IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.75332 of 2024

(Arising out of Order-in-Original No.09/Cus/CC(P)/WB/2023-24 dated 31.10.2023 passed by Commissioner of Customs (Preventive), Kolkata.)

M/s. Jindal Nickel & Alloys Ltd.
(Head Office at AN-64B, Shalimar Bagh, North West Delhi-110088.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent
(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri A.K.Prasad, Advocate for the Appellant (s)

Shri Tariq Suleman, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75427/2026

DATE OF HEARING : 12.03.2026
DATE OF DECISION : 25.03.2026

Per : RAJEEV TANDON :

The appellant is a trader and an importer of goods. They also import Ferro Silicon and Magnesium Fello Silicon from Bhutan and supply the same across the country. The said imports are made by

them in bulk through Land Customs Station at Jaigaon, located at the Indo-Bhutan border.

2. The short question concerned in the present appeal is inclusion of the freight and insurance charges in the assessable value in accordance with the provisions of Rule 10(2) of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007[1] as the invoice submitted by the importer at the time of import had only indicated the FOB value of the said goods imported.

3. Vide Order-in-Original under challenge the Ld.Commissioner has directed the re-assessment of the imported goods by inclusion of an amount equivalent to 20% of the FOB value of the goods in terms of erstwhile Rule 10(2) of the Valuation Rules[1], and inclusion of 1.125% in terms of proviso (3) to Rule 10(2) towards insurance charge. Accordingly, the Ld.Adjudicating authority has confirmed the demand for an amount of Rs.83,43,639/- along with interest as leviable in terms of Section 28AA. He has also imposed a penalty of equal amount on the appellant under Section 114A of the Customs Act.

4. Vide the show cause notice dated 24.05.2022, issued in the matter, it is alleged that the importer during the period July 2017 to June 2018 resorted to short payment of IGST on account of non-inclusion of freight charges and the insurance amount in the assessable value. The department has therefore charged that the assessable value was deliberately mis-declared by the appellant and the appellant had contravened the provisions of Section 14(1) of the Customs Act, 1962

---

1 The Valuation Rules

read with Rule 10(2) of the Valuation Rules 2007[1]. The Revenue have *inter alia* also alleged violation of Section 12 and Section 17 of the Customs Act read with section 3(7) of the Customs Tariff Act and Section 5(1) of the IGST Act, 2017. The Revenue's case therefore and as confirmed by the Order-in-Original, is that the importer by willful misstatement and deliberate mis-declaration has evaded IGST amount of Rs.83,43,639/-, during the aforesaid period which was liable to be recovered from the appellant under the provisions of section 28(4) along with interest as leviable under Section 28AA of the Customs Act.

5. On merits the appellant has submitted before us that as at the Phuentsholing Customs Station in Bhutan and the Indian LCS at Jaigaon in West Bengal, there is no no-man's land between the two borders of India and Bhutan, and has therefore pointed out that the point of export for Bhutan coincides to the point of import into India. He submits that the import from Bhutan through the land border at the LCS are therefore invoiced in FOB terms, which in effect is actually the CIF value of the imported goods.

6. The Ld.Counsel Shri A.K.Prasad emphatically points out that it is the responsibility of the Bhutan manufacturer/exporter to get the goods packed, loaded in the vehicle and transported to the Customs border point, and thereafter discharge all export formalities. He goes on to submit that the point of export in Bhutan therefore effectively becomes the point of import into India and there is thus no transportation cost, involved between the two borders. In other words it is the appellant's strong contention that there is no difference between the FOB and CIF

value of the goods, thereby the FOB value is the deemed CIF value and therefore recourse to the provisions of Rule 10(2) of the Valuation Rules[1] aforesaid is uncalled for. Supplementing his arguments, by pointing out that the goods exported from Bhutan enter into India immediately with no transit time actually involved, hence indeed there is no need either for the seller (in Bhutan) or the buyer (in India) to take any insurance cover for the transit period. He therefore submits that while filing the Bills of Entry for imports of the aforesaid items into India, the appellants in some cases were not adding any element towards freight or insurance to the declared FOB value while in other cases were not adding the transportation cost alone. The appellant has also submitted that prior to 26.09.2017 the appellants were however including 1% of the declared FOB value towards landing charges and did not do so subsequently because of the amendment carried out to the legal provisions for discontinuation of any addition of amount towards landing charges thereafter.

7. The Ld.AR for the Revenue has pointed out that the inclusion of freight and insurance to the FOB value is legally mandated in terms of the provisions of Section 14 of the Customs Act read with Rule 10(2) of the Valuation Rules[1] and that an addition of 20% of the FOB towards freight cost (as prescribed in law), was not done. The same way it was required that the declared value be added, by way of insurance charge, an amount @ 1.125% of FOB to arrive at the assessable value. He therefore supports the adjudication order of the Ld.Commissioner passed in response to the impugned show cause notice dated

24.05.2022, demanding differential duty along with interest and proposing imposition of penalty under section 114A of the Customs Act.

8. The Ld.Counsel for the appellant, to the Revenue's plea that place of loading of the imported goods was nearly 18-20 kms. inside the LCS location in Bhutan and therefore freight was required to be added to the FOB value as the goods have suffered a certain element of freight charge, submits that this aspect of the matter i.e. inclusion of hinterland freight for movement of goods within Bhutan was never a part of the show cause notice and therefore a fresh case cannot be made out at this stage. He further submits that the Commissioner has erroneously computed the distance from the place of loading of the imported goods on the transport vehicle and not from the exit point i.e. Bhutan Customs Station at Phuentsholing, where the export consignments were cleared for import into India. He submits that the Commissioner has calculated distance from the point of loading (the manufacturer's factory gate) and that the invoices raised by the exporter was on FOB basis. Delving into the scope of the FOB value, he submits that FOB being an acronym for 'Free on Board', it was quite clear that it was the exporter's responsibility to pack the goods, load them at its factory premises/warehouse and transport the same to the export Customs Station. The FOB value therefore has to necessarily include the cost of transportation from the exporter's premises to the Customs export point and therefore the Ld.Commissioner was in error in arriving at his computation. He submits that the Adjudicating authority ought to have taken note of the distance from the point of

export in Bhutan (Phuentsholing Customs Station) to the point of import into India (Jaigaon Customs Station) which distance between the two points according to the appellant, being NIL, the question of inclusion of any freight element for transport of goods from the point of export to the point of import would not arise. In view of no transit being involved, the question of including any insurance charges is also no more than of mere academic relevance. As for the inclusion of landing charges, it was the appellant's case that the courts have held that the arbitrary amount of 1% was not leviable when landing charges were actually known and since the imported goods were never unloaded at the Indian Customs Station and were directly transferred to the premises of the Indian importer in the same truck, in which the goods were exported, no amount could be added towards landing charges. He points out that therefore in all fairness the Commissioner has deducted this amount from the demand confirmed.

9. The Ld.Counsel has further assailed the show cause notice being issued, invoking extended period of limitation stating that no charge of suppression can be made out against them as they had clearly stated that the value of the goods declared to be FOB as evident from the invoice cum challan that was tendered at the time of assessment and hence the charge of suppression cannot be made out against them in the matter. He also points out that in addition, the subject matter being revenue neutral, no loss is either caused to the Revenue nor can any intendment be attributed to the appellant towards evasion of duty in the matter. He has finally submitted that at best this can be considered

as a case of interpretation of the valuation aspect and therefore, subjecting the appellant to imposition of penalty is also grossly irregular and unfounded. The Ld.Counsel therefore prayed for setting aside the order both on merits as well as on limitation.

10. We have considered the rival submissions of the two sides and perused the case records.

11. On the merits of the matter, the appellant has pointed that in the present case the FOB and the CIF value is one and the same and therefore there is no legal basis for addition of further cost elements, by way of freight and insurance charges to the assessable value declared. Section 14 of the Customs Act provides that ordinarily the value of the imported goods is the transaction value, that is the price actually paid or payable, for goods sold for export to India at the time and place of importation. The Ld.Counsel for the appellant has tried to demonstrate before us that the price paid by the importers in India i.e. the appellant, to the exporters in Bhutan is that as was indicated on the invoice cum challan and that the same price was the actual price of the goods as payable at the time of delivery and place of importation i.e. Jaigaon LCS. According to the appellant, further recourse to the provisions of Rule 10(2) ibid, seeking to incorporate certain elements to the aforesaid transaction are therefore unwarranted and uncalled for. The plea of the Ld.Counsel that there is a common border while may not be disputable, however, we feel it absolutely necessary to state that the fact of FOB and CIF value being one and same in the present matter ought to have been appropriately demonstrated from records.

Such oral surmises cannot meet the requirements of law. We are of the view that in the given situation nothing prevented the transactions billed and invoice prepared in CIF terms. We find no contractual agreement between the supplier and the recipient i.e. the importer M/s. Jindal Nickel & Alloys Ltd. to have formally so stated by way of a mutually signed agreement or something similar to demonstrate the same. In the circumstances of lack of documentary substantiation thereto, the plea of the appellant, howsoever impactable cannot be accepted on its face value. We find no qualms with the contention of the appellant that Rule 10(2) of the Valuation Rules[1] would come into play when the cost of the transportation is not ascertainable in accordance with the provisions of Section 14 of the Customs Act.

12. The first proviso to sub-rule 10(2) of the said rules ibid provide, for purpose of inclusion of freight charges an amount of 20% to the FOB value of the goods. The said proviso reads as :

> *"provided that where the cost referred to in Clause-A is not ascertainable, such cost shall be 20% of the Free on Board value of goods."*

We feel therefore the appellant's contention of claiming NIL transportation cost is required to be demonstrated concisely by producing cogent documentary evidence. The NIL cost of transportation as contended by the appellant therefore under the circumstances at best can be considered as a ploy, to escape the clutches of law and to circumvent the aspect of transportation cost as being NIL and therefore not "not ascertainable". We also note that some of invoice-cum-challan

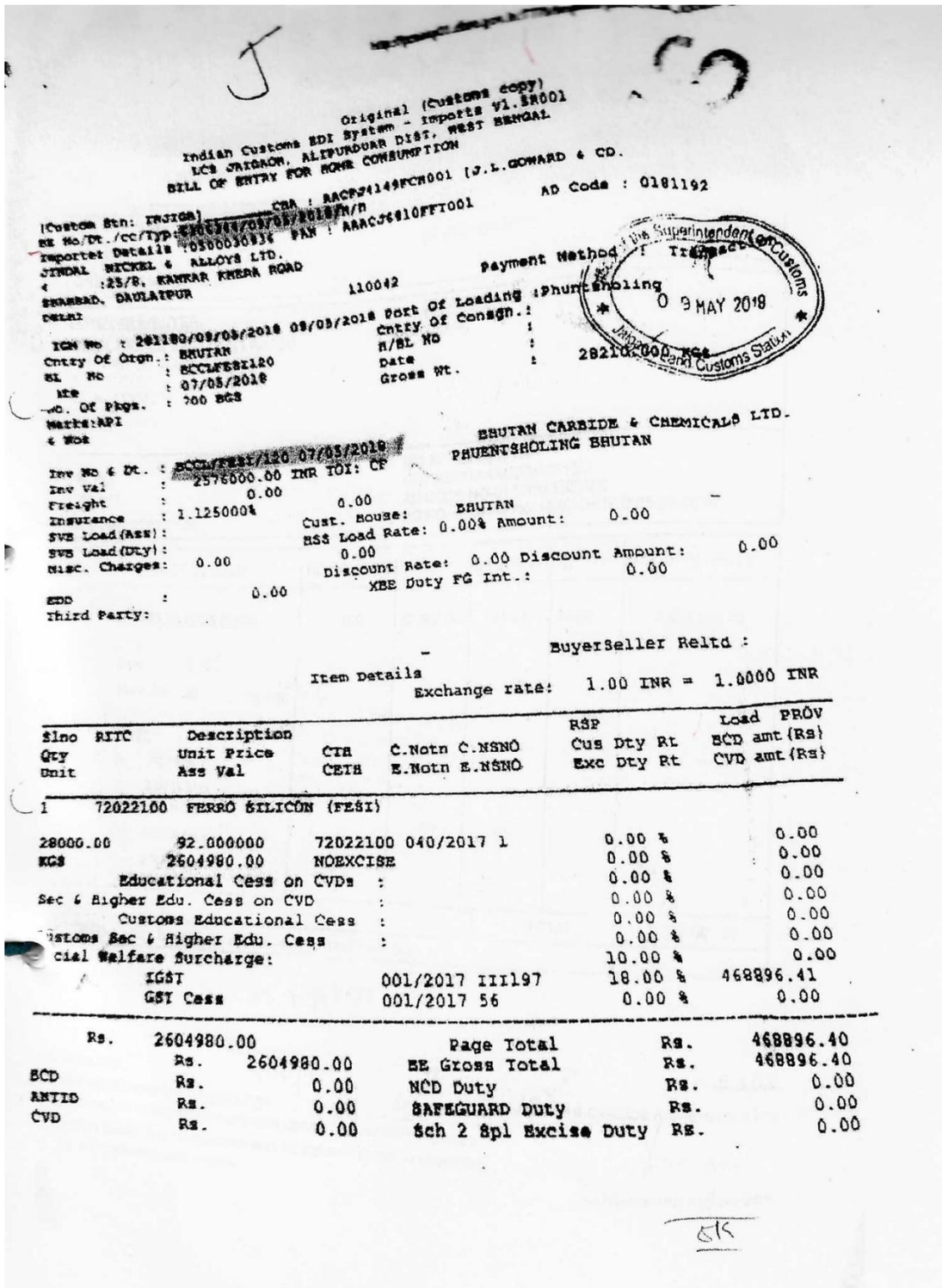
Delivery Order Date 28.10.2017, Order Date 28.09.2017 enclosed to the appeal papers have the following "Terms & Conditions", printed therein :

> *"1. ALL GOODS ARE DESPATCHED AT BUYERS RISK.*
> *2. OUR REPONSIBILITY CEASES WHEN THE TRUCK LEAVES OUR FACTORY PREMISES.*
> *3. ANY DISPUTES AGAINST THIS TRANSACTION WILL BE SUBJECT TO THE JURISDICTION OF COURTS IN THE KINGDOM OF BHUTAN.*

These endorsements are sufficient enough to find substance in the Revenue's claim that the goods have been consigned ex works and the cost of transportation (at least within Bhutan, as also between Bhutan and India in the absence to show anything to the contrary) as well as insurance is required to be added as per law to the invoiced cost,. For the very reasons the inclusion of both 20% and 1.125% of the FOB value of the goods towards freight and insurance in terms of Rule 10(2) and proviso three and four of sub-rule 10(2) of the Valuation Rules[1] would accordingly be referrable. Thus on the merits of the subject though the appellant has tried to make out a semblance of a case we tend not to be pursued therewith for complete lack of any categoric documentary evidence in this regard, more so in the wake of the remarks - what is stated to the contrary in the invoice-cum-challan.

13. Coming to the plea of extended period of limitation as invoked in the show cause notice we find that the impugned show cause notice was issued to the appellant under section 28(4) on 24.05.2022 for the imports made during the period July 2017 to June 2018 by invoking suppression and willful mis-declaration on the part of the appellant. In

this regard it is therefore imperative to consider the exact documentation made by the appellant while self-assessing the imports. Thus, by way of sample we hereinbelow scan a copy of the Import Bill along with its Invoice cum Challan as relevant for the impugned period :



Original (Customs copy)
Indian Customs EDI System - Imports v1.5R001
LCS JHIGAON, ALIPURDUAR DIST, WEST BENGAL
BILL OF ENTRY FOR HOME CONSUMPTION

(Custom Stn: INJIGA) CHA : AACP[illegible]FCH001 [J.L.GOWARD & CO.
BE No/Dt./CC/Typ: [illegible] PAN : AAACJ6810FFI001 AD Code : 0181192
Importer Details :0500030[illegible]
JINDAL NICKEL & ALLOYS LTD.
4 :25/B, KANKAR KHERA ROAD
MEERUT, BAGHPAT
DELHI 110042 Payment Method : Transaction

ICN No : 261180/09/05/2018 09/05/2018 Port Of Loading :Phuntsholing
Cntry Of Orgn. : BHUTAN Cntry Of Consgn.:
BL No : BCCLFEB2120 M/BL No :
Mfg Date : 07/05/2018 Date :
No. Of Pkgs. : 700 BGS Gross Wt. : 28210.000 KGS
Marks:API
& Nos

The Superintendent of Customs
09 MAY 2018
Jhingabari Land Customs Station

BHUTAN CARBIDE & CHEMICALS LTD.
PHUENTSHOLING BHUTAN

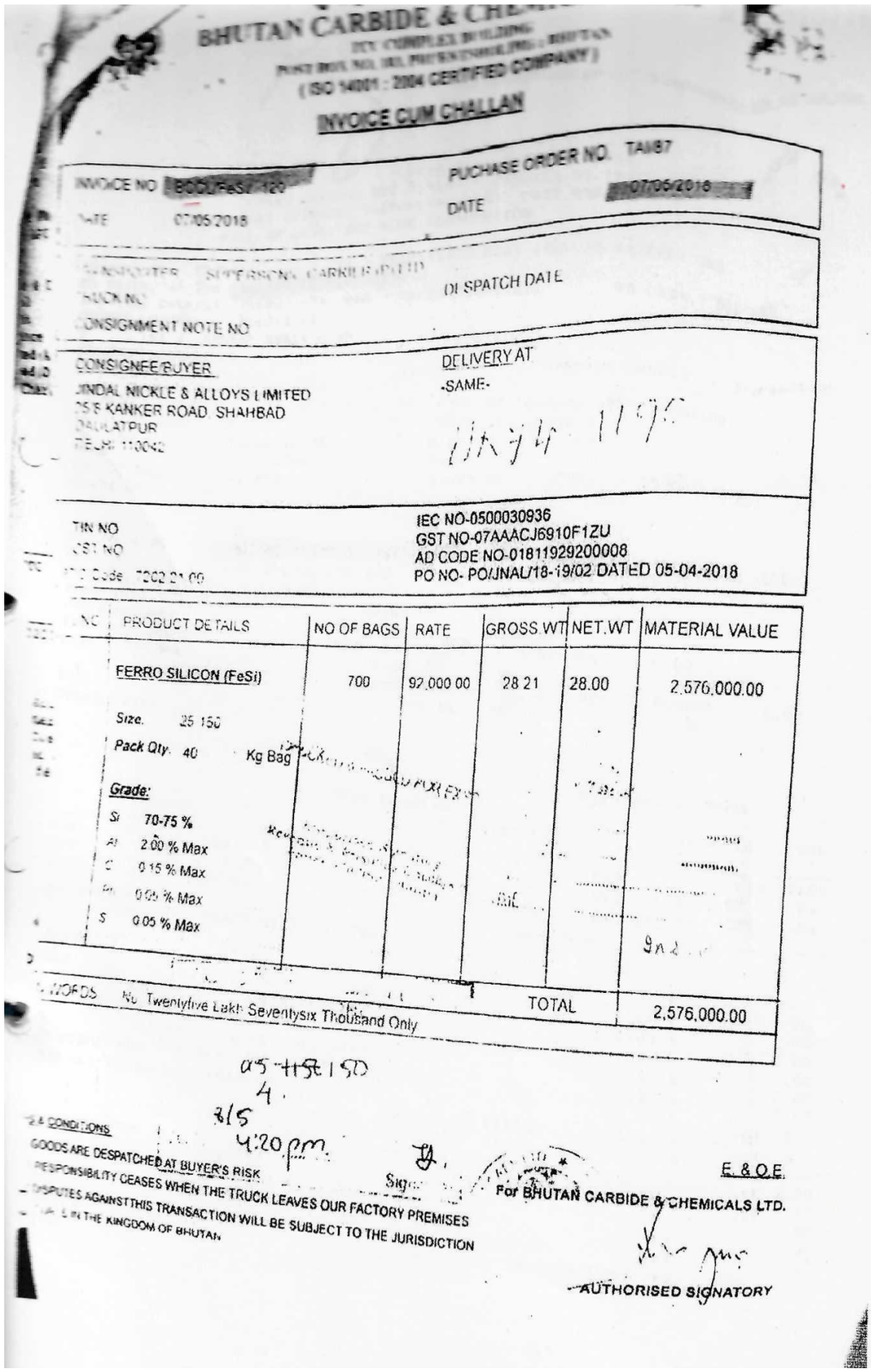
Inv No & Dt. : BCCL/FEB2/120 07/05/2018
Inv Val : 2576000.00 INR TOI: CF
Freight : 0.00 0.00
Insurance : 1.1250008 Cust. House: BHUTAN
SVB Load(Ass): BSS Load Rate: 0.00% Amount: 0.00
SVB Load(Dty): 0.00
Misc. Charges: 0.00 Discount Rate: 0.00 Discount Amount: 0.00
XBE Duty FG Int.: 0.00
EDD : 0.00
Third Party:

Buyer Seller Reltd :

Item Details
Exchange rate: 1.00 INR = 1.0000 INR

Slno RITC Description Qty Unit Price Unit Ass Val	CTH CETH	C.Notn C.NSNO E.Notn E.NSNO	RSP Cus Dty Rt Exc Dty Rt	Load PROV BCD amt(Rs) CVD amt(Rs)
1 72022100 FERRO SILICON (FESI)				
28000.00 92.000000 KGS 2604980.00	72022100 NOEXCISE	040/2017 1	0.00 % 0.00 %	0.00 0.00
Educational Cess on CVDs :			0.00 %	0.00
Sec & Higher Edu. Cess on CVD :			0.00 %	0.00
Customs Educational Cess :			0.00 %	0.00
Customs Sec & Higher Edu. Cess :			0.00 %	0.00
cial Welfare Surcharge:			10.00 %	0.00
IGST		001/2017 III197	18.00 %	468896.41
GST Cess		001/2017 56	0.00 %	0.00

Rs.	2604980.00	Page Total	Rs.	468896.40
	Rs. 2604980.00	BE Gross Total	Rs.	468896.40
BCD	Rs. 0.00	NCD Duty	Rs.	0.00
ANTID	Rs. 0.00	SAFEGUARD Duty	Rs.	0.00
CVD	Rs. 0.00	Sch 2 Spl Excise Duty	Rs.	0.00



BHUTAN CARBIDE & CHE...
DCC COMPLEX BUILDING
POST BOX NO. 581 PHUNTSHOLING BHUTAN
(ISO 14001 : 2004 CERTIFIED COMPANY)

INVOICE CUM CHALLAN

INVOICE NO [illegible] PUCHASE ORDER NO. TAI/87
DATE 07/05/2018 DATE [illegible]07/05/2018

TRANSPORTER SUPERSONIC CARRIERS PVT LTD
TRUCK NO DISPATCH DATE
CONSIGNMENT NOTE NO

CONSIGNEE/BUYER
JINDAL NICKLE & ALLOYS LIMITED
25/5 KANKER ROAD SHAHBAD
DAULATPUR
[illegible] 132042

DELIVERY AT
-SAME-

TIN NO
CST NO
HS Code 7202.21.00

IEC NO-0500030936
GST NO-07AAACJ6910F1ZU
AD CODE NO-01811929200008
PO NO- PO/JNAL/18-19/02 DATED 05-04-2018

NO	PRODUCT DETAILS	NO OF BAGS	RATE	GROSS WT	NET WT	MATERIAL VALUE
	FERRO SILICON (FeSi)	700	92,000.00	28.21	28.00	2,576,000.00
	Size. 25-150					
	Pack Qty. 40 Kg Bag					
	Grade:					
	Si 70-75 %					
	Al 2.00 % Max					
	C 0.15 % Max					
	[illegible] 0.05 % Max					
	S 0.05 % Max					
	TOTAL					2,576,000.00

RUPEES Rs Twentyfive Lakh Seventysix Thousand Only

05-15-18
4.
3/5
4:20 pm

T & CONDITIONS
GOODS ARE DESPATCHED AT BUYER'S RISK
RESPONSIBILITY CEASES WHEN THE TRUCK LEAVES OUR FACTORY PREMISES
DISPUTES AGAINST THIS TRANSACTION WILL BE SUBJECT TO THE JURISDICTION OF THE KINGDOM OF BHUTAN

Sign

E & O.E

For BHUTAN CARBIDE & CHEMICALS LTD.

AUTHORISED SIGNATORY

14. From the above, it can be seen that in respect of Invoice No.BCCL/FeSV 120 dated 07.06.2018 for a material value of Rs.25,76,000/- pertaining to 700 bags of import of Ferro Silicon the importer had filed aforesaid Bill of Entry No. illegible dated 09.05.2018 wherein the invoice value indicated, is the same as on the invoice cum challan, the freight element is clearly indicated as zero while insurance @ 1.125% has been clearly recorded and the Bill of Entry filed accordingly. The importer having indicated the FOB value along with a mention of NIL freight on the Bill of Entry cannot therefore be charged for suppressing any material information. It was for the authorities to have, within the normal limitation period as prescribed under Section 28(1) i.e. two years from the relevant date ought to have issued any such notice proposing inclusion of the transportation cost in accordance with Rule 10(2) of the Valuation Rules. The charge of suppression against the appellant could have withstood the test of scrutiny, provided the Revenue was able to lay their hands on documentation indicating the actual amount of transport incurred by the appellant, and its non-inclusion in value for assessment purposes. That, not being produced by the authorities, they are precluded from simply seeking recourse to the provisions of Rule 10(2) for loading the FOB value by a standard/prescribed amount of 20% of FOB. It appears that the authority in order to overcome the aspect of limitation has sought recourse to suppression. This suppression or willful intent to evade cannot be made out as the appellant had categorically stated the facts in the invoice cum challan furnished and based on their

understanding had apparently termed the same as "CF", in the Bill of Entry. Given the categoric assertion in the invoice cum challan, the Bill of Entry declaration cannot be considered a case of willful misstatement. We do not find that the Revenue has under the circumstances categorically discharged its onus to prove *malafides* on the part of the appellant importer. Were the variation in language between the invoice cum challan and the Bill of Entry were to be considered by way of lack of appropriate understanding of the concepts of the importer, we may point out that it is the responsibility of the authorities to appropriately assess the Bill of Entry. Having not done so at the initial stage, no decoy case of suppression/misstatement can be made out at a subsequent stage. The onus is on the Revenue to show suppression/misstatement by way of a positive lead. A conscious deliberate withholding/misstatement is required to be shown in order to invoke the larger period of limitation, as held by the hon'ble apex court in the case of **Collector of Central Excise v. Camphor Drugs & Liniments [1989 (40) E.L.T. 276 (SC)]**.

15. Moreover, under the circumstances that the appellant was eligible to avail the credit of duty alleged to be evaded, it cannot be anybody's case that such evasion/non-payment of duty was willful or intentional, so as to evade the same. The extended period of limitation can be invoked only in such cases as are met with deliberate default – mere non payment of duty would not fall into the category of deliberate default and for which cases only normal period of limitation would apply. The apex court in the case of **Continental Foundation Jt.**

Venture v. Commissioner of Central Excise, Chandigarh-I [2007 (216) E.L.T. 177 (S.C.)] had held that the word "suppression" is to be construed strictly and any failure to furnish correct information cannot be construed as to be a case of suppression of facts, i.e. to say that even an incorrect statement cannot be equated with willful misstatement. We are of the view that a case of *bonafide* belief/interpretation would not fall into the realm of suppression/willful misstatement. No intention to evade duty or suppressing the facts could be ascribed to the appellant, in the matter, in view of the arguments made by them and their submission of non-existence of a no-man's land between the two boundaries, with no transit time in effect, required to cross over to the other side. Any *bonafide* belief or a question of interpretation does not merit the claim of suppression/willful misstatement **(Commissioner of Central Excise& Customs v. Alican Pharma Pvt.Ltd. [2015 (322) E.L.T. 47 (Guj.)])** and hence the larger period of limitation is not invokable in the matter.

16. We also note that apart from the above the entire exercise is revenue neutral and the appellant would have been rightly entitled to avail credit of any duty paid on such cost incurred by them towards transportation and insurance. For this reason too we are not led to believe this to be a case of suppression or willful misstatement and we find that the claim of the Revenue of suppression has been not emphatically made out. Discussions foregoing clearly establish that in the first place the entire excise was revenue neutral.

17. In view of our aforesaid discussions, we are of the view that the appeal filed is bound to succeed on grounds of limitation. We therefore set aside the order of the lower authority and allow the appeal filed.

(Order pronounced in the open court on 25 March 2026.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm