

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

Division Bench – Court No. – I

Customs Appeal No. 20682 of 2015

(Arising out of Order-in-Appeal No. 171/2014-VCH dt.18.12.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s S.K. Sarawagi & Co. Pvt Ltd

10-1-31, Signature Towers, Waltair Uplands,
Visakhapatnam, Andhra Pradesh – 530 003

.....Appellant

VERSUS

Commissioner of Customs

Visakhapatnam - CUS

4th Floor, Customs House, Port Area,
Visakhapatnam, Andhra Pradesh – 530 035

.....Respondent

Appearance

Shri S.C. Choudhary, Advocate for the Appellant.
Shri K. Sreenivasa Reddy, AR for the Respondent.

**CORAM: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)**

FINAL ORDER No. A/30080/2026

Date of Hearing: 16.10.2025

Date of Decision: 06.02.2026

[Order per: ANGAD PRASAD]

M/s S.K. Sarawagi & Co. Pvt Ltd (herein after referred to as Appellant) are engaged in export of Iron Ore fines. They have filed the Shipping Bill No.004888 dt.04.10.2010 and Shipping Bill No.005014 dt.11.10.2010 for the export of 10,500 WMT of Iron Ore Fines of 61% Fe content through MV Vessel BK Duke under contract dt.04.10.2010 to a buyer in Hong Kong, China. The declared price was assessed provisionally, pending test and submission of final documents on execution of PD/ITC bond and securing revenue deposit towards differential duty between declared unit price of USD 115.00 and final duty to be ascertained and differential moisture content between declared content of 9% and 3%, which was adopted by Visakhapatnam Customs House for differential duty. On finalization, by OIO dt.04.09.2012, the Original Authority found the declared price to be in variance with the contemporaneous export prices and adopted USD 128

PDMT FOB pertaining to M/s Rungta Sons for finalization of the shipping bills. He further held that as per the contract of the appellant, lumps (as per IBS more than 10mm) are allowed up to 10% maximum. However, as per the decision taken by the Department in F.No.S23/307/2009-AP dt.28.01.2011, 5% tolerance is allowed as per the practice followed in the Customs House, Goa. Therefore, over and above tolerance limit of 5%, is leviable to duty at the applicable rates. In terms of Notification No.56/2010-Cus dt.29.04.2010, lumps are leviable to duty @15% advalorem and in the present case, the lumps are found to be 8.4% and accordingly, he has proposed to levy duty on 3.4% of the export goods @15% advalorem. Accordingly, he ordered for recovery of Rs.2,97,081/- along with applicable interest from the appellant. The appellant filed an appeal against the said OIO before the Commissioner (Appeals), who, after personal hearing and considering the relied upon case laws, dismissed the appeal filed by the appellant. Being aggrieved, the appellants filed the present appeal.

2. Learned Advocate for the appellant has submitted that the adjudication order has nowhere mentioned the grounds of doubt to reject the transaction value, and still the Original Authority has gone to compute and compare value of other exporters with the subject export. He has further contended that Original Adjudicating Authority has taken the highest price while adopting the contemporaneous price as transaction value even though the appellants had submitted copies of published journals, wherein the price for 60/61% Fe content was mentioned as 130 USD. He has further submitted that Rule 4(2) of the Export Valuation Rules provides that in determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable taking into consideration the relevant factors including (i) difference in dates of exportation, (ii) difference in commercial levels and quantity levels, (iii) difference in composition quality and design between the goods to be assessed and the goods with which they are being compared and (iv) difference in domestic freight and insurance charges depending on the place of exportation. But the Deputy Commissioner has not made any adjustments as required in law. He has further submitted that Original Authority has not raised any doubt about transaction value or BRC or discussed it or rejected the same. In such a situation, the transaction value, which is the declared value, has to be accepted. He has relied on the decision of Hon'ble Supreme

Court in the case of CC, Mumbai Vs Vishal Exports Overseas Ltd [2007 (209) ELT 331 (SC)] in support that in case of exports, whether export duty is paid or any other export incentive matter is involved, the prime factor is the foreign exchange realization and the BRC is main document which shows billing amount and has to be relied upon. He has also relied on the following decisions and prayed for setting aside the impugned OIA and direct the finalization of assessment as per transaction value as reflected in BRC.

- a) CC, Delhi Vs Polyglass Acrylic Mfg Co P Ltd [2011 (274) ELT 419 (Tri-Del)]
- b) AC Cus, Kakinada Vs Alstom Projects (I) Ltd [2011 (272) ELT 742 (Tri-Bang)]
- c) Global Industries Vs UOI [2011 (272) ELT 724 (Tri-Bang)]
- d) HK International Vs CC, New Delhi [2011 (274) ELT 449 (Tri-Del)]
- e) CC, Kandla Vs Bloom Décor [2009 (244) ELT 472 (Tri-Ahmd)]
- f) Eicher Tractors Ltd Vs CC, Mumbai [2000 (122) ELT 321 (SC)]

3. Learned AR, on the other hand, has reiterated the findings of the Commissioner (Appeals) in the impugned order.

4. Heard both sides and perused the records.

5. On perusal of the impugned order, it is clear that the dispute is not regarding the Fe content or moisture but relates to the acceptance of the unit price of USD 128 PDMT FOB instead of USD 115 PDMT FOB.

6. The adjudicating authority has adopted the figure of Rungta Sons Pvt Ltd i.e., USD 128 FOB. From the table of contemporaneous prices mentioned in the order of the adjudicating authority, it is clear that there were three prices below and two prices above the declared price of appellant but the adjudicating authority has chosen the highest price. It cannot be said to be contemporaneous, especially in a situation where no doubt has been raised about declared value.

7. The observations expressed by the appellate authority regarding the assessment made by the adjudicating authority are also noteworthy, which is reproduced below for ease of reference.

"5.8 Furthermore, while finalizing the transaction value as per section 14 of the Customs Act, 1962, it was incumbent upon the respondent to

follow the conditions and procedure prescribed under Rule 8(1) and (2) of the EVR, 2007. And the said conditions and procedure include issuing query memo to the appellant to furnish further information including documents or other evidence, at the request of the appellant specifying reasons in writing for doubting the declared transaction value and granting personal hearing to the appellant before taking the final decision to reject the declared price. I find in the instant impugned order, the respondent did not follow any such procedure before taking the decision to reject the declared unit price and kept the appellant in darkness while finalizing the assessment, rejecting the declared transaction value; thereby his decision of rejecting of declared unit price coming to the verge of being legally untenable under Rule 8 of EVR, 2007."

8. The adjudicating authority has not raised any doubt about the transaction value or BRC and he had not given any reason to reject the said declared transaction value. Section 14(1) of the Customs Act provides as under.

"14. Valuation of goods. – (1) For the purpose of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,—

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*
- (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:*

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50."

9. Hon'ble Supreme Court in the case of Century Metal Recycling (P) Ltd Vs UOI [2019 (6) SCC 655], inter alia, held that 'rejection of the transaction value declared by importer without giving cogent and good reasons in terms of Section 14(1) of the Customs Act, 1962 and Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, not permissible. Enquiry prior to such rejection and giving of valid reasons for doing so by proper officer, is necessary. Requirement of giving reasons, both at the preliminary as well as the second stage of enquiry i.e., when doubting the truth or accuracy of the value declared, mandatory in nature'.

10. Transaction value/invoice price corroborated by sale/purchase contract and BRC cannot be rejected without substantive evidence that the export price was not true or genuine. Hon'ble Supreme Court in the case of CCE & ST, Noida Vs Sanjivani Non Ferrous Trading Pvt Ltd [2019 (365) ELT 3 (SC)] has held as under.

"10) The law, thus, is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value 2(2007) 6 SCC 373 3(2010) 10 SCC 576 4(2012) 1 SCC 186 value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4 (1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value."

11. In the case of CC, Goa Vs VGM Exports [2013 (291) ELT 572 (Tri-Mumbai)], it has been held as under.

"6.1 Section 14 of the Customs Act, 1962 stipulates that for the purpose of the Customs Tariff Act, the value of the exported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

6.2 It is not the case of the department that the buyer and seller are related. It is also not a case of the department that the respondent has realized any amount more than what is indicated in the final invoice price, which has been received by them through the Bank. In other words, the price actually paid for the goods exported was the price realized by them as per the final invoice and as per the Bank certificate and that is the transaction value on which duty liability has to be discharged."

12. In the case of Mahajan Fabrics Pvt Ltd Vs CCE, New Delhi [2017 (357) ELT 1240 (Tri-Del)], it has been held as under.

"10. it is seen that the customer in the foreign country has accepted the declared value of the export goods and have also paid the declared amount to the appellant. There is nothing on record to indicate any other extraneous consideration. It is settled law that transaction value between the importer and exporter is required to be accepted normally. The conditions under which such transaction value can be rejected is also mentioned in the Customs Valuation Rules 2007. These rules also indicate the procedure for re-determination of the value in the case transaction value is to be rejected. In the present case we are of the view that there are no valid reasons for rejection of the transaction value..."

13. In view of the above, the impugned order of the Commissioner (Appeals) is not proper, legal and correct in the facts of the case and therefore, liable to be set aside.

14. Accordingly, the impugned order is set aside and the appeal is allowed by way of remand to the Assessing Officer, who has to finalize the assessment as per the transaction value, as reflected in the Bank Realization Statement.

(Pronounced in the Open Court on 06.02.2026)

**(A.K. JYOTISHI)
MEMBER (TECHNICAL)**

**(ANGAD PRASAD)
MEMBER (JUDICIAL)**