CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87439 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Usha International **.... Appellant**
16F, Judges Court Road,
Kolkata -700 027.

Versus

Commissioner of Customs (Import), Nhava Sheva **.... Respondent**
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Vineet Dubey, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87327 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

M/s. Priyal Equipments Pvt. Ltd. **.... Appellant**
A-2/16, Mainwali, Nagar, Paschim Vihar,
New Delhi – 110087.

Versus

Commissioner of Customs (Import-I), Mumbai **.... Respondent**
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

None for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87388 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

M. Dharamdas & Company **.... Appellant**
26, Kalikat Street, 2, Mehta Building
Ballard Estate, Mumbai – 400 038.

Versus

Commissioner of Customs (Import-I), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Archi Aditya, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87404 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Harish Chandra (I) Ltd. .... Appellant
113-A, Kamla Nagar, Delhi

Versus

Commissioner of Customs (Import-I), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Anil Mishra, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87429 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Sachin Agarwal .... Appellant
Jugal Jyoti House, 1st Floor, 176, C.S.T. Road,
Santacruz (E), Mumbai 400 098.

Versus

Commissioner of Customs (Import-I), Mumbai .... Respondent
2nd Floor New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Stebin Mathew a/w Shri Ajay Singh, Advocate for the Appellants
Shri C.S. Pavan, Authorized Representative for the Respondents

With

Customs Appeal No. 87430 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Jindal Earthmovers P. Ltd. .... Appellant
89-D, IInd Floor, Kamla Nagar,
New Delhi

Versus

Commissioner of Customs (Import-I), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

With

Customs Appeal No. 87431 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Chuhan Engineering & Services P. Ltd. .... Appellant
Tanseen Road, Inder Nagar, Gwalior

Versus

Commissioner of Customs (Import-I), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Durgesh Nadkarni, Advocate for the Appellants
Shri C.S. Pavan, Authorized Representative for the Respondents

With

Customs Appeal No. 87432 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Brijesh Gala .... Appellant
Flat No.1,2 & 4,5th Floor, New Sai Niketan Building,
'A' Wing, Opp. Sales Tax Office, Mazagaon,
Mumbai – 400 010.

Versus

Commissioner of Customs (Import-I), Nhava Sheva .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Anil Balani, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87437 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Venkata Apparao Chinnam .... Appellant
D.No.7-5-95/1, Plot No.80-B, Pandur Angapuram Layout,
Vishakhapatnam.

Versus

Commissioner of Customs (Import), Nhava Sheva .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

With

Customs Appeal No. 87438 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Kumari Satyavathi Chinnam .... Appellant
D.No.7-5-95/1, Plot No.80-B, Pandur Angapuram Layout,
Vishakhapatnam.

Versus

Commissioner of Customs (Import), Nhava Sheva .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

None for the Appellants
Shri C.S. Pavan, Authorized Representative for the Respondents

With

Customs Appeal No. 87440 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Pulkit Choudhary .... Appellant
16F, Judges Court Road,
Kolkata -700 027.

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

With

Customs Appeal No. 87673 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

M/s Om Siddhivinayak Lifters .... Appellant
C-4057, Bima Complex, Nr. Steel Market,
Kalamboli, Navi Mumbai

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Vineet Dubey, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87728 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

M/s S R Construction .... Appellant
Plot No. 1443, Rd. 16, KWC,
Kalamboli, Navi Mumbai.

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Durgesh Nadkarni, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87794 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

Mahesh Vasant Oswal .... Appellant
At Port, Pali, Tal. Sudhagad,
Dist. Raigadh.

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Prashant Patankar, Consultant for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 87868 of 2017

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

M/s Apollo Enterprises .... Appellant
Plot No. 1443, Road No. 16,
Kalamboli Warehousing Complex,
Kalamboli.

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

None for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

With

Customs Appeal No. 85055 of 2018

(Arising out of Order-in-Original No. 22-RT-PC-2016-17 dated 31.03.2017 passed by Commissioner of Customs (Import), Mumbai-I)

M/s Shubh Transport Pvt. Ltd. .... Appellant
A-1013, Bima Complex, Kalamboli,
Navi Mumbai.

Versus

Commissioner of Customs (Import), Mumbai .... Respondent
2nd Floor, New Custom House,
Ballard Estate, Mumbai- 400 001.

Appearance:

Shri Vinit Dubey, Advocate for the Appellant
Shri C.S. Pavan, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86419-86434/2026

Date of Hearing: 29.07.2026
Date of Decision: 13.11.2026

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Usha International, Kolkata and other co-noticees including high-sea-sale buyers (hereinafter, referred together as 'the appellants'), assailing Order-in-Original No. 22/RT/PC/2016-17 dated 31.03.2017 (hereinafter, referred to as 'the impugned order') passed by the Principal Commissioner of Customs (Import-I), New Custom House (NCH), Mumbai Customs Zone-I, Mumbai.

2.1 The brief facts of the case are that the appellants during the period January, 2006 to September, 2010 had imported several consignments consisting of 86 numbers of 'second hand/used cranes' both by direct imports and through High Sea Sales basis to other importers; 1 consignment of its accessories, by filing Bills of Entry (B/Es) with the

jurisdictional Customs Commissionerate/House, seeking clearance of goods from Customs authorities at the port of import. The department assessed the imported goods on first check basis by subjecting the imported secondhand cranes to expert examination by local Chartered Engineer for its proper valuation in terms of the guidelines prescribed by the Central Board of Excise & Customs (CBEC).

2.2 On the basis of intelligence gathered by Directorate of Revenue Intelligence, Mumbai Zonal Unit (DRI) indicating that a number of second hand crane importers were involved in evading Customs duty by adopting modus-operandi involving multi-layered strategy of undervaluation of imported goods; suppression/manipulation of freight and insurance; fabrication of documents relating to bill of lading, invoice and remittances of differential value suppressed through unauthorised channels; accepting the benchmark value of Rs.40/- per kg. for the total weight of each crane for hassle-free clearance from jurisdictional Customs authorities etc., necessary investigation was conducted by DRI against such importers.

2.3 The appellant M/s Usha International, Kolkata is one such importer whose import transactions were subjected to detailed investigation including search of various premises, along with the office/residential premises of Shri Madan Lalwani, who was attending customs clearance work through customs broker M/s M.Dharamadas & Co., Mumbai; residential premises of Shri Brijesh Gala, who was involved in transferring money overseas through unofficial means on behalf of various importers; premises of High Sea Sales purchasers from the appellant M/s Usha International. Further, number of statements from various persons concerned were also recorded.

2.4 The investigation culminated in issue of Show Cause Notice (SCN) dated 21.11.2013, which was adjudicated by the Principal Commissioner of Customs (Imports), Mumbai vide impugned order dated 31.03.2017 in confirmation of all the proposals made for demand of differential duty, imposition of redemption fine upon confiscation of goods and imposed penalty on the appellants. In the impugned order, the learned Principal Commissioner of Customs had redetermined the assessable value of (i) 36 used cranes imported by M/s Usha International by enhancing declared value

of Rs.3,38,56,704/- to Rs. 6,83,90,723/- and (ii) 48 used cranes and one used accessories imported by various importers through M/s Usha International on High Sea Sale basis, from Rs. 3,79,51,474/- to Rs. 9,28,44,830/-. Accordingly, he had confirmed the differential duty of Rs. 2,96,70,380/- & Rs.17,17,357/- for certain specified cranes imported by M/s Usha International, under Section 28 of the Customs Act, 1962 along with interest, and imposed mandatory penalty equal to duty under Section 114A ibid. Besides this, differential duty of Rs. 2,79,53,023/- along with interest for 48 cranes (listed at Serial No. 1 to 32 of Annexure to SCN) imported beyond a period of five years from the date of issue of SCN, was appropriated by him from the voluntary deposits made for an amount of Rs.4,14,00,000/- made by appellant Shri Pulkit Choudhary of M/s Usha International during the course of investigation. Further, he imposed penalties of Rs. 2,96,70,380/- on Shri Pulkit Choudhary under Section 114A ibid; Rs.30,00,000/- each on Shri Sachin Agarwal, Shri Madan Lalwani, Shri Brijesh Gala; and Rs.10,00,000/- on M/s M. Dharamdas & Co. under Section 112(a) ibid. Feeling aggrieved with the impugned order all sixteen the appellants have filed these appeals before the Tribunal.

3.1 Learned Advocates/Counsel appearing for different appellants at the outset submitted that the issue of demand of differential duty arising on account of revision of assessable value is no longer *res integra* in view of the Final Order No. A/85324-85327/ 2022 passed by the Tribunal in the case of *Karim Jaria and Crown Lifters Pvt Ltd.* Vs. *Commissioner of Customs (Import-I), Mumbai* [2022 (4) TMI 948 – CESTAT MUMBAI]. They placed reliance on the comparable facts of the present case before the Tribunal and those in the relied upon case, including the nature of imported goods i.e., used/secondhand cranes; period of investigation; statements of customs broker and agent for alleged undervaluation of imported goods; method of valuation of goods based on chartered engineer's certification, to demonstrate that the factual matrix of both the cases are identical. They further stated that the plea advanced by the department for having preferred an appeal in the case of *Crown Lifters Pvt Ltd.* and hence the said decision of the Tribunal cannot be taken as final, is not justifiable since the Hon'ble Bombay High Court has neither granted any stay nor has set aside the order of the Tribunal.

3.2 They further stated that value declared by the appellants is legally correct and it is as per the provisions of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. They had submitted all the requisite documents and obtained the local chartered engineer's certification for valuation of second-hand goods as per procedure prescribed by the CBEC in Circular No.4/2008-Customs dated 12.02.2008 for valuation of second-hand cranes. However, the department had incorrectly re-determined the value of imported goods on the basis of local purchase price, comparable values available on the internet, NIDB data, prevalent market price etc. which they claimed is not in conformity with the Customs Valuation Rules, 2007. They also submitted that no subsequent demand of duty can be made in respect of imported secondhand cranes on which duty was paid by them, after enhancing the value declared by them at the time of import by revising/enhancing it after determination of assessable value in terms of Section 17 ibid by the proper officers of customs in their orders of assessment, after duly taking into account chartered engineer's report of valuation of imported second hand goods, and more so, when such enhancement was done upon its physical examination, on first check basis at the port of import.

3.3 Learned Counsel have also submitted that duty demand in respect of imports made for 48 cranes, which are beyond a period of five years from the date of issue of SCN, and its appropriation from the voluntary deposits made, as ordered in the impugned order is not legally sustainable. Further, by relying on various case laws cited in their written submissions, they stated that extended period of limitation is not invokable in their case for demand of duty along with interest, since they were of bonafide belief that the value adopted by them is the correct value and they had also accepted the valuation done by the independent chartered engineers duly recognised by the department, before clearing the goods from customs control. Further, as the appellants have declared in the Bills of Entry all the particulars as per invoice, and the goods were subjected to physical examination on first check basis, they stated there is no ground to claim that any incorrect particulars were declared with an intention to evade duty for invoking the extended period of limitation and also for confiscation of impugned goods and for imposition of penalty on the appellants.

4. Learned Authorized Representative reiterated the findings in the impugned order and submitted that the imported goods though were duly examined by the chartered engineers at the port of import, it is during the investigation conducted by DRI that the entire modus operandi of evasion of customs duty was brought to the fore. These included suppression of freight, commercial terms of supply of goods, hawala remittances etc., Further, statements recorded from various persons involved in such imports also supported the involvement of customs brokers, shipping lines etc. Hence, he pleaded that the impugned order is legally sustainable.

5. We have heard both the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records along with the additional submissions made by both sides in the form of written submissions.

6. The following issues arise for determination before the Tribunal:

(i) whether re-determination/enhancement of the assessable value in respect of imported second hand cranes, is proper and valid in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after, for short, referred to as "the CVR, 2007"]; and the confirmation of differential customs duty demands under Section 28 *ibid* is sustainable under the Customs statute or otherwise;

(ii) Whether confiscation of imported second cranes and consequent imposition of penalty on the appellants under Sections 112(a), 114A ibid is legally sustainable;

(iii) differential duty in respect of 48 cranes, relating to imports beyond the 5 years period from the date of issue of SCN, but adjusted against the amount deposited voluntarily towards duty during investigation, which has not been confirmed in the impugned order by the adjudicating authority is proper and justified in terms of the Customs statute.

7. The dispute between the appellants-importer and the department lies in determination of appropriate duties of customs payable on the

imported goods, duly determining its assessable value for the purpose of calculation of duty under Section 14 of the Act of 1962 read with CVR, 2007. Further, it is also required to be determined whether the imported goods are liable for penal consequences of confiscation, redemption fine and the appellants concerned with such goods are liable for penalty under the various provisions of Customs Act, 1962.

8.1 Before we consider the issues under dispute along with the submissions made by both sides, it is important to note that the undisputed facts with respect to the factual matrix of the case are as follows:

(i) The appeals filed in respect of 6 original orders all dated 31.03.2016 before the Commissioner of Customs (Appeals) which were remanded back in 5 orders to the original authority for *de novo* adjudication vide Order-in-Appeal No. MUM-CUSTM-SMP-80 to 97/17-18 dated 31.07.2017, are not the subject matter of the present set of appeals before the Tribunal, in this case.

(ii) All the impugned goods/secondhand cranes imported during the disputed period from January, 2006 to September, 2010 were subjected to physical examination by local chartered engineer and on the basis of value of goods determined by such technical expert, the proper officer of Customs at the port of import have assessed the import duty leviable of on such goods. Further, on the basis of enhanced/ redetermined value of goods, the appellants have paid the Customs duty before taking clearance of imported goods from Customs control;

(iii) Shri Pulkit Choudhary of M/s Usha International during the investigation have paid an amount of Rs.4.14 crores vide (i) D.D. No. 004195 dated 26.11.2010 of ICICI Bank for Rs.1.05 crore; and (ii) similarly, further D.D. Nos. 093942 to 093944, all dated 26.11.2010 of Union Bank of India together for Rs.3.09 crore, submitted to the DRI, Mumbai vide letter dated 26.11.2010. These were also paid to the Government account vide DRI's challan dated 29.11.2010.

(iv) on completion of the DRI investigation, SCN was issued on 11.12.2013 *inter alia* covering duty demands of import of goods covered under various B/Es mentioned in the Annexures-A,B along with its corrigendum dated 17.04.2014.

8.2 In terms of the legal provisions under Section 2(2) of the Customs Act, 1962, the phrase "assessment" would mean determination of the duty liability of imported goods including *inter alia* in arriving at the appropriate valuation of such imported goods as determined in accordance with the provisions of Section 14 ibid and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 framed thereunder. Further, the provisions relating to search of premises, detention/seizure of goods involving customs offence, provisional release, confiscation, imposing redemption fine in lieu of goods, penalty on the persons etc. are also provided under the respective legal provisions of the Act of 1962. These are extracted for convenience of reference and given below:

"Section 2. Definitions. *-*
(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;'

(25) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

Section 12. Dutiable goods. *-*
(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

Section 14. Dutiable goods. *-*
(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided *that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of*

transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

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[1]Section 17. Assessment of duty.—

(1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section (3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.

(5) Where any assessment done under sub-section (2) is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification therefor under this Act, and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within fifteen days from the date of assessment of the bill of entry or the shipping bill, as the case may be.

Section 105. Power to search premises.

(1) If the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to

[1] Substituted by the Finance Act, 2011, w.e.f. 08.04.2011 to provide for the self-assessment provisions as it exists in customs statue as on date. Prior to its substitution, section 17, as amended by the Taxation Laws (Amendment) Act, 2006, w.e.f. 13-7-2006, read as given above.

any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words "[7][Principal Commissioner of Customs or] Commissioner of Customs" were substituted.

Section 110. Seizure of goods, documents and things

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :

***Provided** that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.*

Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation :—

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

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(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect;

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Section 112. Penalty for improper importation of goods, etc.

Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per

cent of the duty sought to be evaded or five thousand rupees, whichever is higher;

xxx xxx xxx

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account :

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced

penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114…….”

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

Definitions

Rule 2. *(1) In these rules, unless the context otherwise requires, -*

xxx xxx xxx xxx

(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(d) "identical goods" means imported goods-

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods,

(ii) produced in the country in which the goods being valued were produced, and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(f) "similar goods" means imported goods-

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

(iv) but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken

in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;

Determination of the method of valuation

Rule 3. *(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) Value of imported goods under sub-rule (1) shall be accepted :
Provided that –

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-
(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
(ii) the deductive value for identical goods or similar goods;
(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity

levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9.

Transaction value of identical goods *—*
Rule 4. *(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued:*

Provided *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Transaction value of similar goods
Rule 5. *(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:*

Provided *that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

xxx xxx xxx xxx

Computed value

Rule 8. *Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-*
(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

Residual method

Rule 9. *(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India :*

Provided *that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.*

(2) No value shall be determined under the provisions of this rule on the basis of:-

(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
(iii) the price of the goods on the domestic market of the country of exportation;
(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
(v) the price of the goods for the export to a country other than India;
(vi) minimum customs values; or
(vii) arbitrary or fictitious values.

xxx xxx xxx xxx

Rejection of declared value

Rule 12 *(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such*

imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)…."

9.1 From plain reading of the above legal provisions, 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 duties of customs payable on imported goods by properly determining the assessable value under Section 14 ibid read with the Rules of 2007. In the present case, the proper officer of customs at the port of import had assessed the duty payable on the imported second-hand/used goods after subjecting it to examination by independent local chartered engineer for determining the assessable value and levy of duty. However, on account of intelligence developed by DRI and upon conducting detailed investigation unearthing the modus operandi of multi-layered strategy of undervaluation adopted by the appellants, the Department had issued SCN dated 11.12.2013 demanding differential duty of customs payable on account of suppression of actual transaction value on which the imported goods were procured by the appellants and for determining the transaction value in terms of Rules of 2007 for all imported consignments, during the disputed period.

9.2 In terms of the legal provisions governing recovery of duties not levied or short levied or short paid, such duty can be recovered by issue of SCN within 5 years from the relevant date under Section 28 ibid. On perusal of the case records, it transpires that in respect of second hand cranes (which are listed at serial Nos. 1 to 32 of Annexure 'A' and 48 cranes listed in Annexure 'B' to SCN) and imported by appellant M/s Usha International, directly and through HSS basis, an amount of Rs.3,61,18,074/- has been appropriated in the impugned order from the voluntary deposits made during investigation. It is a fact on record that such adjustment of voluntary deposits during investigation were in respect of imported consignments on which the appellants had paid customs duty at the time of its import before clearance from customs control on different dates, and these dates back beyond the 5 years' time limit from the date of issue of SCN dated 11.12.2013. In the absence of admission of duty

liability and the appellants' intent for adjustment not being expressly supported by any documents on record and this being agitated in these appeals, we are of the considered view that no duty demand can legally sustain in terms of Section 28 of the Act of 1962. Further, in the impugned order, the learned adjudicating authority also did not confirm the duty demand in respect of these imports, which are beyond the statutory time limit of 5 years for issue of SCN, in recovering the short levy. Therefore, in our considered opinion re-determination/ enhancement of assessable values for the aforesaid consignments of used secondhand cranes under Rule 8/9 ibid; for demanding duty is not proper and cannot sustain legal scrutiny in terms of Sections 14 and 28 of the Customs Act, 1962 read with Rules of 2007.

9.3 On careful perusal of the impugned order passed by the learned Commissioner, it transpires that assessable value was re-determined by the adjudicating authority, under Rule 8 /9 of CVR of 2007 as recorded at paragraph 33 in the impugned order; on the basis of available evidence and industry practices being a method having well-reasoned, justified and aligned with the principles of CVR of 2007. Therefore, it clearly transpires that the learned Commissioner had adopted Rule 8 and Rule 9 of CVR, 2007 for re-determination of assessable value of impugned goods.

9.4 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) therein, 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, while determining the assessable value in terms of Section 14 ibid read with Rules 3, 4, 5 of the Rules of 2007, the value of the goods shall be the transaction value, unless the same is rejected in terms of Rule 12 ibid and thereafter to proceed with Rules 4 to 9 sequentially. In the present case, the transaction value of secondhand cranes were already rejected under

Rule 12 ibid and was re-determined by the proper officers of customs at the port of import, on the basis of independent chartered engineer's assessment, which is in compliance with the instructions issued by the CBEC vide Circular No.4/2008-Customs dated 12.02.2008 and the earlier Circular No. F. No. 493/124/86-Cus.VI dated 19.11.1987 for assessment of secondhand goods. Therefore, in order to again re-determine the assessable value, there should be specific evidence on the basis of which the duty that escaped assessment or duty short levied could be confirmed on the appellants importer. It is on record that the learned Commissioner has justified the valuation methodology for confirmation of the adjudged demands on the basis of detailed workings made in the SCN viz., (i) values in respect of 36 cranes admitted by Shri Pulok Choudary being treated as admitted transaction value under Rule 3 ibid; (ii) value of 12 cranes imported by M/s Usha International and those on High Sea Sales, on the basis of residual method under Rule 8/9 ibid; Therefore, the learned Commissioner has upheld the re-determined assessable value under Rule 8/9 of CVR of 2007, in the impugned order.

9.5 We have carefully gone through the CBEC vide Circular No.4/2008-Customs dated 12.02.2008 issued in furtherance to Circular No. F. No. 493/ 124/86-Cus.VI dated 19.11.1987. The extract of the same is given below:

"Circular No. 4/2008-Cus.,
dated 12-2-2008

F. No. 467/34/2006-Cus.V
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs,
New Delhi

Subject: Valuation practice of second hand machinery to be adopted by all Custom Houses/ Customs Commissionerates - Regarding

It has been noticed that the Custom Houses/Customs Commissionerates have been adopting different assessment practices with regard to valuation of imported Second Hand Machinery/Capital Goods. As this was resulting into diverse assessments the following guidelines are being issued so that assessments are done as far as possible on their basis.

2. A careful analysis of the Tribunal decisions and an Apex Court judgment on the issue of valuation of second-hand machinery reveal the following views of the judiciary :

(i) If other parameters of Section 14 of the Customs Act, 1962 are satisfied, the transaction value method of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 can also be applied to importation of second-hand machinery sold for export i.e. it was imported immediately after sale without any further usage abroad.

(ii) However if transaction value of Rule 3 is rejected, valuation of second-hand machinery can be done under Rule 9, on the basis of value of new machine, as certified by the Chartered Engineer, and scaled down by allowing depreciation commensurate with the period of usage. Supreme Court judgment in the case of Gajra Bevel Gears [2000 (115) E.L.T. 612 (S.C.)] refers in this regard.

(iii) However, transaction value of Rule 3 cannot be rejected by ab initio application of Rule 9, inasmuch as one cannot, before rejecting transaction value of Rule 3 with sufficient evidences, straightaway arrive at a notional value under Rule 9.

3. It may thus be seen from the judicial decisions that, before redetermination of value of second hand machinery under Rule 9, it is essential to reject the transaction value of Rule 3. There would be no difficulty in rejection of transaction value in those cases where the assessing officer is able to assail the documents like Chartered Engineer's Certificate, invoice, etc., as manipulated or fraudulently obtained. Similarly, there will also be no difficulty in rejection of transaction value in cases where the assessing officer proves that certain basic particulars like description, period of usage, extent of the re-conditioning, year of manufacture, model no., price when new, etc., are mis-declared either in the Chartered Engineer's Certificate or in the invoice. There will also be no difficulty in rejecting the transaction value in cases which are hit by the provisions to Sub-Rule (2) of Rule 3. Difficulties may however be faced in situations other than those described above.

4. In this context, attention of the assessing officers is drawn to Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which provides for rejection of declared value under certain circumstances. Following views have emerged from various Tribunal decisions on the application of Rule 12 :

(i) Rule 12 empowers the Revenue not to determine the value of the imported goods on the basis of transaction value under Rule 3(1) of the Valuation Rules. The Tribunal decision in the case of Chandni International [2003 (153) E.L.T. 312] refers.

(ii) Rule 12 provides that when the proper officer has reason to doubt the truth or accuracy of the value declared, he may ask the importer to furnish further information or other evidence. If he still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of the goods cannot be accepted. It is therefore required to determine whether the evidences constitute reasonable doubt for the assessing officer to doubt the value of the goods. The Tribunal decision in the case of Sunny Enterprises [2004 (175) E.L.T. 420] refers.

(iii) Rule 12 is a procedural provision, which is meant to act as an aid in determining as to whether Sub-Rule (1) or Sub-Rule (4) of Rule 3 would be applicable in a given case. This deeming provision contained in Rule 12 has necessarily to be pressed into service at the very initial stage under the sequential scheme. It has no role after the scheme has worked out. The Tribunal decision in the case of Venus Insulation Products Mfg. Co. [2002 (143) E.L.T. 364] refers.

5. Thus in respect of valuation of second hand machineries as well, the assessing officers may apply Rule 12 in appropriate cases. As an illustration, if the declared value of a second hand machinery is found to be much below the value arrived at by the depreciation method on the basis of the certified price of the new machinery in the year of its manufacture, the assessing officer may have reason to doubt the truth or accuracy of the declared value, and ask the importer to furnish further information and explanation. If he is satisfied, he may accept the declared value. But, if he still has reasonable doubt about the truth or accuracy of the declared value, he can reject the declared value under Rule 12, and proceed to re-determine the value under Rule 9 by following the Board's Circular No. F. No. 493/124/86-Cus. VI, dated 19-11-1987 in respect of the depreciation to be extended to such second hand machinery.

6. In fact, for other imported goods as well, the method for acceptance or rejection of declared value, and then re-determination of value in case the declared value is rejected, would be similar to that in the case of second hand machinery, as explained hereinabove.

7. In cases where the declared value is rejected, and assessable value is re-determined, the assessing officer shall issue a detailed speaking order, giving the reasons for such rejection, by invoking the provisions of Rule 12 or Rule 3(2), as appropriate, and giving the reasons for re-determination of value under appropriate provision.

8. Guidelines in respect of some other issues related to valuation of second hand machinery are as follows :
(a) For valuation of second hand machinery/capital goods, the assessing officers must insist on importers submitting a certificate issued by an independent Chartered Engineer or any equivalent in the country of supply. The certificate should indicate inter alia :
(i) Price of new machinery as in the year of its manufacture,
(ii) Current CIF value of new machinery if purchased now,
(iii) Year of the manufacture of machinery,
(iv) Sale price of the supplier,
(v) Present condition of machinery,
(vi) Nature of reconditioning or repairs carried out, if any, and the cost (including the dismantling cost, if any) thereof,
(vii) Expected life span.

(b) There is no need to specify the agencies whose certificates alone, issued at the port of loading, would be accepted. The number of such agencies should not be limited.

(c) In the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted. Each Custom House may consider issuing Public Notices giving names and addresses of Chartered Engineers, whom the trade can contact for issuance of CE Certificate.

(d) It is not essential to have the examination of the second hand machinery by a panel of officers, since in many Customs formations no machinery expert is posted. The routine examination of second hand machinery being done by the Docks staff shall continue.

9. The aforesaid guidelines regarding valuation of second-hand Machinery as contained in foregoing paragraphs 3 to 8 shall be strictly followed.

10. Any difficulty in the implementation of the foregoing guidelines may be brought to the notice of the Directorate General of Valuation, Mumbai with a copy to the Board."

From the above, it clearly transpires that assessment of imported second hand cranes have to be done in terms of legal provisions of the Customs statute and the various Rules under CVR of 2007 have to be followed sequentially and Rule 9 ibid cannot be adopted straight away, ignoring the other rules. Further, method of valuation under Rule 8 of CVR, 2007 is to be determined on the basis of computation of value of materials, processing or fabrication charges, profit margin etc., of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India. Further, the method of valuation of goods Rule 9 of CVR 2007 should be on reasonable means consistent with the principles and general provisions of the rules of CVR, 2007 and on the basis of data available in India. In adopting such method, the learned Commissioner had relied upon the statement of Shri Pulkit Choudhary, who had given the transaction values for used cranes imported by M/s Usha International. However, in his reply to the SCN and before the Chief Metropolitan Magistrate, Esplanade Court, Mumbai at the time of his arrest he had filed retraction on 25.11.2010 stating that part of the statement was obtained by DRI using force, threat and coercion. Therefore, such determination of values based on values given by Shri Pulkit Choudhary during investigation in the form of statement has no basis for such determination and thus the impugned order, accepting such method as the basis for re-determination of assessable value is not legally sustainable.

9.6 Further we find that once a statement recorded under Section 108 ibid has been retracted at the earliest opportunity before the judicial authority, no reliance can be placed by the adjudicating authority for confirmation of duty demands. Further, it is not the case of the department that fresh statement was recorded to overcome the retraction by providing proper opportunity or cross-examination opportunity was given to the appellant for denying the allegations of statements being taken under duress. In respect of opportunity for providing cross-examination of the persons whose statements are relied in the adjudication and on the issue of under-valuation of goods, we find that this Bench of the Tribunal in the case of *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* - (2024) 16 Centax 503 (Tri.-Bom) have held that when the Bills of entry was already assessed at time of importation of goods and said assessment orders were not been appealed against/reviewed and, thus, had attained finality, further proposal to re-enhance value could not be proceeded with for rejection of declared value; and the statements of witnesses/importer are not admissible as evidence unless proper procedure as prescribed under the statute is followed duly affording the opportunity of cross examination. Thus, it was held that the allegation of undervaluation of imported goods on basis of such documents and witnesses was not sustainable. The relevant paragraphs of the said order is quoted below:

> ***"12.*** *It is submitted by the Learned Counsel for the appellant that the adjudicating authority had not examined the witnesses, as per the provisions of Section 138B of the Act, 1962. In this context, we find that the Hon'ble Delhi High Court, in the case of J&K Cigaratte v. Collector of Customs - 2009 (242) E.L.T. 189 = 2011 (22) S.T.R. 225 (Del.), while dealing with Section 9D(1) of the Central Excise Act, 1944 (Parimatria to Section 138B of the Customs Act, 1962) have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of G-Tech Industries v. Union of India - 2016 (339) E.L.T. 209 (P & H). We find force in the submissions of the Learned Counsel for the appellant that the adjudicating authority has not followed the procedures prescribed under section 138B of the Act, 1962. We are also in agreement with the Appellant that the statements of witnesses cannot be relied upon as Learned Adjudicating authority not conducted cross-examination. Hence, on this ground also demand of duty cannot be sustained.*
>
> ***13.*** *We also noticed that the Adjudicating authority in order to justify the under valuation, has relied upon the statements of partners of the appellant's company. However, the Appellant has objected to such reliance, as the statements were retracted. The Appellant has pleaded*

that retracted statements cannot be accepted as evidence for confirmation of demand. The adjudicating authority in the impugned order has chosen not to consider the retraction. We are of the view that the said approach of the adjudicating authority is incorrect. Be that as it may, we note that statements cannot be the sole reason to confirm the charge of undervaluation. We also note that in the present matter there are no evidences produced by the department that the excess amount over and above the invoice price was paid to suppliers. There is no evidence as to how the Appellant came into possession of cash alleged to be differential amount towards goods imported, nor there is any evidence of any cash being handed over to any person, representing suppliers in India. Department had failed to produce corroborative evidences regarding the undervaluation of imported goods. Hence, in our view, the charge of undervaluation of imported goods in the present matter is not sustainable.

14. *Further, we also find that in respect of disputed imported goods, Bills of entry were already been assessed at the time of importation of the goods and hence, further proposal to re-enhance the value, in the eventuality, when the earlier assessment orders having not been appealed against/reviewed, have attained finality and accordingly, cannot be proceeded with for rejection of the declared value. In other words, there cannot be any re-assessment of the said values, which had become final for want of appeal against the same. Our views are supported by the judgments in case CC v. Lord Shiva Overseas (supra), Malhotra Impex v. Commissioner of Customs, Ahmedabad - 2006 (203) E.L.T. 561 (Tri.-Del.) and Commissioner of Customs (Prev.), v. Paras Electronics - 2009 (246) E.L.T. 231 (Tri.-Mumbai)/2009 taxmann.com 923 (Mum. - CESTAT).”*

The department being aggrieved with the above order of the Tribunal filed Civil Appeal Diary No. 4161 of 2024, wherein the Hon’ble Supreme Court had dismissed the appeal of Revenue by upholding the Order of the Tribunal. Therefore, we do not find any merits in confirmation of the adjudged demands by the learned Commissioner on the basis of re-determination of assessable value, without effectively contesting the value firstly determined by the proper officers of customs in the port of import on the basis of independent chartered engineer’s certificate and on the basis of statements recorded from various persons, whose cross-examination could not be conducted by him. Hence, on this ground also demand of duty cannot be sustained.

9.7 Further, the Co-ordinate Bench of the Tribunal vide Final Order No. A/85324-85327/2022 dated 12.04.2022 passed in the case of *Karim Haria and Crown Lifters Private Limited* (supra) have held that since there was no ascertainment of the actual purchase price of second hand/used cranes purchased through auction, re-determination of value on the basis of

alleged payments made through non-banking channels etc. is not sustainable particularly in the absence of corroboration of evidences and its test of cross-examination and its relevancy. It was also held in this case that there was no allegation of the imported goods being prohibited or correct duties have been not discharged before its clearance from customs control. Thus, the subsequent findings of undervaluation could at the most be limited to re-assessment for levy of differential duty that had escaped and this cannot transform into penal consequences. Accordingly, the differential duty demanded by the department and confiscation of goods, consequential penalties imposed was set aside. The relevant paragraphs of the said order are extracted and given below:

> *"6. We have held supra that the 'acceptance' of the voluntary payment is beyond the framework of the proceedings as determined by the proposals in the show cause notice and, with that having been set aside, the Tribunal lacks jurisdiction to address retention of such amount for any purpose, including as restitution towards duty that has been short-paid. Nonetheless, the finding in the impugned order that this payment of duty was voluntary, and even despite being beyond the period of limitation and in the absence of any threat or coercion from customs authorities, does throw some light on the bona fides of the importer who, indeed, was not under legal obligation to do so. The prevailing practice of assessment on the basis of weight which has seemingly been followed by M/s Crown Lifters is also on record. There has been no ascertainment of the actual purchase price of each of the nine 'used cranes', which surely must be available considering that these were sourced at auctions, by the adjudicating authority. The initiation of proceedings for confiscation under section 111(m) of Customs Act, 1962 and penalties under section 112 and section 114AA of Customs Act, 1962 must be viewed through that prism.*
>
> *7. Clearance of goods for home consumption, in exercise of authority under section 47 of Customs Act, 1962 and subject to satisfaction of 'proper officer' that the goods are not prohibited and that the correct duties have been levied, attains a finality thereby that can be disturbed only upon subsequent finding that the goods are prohibited or that short-payment of duty has occurred with the latter to be re-opened only within the stipulated time-frame. There is no allegation of the goods being prohibited and, indeed, recourse to confiscation under section 111(m) of Customs Act, 1962 repudiates that contingency. The discharge of correct duty liability is a determination of rate of duty, under section 12 of Customs Act, 1962, and value determined in the manner prescribed in section 14 of Customs Act, 1962. The first is not in dispute as far as the impugned goods are concerned and the show cause notice has not proposed recovery of duties of customs on goods imported by M/s Crown Lifters; valuation, under the authority of section 14 of Customs Act, 1962, is limited to assessment. In the glaring absence of proposal in the present proceedings for levy of differential duty, recourse to valuation merely for the purpose of resorting to*

confiscation is to transform it from penal consequence to cause of action. Hence, it would appear that confiscation is disproportionate detriment and without any justification to cause such detriment. Consequently, confiscation of nine 'used cranes' imported by M/s Crown Lifters fails along with the penalties arising therefrom.

11. It was after going through the re-determination of value, the confiscation and the imposition of penalty that the Tribunal found it fit to reject all the conclusions in the order impugned therein for want of credibility of the statements relied upon in the absence of cross examination. That order of remand, and its contents, had not been challenged by Revenue in appeal. In such circumstances, it was gross impropriety on the part of the adjudicating authority, and subordinate to the Tribunal, to allege failings in the remand order - the exclusive privilege of the constitutional courts - and reflects his determined obduracy to stand by the first adjudication order. Furthermore, the order now impugned has not relied upon any evidence to corroborate the statements upon which the first adjudication was based. Neither has there been any attempt at ascertainment of the actual transaction value other than by way of the 'confessional statements' of the noticees purportedly being corroborated by the operator of 'illicit fund transfer' and whose cross-examination, sought for specifically in the de novo proceedings, was peremptorily discarded with the specious contention that the deposition merely supplemented the confession of the noticees. A more blatant case of violation of the principles of natural justice may yet have to surface and is, thereby, clear contravention of a specific direction in the remand order.

12. While we find no reason to disapprove the rejection of request for cross-examination of some investigating officials and of persons whose statements had not been relied upon for initiation of proceedings, the finding of the adjudicating authority that the statement of Shri Brijesh Gala, despite being corroborative of the confessions in the statements of the noticees, was not of such relevance as to warrant cross-examination is unacceptable. More so, in the absence of any other evidence to support the allegation of undervaluation and which has not relied upon the authority of the several methods prescribed in the Rules framed under section 14 of Customs Act, 1962. We, therefore, are constrained to hold that the re determination of assessable value by resort to rule 3 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 is not in accordance with law. The re-assessment, recovery of differential duty and confiscation of 'used cranes' imported by M/s Crown Lifters Pvt Ltd in the impugned order fails.

13. Accordingly, we set aside the order for confiscation of the 'used cranes' imported by both entities under section 111 (m) of Customs Act, 1962 along with the consequential penalties under section 112 of Customs Act, 1962. We also set aside the penalties imposed on the noticees under section 114AA of Customs Act, 1962 as also the recovery of differential duty under section 28 of Customs Act, 1962 from M/s Crown Lifters Pvt Ltd."

9.8 We further find that the appeals filed by the department vide CUAPP/31/ 2023 and CUAPP/37/2023 against Crown Lifters P Ltd., and Crown Lifters, respectively, the Hon'ble High Court of Bombay had assigned the filing number to the appeals on 29.09.2023 by registering the same, and had not given any hearing or given any stay against the order of the Tribunal, as on date. Therefore, we do not find any justifiable ground for taking a decision contrary to the above order passed by the Co-ordinate Bench of the Tribunal on the same set of facts.

10. In view of the above analysis of the statutory provisions vis-à-vis the facts of the case, and our observations and findings on such issues, we are of the opinion that the duty demand confirmed against the appellants-importer and penalties imposed upon them are not sustainable. For the same reason, the penalty imposed Shri Pulkit Choudhary under Section 114A ibid; and on the co-appellants namely S/Shri Sachin Agarwal, Madan Lalwani, Brijesh Gala; M/s M. Dharamdas & Co. are also not sustainable. Therefore, the impugned order confirming the adjudged demands on the appellants is *set aside* and the appeals are allowed with consequential relief to the appellants, if any, as per law.

11. In the result, by setting aside the impugned order dated 31.03.2017, the appeals filed by the appellants are allowed.

(Order pronounced in open court on 13.11.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM