Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH- COURT NO. 2

CUSTOMS Appeal No. 11523 of 2017-DB

(Arising out of OIA-MUN-CUSTM-000-APP-032-033-17-18 dated 04/05/2017 passed by Commissioner (Appeals), Customs-Ahmedabad)

JAY JALARAM SAW MILL **..... Appellant**
Jashodanagar Highway Cross Road,
P.O. Vatva, GIDC Vatva,
Ahmedabad, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS – MUNDRA **.....Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra, Kutch, Gujarat-370421

With

CUSTOMS Appeal No. 11526 of 2017-DB

(Arising out of OIA-MUN-CUSTM-000-APP-032-033-17-18 dated 04/05/2017 passed by Commissioner (Appeals), Customs-Ahmedabad)

ARJANBHAI KARSANBHAI PATEL **..... Appellant**
20-21, Krishna Park, Jasodanagar,
Ahmedabad, Gujarat

VERSUS

COMMISSIONER OF CUSTOMS – MUNDRA **.....Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra,
Mundra, Kutch, Gujarat-370421

APPEARANCE:
Shri Anil Gidwani, Tax Consultant for the Appellant
Shri Aakash Singh, Superintendent (AR) for the Respondent

CORAM:
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10045-10046/2026

DATE OF HEARING: 24.09.2025
DATE OF DECISION: 23.01.2026

SATENDRA VIKRAM SINGH

M/s. Jay Jalaram Saw Mill, Vatva, Ahmedabd (Appellant-1) had during the year 2009 and 2010 imported various types of Timber at Kandla and Mundra port. During investigation conducted by DRI against various importers of timber, it revealed that these importers including the appellant, had undervalued their goods and evaded the Customs duty. Evidence of under-

valuation of timber was found in the copy of emails submitted by the supplier Sri Avinash Jindal. The officers recorded the statements of Sri Avinash Jindal on 05.09.2011, wherein he admitted that the import of timber made in the name of his firm M/s A. K. International and in the name of other importers had been undervalued. Sometimes, invoices are prepared on the letter head of Sri Amitabh Saboo's company M/s. Vinayak Impex FZE, Dubai. The invoice amount is transferred through the banking channel whereas the balance amount is given through other persons to M/s. Vinayak Impex FZE, Dubai or to Bhavik Rathod in Sudan as per their instructions. The best quality sawn timber from Tanzania is about USD 850 per cubic ft. and least quality timber is of USD 300. For Sudan timber, rate varies between USD 700 (best quality) to USD 500 (least quality). Similarly, rate of Ghana Timber on an average varies from USD 300 to USD 400 per cubic ft.

1.1 The officers also searched the business premises of the Appellant-1 as well as residence of the partner Sri Arjanbhai Karsanbhai Patel (Appellant-2) but nothing incriminating was found. Statements of Sri Arjanbhai Patel was recorded on 05.06.2014 wherein he accepted undervaluation of imported timber and agreed to pay the differential duty on all the imports. He also accepted to have paid the differential amount in cash to the persons sent by the suppliers. After completing the investigation, revenue issued show cause notice dated 09.06.2014 proposing rejection of the declared value of the imported timber, redetermination of value and demanding the differential duty of Rs. 47,421/- and Rs. 91,780/- under Section 28(4) of the Customs Act, 1962 alongwith interest in respect of timber imported at Kandla and Mundra ports respectively. The proposal to confiscate the goods under Section 111(m) and impose penalty under Section 112(a) & 114A of the Customs Act, 1962 was also made, besides penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 on both Shri Arjanbhai Karsanbhai Patel & Shri Avinash Jindal.

1.2 The above show cause notice was adjudicated wherein the Adjudicating Authority held as under :-

Penalties/Duty	**Kandla Port**	**Mundra Port**
Value determined	Rs. 29,64,027/-	As per Annexure D1
Differential duty	Rs. 47,421/-	Rs. 91,780/-
Redemption Fine	Rs. 6,00,000/-	Rs. 6,70,000/-
Penalty on appellant-1 u/s 114A	Rs. 4742/-	Rs. 9,178/-
Penalty on Sri Arjanbhai Karsanbhai Patel (Appellant-2) u/s 112(a) & 114AA	Rs. 6,00,000/-	Rs. 6,70,000/-
Penalty on Sri Avinash Jindal u/s 112(a) & 114AA	Rs. 6,00,000/-	Rs. 6,70,000/-

Aggrieved with this order, M/s Jay Jalaram (Appellant-1) as well as Sri Arjanbhai Karshan Bhai Patel filed appeals before the Commissioner (Appeals) who vide impugned order dated 04.05.2017 upheld the order of the lower authority except reducing the penalty on the partner from total Rs. 12,70,000/- in respect of both the ports to Rs. 9,40,000/- under Section 112(a) & 114AA of the Customs Act, 1962. He also noted that the Appellant-1 has already paid the differential duty alongwith interest and the reduced penalty as per Provision to Section 114A of the Customs Act, 1962. Aggrieved with this order, both the appellants filed appeal before this Tribunal.

2. In appeals, the appellant took the following grounds:-

- They imported timber in the normal course of trade and filed bills of entry. If the department had any doubt about assessable value, it should have been done by the Assessing officer at the time of assessment.
- The entire investigation is based on the statements of Shri Avinash Jindal and no statements of Shri Amitabh Saboo or any other person has been recorded by the officers. Applying other statements to the imports made by the appellants without any further corroborative evidence is not admissible for demanding duty and imposing penalty on them.

- The mail relied upon by the investigation has been sent to various parties but no such mail has been sent to the appellant. The mail pertains to consignments related to new Ghana timber whereas only a small part of the consignment imported by them pertains to Sudan. It is settled law that third party evidence cannot be considered as a piece of evidence and the allegations have to be substantiated with the help of corroborative evidence. They rely on the following judgments:-
  1. Taksus Steel Pvt. Ltd Vs. Commissioner of Central Excise & ST, Chandigarh as reported at 2015 (329) ELT 859 (Tri.-Del.)
  2. G.S. Alloy Casting Ltd. Vs. Commissioner of C. Ex. Guntur- 2016 (331) ELT 310 (Tri.-Bang.)
- Shri Avinash Jindal has been stated as supplier of goods whereas he is only a mediator who facilitated the deal. It is a common practice that before a contract of sale is made, mails are exchanged to discover prices. Also, the mail is dated 23.04.2009 whereas goods have been imported between June 2009 to July 2010. They rely on the decision in the case of Mekala Raja Plywoods Pvt Ltd Vs. Commissioner of Central Excise, Vapi as reported at 2014 (308) ELT 90(Tri.-Ahmd.) and in the case of Puja Plastic Pvt Ltd. Vs. Commissioner of Customs, Calcutta as reported at 2001 (131) ELT 200 (Tri.- Kolkata), wherein it has been held that burden of proving undervaluation is on Revenue and is required to be discharged by production of affirmative evidence and not on the basis of suspicion, assumption or presumption.
- They have imported goods worth of Rs. 24,57,174/- at Kandla port where duty evasion of Rs. 47,421/- only has been alleged due to undervaluation. In respect of goods valued at Rs. 23,66,723/-, imported at Mundra Port, duty evasion of Rs. 91,780/- has been alleged. There is no reason for them to resort to undervaluation of goods for such a petty amount. The valuation has to be done on the basis of examination of goods or using the contemporaneous data available on NIDB data at

the time of import. If the same was not done at that time, the case made by the investigating agency after gap of 4 years, is without any basis and simply on flimsy grounds. They had made these submissions before the Commissioner (Appeals) who did not consider the same.

- The learned Adjudicating Authority also did not accept the submissions made by Shri Avinash Jindal in his reply which are retraction of his earlier statements given before the investigating agency. He had submitted that as an agent, he had limited role and was merely responsible to procure orders for the foreign supplier from the Indian customers against commission. The transaction between the seller and the importer were on principal to principal basis.
- In the show cause notice dated 9th June, 2014, entire case is based on the statement of Shri Avinash Jindal who has nothing to do with the imports made by the Appellant-1. The investigation has failed to make any attempt to establish as to how value was mis-declared and adopted short cut to invoke extended period by taking confirmatory statement from the appellant. There is no suppression or misstatement on their behalf and therefore, extended period is not invokable in this case. On the same grounds, he requests to set aside proposal to confirm interest and impose penalty under Section 114A. He relies on the following decisions:-
    1. Groversons Vs. Commissioner of Customs, New Delhi - 2016 (332) ELT 378 (Tri.-Del.)
    2. Commissioner Vs. Sushil Kumar Kanodia – 2015 (319) ELT A73 (Mad.)
    3. Assistant Commissioner of Customs Vs. Amrik Singh- 2014 (301) ELT 170 (P&H)
- The lower authority has confiscated the imported goods under Section 111(m) of the Customs Act, 1962 and imposed redemption fine of Rs. 6,00,000/- (goods imported at Kandla) and Rs. 6,70,000/- (goods

imported at Kandla) under Section 125 of the Customs Act, 1962. As the allegation of undervaluation has been made only on the basis of statements of a third person who is not even a supplier of goods and on the basis of emails exchanged between two persons, confiscation of goods is not legally correct and all the allegations are baseless. It is a settled law that option to impose of redemption fine is not available when goods are not physically available for confiscation. They rely on the following cases:-

1. Commissioner V/s Finesse Creation Inc. - 2010 (255) E.L.T. A120 (S.C.)
2. Commissioner of Customs, Bangalore V/s G. M. Exports - 2012(279) E.L.T. 493 (Kar.)
3. Commr. V/s Shiv Kripa Ispat Pvt. Ltd. 2015 (318) E.L.T. A259 (Bom.)
4. Dev Anand Agarwal Versus Commissioner of Customs, New Delhi as reported at 2016 (337) E.L.T. 397 (Tri. Del.)

Both the appellants prayed for setting aside the impugned order and dropping the demand of duty, imposition of penalty and redemption fine.

3. Learned Counsel, during the hearing drew attention of the Bench towards two decisions passed by this Tribunal. First, in the case of M/s Beena Sales Corporation vide final order No. A/10376/2019 dated 26.02.2019 wherein in the similar situations, demand and penalties were set aside. He mentioned that the department had challenged the said order of the Tribunal before Hon'ble Apex Court which vide order dated 06.12.2019, dismissed the department's appeal. Thus, he states that the decision in the case of M/s Beena Sales Corporation (cited supra) which deals with undervaluation of imported timber on the basis of the statements and the documents recovered from third parties, has attained finality. He also relies on the decision of this Tribunal in the case of Radha Swami Timbers Vs. Commissioner of Customs reported at (2024) 19 Centax 376 (Tri.- Ahmd.) which also held that " there

was no difference in fact, evidence and investigation in all the cases and therefore decision in the case of Beena Sales Corporation is directly applicable as all relied on documents and evidence were common." In the light of these two decisions, he prays to allow their appeals and set aside the impugned order.

4. Countering the arguments, learned AR reiterated the findings of the lower authorities. He also states Sri Arjanbhai Karsanbhai Patel in his statements dated 05.06.2014 had accepted undervaluation of imported timber and also payment of the suppressed amount in cash to the persons deputed by the concerned suppliers. He also draws our attention to the fact that the appellant has already deposited duty amount of Rs. 1,39,201/- alongwith interest and also reduced penalty as per the provisions of the Section 114A of the Customs Act, 1962, at the time of investigation. He states that both the appeals are liable to be dismissed. He places reliance on following cases wherein it has been held that confiscation under Section 111 applies to any goods in respect of which offences have been established and it is not necessary that such goods should have been seized. It is also held that the provision of Section 110 & 124 are independent, distinct and mutually exclusive.

1. Harbans Lal v/s Collector of Central Excise {1993 (67) ELT 20 (SC)}
2. J.K. Bardolia Mills v/s M.L. Khunger, Dy. Collector of Customs ((1975) 16 GLR 119
3. Mohanial Devdanbhai Choksey and Others v/s M.P. Mondkar and others (1988 (37) ELT 528 (Bom.)

5. We have carefully considered the submissions made by both the sides. We find that a common investigation has been conducted by DRI against various Timber importers including M/s Jay Jalaram Saw Mill. All the evidence including statements of Shri Rajendra Agarwal and Shri Avinash Jindal are common in all the cases. Some documents were recovered from the

premises of Shri Rajendra Agarwal and Shri Avinash Jindal which have been relied upon in all the cases. In the case of present appellants, the officers searched the office premises as well as residential premises of the partner which did not result in recovery of any incriminating documents. The partner, after seeing the statements and emails of Sri Avinash Jindal accepted undervaluation of goods and also paid the differential duty, interest and the reduced penalty amount on appellant-1 under Section 114A. Therefore, there is absolutely no difference in the facts, evidences and investigation in all the cases. We find that in the case of Beena Sales Corporation, this Tribunal vide Final Order No. A/10376/2019 dated 26.02.2019 after considering all the evidences, statements of various persons, documents, etc. passed the following order:

> *"7. We have heard both the sides and perused the records. We find that the differential duty demands in case of Annexure C-1 and Annexure D-1 of the show cause notice has been made on the basis of e-mails retrieved from Shri Rajendra Agarwal and Shri Avinash Jindal and their statements as well as the statements of Shri VineetJha, Office Assistant of Shri Rajendra Agarwal. The goods were imported from Tanzania. In respect of demand of duty made against the Appellant under Annexure D-2, C-2 and D-3, we find that the valuation has been done under Rule 5 and Rule 9 of the Customs Valuation Rules. In case of demand made under Annexure D-2, the valuation has been made under Rule 5 on the basis of similar goods said to be of same quantity and country of origin other than Tanzanian timber. In case of demand made under Annexure C-2 and D-3, the valuation under Rule 9 has been resorted to on the basis of contemporaneous imports by others. The contemporaneous imports referred to in such annexure were said to have been found by the investigating authority from the premises of Shri Rajendra Agrawal and Shri Avinash Jindal at the time of search in respect of other importers. Also statement of Shri Deepak Malooof Appellant concern has also been relied upon.*
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> *7.1. As far as documents seized from Shri Rajendra Agarwal and Shri Avinash Jindal are concerned, preliminary we find that the said persons have refused the veracity of such documents. Also both these persons in their cross examination has retracted from their statements. They refused that they maintained any accounts or ledger of the appellant on behalf of the suppliers or the importers. Shri Rajendra Agarwal, in his cross examination in respect of data / e-mails retrieved from the hard disc stated that he did not know how to operate the computer and he never made any handwritten entries over the documents. With regard to his signing the seized documents, he stated that he had signed the documents without seeing the contents on the insistence of the officers. Shri Avinash Jindal, in his cross examination, stated that he was only a commission agent as well as he is in business of imports, but never prepared import invoices in India on behalf of the suppliers nor negotiated the price with India parties. He also deposed that he seldom sold the goods on high sea sale basis to the Appellant but never maintained the alleged documents stated in the show cause notice. That his statement was kept ready by the investigating authority and he was told to sign the prepared statements. He had signed more than 4,000 pages without looking its contents in a single day. The cross examination of Shri VineetJha could not be done as he did not offer for the cross examination. We find that the demand is based upon the documents alleged to have been seized from above persons which are third parties and their statements. However, once these persons have retracted from their statements in the cross examination and also refused the veracity of the documents, in such case, their statements and the e-mails cannot be relied*

upon as cogent and tangible evidence to substantiate the allegation that the Appellant had declared the lower value of the imported goods for evasion of custom duty. The e-mails found from the e-mail IDs of Shri Avinash Jindal and Shri Rajendra Agarwal were not responded by the Appellant. No incriminating documents were seized from the Appellant during the course of investigation. The e-mails retrieved from the email ID of the Appellant has no inculpatory contents. The documents relied upon by the investigating authority and the adjudicating authority were not seized from the Appellant but were of the third party documents and the same were not corroborated by any independent evidence at the Appellant's end.

7.2. We find that in one of the bills of entry, the container number was matching with the documents seized from the office of Shri Rajendra Agarwal. However it ipso-facto cannot lead to conclusion that the Appellant had mis-declared the value and quantity of the imported goods. The said document, i.e. packing lists, was never shown to the Appellant and they were never questioned about the same. Thus, the said packing lists remain un-corroborated with an evidence. In case where the declared value is in doubt, the same has to be determined in terms of Section 14 read with provisions of Customs Valuation Rules. If the declared value is to be discarded, the same has to be proved by tangible evidence. The statements of Shri Avinash Jindal and Shri Rajendra Agarwal and Shri VineetJha , Accounts Asst. of Shri Rajendra Agarwal are not corroborated by any evidence and thus cannot form the basis for alleging under-valuation as held in case of Akshay Exports Vs Commissioner 2003 (156) ELT 268 and Galaxy Funworld 2006 (206) ELT 800. Further the statement of Shri VineetJha cannot be relied upon as he was not cross examined. In case of KARAN TRADERS 2016 (339) E.L.T. 249 (Mad.), the Hon'ble High Court of Madras has held that if a person is not made available for cross examination his statement cannot be relied upon.

7.3. We find from the tender documents of M/s Prime Timbers and M/s Janki Exports, who were awarded the tender by the Tanzanian Govt, that the tenders were awarded @ $ 95 to $ 120 per CBM. After cutting and processing, the average cost of yielded material comes to $ 160 to $ 200 per CBM, thus, enhancing the value by 60% . Considering the ocean freight and other charges and transportation of goods to India, the price would be around $ 300 per CBM. Adding 10% profit margin, the price of the goods would be around $ 330 per CBM whereas, the Appellant imported the same material at $ 350 to $ 400, which is quite normal. Thus, the value enhancement by the adjudicating authority to $ 650 to $ 800 is not practical.

