon a comparison of the average unit price declared by the importer in these imports with the average import unit price of other Indian importers for import of similar goods from China and the resultant finding that the average unit price declared by the other importers were found to be at variance with the average unit price declared by the importer in multiple instances and on the lower side and thus the transaction value declared by the importer is not correct and cannot be accepted.

18. We find force in the contention of the appellant that when the transaction value, description, and quantity at the time of importation based on the commercial invoices received by them from their overseas suppliers were declared and the consignments were given out of charge, the department has to prove undervaluation by cogent evidence. The contention of the appellants that the import by other importers from suppliers who are different from the suppliers of the appellant, made on different dates, can vary in value based on various factors like negotiation and discounts extended, difference in quantity, timing of placing of the order, quality etc bears credence. Furthermore, there is no credible evidence of any extra amount having been paid by the appellant towards the said imports over and above the transaction value that has been paid through banking channels. The revenue has also not recovered any parallel invoices pertaining to these imports to substantiate such insinuation. In such circumstances, the premise of the Department as aforementioned, for harbouring a reasonable doubt that the transaction value cannot be accepted in respect of the imports at Annexure C and D, cannot be countenanced. We find the said rationale given by the Department opposed to the dicta laid down by the Honourable Apex Court in ***Century Metal Recycling Pvt Ltd v. Union of India, 2019 (367) ELT 3 (SC)*** where in the Apex Court has held in para 18, inter-alia, that "*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*."

19. It is well settled principle of law that burden squarely lies on the department to prove under-valuation. Value cannot be determined on inference and in the absence of mutuality of interest between importer and supplier duly evidenced or any credible evidence of additional flowback of consideration related to the impugned imports, invoice value cannot be enhanced. We find that the Rule 5 of the valuation rules 2007 invoked, itself calls for identifying the value of similar goods sold for export to India and imported at or about the same time as the goods being valued and sub-rule (2) thereof stipulates that the provisions of clause (b) and (c) of sub-rule (1), sub-rule (2) and sub rule (3) of rule 4 shall mutatis mutandis apply in respect of similar goods. Critical to such application is the determination of sale at the same commercial level and in substantially the same quantity as the goods being valued. We do not see any such discussion in the impugned order validating that the sale is at the same commercial level, thereby rendering the invoking of the said rule 5 unsustainable. It is also pertinent that the evidence of contemporaneous imports provided by the importer in support of its contentions have been facetiously discarded. In this regard, it would be apposite to note what has been held by a coordinate bench of this Tribunal in similar circumstances in the decision in ***Junaid Kudia v. Commissioner of Customs, Mumbai Import-II, (2024) 16 Centax 503 (Tri-Bom),*** which is as under:

> " 14. Further, we also find that in respect of disputed imported goods, Bills of entry were already been assessed at the time of importation of the goods and hence, further proposal to re-enhance the value, in the eventuality, when the earlier assessment orders having not been appealed against/reviewed, have attained finality and accordingly, cannot be proceeded with for rejection of the declared value. In other words, there cannot be any re-assessment of the said values, which had become final for want of appeal against the same. Our views are supported by the judgments in case *CC v. Lord Shiva Overseas (supra), Malhotra Impex v. Commissioner of Customs, Ahmedabad* - 2006 (203) E.L.T. 561 (Tri.-Del.) and *Commissioner of Customs (Prev.), v. Paras Electronics* - 2009 (246) E.L.T. 231 (Tri.-Mumbai)/2009 taxmann.com 923 (Mum. - CESTAT)."

20. The said binding decision, though cited before the Ld. Adjudicating Authority, has neither been controverted nor followed. It is seen that the Honourable Apex Court has affirmed the said decision in ***Commissioner of***

Customs, Mumbai Import-II v Junaid Kudia, (2024) 16 Centax 504 (SC), holding as under:

> "2. Having heard Mr. N Venkataraman, learned Additional Solicitor General and on carefully perusing the material placed on record, we are not inclined to entertain the present Civil Appeals, the same are accordingly dismissed."

21. That apart, Section 14 of the Customs Act, 1962 read with Customs Valuation Rules makes it abundantly clear that transaction value in the ordinary course of commerce is to be taken as the assessable value. The Customs Valuation Rules prescribe the sequence and methodology to be adopted for re-determination of the assessable value in certain circumstances. The prerequisite for re-determination of the value is that the transaction value should be rejected for cogent reasons as prescribed in the Customs Valuation Rules. If the transaction value is rejected, then recourse is to be taken to the Customs Valuation Rules which stipulate the basis and manner in which the assessable value is to be determined. We are of the view that, the Revenue is initially required to satisfy the mandate under Section 14 of the Customs Act read with Customs Valuation Rules before any enhancement of valuation, as per the settled position in law as laid down by the Hon'ble Apex Court decisions in ***Commissioner of Customs, Calcutta v South Indian Television (P) Ltd, 2007 (214) ELT 3 (SC)***, which we find it has failed to do. The Apex Court has in the aforesaid decision while holding that it is for the Department to prove the allegation of undervaluation, has also stated that "*casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports*."

22. We find that the decisions relied upon by the Ld. A.R were rendered in different facts and circumstances and are hence clearly distinguishable as inapplicable, given their facts and circumstances. Given our aforesaid

findings on merits, we find that the allegations against Shri. S. Amrish will also not sustain and resultantly the findings in the impugned order pertaining to redetermination of assessable value, demands of differential duty, appropriation towards the differential duty and interest liabilities, liability to confiscation, imposition of redemption fines and penalties on the appellants are unsustainable.

23. In light of our discussions and for the reasons stated above, we hold that the impugned order in original cannot be sustained and is liable to be set aside *in toto*. Ordered accordingly.

The appeals are allowed, with consequential relief(s) in law, if any.

(Order pronounced in open court on 11.12.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

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