

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

REGIONAL BENCH – COURT No. III

**Customs Appeal No. 40953 of 2016**

(Arising out of Order-in-Appeal C.Cus.I No. 874/2015 dated 23.12.2015 passed by Commissioner of Customs (Appeals-I), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

**M/s. Kotak Mahindra Bank Limited**

No. 555, Capitale Tower,  
Anna Salai,  
Teynampet,  
Chennai – 600 018.

**...Appellant**

***Versus***

**Commissioner of Customs**

Chennai VII Commissionerate,  
New Custom House,  
Air Cargo Complex,  
Meenambakkam,  
Chennai – 600 027.

**...Respondent**

**APPEARANCE:**

For the Appellant : Ms. Ginita Bodani, Advocate

For the Respondent : Ms. Rajini Menon, Authorised Representative

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No. 40020 / 2026**

DATE OF HEARING : 29.10.2025

DATE OF DECISION : 08.01.2026

**Per Mr. VASA SESHAGIRI RAO**

This is an appeal filed by M/s. Kotak Mahindra Bank Limited, Chennai (hereinafter referred to as the 'Appellant') to assail the Order-in-Appeal C.Cus. I No. 874/2015 dated 23.12.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated, the appellant had imported "Gold Bars" as detailed in the table below: -

Sl.No.	Bill of Entry Number and date	Invoice Value (in USD)	Assessable Value (in Rs.)
1	5769667/18.01.2012	12992339	69,87,60,452
2	5784371/20.01.2012	10582292	56,91,42,119
3	5992914/13.02.2012	5476688	27,76,79,035

The goods imported under the above bills of entry were cleared on payment of duty assessed on the basis of the invoice value declared by the appellant. Thereafter, the department called for the details of statement of sale of imported goods (bill of entry wise) to the buyers with the details of sale price, actual remittances made to the suppliers and Customs Duty recovered, local taxes and contract entered into with the overseas suppliers for the subject consignments. Based on scrutiny of the details and documents submitted by the appellant, the department found out that the amounts remitted to the overseas supplier for goods imported under the above three bills of entry were higher than the invoice value declared by the appellant in the bills of entry. Hence a show cause notice was issued to the appellant in terms of section 28(1) of Customs Act, 1962 wherein the appellant was called upon to show cause as to

why the differential duty amount of Rs.10,19,051/- should not be paid by them along with interest thereon.

3. After following due process of adjudication, the Order-in-Original No. 708/2015 (ADC) dated 25.08.2015 was passed wherein (i) the declared value in respect of all the three bills of entry was rejected under Rule 12 of Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962; (ii) the value of goods covered under the three bills of entry was re-determined under Rule 3(1) of Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962 by considering the amount actually remitted by the appellant to overseas supplier as the transaction value; and (iii) the demand of duty amounting to Rs. 10,19,051/- along with applicable interest was confirmed under Section 28(1) of Customs Act, 1962 read with Section 28AA *ibid.* Being aggrieved by the same, the appellant preferred an appeal before the first appellate authority. The first appellate authority (hereinafter referred to as LAA) upheld the Order-in-Original and rejected the appeal. Hence, the present appeal filed before this forum.

4.1 The Ld. Advocate Ms. Ginita Bodani appeared and argued for the appellant and submitted that the Appellant is a bank and is also a nominated agency for

buying and selling of gold bars on consignment basis in accordance with RBI Master Circular No. 7/2011-12 dated 01.07.2011. She explained the modus operandi adopted by the Appellant for undertaking the activity of import of gold bars during the relevant period as follows: -

- i. The Appellant imported gold bars from foreign suppliers on consignment sale basis.
- ii. At the time of such supply, the suppliers issued proforma invoice inter alia outlining the price of the gold bars so supplied. The said price was determined based on the rate published by the London Bullion Market Association nearer to the date of issuance of proforma invoice.
- iii. The Appellant filed the Bills of Entry for home consumption for clearance of the imported gold bars. For payment of Customs duty, the Appellant considered the value reflecting in the proforma invoice as transaction value and discharged Customs duty accordingly.
- iv. Subsequent to payment of Customs duty and clearance of the gold bars from Customs, the price of the imported gold bars was mutually finalised, and final invoices were issued by the suppliers. The Appellant remitted the amount so finalised to the supplier.

- v. The rights, title, interest and ownership in the gold bars stood transferred to the Appellant on remittance of final invoice amount to the supplier.
- vi. Given that finalization of prices took around one to three months, coupled with fluctuating gold prices, the price as declared in the proforma invoice was either more or less than the amount actually remitted to the supplier post clearance.

4.2 The Ld. Advocate averred that the demand of differential duty was made in the impugned order-in-original by invoking the provisions of Rule 3(2)(c) read with Rule 10(1)(d) of Customs Valuation Rules, 2007 whereas the Show Cause Notice did not mention the said provisions/sections. She further submitted that in the impugned order-in-appeal, the LAA has gone beyond the show cause notice and order-in-original by alleging for the first time that the sale is one of the main requirements under Section 14, which in the present case did not occur at the time of import and was effected only subsequently; and therefore the price payable at the time of import cannot be considered as the transaction value.

4.3 The Ld. Advocate contended that at every stage of adjudication, the demand has been made on different

grounds/basis. In this regard, she placed reliance on the decision of the Hon'ble Supreme Court in the case of *C.C.E. v. Gas Authority of India [(2008) 232 ELT 7 SC]* to submit that demand cannot be confirmed on the basis of a ground which has not been alleged in the show cause notice. Further reliance has been placed on the decision rendered in the case of *CC v. Toyo Engineering [(2006) 7 SCC 592]* wherein it was similarly held that the authority cannot go beyond the show cause notice and decide an issue which was never alleged in the SCN.

4.4 Further, referring to the decision in the case of *Commissioner of C.Ex., Bangalore Vs. Brindavan Beverages (P) Ltd. [2007 (213) ELT 487 (SC)]*, the Ld. Advocate submitted that if the allegations in the Show Cause Notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the assessee was not given a proper opportunity to meet the allegations in the show cause notice.

4.5 The Ld. Advocate argued that in holding that the event of "sale" is one of the main requirements of Section 14, the LAA has erred in interpreting the provisions of Section 14 of the Customs Act, 1962 and therefore, demand of differential duty on the basis of charges paid post

importation to the overseas supplier is without any basis. In this regard, she submitted that in terms of Section 14 of the Customs Act, the value of imported goods would be the transaction value i.e., the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation and not the charges paid after about 2-3 months after the date of import. Therefore, the value declared by the Appellant in the Bills of Entry should be regarded as the transaction value for Customs valuation purposes as the same has been determined by the Appellant on the basis of the price prevalent at the time of delivery of gold to the Appellant, i.e., at the price paid or payable for delivery at the time and place of importation.

4.6 Referring to the finding of LAA that Circular No. 11/2010-Cus dated 03.06.2010 relied upon by the Appellant does not have identical facts, she submitted that Circular No. 11/2010-Cus dated 03.06.2010 clearly states that post warehousing value of resale after importing the goods into India cannot be considered for the purpose of Section 14. In the present case, the LAA seeks to consider the remittance made at a subsequent date (post importation) as part of the transaction value which is clearly against the underlying principle laid down in the aforesaid Circular issued by the Customs department.

4.7 She averred that transaction value in terms of Section 14 shall be the value of goods when sold for export to India, that is to say, the price at which the goods are to be sold before they are imported into India. The remittances after importing goods into India cannot be considered a sale for export to India. In this regard, she placed reliance on the decision in the case of *Surendra R. Choudhary Vs. Commissioner of Customs, Nhava Sheva [2020 (2) TMI 1260 – CESTAT MUMBAI]*, the appellant in which case accepted a consignment for a negotiated value of € 800 per metric ton after the original importer refused to take delivery after importing the goods against proforma invoice for a value of € 1137 per metric upon and the Tribunal upheld the enhancement in transaction value from € 800 to € 1137 by holding as under: -

*"9. While such may be the negotiated value, it cannot be disputed that the whole of it was conducted after the importation of the goods. Hence, the qualifications entailed upon acceptance of declaration as 'transaction value' is compromised; the price is no longer one at the time and place of importation. Naturally, in the circumstances, recourse will have to be had to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.*

...

*13. Accordingly, we uphold the impugned order only to the extent of enhancement of value. All other detriments are set aside."*

Further reliance is placed by the Learned Advocate on the case of *M/s. Steel Strips Ltd. Vs. Commissioner of Customs Mumbai [1997 (95) ELT 538]* wherein it was held as under:

*"3. We have considered the rival submissions. The distinguishing feature of the present import is that the negotiations between the supplier and appellants had taken place admittedly after the import of the goods into the country had been completed. M/s. Shyam Sunder & Sons had even filed a Bill of Entry for their clearance on 23-6-1989. The admitted position is that the goods had been shipped on 30-4-1989 as per the order placed on the suppliers as per the indent dated 3-3-1989 @ US \$ 1045 PMT. The goods had landed on 4-7-1989, and had been unloaded also.*

*4. Thus the reduced price had been negotiated by the appellants after the landing of the goods in India. According to Rule 4 of Valuation Rules transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India. The actual price giving rise to the import of the goods into India is US \$ 1045 PMT. The goods were sold for export to India at that price. The transaction between the supplier and the original buyer Shyam Sunder was a "Sale" in the wider sense of the term because admittedly it was in terms of the agreed terms of sale; it was not free consignment like gifts."*

4.8 The Ld. Advocate submitted that when there is no sale in the first place, the valuation should be done in terms of Customs Valuation Rules, 2007. Rule 3(4) of the Valuation Rules specifies that value should be determined by proceeding sequentially through Rule 4 to 9 of the Valuation Rules, in accordance with which the value of similar goods/identical goods is required to be considered for determining the value on which Customs duty is payable. In the present case, the value of London Metal Exchange price of gold is the value of similar goods and hence the Customs duty has been paid on the correct value.

4.9 It is the contention of the Learned Advocate that Rule 10(1)(d) of Customs Valuation Rules, 2007 is applicable

only when a fixed percentage of the proceeds from a re-sale are remitted outside India as a condition of sale of goods whereas in the present case, it is not established that the payment made to the foreign vendor form part of the proceeds of a subsequent re-sale.

4.10 The Ld. Advocate placed reliance on the decisions of the *Apex Court in Pratibha Processors vs Union of India [1996 (88) ELT 12 (SC)]* and *Commissioner of Customs, Chennai vs Jayanthi Krishna & Co. [2000 (119) E.L.T. 4 (S.C.)]* to submit that no interest is payable by the Appellant as there is no short payment of duty by the Appellant.

5. *Per contra*, Ms. Rajini Menon the Ld. AR for the Revenue supported the findings in the impugned order. She submitted that it is an undisputed fact that the Appellant has remitted higher amounts to the overseas supplier than the invoice value declared in the bills of entry for import of the impugned goods and therefore, the same should be considered as correct transaction value under Rule 3(1) of Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962. Accordingly, the confirmation of demand of duty in the order-in-original which has been upheld in the impugned order-in-appeal is in order.

6. We have heard both the sides and considered their submissions along with the cited case laws.

7. The issues for consideration in this case are: -

- i. Whether there is any "sale" involved in the impugned imports made by the Appellant and if so, whether the event of "sale" happened after import, as held by the LAA;
- ii. Whether the value declared in the bills of entry for the impugned imports made by the Appellant represent the correct value of the goods as per Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of imported goods) Rules, 2007 or not; and if not,
- iii. What is the correct value of the impugned goods as per Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of value of imported goods) Rules, 2007.

8. In order to determine whether there is any sale involved in the impugned imports made by the Appellant, it is appropriate to refer to question no. Q42 and corresponding answer in FREQUENTLY ASKED QUESTIONS (FAQs) published by the Directorate General of Valuation (hereinafter referred

to as DGOV), Central Board of Indirect Taxes & Customs (hereinafter referred to as CBIC) at webpage <https://dov.gov.in/faqs> which inter-alia read as under: -

*"Q42. What constitutes sale for the purpose Customs valuation?"*

*Ans: The ACV contains no definition of 'sale'. However, the term 'sale' has to be interpreted in the widest sense, keeping in view the provisions contained in Articles 1 and 8 of the ACV. The Technical Committee on Customs Valuation has prepared a list of cases that would not be deemed to constitute 'sales' meeting the requirements and conditions of Article 1 and 8 of the Code. In such cases, one of the methods other than the transaction value method has to be applied proceeding sequentially. The list is not exhaustive:*

*(i) -----*

*(ii) Goods imported on consignment: Under this arrangement the goods are imported not as a result of sale but for subsequent sale on the account of the supplier. As such, there is no sale the time of importation. Importation on consignment for subsequent auction sale is an example of such transaction. Such importations on consignment are to be distinguished from profit-sharing transactions. In the case of the latter, the goods are sold Provisionally at a price to which part of the profit arising out of subsequent sale in the country of importation has to be added."*

9. In page 9 of the impugned order-in-appeal, the LAA has held that "The gold bars were imported into India under the "consignment sales". The Appellant has also submitted that it imported gold bars from foreign suppliers on consignment sale basis. The above facts leave no doubt that the Appellant has imported the impugned goods on consignment sale basis. It is seen from the FAQ of DGOV that according to the Technical Committee on Customs Valuation, goods imported on consignment sale basis do not constitute 'sales' meeting the requirements and conditions of Article 1 and 8 of the Code, viz. Agreement on

Implementation of Article VII of The General Agreement on Tariffs And Trade (GATT), 1994, (Usually referred to as the Agreement on Customs Valuation or ACV for short), and in such cases, one of the methods other than the transaction value method has to be applied proceeding sequentially.

10. The Original Authority has applied Transaction Value Method under rule 3 of Customs Valuation (Determination of value of imported goods) Rules, 2007 (hereinafter referred to as CVR, 2007) for determination of value of the impugned goods and the same has been upheld by the LAA. Thus, both the lower authorities have ignored question no. Q42 and its corresponding answer in FAQs published by DGOV, CBIC where it is explicitly stated that "In such cases, one of the methods other than the transaction value method has to be applied proceeding sequentially".

11. The proper course would have been to determine the value of the impugned goods by proceeding sequentially from rule 4 to 9 of CVR, 2007. Rules 4 and 5 of CVR, 2007 provide for determination of value based on the value of identical goods and similar goods respectively. The Appellant has stated that the value declared in the bills of entry is based on the prevailing London Metal Exchange price, which is the value of goods. In other words, the declared value is

the value under Rule 5 of CVR, 2007. The Revenue has not disputed the same. Therefore, the value declared by the Appellant in the bills of entry is found to be the correct value in terms of Section 14 of Customs Act, 1962 read with CVR.

12. Before concluding, it is appropriate to mention that the case laws cited by the Appellant are on different facts as there is no "consignment sale" in those cases. Another aspect to be noted is that the Appellant has pleaded that the department should take one uniform stand and therefore, the appellant is eligible for refund in some other cases where the amount remitted subsequent to the import is lower than the value declared in the bills of entry. Though such other imports made by the appellant are not under dispute in this case, it is appropriate to deal with the above argument of the Appellant, especially given the fact that the LAA has accepted the above plea and held that the "appellants are free to file claim for refund in such cases and the same shall be considered as per law". The correct legal position in such cases is that in those cases also, the value declared by the Appellant in the bills of entry is the correct value in terms of Section 14 of Customs Act, 1962 read with CVR, 2007 as the modus-operandi of the appellant in all such cases of import of gold bars on "consignment sale" basis is that the price declared at the time of import is determined

based on the rate published by the London Bullion Market Association nearer to the date of import, which would be tantamount to price of similar goods in terms of Rule 5 of CVR, 2007.

13. In view of the above findings, the impugned Order-in-Appeal C.Cus.I No. 874/2015 dated 23.12.2015 is set aside and the appeal is allowed with consequential relief(s), if any, as per the law.

(Order pronounced in open court on 08.01.2026)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

MK