7.3. In case of Bill of Entries of Goods imported from Tanzania, the revenue has not been able to conclusively show that the goods were undervalued by Appellant with help of any independent evidence. The Appellant has brought out various instances to show that even the third party records seized from Rajendra Agarwal and Shri Avinash Jindal are not reliable enough. For instance in case of demand under Annexure D – 1, the Revenue has relied upon the documents of Hard disk of Shri Rajendra Aagarwal i.e. file found in file path "live data /01/Agarwal-Teak 19.01.2010" said to be related to Bill of entry Nos. 137753 dated 25.06.2009 and 141411 dated 16.09.2009. It is alleged that the details in said file path is matching with the accounts statement found in file path "live data/01/Accounts/Ambrish" and that it pertains to transaction of material purchased by Shri Rajendra Agarwal from one Ambrish Bhai at the rate and quantity listed therein and a few of these transactions are against the name " Beena Sales". That Shri Rajendra Agarwal in his statement has stated that the rate at which he sold the material listed against the name of Beena Sales was his purchase price plus US$40 per CBM, which was his margin. By matching the number of containers and billed amounts from the documents found at "live data /01/Agarwal-Teak 19.01.2010", it is alleged that the Appellant under-valued the material in order to pay lesser custom duty.

7.4. We find that the documents in hard disk relied upon by the Revenue were solely maintained by Shri Rajendra Agarwal. Even if the number of containers and the rates mentioned of US$ 275 and US$ 405 from the said bills of entry matched with a few of the transactions listed in the documents, it does not conclusively show that the said material was actually imported by the Appellant or was undervalued. The container-wise numbers mentioned in the document are not matching with the import documents. Further the documents does not disclose the rate at which the materials were purchased. Even the Appellants were not shown these documents or questioned about the same

during investigation. In case of Bill of Entry No. 144831 dt 12.07.2009, reliance has been placed by the Revenue on account statement named "A/c Export Trading" located in file path "live data/01/Account 26.01.10" report located in file path "live data/01/Accounts/Ambrish Bhai" and import bill located in the file path "live data/02/Agarwal-Teak 19.01.2010" found in hard disk recovered from Shri Rajendra Agarwal. It is alleged that the actual value of imported timber was found to be higher than the declared valued and relied upon the statement of Shri Rajendra Agarwal and Shri Deepak Maloo.

7.5. We find that the statement of Shri Rajendra Agarwal has been denied by him. In respect of "A/c Export Trading", the document does not show the rates at which the goods were purchased nor the Appellant was questioned about the same during investigation. The billed quantity and amount in the document located in file path "live data/01/Agarwal-Teak 19.01.2010 and "livedata/01/Accounts/Ambrish Bhai" does not match. The quality mentioned in file path "live data/02/Agarwal-Teak 19.01.2010" is for "Ripper" quality timber whereas the show cause notice alleged that it is "Repla" quality. Even though the aforesaid records are in respect of 12 containers but the prices in each document varies. In case of "Repla" quality of Timber the documents mentioned contained different prices of the goods, which leads to suspicion about the authenticity of these documents. In case of Bill of Entry No. 145909 dt 30.12.2009, 14760 dt 2.2.10 and 148338 dt 16.2.2010 reliance has been placed upon account statement named "A/c Export Trading", which was found from Shri Rajendra Agarwal. On the basis of same, under-valuation has been alleged. We find that the document is of Shri Rajendra Agarwal and it mentions the number of container and quantity and rate of material. The value mentioned in "A/c Export Trading" is not comparable with the corresponding bill of entry. The Customs authority at the time of importation, after examination of the goods, has enhanced the value from US$ 350 to US$ 422 per CBM. In such case, the enhancement made in the impugned order is not sustainable.

7.6. In case of other demands for other imports we find that in case of Bill of Entry Nos. 151367 dated 29.4.2010, 155707 dated 02.7.2010, 2321538 dated 11.11.2010, 2354906 dated 23.11.2010, 2422349 dated 11.12.2010, 3245435 dated 19.04.2010, 3471154 dated 11.05.2011, the Revenue has relied upon various invoices sent through e-mail by Shri Avinash Jindal to the proprietor of the appellant to allege that the value and quantity declared in the said e-mail was the correct amount and that the materials mentioned in the said emails were declared at much lower values and quantities when imported. The value in the invoices has been made basis to enhance the value declared by the Appellant. The invoices found in the email and the statement of Shri Avinash Jindal are in isolation without any corroboration. None of the e-mails were replied by the Appellant. It is not forthcoming that the value and quantity of goods mentioned in the invoices are final or agreed upon and they did not change subsequent to sending the invoice. Even the A/c Export Trading and the bill of entry No. 151367 dated 2004.2010, 155707 dated 02.07.2010, 2321538 dated 11.11.2010, 2534906 dated 23.11.2010, 2422349 dated 11.12.2010, 3245435 dated 19.04.2010, 3471154 dated 11.05.2011 the emails of Shri Avinash Jindal has been relied upon to allege that the values and quantities mentioned therein are actual. Reliance has also been placed upon statement of Shri Rajendra Agarwal and Shri Deepak Maloo. However we are of the view that the statements cannot be basis of alleging undervaluation. Further, statement of Shri Rajendra Agarwal stands retracted. The statement of proprietor of the Appellant concern Shri Deepak Maloo, who accepted under-valuation cannot be the basis to conclude that the goods were under-valued as it is not corroborated with any independent evidence.

7.7. It is also a fact that at the time of importation the goods were reassessed by the Customs Authorities after examination and the value was enhanced. In case of Bill of Entry No. 155709 dated 02.07.2010, reliance was placed upon emails of Shri Avinash Jindal to allege that the values and quantities declared in the said e-mails were correct and that the values declared by the Appellant were much lower. We find that the enhancement of value is not proper as the said document is not corroborated by any independent evidence. No evidence is forthcoming that the value and quantity of goods mentioned in the invoice are final or agreed upon or it was not changed subsequent to sending of the invoice. Even the quantity shown in all the containers are same, which is not possible. Further, the quantity mentioned in the e-mail does not match with the quantity mentioned in the bill of entry. At the time of importation, the goods were re-assessed and the value were enhanced. In case of Bill of Entry No.156846 dated 22.07.2010, the Revenue has compared the same with the accounts statement

found in hard disk retrieved from Shri Rajendra Agarwal and in file path "livedata / 01/account (Avinash) 26.7.2010." It is alleged that the statement indicates that the Appellant purchased said material from the Ivory Coast for US$ 55400. The packing list sent by Shri Avinash Jindal through e-mail to one Shri Sunil Gupta has also been relied upon. On the basis of container number on the packing list matching with the bill of entry filed by the Appellant, it is alleged that the Appellant under-valued the imports.

