CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70515 of 2021

(Arising out of Orders-In-Appeal No.NOI-CUSTM-000-APP-1366-1370-19-20, dated 31.01.2020passed by Commissioner (Appeals),CGST, Noida)

M/sJai Mata Di Trading .....Appellant
(D-14/236, Sector-8, Rohini, New Delhi-110085)

VERSUS

Commissioner, Customs, Noida....Respondent
(ConcorComplex . P. O. Container Depot,
Gautam Budh Nagar, Greater Noida, Uttar Pradesh 201311)

WITH

1. **Customs Appeal No.70516 of 2021(Jai Mata Di Trading);**
2. **Customs Appeal No.70517 of 2021(Jai Mata Di Trading);**
3. **Customs Appeal No.70518 of 2021 (Jai Mata Di Trading);**
4. **Customs Appeal No.70519 of 2021(Jai Mata Di Trading)**

(Arising out of Orders-In-Appeal No.NOI-CUSTM-000-APP-1366-1370-19-20, dated 31.01.2020passed by Commissioner (Appeals), CGST, Noida)

APPEARANCE:

Shri Sunil Kumar Gupta, Advocate for the Appellant
Mrs. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70175-70179/2026

DATE OF HEARING : 28.04.2026
DATE OF DECISION : 22.05.2026

PER BENCH:

All the above 05 Appeals are taken up together as the issue involved is primarily whether the appeals filed by the Appellants were correctly rejected by the learned Commissioner (Appeals) holding that the Appellants accepted the enhancement

of the value in writing at the time of clearance of the consignment in question.

2. Briefly stated, the facts of the case are that the Appellantsare engaged in the business of import and trading in various types of goods including Polyester Knitted Fabrics of Mix Lot (Rolls of assorted colour and weight) and have been importing the same from Hong Kong/China during the period from May to June 2019 at ICD Dadri against negotiated price. On arrival of goods, the Appellant filed the Bills of Entry for clearance and submitted all the desired documents.

3. Learned Counsel for the Appellants submitted that the Appellants are regular importers of different kind of fabrics and have imported consignments of fabrics from Hong Kong/China during the period May to June 2019 at ICD, Dadri against negotiated price. It has further been contended that the Appellants had self-assessed the duty correctly as per the respective invoices. However, no 'Out of Charge Orders' were passed. The Appellants made written requests to the Proper Officer to clear the consignments provisionally paying duty on the enhanced value under protest in order to avoid delay in clearance of consignments. According to the Appellants, no cognizance was taken by the Proper Officer despite several written requests made for clearance of consignment on enhanced value under protest. Finally, the Appellants were coerced to submit letters of consent agreeing to assessment/valuation by the Customs Authorities. The Appellants further contended that the Customs Authorities without observing the mandate of Section 14 of the Customs Act, 1962, discarded the declared transaction value and enhanced the value on the basis of the consent letter.

4. It was further contended that since the acceptance letters were not voluntary, the Appellants wrote several letters requesting the Ld. Assessing Officer to issue Speaking Order. However, no speaking Order was passed. Hence, the Appellants

filed respective Appeals before the Commissioner (Appeals) against the assessment made in the respective Bills of Entry. The Appellate Authority sought comments from the Department on the Appeals filed by the Appellants wherein the Department contended that the re-assessment has been done under Section 17(4) of the Customs Act, 1962 on the basis of written consent, therefore, no speaking Order was passed. All the Appeals were rejected merely on the ground that since the Appellants have accepted the enhancement of value in writing there was no requirement of issuance of speaking Order under Section 17(5) of the Customs Act, 1962 and therefore, the assessable value determined by the Adjudicating Authority on reassessment of imported goods in the Bills of Entry and accepted by the Appellants in writing was legal and binding on the Appellants.

5. Learned Counsel further submitted that the letter of acceptance which has been reproduced in the Order-in-Appeal does not provide any evidence of contemporaneous import and merely mentions that the declared value is liable to be rejected and redetermined on the basis of the data of contemporaneous import. It is further submitted that merely mentioning that the declared value is liable to be rejected and the same is liable to be assessed at a particular price, does not meet the requirement of Customs Valuations Rules, 2007,[1]as even for applying Rule 5 of CVR, 2007, several parameters like quantity in comparable commercial transactions, GSM, quality, time of placement of Order for import etc. has to be fulfilled.

6. Learned Counsel submits that similar letters of acceptance were submitted by the importers in the case of Hanuman Prasad &ors. and in the Appeals filed by them, the learned Commissioner (Appeals) set aside the enhancement of value merely on the basis of letters of acceptance. The Department filed Appeals against the Orders of the Ld. Commissioner (Appeals) wherein the Tribunal allowed the Appeals holding that once letter of acceptance has been submitted, the importers

[1]CVR, 2007

cannot question the assessment later on. The said importers filed Appeals before the Hon'ble High Court of Delhi titled as Niraj Silk Mills vs. Commissioner of Customs &Ors. - CUSAA 26/2022. The Hon'ble High Court of Delhi after analyzing the provisions of law and judgments allowed the Appeals. The present Appeals are squarely covered by the judgment of the Hon'ble High Court.

7. Further, it was also submitted that the mandate of Rule 12(2) of CVR, 2007 is to intimate the importer in writing the ground of doubting the truth of accuracy of the declared value.

8. Heard both the sides and perused the appeal records.

9. We have examined the impugned Orders-in-Appeal vide which the Appeals filed by the Appellants were rejected holding that the Appellants had accepted the enhancement of value in writing and therefore, there was no question of issuance of Speaking Order under Section 17(5) of the Customs Act, 1962. From the impugned Order-in-Appeal, it is further revealed that the Appellate Authority sought parawise comments from the Department and in response, the Department filed parawise comments and the acceptance letters regarding enhancement of assessable value by the Appellant. However, we find that none of the letters written by the Appellant seeking clearance of the consignments either provisionally or finally on payment of duty on enhanced assessable value under protest have been referred too. We have seen the letters written by the Appellants requesting the clearance of consignments either provisionally or finally on payment of duty on enhanced value under protest which clearly proved that it was not the case of acceptance of enhancement of value simplicitor.

10. We find that the Order of the Commissioner (Appeals) merely proceeded on the ground that the Appellant had accepted the enhancement of value under Section 17(5) of the Customs Act, 1962 and therefore, there was no requirement of issuance of Speaking Order.

11. We further find that the issue as to whether the Department can enhance the value relying on NIDB and on the basis of the acceptance letter and once there is acceptance letters, the importer cannot contest the same also came up for consideration before the Hon'ble High Court of Delhi in the case of Niraj Silk Mills vs. Commissioner of Customs (ICD) Patparganj passed in CUSAA 26/2022 and the Hon'ble High Court vide its judgment dated 27.11.2024 has held that the right to question the correctness of the decision of the proper officer, be it with respect to the formation of opinion or even on merits, is one which is protected by statute. The Hon'ble High Court formulated the question of law as under:-

> *"Whether the Tribunal misdirected itself in holding that the appellants in the above-mentioned matter could not question the enhancement made concerning the valuation of the imported goods, once the appellants had given up their right to seek issuance of a show cause notice and/or speaking Order under Section 17 of the Customs Act, 1962?"*

The Hon'ble High Court vide its judgment held as under:-

> *"83. That then takes us to the concession which the importer could tender and which would require us to identify the subject in respect of which that concession may be made. When we examine this aspect on the anvil of Section 17(5), it becomes apparent that the statute speaks of the concession being with reference to the reassessment made under Section 17(4). It thus proceeds to provide that in a case where the importer confirms his acceptance of the reassessment in writing, the proper officer would stand relieved of the obligation of passing a speaking Order in respect of such reassessment. In all other cases and where the reassessment is not acceded to, the proper officer is obliged to pass a speaking Order. Thus, the waiver or concession is at best confined to the speaking Order which the proper officer is obliged to frame*

in affirmation of the provisional opinion that it may have formed under Section 17(4).

84. We find ourselves unable to construe Rule 12(2) as contemplating any concession or waiver at least in explicit terms. All that Rule 12(2) stipulates is that the proper officer would intimate to the importer the grounds for doubting the declared value at its request. It is in the aforesaid context that we would thus have to adjudge whether the CESTAT was correct in holding that the exchange of communications amounted to a waiver or abandonment not just of the right to question and assail the reassessment but to impugn it in further proceedings in accordance with the procedure prescribed under the Act.

85. In our considered opinion, the perceived concession made in respect of the opinion harboured by the proper officer cannot possibly be interpreted or construed as detracting from or depriving the importer of the right to question the decision of the proper officer in accordance with law. The right to question the correctness of the decision of the proper officer, be it with respect to the formation of opinion or even on merits, is one which is protected by statute. The question, which as a sequitur, arises is whether that right itself can be said to have been abandoned."

12. We find that the Hon'ble High Court of Delhi vide its order dated 27.11.2024 passed in the case of Niraj Silk Mills and Hanuman Prasad & Sons Vs. Commissioner of Customs (ICD) Patparganj – CUSAA 26 of 2022 and CUSAA No. 27 of 2022, wherein the Hon'ble High Court of Delhi, in a bunch of appeals, has considered the identical issue in detail and after considering the various judgments of the Tribunal as well as of the Hon'ble Supreme Court, has decided the issue in favour of the importer/assessee. Here, it is pertinent to reproduce the relevant paras of the judgment of the Hon'ble Delhi High Court passed on 27.11.2024, which are reproduced herein below:-

"58. Before we proceed to analyse Section 17 of the Act and its application to the appeals before us, it would be pertinent to preface the discussion by acknowledging the statutory position as it exists. An entity intending to import goods is firstly required to self-assess the duty which would be leviable. This obliges the importer to comply with the prescriptions set out in Section 46 of the Act. As that provision stands in its present avatar, the importer of any goods is required to electronically present on the customs automated system, the BoE for the consideration of the proper officer. The BoE is to include all particulars required in terms of the provisions made in the Act and corresponding rules. In addition to the presentation of a BoE, the importer is also statutorily obliged to submit a declaration as to the truthfulness of the contents of such BoE and in support thereof produce before the proper officer the invoice and other documents relating to the imported goods as may be prescribed. In terms of sub-section (4A) of Section 46, the importer who presents a BoE is to ensure that the said document is accurate and complete in respect of the information disclosed therein, the authenticity and validity of documents filed in support thereof and the import itself being compliant with any restriction or prohibition imposed in relation to those goods by law. 59. Upon the proper officer being satisfied that the goods entered for home consumption are not prohibited and import duty has been paid, it would pass an order permitting clearance of those goods for home consumption. This flows from a reading of Section 47 of the Act. In terms of Sections 48 and 49, an importer is also entitled to warehouse the imported goods after the same have been unloaded at a customs station or even transshipped within 30 days therefrom. The goods can thereafter remain in the warehouse pending clearance for removal. 60. Undisputedly, a self-assessed BoE which is submitted

by an importer, if accepted and endorsed by the proper officer, would be deemed to have been duly assessed. This clearly flows from the manner in which the word 'assessment' has been defined in Section 2(2) of the Act and is in any case, an issue that is no longer res integra, bearing in mind the decision of the Supreme Court rendered in the matter of ITC Ltd. vs. CCE – (2019) 17 SCC 46.

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71. On an overall consideration of the statutory scheme governing the valuation of imports and reassessment, it becomes clear that the reasonable doubt which is spoken of in Rule 12 is indelibly connected to the aspect of the valuation of imported goods and the identification of the transaction value which is spoken of in Section 14. Section 14 introduces a deeming fiction when it provides that the value of the imported goods "shall be the transaction value" and which is ordained to be the price actually paid or is payable for the goods when sold. The 2007 Rules themselves owe their genesis to the identification of transaction value and which subject is principally regulated by Section 14 of the Act.

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75. The imperative of reasons being recorded in support of the doubt with respect to declared value and the same being communicated to the importer were aspects on which due emphasis was laid by the Supreme Court in Century Metal Recycling as is evident from a reading of para 25 of the report. In fact, the Supreme Court pertinently observed that the aforenoted mandate of Rule 12(2) cannot be "ignored or waived". The statutory

obligations flowing from Rule 12 in this regard were reemphasized by the Supreme Court in that decision when their Lordships observed that the same would constitute the only manner in which the proper officer could proceed to make an assessment under Rules 4 to 9. The interplay between Sections 14 and 17, and the 2007 Rules was lucidly explained by the Supreme Court in Century Metal Recycling and where the Supreme Court was faced with a somewhat similar situation of an appellant who alleged that they had been coerced and intimidated into submitting a letter of consent conceding to the assessment and valuation exercise undertaken by the customs authorities compelled by the delay being caused in the clearance of imported articles and the continued levy of demurrage, warehousing charges and other liabilities. After noticing the language in which Rule 12 stood couched, the Supreme Court in Century Metal Recycling observed that while the expression "reason to doubt" may not be akin to a "reason to believe" or a subjective satisfaction being arrived at, it would clearly have to be reasonable and thus the doubt formed would have to be informed by a degree of objectivity.

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78. The key takeaways from the decision in Century Metal Recycling would thus be the reasonable doubt being based on empirical and legally justifiable factors illustratively spelt out in Rule 12, the mandate to record reasons in support of the formation of that opinion and the mandatory requirement of communicating that material to the importer upon request.

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83. That then takes us to the concession which the importer could tender and which would require us to identify the subject in respect of which that concession may be made. When we examine this aspect on the anvil of Section 17(5), it becomes apparent that the statute speaks of the concession being with reference to the reassessment made under Section 17(4). It thus proceeds to provide that in a case where the importer confirms his acceptance of the reassessment in writing, the proper officer would stand relieved of the obligation of passing a speaking Order in respect of such reassessment. In all other cases and where the reassessment is not acceded to, the proper officer is obliged to pass a speaking Order. Thus, the waiver or concession is at best confined to the speaking Order which the proper officer is obliged to frame in affirmation of the provisional opinion that it may have formed under Section 17(4).

84. We find ourselves unable to construe Rule 12(2) as contemplating any concession or waiver at least in explicit terms. All that Rule 12(2) stipulates is that the proper officer would intimate to the importer the grounds for doubting the declared value at its request. It is in the aforesaid context that we would thus have to adjudge whether the CESTAT was correct in holding that the exchange of communications amounted to a waiver or abandonment not just of the right to question and assail the reassessment but to impugn it in further proceedings in accordance with the procedure prescribed under the Act.

85. In our considered opinion, the perceived concession made in respect of the opinion harbored by the proper officer cannot possibly be interpreted or construed as detracting from or depriving the importer of the right to question the decision of the proper officer in accordance

with law. The right to question the correctness of the decision of the proper officer, be it with respect to the formation of opinion or even on merits, is one which is protected by statute. The question, which as a sequitur, arises is whether that right itself can be said to have been abandoned.

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89. The question of abandonment arose for consideration again before a Constitution Bench of the Supreme Court in Bhau Ram vs. Baij Nath Singh – 1961 SCC OnLine SC 292. The issue itself arose in light of the stand of the respondents that the appellants upon withdrawing the pre-emption price would be deemed to have accepted the decree and thus being deprived of the right to assail or question the same.

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97. By virtue of Section 17(5) of the Act, the proper officer stands relieved of the obligation to pass a speaking order only in cases where the importer confirms his acceptance of the reassessment in writing. However, and as was noted in the preceding parts of this decision, the different Benches of the CESTAT have consistently taken the position that letters of consent of the like submitted by the appellants in this batch cannot be viewed as a complete or abject surrender of the right to assail or question a reassessment. However, the host of past precedents rendered on this aspect have come to be overlooked and ignored by the CESTAT which has merely proceeded to toe the line taken in the Advanced Scan Support and Vikas Spinners. We have already taken note

of the distinguishing features which inform the aforementioned two decisions.

98. Therefore, the proper officer could not be said to have been relieved of its obligation to pass a speaking order in terms of Section 17(5). The process of rejecting the declared value and reassessing the transaction value is statutorily required to be preceded by the proper officer having drawn an opinion of why the declared value was not liable to be accepted before consequently proceeding to reassess the value. While the said reassessment may not be framed in elaborate terms, it would necessarily have to be reflective of the reasons which weighed upon the respondent to form the opinion that the declared value was not liable to be accepted.

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100. Insofar as the aspect of whether the enhancement or reevaluation of the 'declared value' can be based solely on the data available in the NIDB, in Agarwal Foundries, the Hyderabad Bench of the CESTAT had held that the customs authorities would be unjustified in enhancing the declared import values solely on the basis of NIDB data. It emphasized that transaction values cannot be rejected arbitrarily and that the authenticity of importer-issued invoices must be accepted unless discredited on the basis of cogent evidence.

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103. The Chennai Bench of the Tribunal in M/s Gypsie Impex vs. Commissioner of Customs [Final Order No. 40131/2024 dated 5.2.2024] addressed the limitations besetting the usage of NIDB data as the sole basis for redetermining transaction values. It is pertinent to note that Rule 10A of the Customs Valuation (Determination of

Price of Imported Goods) Rules, 1988, as analysed by the CESTAT in this decision, was similar to Rule 12 of the 2007 Rules. The CESTAT ruled in favour of the appellant, holding that NIDB data alone would be insufficient for value reassessment without corroborative evidence or contemporaneous import comparisons. This decision underscored the importance of comprehensive evidence and procedural compliance in customs disputes, cautioning against arbitrary reliance on NIDB data.

104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a value addition based solely on NIDB data would be wholly unwarranted and that any such reassessment would have to be shored up by independent and cogent evidence. The legal position so articulated would ensure fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs valuation and a deviation from declared values being founded on tangible and justiciable material. A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the aforenoted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences.

105. Accordingly, and for all the aforesaid reasons, we would answer the question framed in the affirmative and in favour of the importers. The appeals are consequently allowed and the impugned orders of the CESTAT set

aside. The order of the Commissioner (Appeals) shall in consequence stand restored."

13. In view of our discussion above and by following the ratio of the above judgment of Hon'ble High Court of Delhi passed in the case of Niraj Silk Mills and Hanuman Prasad & Sons (supra) vide its order dated 27.11.2024, the issue involved in the present Appeals is squarely covered by the judgement of the Hon'ble High Court of Delhi and therefore, the impugned Orders-In-Appeal are not sustainable in law. Accordingly, we set aside the same and allow all the 05Appeals with consequential relief, if any, as per law.

(Pronounced in open court on- **22.05.2026**)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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