

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 86517 of 2014

[Arising out of Order-in-Appeal No. 1710(Gr-IV)/2014 (JNCH)/IMP-1651 dated 10.04.2014 passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.]

Chandan Steel Limited

.... Appellant

Plot No.31 to 36, 45 to 49/2, 142, (Exp Area),
GIDC Industrial Area, S. No.102/2 & 3, Dehari
Umbergaon, Valsad, Gujarat – 396 171.

Versus

Commissioner of Customs (Import), Nhava Sheva

.... Respondent

Jawaharlal Nehru Custom House (JNCH), Nhava Sheva
Taluk Uran, District Raigad – 400 707

APPEARANCE:

Shri Vikas Doiphode, Advocate for the Appellant

Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85391/2026

Date of Hearing: 24.12.2025

Date of Decision: 27.02.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Chandan Steel Limited, Valsad (herein after referred to, for short, as "the appellant") assailing the Order-in-Appeal No. 1710(Gr-IV)/2014 (JNCH)/IMP-1651 dated 10.04.2014 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-II, JNCH, Nhava Sheva.

2.1 The brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant had filed Bill of Entry No. 3347203 dated 23.09.2013 for clearance of 24.105 MTs of "used/unused articles of Base metal and Flange protection caps, of various sizes (articles of plastics)", which were

imported from Germany. Both the category of items viz., articles of base metal and flanges of plastics were described as per constituent material and these were classified under Customs Tariff Item (CTI) 8487 9000 and CTI 3926 9099, respectively, of the Customs Tariff Act, 1975 with declared assessable value of Euro 10387.50 FOB with freight element of 1650 USD, insurance of Rs.539/- / Rs.10,03,355/-. The importer had requested for first check examination of imported goods by jurisdictional customs authorities at the port of import, before assessment of such goods, as part of the goods were of 'used' nature and partly of unused goods.

2.3 The customs officers posted in the Docks examination area had examined the imported goods covered under the impugned B/E under the supervision of Deputy Commissioner of Customs, Docks and reported that the consignment consisted of old & used secondhand nuts, bolts, pipe fittings, V joints etc.; articles of plastics are also found old and used and it requires NOC from Pollution Control Board and PSIC. Since, all the goods were found to be old & used other than capital goods, they stated that it is not allowed for import. Further, the Chartered Engineer appointed by customs authorities had also examined the imported goods and stated that they carried out the physical inspection of the goods and found various parts/ spares like nuts, bolts, motor, motor belts, elbows, pipe fittings, V-joints, cables, metal wire, plastic pipes, grinding wheels etc.

2.4 On the above basis, by providing an opportunity of personal hearing to the appellant, in adjudication proceedings, the original authority vide Order-in-Original dated 17.10.2013 had ordered for re-assessment of the impugned goods on the basis of comparable value of contemporaneous imports and the certificate given by the Chartered Engineer, and determined the differential duty payable as Rs.1,42,817/- along with interest. Further, he confiscated the import goods on the grounds of mis-declaration under Section 111(m) of the Customs Act, 1962 and allowed it to be released on payment of redemption fine of Rs.60,000/- under Section 125 *ibid*; besides, he also imposed penalty of Rs.30,000/- on the appellant under Section 112(a) *ibid*. Being aggrieved with the order of the original authority, the appellant had preferred an appeal before the Commissioner (Appeals), which was disposed of by him by confirming the order of the original authority and by dismissing the appeal filed by the appellant vide Order-in-Appeal dated 10.04.2014. Feeling aggrieved with the impugned order dated 10.04.2014, the appellant had preferred the present appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellant submitted that the learned Commissioner (Appeals) failed to consider the fact that since the appellant-importer themselves sought for first check examination of the imported goods, in order to verify the details including specific description, classification, used/unused nature etc., there is no ground for deliberate mis-declaration on the part of the appellant for enabling the goods liable to confiscation, imposition of fine and penalty.

3.2 Learned Advocate also submitted that the Chartered Engineer had observed in his certificate that the goods are as per the declaration made by the appellant. Therefore, he stated that describing the goods in generic terms, based on the constituent material, as declared in the supplier's invoice does not amount to mis-declaration, particularly when they had sought for first check examination of the goods, before the assessment.

3.3 He further submitted that the estimated value of goods by the Chartered Engineer given in his certificate is at Euro 16,500 (FOB); however, the original authority had re-determined the assessable value on the basis of contemporaneous imports, without even disclosing the details of such imports and its value, whether it was the lowest of the comparable value as per Rule 5(3) of the Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007. Therefore, he pleaded that such re-determination of value by the original authority, which was upheld by the first appellate authority has no force of law.

3.4 In support their stand, he had relied upon the following judgements of the various judicial forums:

(i) *RKG International Private Limited Vs. Commissioner of Customs (Export), Nhava Sheva* – 2018 (362) E.L.T. 162 (Tri. – Mumbai)

(ii) *Makali Metals Private Limited Vs. Commissioner of Customs, Raigad* – 2001 (138) E.L.T. 607 (Tri. – Kolkata)

(iii) *Commissioner of Customs, Mumbai Vs. B. Arunkumar's International Limited* 2004 (177) E.L.T. 152 (Tri. – Mumbai)

4. Learned Authorized Representative appearing for the Revenue reiterated the findings recorded by the lower authorities.

5. We have heard both sides and carefully gone through the records of the case. The issue for determination by the Tribunal is to decide whether the enhancement of value of imported goods determining the differential duty payable by the appellant, on the basis of Chartered Engineer's

certificate and contemporaneous imports of identical goods, is sustainable or not, in terms of the legal provisions of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after referred to as 'CVR', for short]. Consequently, whether the impugned order imposing redemption fine upon confiscation of goods and penalty on the appellant for undervaluation/mis-declaration is sustainable or not, under the provisions of the Customs Act, 1962?

6.1 On careful consideration of the submissions made by both the sides, we find that the appellant has challenged the impugned order mainly on two grounds; firstly, on the ground that enhancement of value is without any basis and no data of import values of contemporary importation of identical goods had been provided to them or considered by the authorities below; and thus, such re-determination of value is without following due process of law, and is therefore against the provisions of Section 14(1) of the Customs Act, 1962 and CVR, 2007; and secondly, on the ground that there was no evidence produced by the department to support the allegation of mis-declaration of description of goods and its value as declared by the appellant, in order to reject the transaction value and for imposition of fine and penalty on them.

6.2 Learned adjudicating authority in the impugned order had given his findings and had come to the conclusion for re-determination of assessable value as follows:

Discussion and Findings

9. *I have carefully gone through the records of the case and written submissions made by the importer and I find that M/s. CHANDAN STEEL LIMITED filed Bill of Entry No. 3347203 dated 23.09.2013 for import and clearance of a consignment declared to be 24.105 MTS of "USED/UN USED ARTICLES OF BASE METAL & FLANGE PROTECTION CAPS, VARIOUS SIZES (ARTICLE OF PLASTIC)" imported from Germany. Further, I find that the said goods were classified under the CTH 84879000 & 39269099 and the declared assessable value of the consignment was Rs.10,03,355/- and the duty leviable thereon was Rs.2,60,233/-. Further, I find that the unit FOB value was declared to be EUR 0.589980 per kgs & EUR 0.426471 per kgs. Further, I find that the said bill of entry was filed under 1st check and the docks officials examined the goods under supervision of DC/DOCKS. On examination of the goods, I find that the same was found to be old & used second hand nuts, bolt, pipe fittings V joints, wheels etc. There was no visible re-conditioning noticed, year of Manufacture was as per C.E. Certificate, residual life was as per C.E. Certificate and DV appeared to be low and may be taken as per C.E. Certificate. Further, I find that Item No. 2 of B/E i.e. Articles of Plastic are also found old & used and it requires NOC from Pollution Control Board and PSIC. Since all the*

goods were found to be old & used other than capital goods & it is not allowed for Import. Further, I find that the imported items are not scraps and they should not fall under the purview of mandatory no objection from Pollution Control Board and as such policy Circular no. 20/2002-2007 dated 12.03.2003 is not applicable.

10. Further, I find that since 17.795 MTS. of old & used second hand nuts, bolt, pipe fittings V joints, wheels etc. were mis-declared as "USED/UN USED ARTICLES OF BASE METAL & FLANGE PROTECTION CAPS, VARIOUS SIZES(ARTICLE OF PLASTIC)" the price declared by the Importer is not accepted under Rule 3 of the Customs Valuation (Determination of Valuation of Imported Goods) Rules 2007 (the CVR, 2007, for brevity) read with provisions laid down under Section 14 of the Customs Act, 1962 and is liable for rejection. The value of the goods has to be re-determined on the basis of contemporaneous imports & C.E. Certificate. The total value of offending goods is Rs. 10,03,355/-.

11. Further, I find that Section 46 sub section 4 reads as "The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods."

12. Accordingly, in view of the above, I find that the importer has intentionally mis-declared the goods to evade payment of applicable duty upto the tune of Rs. 1,42,817/-. Therefore, I find that the goods have been rendered liable for confiscation under Section 111(m) of the Customs Act, 1962 and for this act of omission and commission; the importer has rendered himself liable for penalty under Section 112(a) of the Customs Act, 1962."

Further, the learned Commissioner (Appeals) in the impugned order, by upholding the order of the original authority, had observed as follows:

9.....I observe the appellant had suppressed the factual contents of the consignment and had therefore, mis-declared the goods with an intention to evade the applicable customs duty. In light of the mis-declarations made in the Bill of Entry, the contention of the appellant that the impugned goods ought to have been considered as capital goods and the imports of the same are authorized, does not hold good. The appellant has nowhere declared the impugned goods as spares/accessories of Capital goods and by merely declaring the generic description has indeed mis-declared the goods intentionally to evade applicable duty.

10. I further find that having established the alleged misdeclaration on the basis of the Chartered Engineer's Certificate, the adjudicating authority had reasons to doubt the correctness of the declared value as provided under Rule 12 of the Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007. Considering the said expert opinion rendered by the Chartered Engineer, who being an expert in the field had given the estimated value of the impugned goods after inspecting the physical condition of the goods. An expert in the field of scrap / old & used goods can seldom fail to give inappropriate value of the goods. I therefore, find giving due consideration to the Chartered Engineer's Certificate, the adjudicating authority proceeded to re-

determine the declared value to EUR 16,500.00 (FOB) as estimated by the Chartered Engineer.

11. I find the appellant has also contended that the estimated value of EUR 16,500.00 (FOB) given by the Chartered Engineer is on the basis of new equivalent tool room parts/spares. On detailed reading of the Chartered Engineer's Certificate, it can be distinguished that the Chartered Engineer, only after considering the condition of the goods and in comparison of the new equivalent spares had arrived at the estimated value of the goods. I therefore, find no substance in the contention of the appellant.

12. Further, I find from the case of Commissioner of Customs (Import). Mumbai Vs Konkan Synthetic Fibres, the Hon'ble Supreme Court had held that the opinion of an expert in the field of trade should be given due importance. The extracts as reported in 2012 (278) E.L.T. 37 (S.C.)...

13. In view of the above facts, I observe that on the basis of Chartered Engineer's Certificate, giving due importance to the expert opinion, the adjudicating authority has rightly arrived to the conclusion that the impugned goods have been mis-declared. Accordingly, the value of impugned goods has been re-determined on the basis of Chartered Engineer's Certificate. I therefore, hold that confiscation of impugned goods and imposition of penalty on this account is legal and proper..."

6.3 On careful perusal of the order passed by the original authority and the impugned order passed by the learned Commissioner (Appeals), it transpires that though there is a mention that the value of the goods has to be re-determined on the basis of contemporaneous imports and the Chartered Engineer's certificate, there is no data of contemporaneous import values have been provided for re-determination of value of the impugned goods, and it has been solely done on the basis of Certificate given by the Chartered Engineer.

7. In terms of the legal provisions of Sections 14 of the Customs Act, 1962 and CVR, 2007, where the value of second hand/used goods, sold for export to India, are to be determined for assessment of customs duty, then the price paid or payable for such goods is to be used as the basis considering the concept of 'transaction value'. However, since the used goods may be subject to reconditioning, refurbishing etc., for enabling it saleable/export worthy, rather than selling it in 'as it is' condition, the requirements of Rule 3 of CVR, 2007 are not met inasmuch as after sale, certain expenses would have been incurred which has not been captured in the transaction value, in which case, the value for imposition of duty must be determined under one of the subsequent methods of valuation

applied in sequential order from Rule 4 to Rule 9 *ibid*. Further, considering the fact that there may not be 'similar goods' or 'identical goods', since usage of goods resulting into second hand nature is not comparable, there may be certain difficulties in applying Rule 4 or 5 of CVR, 2007. These difficulties arise from the fact that the goods being valued are used second hand machinery/goods, and it may be difficult to find data relating to sales of such goods to India, which could be considered identical or similar and meet all the requirements of Rules 4 and 5 of the CVR, 2007. Similarly, application of Rule 7 of CVR, 2007 whereunder goods being appraised are valued on the basis of subsequent sales of identical or similar goods in India, may also not be possible because the goods being appraised are imported for use rather than for resale, and it is difficult to find such sale of identical or similar goods. Furthermore, Rule 8 *ibid* deals with the computed value method which is based, among other things, on the cost of production of the goods being appraised plus an amount for profit and general expenses, which is not possible to calculate assessable value of second hand goods, based upon the cost of production. Thus, there are difficulties faced by the customs officers in appraising the value of second hand goods under Rule 3 *ibid*, and where there may be difficulty in applying Rules 4 to 8 of CVR, 2007, which may preclude the application of the aforesaid method of applying Rules 3 to 8 *ibid*, then the proper officer may be required to apply the residual method under Rule 9 *ibid* so as to factor condition, depreciation, refurbishment, charges of disassembly & packing and any expenses incurred by way of pre-shipment inspection agency charges etc. In such a situation, the Central Board of Excise and Customs (CBEC) had prescribed detailed guidelines vide Circular No. 25/2015-Customs dated 15.10.2015, to ensure that the method of valuation is fair, and is arrived through uniform processes by all custom field formations, including obtaining inspection/appraisal report from qualified Chartered Engineers.

8.1 From the careful perusal of the orders passed by the authorities below, viz., the order of the original authority, which was upheld by the learned Commissioner (Appeals) in the impugned order, as detailed at paragraph 6.2 above, it clearly transpires that the requirements of Rule 3 and following sequentially Rule 4 to Rule 9 of CVR, 2007 have not been followed. Further, the proper officer had re-determined the assessable value solely on the basis of value certified by the Chartered Engineer, without rejecting the transaction value as provided under Rule 12 of the

CVR, 2007. The extract of the said certificate dated 30.09.2013 of the Chartered Engineer as quoted below:

"CHARTERED ENGINEER CERTIFICATE
Our Ref.: SAI-NS/RANK-CHANDAN/0372/2013-14 dated 30.09.2013

1.0 Details of Goods inspected

S. No.	Description With Technical Specifications	Qty	Declared Invoice Value	Present Assessed Value
1.	Used/Unused Articles Of Base Metal	17115kgs	10097.20	1650.00
Total EUR (FOB)			10097.50	16500.00

2.0 Nature of inspection

2.1 Present physical condition of goods

On the basis of physical inspection, verification and scrutiny of documents provided to us we confirm that all the items as per aforesaid, were made available for our physical inspection, which were observed used and unused tool room parts/ spares/ accessories.

We carried out only visual inspection of the C.G. and as far as the present physical condition is observed they seem to be workable.

2.2 Standards followed for inspection

Neither of any National / International Standards was applicable, as such we have followed general engineering principles.

3.0 Chartered Engineer's comments

3.1 Present condition and estimated residual life

We carried out the physical inspection of the goods and we found various parts/spares like nuts, bolts, motor, motor belts, elbows, pipe fittings, V-joints, cables, metal wire, plastic pipes, grinding wheels etc.

Our keen observation reveals that most of the tool room parts/spares/ accessories were found used one. For our assessment purpose we have considered lump sum amount for both used and unused tool room parts/spares/accessories.

We have considered only used / unused article of base metal i.e., value EUR 10,097.50 for our assessment purpose.

Looking at the physical condition of the tool room parts/ spares/accessories, we opine that the used parts/spares/accessories would fetch at least 80% of the original estimated residual life whereas the unused parts/spares/ accessories would fetch original estimated residual life.

3.2 Present sale price

If we reckoned the condition of the C.G., as tabulated on page #2 and compare them with new equivalent tool room parts/spares/accessories, they make an estimated present market value of EUR 16,500.00 (FOB) (EUR Sixteen Thousand Five Hundred Only), as fair and reasonably rated values.

Our assessment of present price, as detailed on page #2 is based on the physical observation & condition of the tool room parts/spares/accessories imported and presented for our inspection. Considering these factors, we appraise that the present assessed rates detailed on page #2 would be the estimated present rates being priced appropriately.....

"CHARTERED ENGINEER CERTIFICATE"

I have personally inspected the goods on 26th September 2013 & we hereby confirm, on my physical inspection & verification and scrutiny of documents provided, that the goods imported by M/s. Chandan Steel Limited, Umargam, Valsad, Gujarat, India are used/unused tool room parts/spares and accessories and are in conformity with that found by us and as per the declaration and are as described in details in this certificate.

This is certificated that the value assessed for the goods in this certificate, in the 'as is where is' basis, is EUR 16,500.00 (FOB) (EUR Sixteen Thousand Five Hundred Only), against that declared in both the invoice as EUR 10,097.50 (FOB) which is fair and reasonably rated and can be considered by the Custom Authorities for the clearance purposes."

8.2 On perusal of the above Chartered Engineer's certificate, there is a specific mention about the goods imported by the appellant importer are used/unused tool room parts/spares and accessories which are in conformity with that found by them and these as per the declaration made by the importer. Further, the facts of the case also clearly indicate that the imported goods consist of mix of used/un-used parts/spares and therefore the appellant themselves sought for examination of goods on first-check basis, before its assessment including valuation of the impugned goods. Therefore, the claim that the appellant-importer has mis-declared the description of the goods and its value under Section 111(m) *ibid*, for confiscation of goods and resultant imposition of redemption fine and penalty, is contrary to the factual matrix of the case and therefore it is not legally sustainable.

8.3 In a case involving identical facts of the present case, the Co-ordinate Bench of the Tribunal in the case of *RKG International Private Limited* (*supra*) have held that there was no reasonable cause for enhancement of value on the basis of chartered engineer's certificate discarding the transaction value and set aside the impugned therein. The relevant paragraph of the said order is quoted below:

"4.1 *From the above opinion of the Chartered Engineer, it can be seen that the Chartered Engineer nowhere disputed about the description of the goods declared by the appellant and more or less he agreed that the description was made correctly in the Bill of Entry. The Chartered Engineer also opined that the imported goods can either be used for melting purposes. Therefore, the goods declared as heavy melting scrap is not incorrect. It is also clear that the railway scrap consisting of axles cannot be used as axles. The same can be used only as a melting scrap or by turning, cutting and grinding. Therefore, the goods cannot be used as such. Therefore, there is no basis for making allegation against the appellant regarding the misdeclaration of the goods and the goods imported does not fall under the restricted*

category. Therefore, the same is not liable for confiscation. As regards the enhancement of the value, the apprehension of the Revenue is that since the goods is not melting scrap but second hand axles, therefore, presumably the value was enhanced. We find that no material such as contemporaneous import of the like goods was relied upon. Therefore, the enhancement of the value is arbitrary and cannot be accepted."

8.4 On the basis of above discussions and analysis of the legal provisions, we are of the considered view that the authorities below in re-assessment of impugned goods under Section 17(5) *ibid*, had not followed the requirements of the legal provisions of Section 14 *ibid* and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

9. In view of the above, we are of the considered view that the impugned order passed by the learned Commissioner of Customs (Appeals) in upholding the order of the original authority to the extent it had confirmed the adjudged demands is not legally sustainable. Therefore, we are of the considered view that the impugned order is liable to be set aside.

10. In the result, by setting aside the impugned order dated 10.04.2014, we allow the appeal filed by the appellant in their favour.

(Order pronounced in the open court on 27.02.2026)

(M.M. Parthiban)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)