7.8. The account statement has been relied upon to show that the value of material of US$ 55400 is actual. We find that the document relied upon by the Revenue was of Shri Avinash Jindal and only on the ground that name of Shri Deepak Maloo is appearing, it cannot be concluded that the payment of said amount was made by the Appellant for such materials. There is no evidence that the Appellant paid any such amount against the bill of entry No. 156486. The e-mail sent by Shri Avinash Jindal is to Shri Sunil Gupta and the Appellant is not concerned with such e-mail. Shri Deepak Maloo was never questioned regarding either of the documents nor the statement of Shri Sunil Gupta was recorded or he was summoned to ascertain the correctness of the transaction. In case of Bill of Entry No. 798 dated 14.8.2010, the e-mails of Shri Avinash Jindal and his statement dated 05.9.2011 have been relied upon to allege that Shri Avinash Jindal in partnership with Shri Sunil Gupta bought and sold materials for value ranging from US$ 700 to US$ 800 whereas the custom duty was paid on lesser value. It is alleged that the container number, quantity and number of pieces in the said e-mail match with the Appellant import documents. We find that Appellant was not a party to such correspondence nor is he concerned with the same. The Appellants were never shown such correspondence nor they were questioned at the time of investigation. The e-mails were between Shri Avinash Jindal and Shri Sunil Gupta with no involvement of the Appellant. There is no clear evidence to determine which figures in the e-mail corresponding to the actual rate at which the materials were purchased. The e-mails contained table having heading of Sl. No., container no., PIC, CBM, invoice, rate US$ and size. The remaining two columns do not have heading. For enhancing the value, figures mentioned in one of the un-named columns has been used without ascertaining as to what this figure actual meant. Shri Avinash Jindal was never questioned or was asked to clarify as to what the unnamed figures represent. It is also found that the goods at the time of importation was re-assessed and the value was enhanced from US$ 350 to US$ 375. In view of such circumstances, there is no reason to enhance the value.

7.9. In case of Bill of Entry No. 4794 dated 30.09.2010, the Revenue has relied upon the e-mails from Shri Avinash Jindal to Leo Timbers. The e-mail contains information regarding container number, number of pieces, CBM, average rate and amount that has been alleged to be corresponding to the materials imported by the Appellant. On the basis of such e-mails and statement of Shri Deepak Maloo, it was held that the goods were under-valued. We find that the material mentioned in e-mail was not imported by the Appellant. None of the container numbers or any particulars identified in the e-mail corresponds to any of the containers imported by the Appellant under subject bill of entry. The Appellant has denied the statement of Shri Deepak Maloo as having been undertaken under pressure and duress. As per the Appellant, Shri Deepak Maloo was never shown the said documents but was forced to state that he has seen and signed the documents. The relied upon email was never shown to the Appellant. In such view of facts it cannot be concluded that the materials were imported by the Appellant or they were imported at the rates mentioned, hence the demand is incorrect.

7.10. In case of Bill of Entry No. 3420395 dated 5.5.2011 on the basis of invoice located in file path "live data/01/DC215/Summary" found from the hard disk of Shri Rajendra Agrawal, it is alleged that two containers of Sudan timber shown in the invoice were purchased at higher rates and quantity than declared in the bill of entry. The statement of Shri Deepak Maloo has been relied upon to substantiate the claim. We find that only for the reason that the container number in the invoice matches with the bill of entry itself cannot lead to the conclusion that the material in the said containers were of the same quantity and quality, as indicated in the invoice. Further, there is no evidence for connecting Shri Deepak Maloo with the said invoice only on the basis of his statement.

7.11. The allegation of cash payment by the Appellant is also based upon the pages of "made-up file" recovered from Shri Avinash Jindal. It is alleged that

the said details pertain to cash payments for unofficial part of transaction. We find that the documents does not indicate whether the payments are in cash or on which account such payments have been made. Even, the same is not corroborated by any evidence from the Appellant's side. Shri Avinash Jindal in respect of 2 pages of said file stated that it indicated payments made by various importers but neither his statement nor the subject document supports the allegation that the payments were of unofficial part of the transaction. The Proprietor of the appellant concern was not shown such papers nor was he questioned about the same in spite of the fact that these documents are the sole evidence for making the allegation that the appellant had made un-official payments in cash. Only by showing the name of the Appellant in the account statement and that too of a third party, it cannot be concluded that the payment was actually made to Shri Avinash Jindal or even if the payment was made, it was on what account . In absence of any confirmation from Shri Avinash jindal or from Shri Deepak Maloo about the authenticity of such papers, no allegation can be made against the Appellant. A hand-written page from the made-up file of Shri Avinash Jindal has been made as basis for alleging that the Appellant imported Tanzanian timber from Shri Avinash Jindal through one container of 1" material of 14.556 CBM at US$ 391 per CBM, one container of "silli" material of 22.329 CBM at US$ 785 per CBM. We find that there is no evidence that the material mentioned was imported by the Appellant as there is no corresponding bill of entry. The only evidence is the statement of Shri Avinash Jindal, however, the same has been retracted in cross examination and , thus, cannot be relied upon.

8. In some cases for alleging undervaluation, reliance has been made upon the e-mail between Shri Avinash Jindal and Shri Sunil Gupta on account of Timber allegedly purchased by the Appellant. However we find that the Appellant was not a party to such e-mails. The Appellants were never shown these e-mails during the questioning. The e-mails were private exchange between Shri Avinash Jindal and Shri Sunil Gupta and cannot be used to demand the differential duty. In case of some of the email relied upon even the quantity and the number of pieces do not match. There is no evidence that the said materials were actually imported at any other value than the one declared by the Appellant. Only for the reason that the container and numbers mentioned in the email match with those listed on the Bill of Entry of the Appellant, it is not sufficient to prove that the material was under-valued. Even, assuming that the material indicated against the container number mentioned in the bill of entry matches the container imported by the Appellant, but there is no clear evidence to determine as to which figures in the e-mail correspond to the actual rate at which the materials were purchased.

9. In respect of hard disk recovered from the premises of the Appellant, the Revenue has alleged that it contained unsigned invoices and packing list of Timber imported from various countries. We, however, find that the Appellant was not shown these documents nor was he questioned about the same. It is alleged that in hard disk seized from Shri RajendraAagarwal, the quality and quantity of Timber indicated in the accounts statement under file path "livedata/01/Account/26.01.2010", file path "livedata/01/Account/ Bina Sales Corpn) 22.12.2010, file path "livedata/01/Account/ Bina Sales Coprn 23.07.2010", matches with the various packing lists. We are of the view that only by matching the quality and quantity of Timber in the accounts statement with the packing lists, it cannot be held that the values in the account statements are higher than those declared before the customs. The Appellant has refused the veracity of these documents. Only by matching the container numbers found in packing lists of the hard disk with the container number in the import documents under-valuation cannot be alleged. The packing list was never shown to the Appellant and the Appellant had already submitted the packing lists received from the overseas suppliers to the Customs at the time of filing of bill of entry, which dealt with the contents mentioned in the import documents. The Appellant has also stated that the packing lists relied upon by the Revenue are not related to the import by the Appellant. In spite of search of the premises of the Appellant, no incriminating document was found.

10. Similarly in case of packing lists of containers of Tanzanian timber found in the hard disk of Shri Rajendra Agarwal, on the basis of which the demand was made against the Appellant, we find that the Appellants were never shown the above records nor their statement was recorded. It has been alleged that the accounts statement found from the hard disk of Shri Rajendra Agarwal indicates the rates at which he purchased the material from one Shri Ambrish Bhai. However, we find that these transactions are of private documents of Shri

Rajendra Agarwal with no corroboration from the Appellant. Further the transactions in respect of Appellants were listed under the sub-heading "Through Bank", which even the investigating authority stated as official payment. The name of the Appellant does not appear in sub-heading "Cash", which clearly shows that the imported material was not undervalued by the Appellant. Shri Deepak Maloo, proprietor of the appellant in his statement was not questioned about such statements.

11. The SCN has also relied upon packing list of 2 containers of Timber from file path "livedata/01/2x20containers packing list – OT (Bina Sales Corpn)/Sheet 1". However, it is seen that there is no bill of entry of the Appellant corresponding to the container number indicated in the packing list. It does not show as to how the Appellant is identified with such packing lists. Even if assumed so, there is no evidence that the containers were under-valued. We also find that Shri Deepak Maloo in his statement dated 17.10.2013 has stated that the rate of material imported from Sudan were re-negotiated with Shri Rajendra Agarwal after it was imported due to inferior quality and in case of material imported from Ecuador, which was purchased on high sea sales, the payment of the same was made to the seller after unloading of the material. He also stated that the actual rate for both the transactions were declared. Thus, on the statement of Shri Rajendra Agarwal and in the light of the fact that Shri Deepak Maloo in his statement was not questioned in respect of such containers, there is no ground to enhance the value. There is no evidence that the rates of the goods imported by the Appellant should be valued on the basis of number of pieces since Timber has its own characteristics of quality, weight and size and differs from log to log. The allegation of the extra consideration towards undeclared value and quantity of the goods is only on the basis of documents of Shri Rajendra Agrawal and if the name of the appellant is shown in such records, it can, ipso-facto, lead to the conclusion that the Appellant paid extra consideration over and above the declared value in the bill of entry to the supplier of the goods. Even otherwise also, there is no independent evidence recovered from the Appellant that the Appellant has paid extra consideration for alleged under-declared value of the goods to the supplier. The sales price of the Appellant has not been disputed. There is no evidence that the Appellant sold the imported goods in domestic market by suppressing the price and any cash was generated which was used to pay to the foreign suppliers. Even during the cross examination, Shri Rajendra Agarwal and Shri Avinash Jindal have accepted that the Appellant is not concerned with the contents of the made-up files. It is emanating from the records that the Appellant imported Timber from various suppliers, who were well- recognized and there is no direct evidence that the Appellant had connivance with them so as to undervalue or mis-declare the imported goods.

12. Further, the Appellant have imported Timber even after the disputed period more or less at the same price at which the Appellant imported the goods in disputed period, as we find from the data submitted by the Appellant, there is no specific evidence that the prices were influenced by non-commercial consideration. In case of M/s Oswal Fats & Oils - 2007 (220) ELT 795, the Tribunal has held that the price of the goods would not remain same for the imported goods when the prices fluctuate and the prices in a particular situation can be rejected only when there is information or evidence that the transaction was not a commercial transaction. We find that the Appellant has given the import data of Timbers from the same country and same size and similar period, which shows that there are a number of instances and evidences of contemporaneous imports which are of the same price as declared by the Appellant. In terms of Rule 3 the transaction value has to be accepted unless it falls under the exceptions carved out in Rule 3 (iii) of Custom Valuation Rules. Since this is not the case the transactional value has to be accepted as held by the Hon'ble Apex Court in case of BUREAU VERITAS 2005 (181) E.L.T. 3 (S.C.). In case of M/s Eicher Tractors Limited - 2000 (122) E.L.T. 321 (S.C.), the Hon'ble Apex Court has held as under :

> ***"13.** That Rule 4 is limited to the transaction in question is also supported by the provisions of the other Rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be*

determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India." If the phrase 'the transaction value' used in Rule 4 were not limited to the particular transaction then the other Rules which refer to other transactions and data would become redundant.

14. *It is only when the transaction value under Rule 4 is rejected, then under Rule 3(ii) the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules. Conversely if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules."*

In case of M/s Truwoods Private Limited - 2006 (204) E.L.T. 288 (Tri. - Bang.), the tribunal while dealing with similar situation held:-

"6. *We have gone through the records of the case carefully. A similar issue of alleged undervaluation was examined in the case of M/s. Truwoods Pvt. Ltd. by CESTAT, Delhi and the appeal was allowed. The ratio of the above decision is squarely applicable to the facts of the present case. We also do not find any reason for rejection of the transaction value in terms of Rule 4(2) of the Customs Valuation Rules, 1988. The case-laws cited by the appellants are relevant. It is not the case of the Revenue that the appellants had paid more than what has been reflected in the invoices. Investigations have not brought out any evidence against the appellants in this manner. It is further seen that the insurance covers the value of the goods enhanced by 10% as per the international practice. Further, we find that reliance has been placed on photocopies without proper signature or official seal of the foreign Customs officers. It has already been held in M/s. Truwoods Pvt. Ltd. case, cited supra, that such documents cannot be relied on to enhance the declared value. Further, we have seen that the appellants have given enormous evidence to show that the value of contemporaneous imports in respect of other importers is more or less the same as those of the appellants. In these circumstances, we do not find any valid reason for enhancement of the Transaction Value. Further, the documents received from M/s. MSAS Blue Skies in respect of M/s. Maxworth Plywood Pvt. Ltd. has not been supplied to the appellants and the lower authority has not allowed the appellant to cross-examine the representatives of M/S. MSAS Blue Skies. This amounts to the denial of Principles of Natural Justice. Moreover, in M/s. Maxworth Plywood case, the corrigendum, revising the demand of duty, was issued on 31-12-2003. In those circumstances, the period of limitation should be reckoned from 31-12-2003. In that case, the demand also would be time-barred. As the demand of duty is not sustainable in view of our above findings, penalty under Section 114A and the demand of interest are not maintainable. The Orders-in-Original cannot be sustained. Hence, we, allow these appeals with consequential relief, if any.*

The aforesaid order was upheld by the Hon'ble Apex Court as reported in Commissioner of Customs vs. Truwoods Pvt. Limited -2016 (331) E.L.T. 15 (S.C.). We are of the view that the ratio of aforesaid case is squarely applicable to the given facts of the case as only on the basis of third party records and statements with no corroborations with independent evidence. Our views are also based upon the Tribunal order in case of Pee Kay Steel Castings Pvt. Limited - 2016 (340) E.L.T. 389 (Tri. - Bang.) wherein the Tribunal held that :

"6.8 *We find sufficient force in the arguments of the appellants that the Revenue is not able to prove any undervaluation or misdeclaration and thus able to convincingly reject the transaction value declared by the importer. There cannot be any case for enhancement of value just by citing importation of contemporary period by other importers through different contracts unless Revenue is able to reject the transaction value strictly as per provisions of law including the provisions of Customs Valuation Rules as applicable.*

13. Further the Hon'ble Apex Court in case of South India Television (P) Ltd. 2007 (214) E.L.T. 3 (S.C.) has also held that:

> ***"6.*** *We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent-importer alleging mis-declaration regarding the price. There is no allegation of mis-declaration in the context of the description of the goods. In the present case, the allegation is of under-invoicing. The charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14(1A), it envisages that the value of any goods chargeable to ad valorem duty has to be deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation 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. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the*

invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

7. *Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s. Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19-9-1996. In the present case, the importer has alleged that the original declarations were with the Department. That certain portions of the originals were not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Department to produce the original declaration in the Court. No reply has been filed to the said I.A. till date. In the circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22-7-1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. For the aforestated reasons, we find no infirmity in the impugned judgment of the Tribunal.*

8. *Before concluding, we may point out that in the present case at the stage of show cause notice, the Department invoked Rule 8 on the ground that the invoice submitted by the importer was incorrect. In Eicher Tractors (supra) this Court observed that Rule 4(1) of the Customs Valuation Rules refers to the transaction value. Utilization of the word 'the' as definite article indicated that what should be accepted as the transaction value for the purpose of assessment under the Customs Act is the price actually paid by the importer for the particular transaction, unless it is unacceptable for the reasons set out in Rule 4(2). In the said judgment, it has been further held that, the word 'payable' in Rule 4(1) also refers to the "transaction value" and payability in respect of the transaction envisaged a situation where payment of price stood deferred. Therefore, this decision of the Supreme Court directs the Revenue to decide the validity of the particular value instead of rejecting the transaction value. We wish, however, to clarify that it is still open to the Department based on evidence, to show that the declared price is not the price at which like goods are sold or offered for sale ordinarily, which words occur in Section 14(1). Lastly, it is important to note that in the above decision of this Court in Eicher Tractors (supra) this Court has held that the Department has to proceed sequentially under Rules 5, 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is to be rejected under Rule 4. In the present case, the show cause notice indicates that the Department had invoked Rule 8 without complying with the earlier rules."*

14. In the present case the Appellant has imported goods on correct transactional value and the allegation of undervaluation are not supported by any cogent evidence. Further the goods by other importers are also on same price. Hence in view of above judgments we find that the declared value cannot be doubted. We also find from the data submitted by the Appellant that the contemporaneous imports of such or like goods were allowed to be cleared only at the same price or comparable price, but in fact at price lower than those declared by the Appellant. There is no reference of any excess payment made to any of the suppliers, the mode of such payment, manner of payment or person through whom such payments were made. In absence of same, it cannot be held that the Appellant has under-valued the imported goods. Even though the other importers were importing same quality, quantity of goods at the same prices, no question has been raised against such importers. We have gone through the copy of statement along with copies of bills of entry filed by other importers for importation of identical goods from the same suppliers and such imports are not doubted. We find that the case of the Appellant is squarely covered by the Tribunal's order in case of Vijay Leather Stores 2007 (215) ELT 304 (TRI) as the same and similar goods were also imported on same price and the allegation of undervaluation thus would not sustain. The records of contemporaneous imports and the data have not been considered by the adjudicating authority and in such cases, we find that there is no case of demand against the Appellant.

15. From the quantity of imports, we find that more than 60% of the imports were of rejected quality Timber. Also, we find that out of 161 bills of entry involved in this case, the value of 83 bills of entry declared by the Appellant was initially rejected by the Revenue and were enhanced in comparison with the contemporaneous imports after physical inspection and examination of the goods. In such case, there is no reason to doubt the declared value as the goods were permitted to be cleared after physical examination. The Appellant has made payments through letters of credit and there is no evidence of having made payments to Shri Rajendra Agarwal or Shri Avinash Jindal on behalf of the suppliers. In such case, the value cannot be discarded. The Appellant has also annexed the prices of imported goods in the domestic market and we do not find any major difference between the declared price and the sales price in local market. There is no evidence acquired from the Appellant such as private records or records of any payment made in cash or recovery of any unaccounted cash which can be supported the cases that the Appellant has indulged in under-valuation. From the difference between the declared value and the price at which the goods were sold in the domestic market, there appears to be a normal profit margin. The Revenue has not investigated even a single buyer, who has purchased such imported goods from the Appellant, to ascertain the correct position. The Appellant has taken insurance policy for the goods for the transit for foreign loading port to India and the price shown in such insurance document is the declared price. It is coupled with the fact that the Forestry & Beekeeping Division of Ministry of Natural Resources & Tourism of Tanzania has shown the sale price of Timber as $ 130 PMT as against the enhanced value of $ 600 to $ 800. It is not disputed that the Appellant had imported the rejected grade / short length / off size/ off cut size timber, which is more than 33% of the quantity of the imported timber. In such case, there was no reason to enhance the value of rejected timber as per good quality timber.

16. The goods at the time of importation were physically examined by Customs authorities and were found as per the declared description. Thus, in absence of any contrary evidence, the value of rejected grade timber cannot be enhanced on the basis of good quality timber. Our views are based upon Tribunal decision in case of Commissioner of Customs, Chennai vs. Adani Exports - 1999 (111) E.L.T. 143 (Tribunal), wherein the Tribunal held that :

> *"11. We find that the department has not been able to lead any evidence to show that the Invoice under which these goods have been imported, i.e. this transaction, is a fraudulent one inasmuch as that there was some fraud in the value declared and that this was not therefore the fair value. There is no evidence to show that there was a conspiracy between the importer and the foreign seller to over-value the said goods for other considerations. Therefore, the transaction value declared in the Invoice Bill of Entry for these imports cannot be rejected by the Department merely on the grounds of fraud. It is needless to say that the onus to so prove rests on the department and not on the importer.*
>
> *12. The department has applied the values of imports by the Water*

Base Ltd. from Pingtai as well as Zuelling for Vitamin pre-mixes to show that there are contemporaneous imports of comparable goods at much lesser prices, normally at U.S. Dollars 8,200/- per M.T. It is not in dispute that by its very nature Vitamin Mixes imported at different times from different sources are having different composition. Therefore, prices at which identical goods have been imported may not be available. It is also not disputed that in view of this what the department seeks to do is to apply the price of comparable or similar goods as per the Customs Valuation Rules. However, the dispute arises on the sole ground that the chemical composition of such comparable goods relied upon by the department as contemporaneous imports was so widely different from the chemical composition of the goods imported in these cases by the appellants that it would not be correct to hold the two sets of goods as comparable. We find that ld. Advocate has in detail submitted the chemical composition as per the Analysis Certificate on record which have not been disputed. Comparison of these show that whereas any cost of imports relied upon by the department the concentration of major Vitamins was many times lower in the goods imported from both Pingtai as well as Zuelling when compared to the concentration of similar Vitamins in the products imported by these appellants. We have seen these Analysis Certificates on record and we find that the difference between the two is very wide and certainly not marginal. We find that the major value element of such Vitamin Mixes is derived from the active ingredients in such ingredients namely the major Vitamins and not the fillers and other impurities. Therefore, we find that when there is such a wide difference in the concentration of such active ingredients in the products imported vis-a-vis the contemporaneous imports relied upon by the department, therefore we cannot subscribe to the view that the two sets of products are even comparable products.

13. With respect to the contemporaneous import relied upon by the importer namely that by M/s. Victoria Marines, the department has brushed it aside saying that it. was a clever set-up by associates of the importers to pave the way for the bigger quantity of imports subsequently at much higher prices. Even if the department harbours such suspicions, there is nothing on record to show that detailed investigations were resorted to by the department to uncover these suspicions through sufficient evidences. It is one thing to say that M/s. Victoria Marines were associates of the present appellants and another thing to show by evidence that not only were they associates of the present appellants but also that they were party to a conspiracy with the present appellants leading to the said import of the alleged pilot consignment. There is not an iota of evidence on record led by the department to support their allegations in this regard. Therefore, we cannot but conclude that the said contemporaneous imports relied upon by the appellants are good evidence under Section 14 of the Customs Act."

17. The burden to prove under-valuation lies upon the Revenue by bringing credible and cogent evidence, whereas the submissions made by the Appellant clearly shows that in the present case, except third party documents and statements, no evidence has been brought by the Revenue on record. The statements of Shri Avinash Jindal and Shri Rajendra Agarwal and their employee corroborated which was corroborated with their own record is not a tangible and cogent evidence and cannot form the basis of under-valuation in respect of value declared by the Appellant.

18. Thus in view of our above findings and the judgments, we hold that the demand and penalties imposed against Appellant are not sustainable. We, therefore, set aside the impugned order and allow the appeal with consequential reliefs."

5.1 From the above decision of this Tribunal in the case of Beena Sales Corporation, it can be seen that all the documents and evidences are common which have been relied upon in the present cases also. This decision has also

been upheld by the Hon'ble Supreme Court which vide order dated 06.12.2019 after condoning delay held as under:-

> *"We find no reason to interfere with the impugned order dated 26 February 2019 of the Customs, Excise and Service Tax Appellant Tribunal, West Zonal Bench at Ahmedabad.*
>
> *The appeal is Accordingly dismissed."*

Therefore, the above decision is squarely applicable in the present case also.

6. Applying the above decision in the present case also, we set aside the impugned order and allow both the appeals with consequential benefits, if any.

(Pronounced in the open court on 23.01.2026)

(DR. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha