

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

REGIONAL BENCH - COURT NO. 2

**Customs Appeal No. 86195 of 2024**

[Arising out of Order-in-Appeal No. MUM-CUS-TK-IMP 194/2023-24/NCH dated 27.03.2024 passed by the Commissioner of Customs (Appeals), Mumbai-I, NCH, Mumbai.]

**Jilani Traders**

3rd Floor, 101-109 (Office No.13)  
Gaya Yusuf Meharali Road  
Masjid, Mumbai – 400 003.

**.... Appellant**

Versus

**Commissioner of Customs (Import-II)**

New Custom House, Ballard Estate  
Mumbai – 400 001.

**.... Respondent**

**APPEARANCE**

Shri Anil Balani, Advocate for the Appellant

Shri Dinesh Nanal, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE S.K. MOHANTY, MEMBER (JUDICIAL)**

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

**FINAL ORDER NO. A/85390/2026**

Date of Hearing: 31.10.2025

Date of Decision: 27.02.2026

**Per: M.M. PARTHIBAN**

This appeal has been filed by M/s Jilani Traders, Mumbai (herein after referred to, for short, as "the appellant") assailing the Order-in-Appeal No. MUM-CUS-TK-IMP 194/2023-24/NCH dated 27.03.2024 (hereinafter referred to, for short, as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-I, NCH, Mumbai.

2.1 The issue involved in this appeal relates to classification of "walking stick with torch" and alleged misdeclaration of description and value in respect of other goods imported by the appellant herein for upholding confirmation of the adjudged demands by the original authority. Brief facts of the case, leading to this appeal, are summarized herein below:

2.2 The appellant had filed Bill of Entry No. 7379198 dated 16.08.2023 for clearance of assorted goods of twenty different consumer items, which were imported from China. The imported goods were declared with the description as provided in the supplier's invoice/packing list No.232192-5 dated 25.07.2023 and these were classified under respective Customs Tariff Item (CTI) of the First Schedule to the Customs Tariff Act, 1975 with total declared assessable value of Rs.14,08,260/-. On the basis of specific intelligence that a consignment of mixed items is imported with alleged mis-declaration, the above imported consignment was put on hold by the Special Intelligence and Investigation Branch of New Custom House, Mumbai (SIIB) and the said goods were subjected to 100% examination by drawing Pachamama dated 22.08.2023.

2.3 As a result of such examination by SIIB officers, it was found that out of the twenty items, in respect of three items there were certain discrepancies as mentioned below:

(i) as against the declared item of 'Kitchen knife set (05 pieces)', on physical examination it was found to be 'Kitchen knife with chopping board'

(ii) as against the declared item of 'Laser pointer pen' and 'Glue 300G' on examination the same were of two types of 'Laser pointer pen' and 'waterproofing Glue 300G'.

(iii) 14 different types of Halloween item were found against the common description 'Party Halloween Gift Item'.

2.4 During examination, some of the imported goods were found in pre-packed condition, and consequent compliance of Notification 44(RE-2000)/1997-2002 dated 24.11.2000 was not found on such goods. Further, the SIIB opined that the declared unit value of the goods is on the lower side, when compared with the value of the similar goods available in market. Thus, it was interpreted that the import consignment was undervalued. Accordingly, market survey was conducted on 20.10.2023 in the presence of proprietor of the appellant firm and the value of the imported goods were revised on that basis under Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

2.5 Further on examination of the representative samples by SIIB, it was also reported that one of the imported item 'walking stick with torch' was wrongly classified under CTI 6602 0000 instead of the correct classification under CTI 9405 4900, and therefore it is not confirming to the BIS norms.

Accordingly, it was proposed to confiscate 1600 nos. of Walking stick with torch for non-compliance with BIS norms by treating the same as prohibited goods and other imported goods for violation of sub-section (d) and (m) of Section 111 of the Customs Act, 1962.

2.6 On the basis of waiver of show cause notice and personal hearing given by the appellant, in adjudication proceedings, the original authority vide Order-in-Original dated 30.11.2023 read with Addendum dated 08.02.2024 had ordered for re-assessment of the impugned goods on the basis of market survey conducted in the presence of proprietor of the appellant firm, who had accepted such values vide his letter dated 20.10.2023, and re-determined the assessable value as Rs. 39,30,186/- and confirmed the differential duty payable on such re-assessment as Rs.9,20,982/- along with interest. As regards 1600 nos. of 'walking sticks' on account of non-submission of BIS certificate he confiscated such goods under Section 111(m) of the Customs Act, 1962 and allowed it an option for re-export within 60 days. Further, he confiscated rest of the import goods on the grounds of mis-declaration under Section 111(d) and 111(m) ibid and allowed it to be released on payment of redemption fine of Rs.90,000/- under Section 125 ibid; besides, he also imposed penalty of Rs.9,20,982/- on the appellant importer under Section 114A; penalty of Rs.25,000/- under Section 112(a) ibid and Rs.90,000/- under Section 114AA 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 27.03.2024. Feeling aggrieved with the impugned order dated 27.03.2024, the appellant had preferred the present appeal before the Tribunal.

3.1 Learned Advocate appearing for the appellant submitted that the learned Commissioner (Appeals) had failed to consider the fact that the appellant-importer had in his statement dated 08.09.2023 had specifically stated that the prices mentioned in the Bill of Entry is the actual price of the goods imported by them, and prices ascertained during the market survey is after the profit margin added at wholesaler's level, who procure such goods in three-four chain of entities between them as importer and the wholesaler. Hence, they did not agree with the market price and only for the purpose of releasing the consignment early, they had accepted such market price determined by the department. Therefore, they pleaded that

waiver of SCN and personal hearing, for completing the process of clearance of goods, cannot be taken as defensible ground to state that the appellant importer had accepted the re-determined value arrived at by the department. By citing various case laws, he further submitted that the fact that the appellant importer had preferred appeal against such re-determination, re-classification of goods and consequent penal action itself demonstrates that they had not accepted the confirmation of adjudged demands by the original authority, and also has not accepted its being upheld by the first appellate authority.

3.2 He further claimed that each of the item of imported goods have been declared by the appellant importer as per the description given in the invoice and values of such goods have been declared as per invoice; and more over the entire consignment of imported goods was subjected to 100% physical examination by the SIIB officers, in order to verify the intelligence of mis-declaration etc. committed by them. In the absence of any undeclared goods being present in the import consignment, minor variation in the features or type of certain items such as Glue (of waterproof), Halloween (of different types) does not change the product as declared by them; knife sets as declared contained knife with chopping board as set. Hence, he claimed that 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.

3.3 Learned Advocate further submitted that the value of goods as declared by the appellant and as evidenced in the invoice is at Euro 16,500 (FOB); however, the original authority had re-determined the assessable value on the basis of contemporaneous imports of goods, by conducting market survey and providing certain abatement for profit margin of wholesaler which was shown as accepted vide their letter dated 22.09.2023 without even disclosing the basis of such redetermination in terms of investigation report dated 01.11.2023, whether it was undertaken as per Rule 7 of the Customs Valuation (Determination of Valuation of Imported Goods) Rules, 2007 by relying on the comparable price of sale made at the greatest aggregate quantity to persons not related and at same or first commercial level after importation. 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. As regards classification of walking stick with torch, the appellant had submitted that in terms of the features of the product and on the basis of essential character of the goods,

these are classifiable under CTI 6602 0000 and not under 9405 4900, in terms of Rule 3(a)(b) of the General Rules for interpretation of customs tariff. Further, by citing the details of BIS standard IS:10322(Part-I) 1982 and HSN explanatory notes providing that the features built in for aesthetics, rich or luxury look or to enhance the utility of walking sticks does not take away from classifying it under CTH 6602, the appellant claimed that the classification adopted by them is correct and the revised classification adopted by the department has no legal basis.

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

(i) *Commissioner of Customs, Madras Vs. Aradhi Associates* – 2001 (129) E.L.T. 120 (Tri. – Chennai)

(ii) *Dunlop India Limited & Madras Rubber Factory Limited Vs. Union of India & Others* – 1983 (13) E.L.T. 1566 (S.C.)

(iii) *Commissioner of Customs (Sea), Chennai Vs. M.R. Associates* - 2013 (297) E.L.T. 504 (Tri. – Mad.)

4. Learned Authorized Representative appearing for the Revenue reiterated the findings recorded by the lower authorities and therefore justified the impugned order.

5. We have heard both sides and carefully gone through the records of the case.

6. The issue for determination by the Tribunal is to decide the following:

(i) whether the enhancement of value of imported goods determining the differential duty payable by the appellant, on the basis of market survey conducted by the department of identical/similar 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].

(ii) whether 'walking stick with torch' is classifiable under Customs Tariff Item (CTI) 6602 0000 as declared by the appellant, or under CTI 9405 4900 as determined by the authorities below, and whether it is eligible for clearance in terms of ITC-HS of the Foreign Trade Policy or otherwise; and

(iii) whether consequential action in confiscation of goods, imposition of redemption fine and penalty on the appellants are 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/similar goods had been considered by the authorities below in terms of the market survey conducted by them for being in conformity with Rule 7 of CVR; 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 for all goods and the classification in respect of walking stick with torch, and for imposition of fine and penalty on them.

6.2 Learned adjudicating authority in the impugned order had given his findings for re-determination of assessable value and for revision of classification of walking stick with torch, and had come to the conclusion that the appellants are liable for imposition of penalty, redemption fine on imported goods for violation of various legal provisions, as follows:

**"DISCUSSION AND FINDINGS"**

*19. I have carefully gone through the facts of the case contained in Investigation Report with Annexures of SIIB (1), NCH, Mumbai-I, records available and submissions made by the importer. The importer voluntarily requested for waiver of Show Cause Notice and Personal Hearing and has also accepted the re-determined value. The proposed reason for confiscation and penal action contained in Investigation Report of SIIB has been explained orally to the Importer as stipulated in provision to Section 124 of Customs Act, 1962. Hence the request for waiver of SCN and PH is accepted. Accordingly, I take up the case for adjudication.*

*20. I find that, M/s. Jilani Traders had filed Bill of Entry No. 7379198 dated 16.08.2023 through Custom Broker firm M/s Rashmi Shipping Agencies for clearance of miscellaneous goods as tabulated in Table -I with declared assessable value as Rs. Rs. 14,08,260/ and the duty payable thereon was Rs. 4,52,996/-. Based on the specific intelligence they said consignment was kept on hold by the SIIB (I), NCH and the said goods were examined 100% by the officers of SIIB(I) under Panchnama dated 22.08.2023 as detailed mentioned in Table-2.*

*21. I find that the imported goods were found mis-declared and liable for confiscation under section 111 (d) and 111 (m) of Customs Act, 1962.*

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*23. I find that goods for item no-2 Description Walking Stick with Torch are mis-classified by the importer and these goods falls under the purview*

of BIS provisions. The Importer has not submitted BIS certificate for 1600 Pcs of Walking Stick with Torch. Thus, there is violation in terms of BIS and liable for confiscation under section 111(d) and 111 (m) of Customs Act, 1962.

24. I find that the goods covered under impugned Bill of Entry are unbranded and there is no violation of IPR rule and regulations, 2007.

25. The investigation has confirmed that the items imported vide Impugned Bill of entry do not feature in the list of goods specified under schedule I of E-waste Management Rules, 2016 and thus. EPR is not applicable for the said goods.

26. The Investigation report revealed that some of the items of impugned bill of entry were found to be in pre-packed condition but compliance of notification no, 44 (RE-2000)/ 1997-2002 dated 24.11.2000 of DGFT and Legal Meteorology (Pre-Packaged Commodities) Rules 2011 was not done by the importer. The CBIC circular No. 19/2011 dated 18.04.2011 on compliance of DGFT Notification No: 44 (RE-2000)/1997/2002 dated 24.11.2000- Labelling of goods in bond prior to Ex-bond clearance, at para 2 provides that: "DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 provides for labelling of the goods imported into India which are covered by the provisions of Standards of Weights & Measures (Packaged Commodities) Rules, 1977. This Notification mandates that compliance of labelling conditions have to be ensured before the import consignment of such commodities are cleared by Customs for home consumption."

27. It is seen from ICES EDI system that the consignment has not been given OOC and thus not cleared for home consumption from Customs Custody. Hence, they can comply with RE-44-condition before clearance of the goods from Customs Custody. However, if they fail to do so the goods will be liable for absolute confiscation under Section 111(d) of Customs Act, 1962.

28. The imported goods do not correspond to the transaction documents i.e., invoice and packing list. The importer has accepted in statement under Section 108 of Customs Act, 1962, the mis-declaration of value. Hence the declared value is not the true transaction value and is liable to be rejected in terms of Rule 12 or Customs Valuation Rules 2007, read with Section 14(1) of the Customs Act 1962 and therefore the value of the imported goods needs to be re-determined in accordance with Customs Valuation Rules 2007.

29. Rule 3(4) of CVR, 2007 provides that the value of imported goods is required to be re-determined by proceeding sequentially from miles 4 to 9 of CVR, 2007. The investigation has reported that value of the subject goods could not be determined under Rule 4 and Rule 5 because of non-availability of data of contemporaneous imports of identical or similar goods. Hence, Rule 6 of CVR, 2007, was resorted to, for valuation of the subject goods, which mandates that the value is to be determined under (Rule 7) Rule 7 of the CVR, 2007 provides that if the goods being valued or identical or similar imported goods see sold in India, in the condition as Imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported

goods are sold in the greatest aggregates quantity to persons who are not related to the sellers in India.

30. It is seen that a market survey was undertaken in presence of Proprietor of M/s Jilani Traders on 20.10.2023. The market survey was conducted based on the Representative Sealed Samples sealed under Panchanama dated 22.08.2023. The said importer has put his dated signature on the invoices raised during market survey as his presence during the market enquiry. The detail of market survey is listed in Table-04 of this order. The Rule 7 of the CVR, 2007 provides that the Assessable value is to be arrived at using deductive method, after giving necessary deductions of commissions paid, cost of transport and insurance and the customs duties and taxes payable etc., which is detailed in Annexure-B of this order. I find that, on completion of market survey as per Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and on the basis of Market Survey, the assessable Values, total duty payable and differential duty payable have been re-determined item wise and the same is listed as Table- 06 of this order. The summary of re-determined value and re-determined duty is tabulated as Table-07 of this order. In view of the above, I find that the re-determined value works out to be Rs. 36,99,160/- (Rupees Thirty Six Lakhs Ninety Nine Thousand One Hundred & Sixty only) and the differential duty payable works out to be Rs. 9,20,982/- (Rupees Nine Lakhs Twenty Thousand Nine Hundred and Eighty Two only) for Non-prohibited goods. I find re-determined value and duty calculated is as per the provisions of the Customs Act and rule made in this regard.

31. The importer is required to declare the correct quantity, value, classification, description, notification number, if any, on the imported goods as per the provisions of section 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The importer is squarely responsible for filing of all details and declaration and related documents and confirming these are true, correct, and complete. I find that the importer has failed to declare the correct quantity, description and value in respect of the imported goods thereby evading Customs duty of Rs. 9,20,982/- (Rupees Nine Lakhs Twenty Thousand Nine Hundred and Eighty Two only) for Non-prohibited goods. The said short-paid/ differential duty is liable to be demanded and recovered from the importer under Section 28(1) of Customs Act, 1962, along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962. I hold that the imported goods of the Subject Bill of Entry with re-determined value of Rs. 39,30,186/- (Rupees Thirty Nine Lakhs Thirty Thousand One Hundred & Eighty-Six only) are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 and the Importer by rendering the goods liable for confiscation and for acts of omissions and commissions discussed above has rendered himself liable for penal action under Section 112(A) of Customs Act, 1962.

32. The Importer requested to Additional Commissioner of Customs to undertake that they will comply with the provision of RE-44 wherever applicable on the goods imported and clear the same after such compliance from Customs control.

33. From the above discussion it is evident that importer had failed to comply with provisions of Section 46 (4) of Customs Act, 1962 as the entry made under Section 46 is found to be incorrect w.r.t. the description,

quantity, classification and value of the items brought for importation. Thus, it is found that w.r.t. goods covered under present consignment, true and correct declaration of description of goods not made w.r.t. Item like Kitchen Knife Set with chopping Board, Laser Pointer Pen (Two types), Glue 300 G (Waterproofing) & 14 different types of Halloween Gift Item. Further, w.r.t. item's covered under present Bill of Entry, Importer also failed to declare correct classification, quantity and value. In present case goods were also found to be grossly undervalued in order to evade applicable Customs Duty. The importer M/s. Jilani Traders vide letter dated 20.10.2023 has accepted the valuation of the goods imported by them, arrived on the basis of Market Survey conducted in presence of Proprietor of M/s Jilani Traders under Section 14 of Customs Act, read with CVR 2007. This is indicative of the fact that the importer has will-fully mis-declared the goods in terms of description, quantity, classification and value in order to evade consequential Custom Duty. Thus, I find that the declared value is liable for rejection and to be re-determined as Rs. 39,30,186/-. Further, I find that short levied duty amounting to Rs-9,20,982/-(Rupees Nine Lakhs Twenty Thousand Nine Hundred and Eighty Two only) w.r.t. non prohibited goods sought to be evaded by willful mis-statement and suppression of facts, is liable to be demanded under Section 28(4) of Customs Act, 1962 with applicable interest. Further, the goods of the subject Bill of Entry with re-determined value of Rs.39,30,186/- (Rupees Thirty Nine Lakhs Thirty Thousand One Hundred & Eighty-Six only) are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. In this regard, I found that items No -2 declared as Walking Stick with Torch (1600 Pcs) are mis-classified under CTH 66020000 actually it should be classifiable under CTH-94054900 which are contravention of BIS provisions, become prohibited for import and are liable for confiscation under section 111 (d) and 111 (m) of Customs Act, 1962 and thus I confiscate the same. Further, for failure on part of importer which led to non levy of applicable duty and for use of false and incorrect material, importer is liable for penalty under section 114 (A) as well as Section 114 (AA) of Customs Act, 1962. As I intend to impose penalty under section 114 A, hence no penalty is liable to under section 112 (A) as per provisions of 114 A of Customs Act, 1962.

34. In view of the above, I pass the following Order:

**ORDER**

34.1. I reject the declared assessable value of Rs. 14,08,260/- in respect of Bill of Entry No. 7379198 dated 16.08.2023 under Rule 12 of the CVR, 2007 and re-determine the same as Rs. 39,30,186/- under section 14(1) of Customs Act 1962. read with Rule 7 of the CVR, 2007 for prohibited and non prohibited goods;

34.2. I order for assessment of the said Bill of Entry in terms of Para 16.1 above, at the re-determined value of Rs 39,30,186/-

34.3. I confirm the demand of short paid differential duty of Rs. 9,20,982/- (Rupees Nine Lakhs Twenty Thousand Nine Hundred and Eighty Two only) under Section 28(8) of Customs Act, 1962, along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962, whereas total duty payable for non- prohibited goods is Rs. 13,25,182/-;

34.4. I order confiscation of the item No. 02 declared as walking stick with torch, the enhanced assessable value of the said items is Rs. 2,31,026/-

for 1600 Pcs, under Section 111 (m) of Customs Act, 1962 and give option to the importer for re-export of the above said goods i.e. item No. 02 within 60 days of this order;

34.5. I order confiscation of goods imported vide Bill of Entry No. 7379198 dated 16.08.2023 of re-determined value of Rs 39,30,186/- for prohibited and non-prohibited goods under Section 111(d) & 111 (m) of the Customs Act, 1962. However, I give an option to the importer to redeem the above said goods except prohibited goods confiscated at 34.4 above on payment of Redemption Fine of Rs. 90,000/- (Rupees Ninety Thousand Only) under Section 125 of the Customs Act, 1962 along with payment of duty and interest applicable on the re-determined value cited in para 34.1 above equal to short levied duty;

34.6. I impose a penalty equal to short levy duty of Rs. 9,20,982/- (Rupees Nine Lakhs Twenty Thousand Nine Hundred and Eighty Two only) and applicable interest on the importer M/s Jilani Traders under section 114A of the Customs Act, 1962. However, if the duty and interest confirmed as per order 34.3 above is paid within 30 days of communication of this order, the amount of penalty liable to be paid by importer shall be 25% of the duty and interest so determined. The benefit of reduced penalty is subject to the condition that the same is also paid within 30 days of communication of this order;

34.7. I impose penalty of Rs. 90,000/- (Rupees Ninety Thousand only) under section 114AA of the Customs Act, 1962 on the importer for use of false and Incorrect materials;

34.8. I order for fulfilment of the RE-44 compliance for goods found in pre-packed condition before clearing of the goods from the warehouse as per the rule & regulations prescribed in notification no. 44 (RE- 2000)/1997-2002 dated 24.11 2000 of DGFT and Legal Meteorology (Pre-Packaged Commodities) Rule, 2011, failing which the same are to be confiscated absolutely u/s 111(d) of Customs Act, 1962;

34.9. This order is issued without prejudice to any other action that may be taken against the Noticee or persons or imported goods under the provisions of the Customs Act 1962, or any other law for the time being in force in India."

Further, the learned Commissioner (Appeals) in the impugned order dated 27.03.2024 has upheld the order of the original authority, on the following grounds:

"5.....(iv) Market Survey was conducted in the presence of the proprietor of M/s Jilani Traders and he put dated signature on the invoice raised during market enquiry. It is evident from Para 17.1 of the impugned order that the Appellant vide letter dated 20.10.2023 accepted the valuation of the goods imported by them arrived on the basis of market survey conducted in presence of the proprietor of M/s Jilani Traders under Section 14 of the Customs Act, 1962 read with CVR. 2007. .... Further, I find the OA followed Customs Valuation Rules, 2007 and re-determined value of the said goods based on market enquiry under Rule 7 of the CVR. Hence, the contention of the Appellant that the department has wrongly re-determined value of the said goods is not acceptable at this moment. Neither during investigation nor before the OA they raised any objection

with respect to size, quality, quantity or NIDB data. It is settled law that admitted facts are not required to be proved. In this regard, I rely on Hon'ble SC decision in case of Commissioner of C. Ex, Madras Vs. Systems and Components Pvt Ltd [2004(165)ELT 136(SC)] at Para 5 observed that, "It is a basic and settled law that what is admitted need not be proved." Further, they have also submitted that entire differential duty of Rs. 9,20,982/- along with RF and penalty amount had been paid by the Appellant. However, no protest has been demonstrated by them before the department at the time of payment of said duty, RF and Penalty.

7. Now, I find at appeal stage these are agitating before me that the OA has wrongly classified "Walking Sticks with Torch" under CTH 94054900 instead of 6602000 as claimed by the appellant. Further content is Waking Stuck is not covered under any BIS standard since it cannot be said to be Luminaries and are wrongly classified under CTH 9405. Hence, the said goods are wrongly confiscated under section 11(m) and 111(d) of the Customs Act, 1962.....

8. Further, I rely on a decision of Tribunal in Advanced Scan Support Technologies Vs Commissioner of Customs, Jodhpur wherein the Tribunal after making reference to the decisions of the Tribunal in Vikas Spinners vs Commissioner of Customs, Lucknow and Guardian Plasticote Ltd vs CC (Port) Kolkata held that as the Appellant therein had expressly given consent to the value proposed by the Revenue and after accepting the enhanced value and payment of duty accordingly without any they are legally stopped from taking somersault and deny the correctness of the same.

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9. In view of the fact that the Appellant in this case has not even remotely established that they had lodged any protest and on the contrary they had accepted the mis-declaration & the proposed confiscation of the said goods and levy of penalty on the appellant. It is also a fact on the record that the appellant had in writing waived the Show Cause Notice as well as the Personal hearing clearly indicates that they had accepted all the discrepancies revealed during the investigation and subsequent valuation done by the department without any protest and now contending all the charges which appears to be afterthought to shield themselves from the confiscation of the goods and imposed penalty under customs law. Hence, I am of considered view that once importer get clearance of non-prohibited goods after agreeing with the mis-declaration with respect to classification and value etc., and at later stage creating dispute is not acceptable particularly when they had given consent letter and requested for waiver of Show Cause Notice and Personal Hearing too. Under these circumstances, their contentions as well as relied upon judgments diminish their relevance as facts and circumstances are different, hence cited judgments are of no help to them.

Considering these facts and relying on the various judicial pronouncements as discussed above enhanced value, classification once settled and duty having been paid accordingly without protest, importer cannot challenge the same subsequently.

10. In view of the above, I do not find any reason to interfere with the impugned order and I am upholding the same. Accordingly, the Appeal is disposed off by way of rejection."

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 mandate provided under Rule 7 of CVR, there is no data of import values which have been taken into consideration by the adjudicating authority for arriving at the re-determined value of the impugned goods, and it has been solely done on the basis of market survey report indicating three values, as per prices quoted for each piece for 34 items in invoice 1, invoice 2 and invoice 3 and taking the median/average price (as provided in Table-4 of Original order) as the basis of price to be adopted for each item of the impugned imported goods. This is evident from the details provided in Table-04 at paragraph 11.10 of the original order, which is extracted and given below:

Sr. No.	Description of Goods found	Unit	Rate quoted in different invoices in Rs.			Average Market Price (Rs)
			Invoice1	Invoice2	Invoice3	
1.	Mini Brush	Pcs	9	10	11	10.00
2.	Walking Stick with Torch	Pcs	280	290	300	290.00
3.	Folding Bag	Pcs	120	130	125	125.00
4.	Drawing Book with Pen	Pcs	15	16	17	16.00
5.	Kitchen Knife Set (5 PCS) with chopping board	Pcs	90	95	100	95.00
6.	Laser Pointer Pen (Type 1)	Pcs	160	165	170	165.00
7.	Laser Pointer Pen (Type 2)	Pcs	45	50	60	51.67
8.	LED Diodes (1000 pcs/pkt)	Pcs	130	135	140	135.00
9.	Glue 300G (Waterproofing)	Pcs	85	95	80	86.67
10.	Umbrella	Pcs	110	115	120	115.00
11.	Disposable Eyebrow Razor	Pcs	12	14	15	13.67
12.	Kitchen Tape	Pcs	40	38	42	40.00
13.	Potable Air Pump	Pcs	120	130	125	125.00
14.	46PCS Socket Set	Pcs	235	240	245	240.00
15.	Alarm Clock	Pcs	85	80	90	85.00
16.	Lint Remover	Pcs	110	115	120	115.00
17.	Mini Vacuum Cleaner	Pcs	105	110	115	110.0
18.	Kitchen Cleaner	Pcs	40	45	50	45.00
19.	Anti Slip Mat	Pcs	35	36	37	36.00
20.	Foot Massager	Pcs	95	90	100	95.00
21.	Party Halloween Gift Item (paper plate)	Pcs	45	50	55	50.00
22.	Party Halloween Gift Item (paper cup)	Pcs	20	22	24	22.00
23.	Party Halloween Gift Item (ghost faced props type 1)	Pcs	200	210	220	210.00
24.	Party Halloween Gift ghost faced props type 2)	Pcs	225	230	240	231.67
25.	Party Halloween Gift Item (horns wig)	Pcs	60	70	80	70.00
26.	Party Halloween Gift Item (ghost eye balls)	Pcs	33	34	35	34.00
27.	Party Halloween Gift Item (Ghost lantern)	Pcs	60	70	65	65.00
28.	Party Halloween Gift Item (finger nail cover)	Pcs	32	33	34	33.00
29.	Party Halloween Gift Item (Vampire neck costume)	Pcs	170	180	190	180.00
30.	Party Halloween Gift Item (Halloween witch set)	Pcs	155	160	170	161.67
31.	Party Halloween Gift Item (Halloween hands)	Pcs	410	405	415	410.00

Sr. No.	Description of Goods found	Unit	Rate quoted in different invoices in Rs.			Average Market Price (Rs)
			Invoice1	Invoice2	Invoice3	
32.	Party Halloween Gift Item (Halloween fingers set)	Pcs	55	64	70	63.00
33.	Party Halloween Gift Item (Halloween fingers set)	Pcs	60	55	62	59.00
34.	Party Halloween Gift Item (Halloween props)	Pcs	55	60	65	60.00

7.1 In terms of the legal provisions of Sections 14 of the Customs Act, 1962 and CVR, 2007, where the value of imported 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 SIIB had specific intelligence of mis-declaration by the appellant, the declared price was rejected and the assessable value was re-determined by the department. In terms of legal provisions of Customs statute, if the requirements of Rule 3 of CVR, 2007 are not met inasmuch as there were certain situations as detailed in sub-rule (2) & (3) such as existence of certain restrictions in disposition or use of imported goods or some conditions were there which could not be quantified for addition to the declared value or certain part of sale proceeds accrued to the buyer subsequently or sale between related persons etc., which have 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, from perusal of aforesaid basis of determining the average/median prices from three different invoices obtained as reported in the investigation report, it is clear that the goods which are either similar or identical in nature were available in the market and the prices quoted by such sellers were taken as the basis for arriving at the re-determined value of goods. However, the basic tenets of CVR that such goods should have been 'similar goods' or 'identical goods', in terms of its origin from the country of export, features of the product, manufacturer, brand, quality etc., were nowhere shown or demonstrated in the order of the original authority. Further, the requirement of comparison of the goods sold in the domestic market at various prices, whether these were at the same commercial level, being at the highest aggregate quantity and that such sale was nearer to the time and place of import (maximum of six months from the date of import) as provided under Note to Rule 7 of the 'Interpretative Notes' specified in the Schedule to CVR *vide* Rule 13 *ibid*, have not at all been considered in arriving such value re-determined by the department either in the investigation report or in the order of the original

adjudicating authority. Therefore, for these reasons alone the value determined under Rule 7 of CVR in the original order is liable to set aside inasmuch as it is not in conformity with the legal provisions of Rule 7 *ibid*, which mandates that the goods being appraised are to be valued on the basis of prices sold in subsequent sales of identical or similar goods in India, having first commercial level after importation/same commercial level and at the greatest aggregate quantity.

7.2 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, as it is stated at paragraphs 11.6 and 11.7 that the National Import Data Base (NIDB) data does not have such prices of identical or similar goods. In such a situation when the customs authorities do not have details of price of goods in terms of import data available in the Customs NIDB database for at all ports, at the national level, it fails to the logical reasoning that how such goods would have entered the domestic market and it is not known how the Indian market could alone give the price of identical or similar goods, unless such goods have been brought into India in an illegal manner and not by import through any of the customs port in India. Further, the authorities below had re-determined the assessable value solely on the basis of investigation report submitted by SIIB, without applying the legal provisions of various rules provided under the CVR, 2007, sequentially. Therefore, the whole basis of market survey conducted about the price of similar or identical goods, and based on such value, the assessable value having been re-determined is contrary to the law and factually incorrect.

8.1 Further, the authorities below had concluded that few items of imported consignments viz., item at sr. No. 5, 6, 20 of Table-02 have been mis-declared as the description of the goods declared is at variance with physical inspection by SIIB officers. These have been captured by the original authority in his order dated 30.11.2023 under Table-02 at paragraph 3.1 to state that there was mis-declaration attracting confiscation of goods and requiring imposition of penalty on the appellant. The relevant Table-02 indicating both the description "as declared" in column (2) by the appellant-importer and "as found" during physical examination by SIIB officers in column (4) , which was taken as basis for

confirmation of adjudged demands by original authority has been extracted and given below:

Sr. No.	Description of Goods Declared	Qty. Deel in pc	Description of Goods found	Qty. found
(1)	(2)	(3)	(4)	(5)
1.	Mini Brush	6000	Mini Brush	6000
2.	Walking Stick with Torch	1600	Walking Stick with Torch	1600
3.	Folding Bag	4008	Folding Bag	4000
4.	Drawing Book with Pen	36000	Drawing Book with Pen	36000
5.	Kitchen Knife Set (5 PCS)	1440	Kitchen Knife Set (5 PCS) With <b>chopping board</b>	1440
6.	Laser Pointer Pen	14004	Laser Pointer Pen ( <b>Type 1</b> )	4000
			Laser Pointer Pen ( <b>Type 2</b> )	14000
7.	LED Diodes	546 Pkt	LED Diodes (1000pcs/pkt)	546 Pkt
8.	Glue 300G	2160	Glue 300G (Waterproofing)	2160
9.	Umbrella	8480	Umbrella	8480
10.	Disposable Eyebrow Razor	33120	Disposable Eyebrow Razor	33120
11.	Kitchen Tape	4008	Kitchen Tape	4000
12.	Potable Air Pump	1125	Potable Air Pump	1125
13.	46 Pcs Socket Set	960	46 Pcs Socket Set	960
14.	Alarm Clock	4008	Alarm Clock	4000
15.	Lint Remover	2400	Lint Remover	2400
16.	Mini Vacuum Cleaner	4320	Mini Vacuum Cleaner	4320
17.	Kitchen Cleaner	2004	Kitchen Cleaner	2004
18.	Anti Slip Mat	4008	Anti Slip Mat	4000
19.	Foot Massager	2500	Foot Massager	2500
20.	Party Halloween Gift Item	5724	Party Halloween Gift Item (paper plate)	1200
			Party Halloween Gift Item (paper cup)	1440
			Party Halloween Gift Item (ghost faced props type 1)	100
			Party Halloween Gift Item (ghost faced props type 2)	100
			Party Halloween Gift Item (horns wig)	100
			Party Halloween Gift Item (ghost eye balls)	480
			Party Halloween Gift Item (Ghost lantern)	840
			Party Halloween Gift Item (finger nail cover)	300
			Party Halloween Gift Item (Vampire neck costume)	600
			Party Halloween Gift Item (Halloween witch set)	120
			Party Halloween Gift Item (Halloween Hands)	120
			Party Halloween Gift Item (Halloween fingers set)	120
			Party Halloween Gift Item (Halloween fingers set)	120
			Party Halloween Gift Item (Halloween props)	84

8.2 On perusal of the above details, there is a mention of the specific description about the goods imported by the appellant importer at sr. No. 5, 6, 20. To elaborate, 'Kitchen Knife set' included "knife and chopping board, as set", since the knife is used to cut vegetables on the chopping board; "Laser Point Pen' was the same but of two different types; and by

nature Halloween costume is traditionally based on frightening super natural characters such as ghost face, parts of body, ghost lantern etc., to ward off evil spirits, and thus by nature it is of different types. Therefore, such variation reported in SIIB investigation as mis-declaration of description is factually incorrect inasmuch as the description of the goods had no way changed or the goods were not found to be of different type, than the one declared. Thus, the conclusion arrived at by the original authority that the goods have been mis-declared in terms of description etc., lacks merit. Therefore, the claim that the appellant-importer has mis-declared the description of the goods and its value under Sections 111(d) and 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 respect of the dispute in classification of 'walking stick with torch' the contending classification are CTI 6602 0000 as declared by the appellant, and CTI 9405 4900 as claimed by the department and as determined by the authorities below. From plain reading of the statutory provisions governing classification of goods under the Customs Tariff Act, 1975, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to said Act of 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the said Act of 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the

remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.4. In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 6602 0000 or CTI 9405 4900 of the First Schedule to the Customs Tariff Act. Thus, it is clear that at the Chapter level, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Headings under the contending chapter in which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item which is appropriate as per the legal principles of classification of goods. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. The relevant headings of Chapter 6602 and Chapter 9405 and the relevant sub-headings and their tariff entries, as provided in the First Schedule to the Customs Tariff Act, are extracted and given below:

**"SECTION XII**

**FOOTWEAR, HEADGEAR, UMBRELLAS, SUN UMBRELLAS, WALKING-STICKS, SEAT-STICKS, WHIPS, RIDING CROPS AND PARTS THEREOF; PREPARED FEATHERS AND ARTICLES MADE THEREWITH; ARTIFICIAL FLOWERS; ARTICLES OF HUMAN HAIR**

**CHAPTER 66**

***Umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding crops and parts thereof***

**Notes :**

1. *This Chapter does not cover:*
  - (a) *measure walking-sticks or the like (heading 9017);*
  - (b) *firearm-sticks, sword-sticks, loaded walking-sticks or the like (Chapter 93); or*
  - (c) *goods of Chapter 95 (for example, toy umbrellas, toy sun umbrellas).*

2.....

Chapter Heading	Description of goods
(1)	(2)
6602 0000	<b>Walking-sticks, seat-sticks, whips, riding crops and the like</b>

And

**CHAPTER 66**

***Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; luminaires and lighting fittings, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like; prefabricated buildings***

**Notes :**

1. This Chapter does not cover:  
xxx

Chapter Heading	Description of goods
(1)	(2)
9405	<b>Luminaires and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated name-plates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included</b>
	- Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or through fares:
9405 1100	-- Designed for use solely with light-emitting diode (LED) light sources
xxx	xxx
	- Other electric luminaires and lighting fittings:
9405 4100	-- Photovoltaic, designed for use solely with light-emitting diode (LED) light sources
9405 4200	-- Other, designed for use solely with light-emitting diode (LED) light sources
9405 4900	-- Other

8.5 It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 6602 covers within its scope and ambit, all type of walking sticks, except for the exclusion of those walking sticks, as specifically provided under Chapter Note 1 (a) & (b), which are in the nature of walking sticks used as 'measuring rods' and those used as weapons such as sword, fire-arm looking like walking stick. Further, in terms of various types of walking sticks covered under heading 6602, includes the one in which the handles are designed to open out to form a seat, to rest during walk. Similarly, the additional feature of torch providing light, during night walk or walking in darkness, cannot provide any ground for taking away the classification of goods from this heading of 6602.

8.6 Similarly, by applying same GIR 1, it could also be seen that Chapter Heading 9405 covers within its scope and ambit, mainly of three broad categories of goods:

- (i) first one i.e., "photovoltaic electric luminaires/device consisting of LED light source," covered under CTI 9405 4100;
- (ii) the second one i.e., "other than photovoltaic electric luminaires/device consisting of LED light source," covered under CTI 9405 4200;
- (iii) the third one i.e., "**residuary** other photovoltaic electric luminaires/device consisting of LED light source," covered under CTI 9405 4900.

These group of products are basically light emitting devices operating on Light-Emitting Diode (LED) as light source. These do not cover any other products in which such luminaires are provided as an attachment, for enhancing the functional utility of the main function. In the present case, since the 'walking stick' serves the main purpose of assistive device for the elderly or needy persons, persons with injury, persons with chronic conditions of arthritis etc., who require it for enhanced balance, stability while walking with the assistance of such walking sticks, these are correctly classifiable under heading 6602.

8.7 From the above discussion on the scope of coverage of goods under the two contending CTIs in Chapters 66 and 94, in terms of GIR-1, we find that the imported goods are more appropriately classifiable under CTI 6602 0000 as 'walking sticks with torch', and not under CTI 9405 4900 as 'other electric luminaires of LED source'.

8.8 On the basis of our above findings on appropriate classification, we find that the ITC HS for CTI 6602 0000, does not provide for any BIS requirement under IS:10322(Part-I) - 1982 that is applicable for luminaires for use with tungsten filament, tubular fluorescent and other discharge lamps on supply voltage not exceeding 1000V. Furthermore, we also find that BIS standard for walking sticks covered under IS:5150-1969 (as amended) cover those walking sticks manufactured from Malabar cane, wood or aluminum tubes subjected to certain processes specified therein and not to the type of walking sticks referred in the present case. Since, the impugned order or the order of original authority, have not dealt with these aspects of BIS requirements under this category, we do not find it necessary to address the same here. Thus, the requirement of BIS certificate for walking sticks classified under CTI 9405 4900 as electric luminaires does not stand the legal scrutiny.

8.9 Therefore, we are of the considered view that the appellant importer had correctly classified the imported goods and there is no mis-declaration of the walking sticks with torch for attracting non-compliance requirements under BIS certification and in respect of other goods for mis-declaration of value, description under Section 111(d) and 111(m) of the Act of 1962.

9.1 In the findings of the original authority at paragraph 27 of the order dated 30.11.2023, it is stated that the compliance with the mandatory requirement of DGFT Notification No.44 (RE-2001/1997-2002) dated

24.11.2000 for labelling of mandatory details, in terms of Legal Metrology (Packaged Commodities) Rules, 2011, the same could be fulfilled by the appellant importer, before clearance of the imported goods from customs control. Further, by looking from the ICES EDI Customs system, he has recorded in the original order that the imported consignment had not been given 'Out Of Charge' (OOC) by the proper officer of Customs at the port of import. Therefore, we find that there is no ground for confiscation of goods under Section 111(d) of the Customs Act, 1962, as such compliance requirement can be fulfilled by the appellant-importer before clearance of goods from customs control, and there is violation at this stage.

9.2 In view of the foregoing discussions and analysis, we are of the considered view that the impugned order dated 27.03.2024 passed by the learned Commissioner of Customs (Appeals) in upholding the confirmation of adjudged demands by the original authority does not stand the scrutiny of law and therefore it is liable to be dismissed. Accordingly, we set aside the impugned order dated 27.03.2024 to the extent it had confirmed the adjudged demands on the basis of such revised classification, enhanced valuation of goods and had imposed fine and penalty on the appellants.

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

(Order pronounced in the open court on 27.02.2026)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**