

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 4**

CUSTOMS APPEAL NO. 546 OF 2010

[Arising out of Order-in-Original No. 13/VKG/2010 dated 20.07.2010 passed by the Commissioner of Customs (Import & General), New Delhi]

M/s. Rama Krishna Sales Pvt. Limited

Appellant

10-11, Old Lajpat Rai Market,
Delhi-110006

Vs.

**Commissioner of Customs (Import &
General), New Delhi**

Respondent

New Custom House,
Near IGI Airport,
New Delhi

Appearance:

Present for the Appellant : Shri Prem Ranjan Kumar, Advocate

Present for the Respondent: Shri Rakesh Kumar, Authorised Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing : 03.09.2025

Date of Decision: 14.01.2026

Final Order No. 50057/2026

HEMAMBIKA R. PRIYA

The present appeal has been filed by M/s. Rama Krishna Sales Pvt. Limited¹ against the Order-in-Original No. 13/VKG/2010 dated 20.07.2010 passed by the Commissioner of Customs (Import & General), New Delhi wherein a duty of Rs.9,63,586/- was confirmed along with interest of Rs.49,460/- and penalty of equal amount.

1. the Appellant

2. The brief facts are that the appellant is an importer and trader of electronic components from Hong Kong and Singapore. The appellant was distributor of M/s Phillips Semi Conductor Ltd. and also engaged in the sale of various types of Phillips brand ICs, Transistors, diodes and other electronic components. The appellant placed orders to Phillips, Hong Kong and Taiwan, which were routed through M/s Asia Lucky Industrial Ltd., Hong Kong, M/s Great Himalyan Pte Ltd., Singapore and M/s Hopeen Trading Pte Ltd., Singapore. DRI received intelligence that the appellant was undervaluing the electronic components by routing the goods through M/s Great Himalyan Pte Ltd., Singapore and M/s Hopeen Trading Pte Ltd, Singapore. The residence and office premises of the appellant were searched; statements from various persons including the representatives from the Phillips India Ltd. were recorded. During investigations, the export declarations from Hong Kong/Taiwan were obtained through the Consul (Eco), Consulate General of India, Hong Kong after causing necessary enquiries with the Hong Kong Customs & Excise Department which indicated under valuation. During investigation, the authorities received certain invoices submitted by the representative of Phillips India vide which goods had been supplied by Phillips Ltd to the Singapore supplier, viz. Hopeen Trading Pte Ltd., from whom the Appellant had imported electronic components. On completion of the investigations, Show Cause notice dated 11.2.2000 was issued to the appellant alleging undervaluation. The Show Cause notice was adjudicated vide Order-in-Original No.39/Adj./RSS/04 dated 29.11.2004 confirming the demand of duty, interest and imposing penalties. Thereafter, an appeal was filed before the Tribunal which

was allowed by way of remand vide Final Order No. C/337-338/08 dated 10.09.2008, wherein the Tribunal directed the Adjudicating Authority to co-relate the items supplied by Philips to Singapore firms and the imports made by Indian firm from the Singapore firms and to consider the proceedings in respect of the revised export declarations filed with the competent authority at Hong Kong in respect of the items imported from Hong Kong. The Adjudicating Authority vide the impugned order dropped the demand in the absence of any documents to co-relate the supplies, but confirmed the demand in respect of two invoices issued by M/s Hopeen Trading Pte. Ltd., Singapore viz., HT-1011/98 dated 22.04.1998 and HT-1019/98 dated 12.05.1998 to the Appellant, which covered the goods supplied by M/s Phillips Taiwan/Hong Kong to M/s Hopeen Trading Pte. Ltd., Singapore, as the description and total number of pieces matched. Aggrieved by the said order, the present appeal is filed before the Tribunal.

3. Learned counsel for the appellant submitted that the demand pertained to goods supplied to the appellant by M/s Hopeen Trading Pvt. Ltd., Singapore vide Invoice No. HT-1011/98 dated 22.04.1998 and HT-1019/98 dated 12.05.1998 wherein, the said goods had been supplied to the Singapore Firm by M/s. Phillips vide Invoice Nos. 5647248 dated 17.03.1998, 5647951 dated 19.03.1998, 5648503 dated 21.03.1998, 5648354 dated 21.03.1998 and 5648723 dated 24.03.1998. Learned counsel submitted that the Adjudicating Authority has held that the comparative chart reveals that the goods which had been supplied by M/s. Phillips to M/s. Hopeen Trading were the same which in-turn had been imported by the appellant.

3.1 Learned counsel further submitted that the Adjudicating Authority had referred to the reply dated 03.05.2010 to hold that since the part numbers and description and quantity matched, the goods were the same which were imported by the appellant which in-turn was supplied by the M/s. Phillips to the supplier in Singapore. However, learned counsel contended that the Adjudicating Authority had failed to note that the goods on examination by the proper officer at the time of clearance had not indicated it to be of Phillips brand. He contended that the proper officer would have certainly taken note of the brand name while assessing the goods and their value. Learned counsel also submitted that the article number are common amongst all manufacturers of similar products and the numbers were not exclusive to Phillips. In support of the said contention, learned counsel stated that the Appellant had submitted several catalogues of Chinese suppliers who manufacture these goods with the same article number. Therefore, mere reference to the article number was not sufficient to prove that the same goods had been imported by the Appellant. In order to prove that the goods imported by the appellant were unbranded and not of the Phillips make, learned counsel submitted that the appellant had requested for the examination report. However, the department showed its inability to provide the examination report stating that the same had been destroyed. Learned counsel submitted that in any case, the price at which the goods were supplied by M/s. Phillips to their supplier was not the transaction value for the purpose of assessment for the goods imported by the appellant, even if it is presumed that the same goods were imported by the appellant. He relied on Supreme

Court judgment in the case of **Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai**² wherein the Court held that utilization of definite article in Rule 4 (1) indicates that what should be accepted as the value for the purpose of assessment to customs duty is the price actually paid for the particular transaction unless the price is unacceptable for the reasons set out in Rule 4 (2). "Payable" in the contest of the language of Rule 4 (1) must therefore, be read as referring to "the particular transaction". Learned counsel submitted that there was nothing on record to show that the goods imported by the Appellant under the two invoices issued by the Singapore Firm were of the Phillips brand. Since the department did not produce the examination report to rebut the submissions made by the appellant that the goods imported vide the said two invoices were unbranded goods, and not of Phillips brand, the onus has not been discharged by the department. He relied on the Supreme Court judgment in the case of **Sounds N. Images versus Collector of Customs**³. He also placed reliance on Supreme Court's judgment in **Commissioner of Customs, Calcutta vs. South India Television (P) Ltd.**⁴ wherein the Court explained as to how the value is derived from the price under what circumstances the deemed value mentioned in Section 14(1) can be departed with. In view of the above, he prayed that the appeal be allowed with consequential relief.

4. Learned authorized representative appearing for the department submitted that the reason for rejection of the transaction value under

2. 2000 (122) ELT 321 (SC)

3. 2000 (117) ELT 38 (SC)

4. 2007(214) ELT 3 (SC)

Rule 10A of the CVR⁵, 1988 was that the appellant had declared the goods as Electronic Components without specifying any brand but on examination, it was found to be of Philips brand. The suppression of the Brand name was the sole intention in order to indicate lower value. Instances of forgery and suppression of original value as declared before Chinese/Hong Kong Customs and submissions of bogus invoices before Customs authorities by the appellant which were corroborated by the other evidences such as market enquiry, overseas enquiry, the statement of the Proprietor etc. Learned authorized representative also submitted that the appellant by refuting the allegations in the impugned Show Cause Notice had tried to derive strength from Section 14 of the Customs Act, stating that transaction value should be the sole criteria for deciding the assessable value based on which the authorities can demand Customs duty, however, he contended that once the related party instances between the supplier and the appellant has not been disclosed, Section 14 of the Act cannot be relied and the declared value deserved to be rejected. Thus it became absolutely clear that the transaction value, as declared, could not be treated as the correct transaction value and the same was liable to be rejected under Rule 10A of the Customs Valuation Rules. Learned authorized representative submitted that appellant, by taking multiplicity of stands to refute these allegations, had destroyed his bonafides, as held by the High Court of Delhi in **Indru Ramchandaran** case which has been upheld by the Hon'ble Supreme Court.

5. Customs Valuation Rules, 1988

4.1 Learned authorized representative also submitted that the documents obtained from overseas inquiry became authentic and the re-determination of value based on these documents by the adjudicating authority should be deemed to be the correct course of action as far as redetermination of value for the purpose of imposing duty and penalty on the appellants. The Apex Court in **Om Prakash Bhatia** has held that any mis-declaration by the appellant in terms of section 46 can take these imported goods to take the colour of prohibited goods in character. Even in Valuation matters, mis-declaration has been held to in the nature of smuggling under Section 2(33) of the Act and the goods have been held to be prohibited goods in nature and character. The authentication of documents received from overseas inquiry cannot be brushed aside in the absence of any documents submitted by the appellant contrary to that as per the statutory provisions under section 139 of the Customs Act, 1962.

4.2 Learned authorized representative also contended that self-confessional statements are the best evidence and Hon'ble Apex Court has held that what is admitted need not to be proved in **Jai Shiv trading, Sodagar Knit wear, System & Components Pvt Ltd.** etc. He further contended that Customs Officers are not police officers and statements recorded under section 108 of the Act are admissible under evidence Act in a Court of Law. As was held by the Hon'ble Supreme Court in the **Surjeet Singh Chhabra, Veera Abraham, Sucha Singh** versus Assistant Collector of Customs, Amritsar, etc.,

4.3 In support of his contentions, learned authorized representative for the department relied upon on the following decisions which are as follows:

- (i) **Decore Rubber Industries vs. Commissioner of Customs, New Delhi⁶;**
- (ii) **Orson Electronics Private Ltd. vs. Collector of Customs, Bombay⁷;** and
- (iii) **Martwin Electronics vs. Commissioner of Central Excise & Service Tax, Ahmadabad⁸.**

5. Learned authorized representative, in the light of above decisions, prayed that the above said appeal filed by the Appellant is liable to be dismissed.

6. We have heard the learned counsel for the appellant and the learned authorized representative for the Department and perused the records. The issue before us is limited to ascertaining whether the electronic components imported by the appellant from M/s Hopeen Trading Pte Ltd, Singapore was of Phillips brand and had been deliberately undervalued in order to evade customs duty.

7. We find that the adjudicating authority has confirmed the demand holding as follows:

"34. On the basis of the documents enclosed with the reply dated 03.05.2010, the Noticee through their counsel, it is evident that Invoice No. HT 1011/98 dated 22.04.1998 and Invoice HT

6. (2023)12 Centax 238 (Tri.-Del)
7. 1996 (82) E.L.T. 499 (Tri. Delhi)
8. 2016 (331) ELT 85 (Tri.-Ahmd.)

1019/98 dated 12.05.1998 issued to M/s R.K. Sales Pvt Ltd, Delhi by M/s Hopkeen(sic) Trading Pte Ltd., Singapore were issued against the invoices issued by Phillips Taiwan, Phillips, HongKong as tabulated hereunder.....

xxx xxx xxx

xxx xxx xxx

Thus from the above correlation an amount of Rs.9,63,586/- of duties of customs is liable to be confirmed and appropriated under proviso clause of Section 28(1) of the Customs Act, 1962 and an amount of Rs.49,460/- of interest is liable to be demanded and appropriated under Section 28AB of the Act *ibid.*"

7.1 From the above order, it is evident that the said prices would apply if it is established that the electronic components imported by the appellant were of Phillips brand. The learned Counsel for the appellant has submitted before us that the examination report at the time the clearance of the goods has not indicated that the goods were of Phillips brand. Hence the question of undervaluation did not arise. It has also been submitted before us that no other evidence has been submitted to corroborate the Department's contention that the components were of Phillips brand. The learned authorized representative has submitted that the appellant had declared the goods as Electronic Components without specifying any brand but on examination, it was found to be of Philips brand.

8. We note that an examination report is the primary contemporaneous record of what was actually found i.e., nature of goods, make/brand, model, condition (new/used/seconds), quantity/weight, and any visible features affecting value. The heart of an examination report is the factual description of goods as found, with emphasis on features impacting value. It includes:

- Exact description, trade/commercial description, make/brand, model, grade, size/specifications, country of origin, and whether branded/unbranded.
- Physical condition (new, used, seconds, damaged, obsolete, mixed lots), actual quantity/weight and any shortage/excess compared to documents.

9. In undervaluation disputes such as the present case, the above directly affect the comparability with contemporaneous imports and the credibility of the declared value. In the instant case, the impugned order has nowhere stated that the goods, on examination were found to be of Phillips brand. The Department has not led any evidence to establish that the appellant had deliberately not indicated the brand in order to undervalue the goods. On the contrary, the learned Counsel submitted that the department could not supply the copy of the said examination report as the same had been destroyed. We find that Courts have repeatedly held that undervaluation must be proved by cogent, positive evidence and that transaction value cannot be rejected on conjecture, database printouts, or third-party statements alone. It is in this context, that the examination report forms part of that evidentiary foundation. Unfortunately, the copy of the said evidence report is not available either with the Department or with the appellant, in order to establish the mis-declaration and the alleged undervaluation. Consequently, in order to apply the prices at which the said goods had been sold to M/s Hopeen Trading Pte Ltd., Singapore by M/s Phillips, the

examination report is crucial, as the same is not available, we would have to extend the benefit of doubt to the appellant.

10. In the above context, we note that the Supreme Court's decision in **Samtel Colour Limited v. Commissioner of Customs**⁹ examined the use of intelligence reports and investigation findings as evidence of undervaluation, holding that such materials can constitute valid evidence provided they meet certain criteria. Intelligence reports must be specific rather than vague, based on reliable sources, and corroborated by other evidence. The Court rejected the use of anonymous or unverified intelligence as sole basis for rejecting declared values, emphasizing that importers must have a fair opportunity to challenge the evidence against them. In the instant case, the Department has not been able to establish conclusively that the two invoices issued by M/s Phillips to M/s Hopeen Trading, Singapore represents the actual value of the goods imported was of Phillips brand, leading to the conclusion that the appellant had undervalued the goods to the Customs authorities at the time of import. We are unable to uphold these findings in the impugned order.

11. The learned Counsel has also submitted that the Customs authorities are bound to accept the transaction value declared by the appellant. The learned authorized representative has contended that once the relationship between the supplier and the appellant had not been disclosed, the declared value was liable to be rejected under Rule 10A of the Customs Valuation Rules. We note that under Section 14 of

9. (2008) 10 SCC 204

the Customs Act, 1962, the value of imported goods is the "transaction value", i.e. the price actually paid or payable for the goods when sold for export to India (or from India), where buyer and seller are not related and price is the sole consideration, subject to conditions in the Customs Valuation Rules, 2007. The statute and rules implement the WTO Customs Valuation Agreement, wherein the assessment primarily rests on the declared transaction value, with additions (freight, insurance, certain commissions, royalties, assists, etc.) being made only in the manner prescribed. As regards the import valuation, Rules 3 and 4 of the 2007 Rules require acceptance of the declared transaction value when: (a) there are no restrictions on the buyer's use/disposal other than those permitted; (b) there is no condition or consideration the value cannot be adjusted for; (c) no part of the proceeds of subsequent resale etc. accrues to the seller unless an appropriate adjustment can be made; and (d) buyer and seller are not related, or if related, the relationship has not influenced the price and the importer demonstrates close approximation with values of identical/similar goods. Even between related parties, if these conditions are met and the importer substantiates that the price is in line with comparable imports or test values, the declared transaction value must ordinarily be accepted. It is a settled legal position that the assessable value has to be based on the actual price paid, and that transaction value cannot be rejected except on grounds permitted by the Valuation Rules. We note that the Courts have consistently held that the department must discharge the burden of showing that the invoice price is incorrect, and in the absence of evidence of contemporaneous higher-priced imports or

other specific incriminating material, the declared transaction value should be accepted. The Hon'ble Supreme Court in their judgment in **Commissioner of Customs (Imports), Mumbai vs. M/s. Ganpati Overseas**¹⁰ observed the following:

"Reverting to Section 14(1) of the Customs Act, this court held that 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. ... when the transaction value under Rule 4 is rejected, the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Customs Valuation Rules."

12. Similar views have been held by the Supreme Court in **Eicher Tractors vs Commissioner of Customs, Mumbai**¹¹ and **Sounds N. Images vs Collector of Customs**¹². In the instant case, the allegation is that the imported electronic components were of Phillips brand and therefore, the price at which the same was sold to their supplier should be the price for customs assessment when imported into India. From the perusal of the relevant Section 14 and Customs Valuation Rules, we note that the Department, before rejecting the invoice price, has to give cogent reasons for such rejection, as the invoice price forms the basis of the transaction value. Consequently, 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. In the absence of such evidence, invoice price has to be accepted as the transaction value. If the charge

10. Civil Appeal Nos. 4735-4736 of 2009 dated 6.10.2023

11. 2000(122) ELT 321(SC)

12. 2000(117) ELT 538 (SC)

of undervaluation 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 undervaluation, it would have to undertake detailed inquiries, collect material and also adequate evidence. In this context, we find that the impugned order has merely relied on the transaction price of the sale of goods between M/s Phillips and the supplier M/s Hopeen Trading in order to substantiate their allegation of undervaluation. In the absence of any evidence led by the department that the goods imported were of Phillips brand, as also lack of evidence of contemporaneous imports to establish such undervaluation, the findings of the impugned order cannot be sustained.

13. In view of the above discussions, we set aside the impugned order and allow the appeal.

(Order pronounced on 14.01.2026)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)