

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

Customs Appeal Nos. 394 and 395 of 2007

(Arising out of Order-in-Original No. 6740/2007 dated 28.09.2007 passed by Commissioner of Customs,
No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Em Pee Bee International

...Appellant

Represented by its Shri M.P. Babu,
Proprietor, T/D 117, Anna Whole Sale,
Fruit Market, Koyambedu,
Chennai – 600 092.

And

Mr. N.C. Alexander

...Appellant

No. 8, Sreenivasan Street,
Chetpet,
Chennai – 600 031.

Versus

Commissioner of Customs

...Respondent

Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellants : Mr. B. Satish Sundar, Advocate

For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40630-40631 / 2026

DATE OF HEARING : 12.01.2026

DATE OF DECISION : 29.05.2026

Per Mr. VASA SESHAGIRI RAO

These two Customs appeals Nos. C/394/2007
and C/395/2007 arise out of a common Order-in-Original No.

6740/2007 dated 28.09.2007 passed by the Commissioner of Customs, Chennai, whereby the declared transaction value in respect of 37 Bills of Entry filed by M/s. Em Pee Bee International has been rejected, assessable value has been re-determined, differential duty has been demanded, goods have been ordered for confiscation and penalties have been imposed both on the importer and on Shri N.C. Alexander for alleged abetment. The first appeal is by M/s. Em Pee Bee International and its proprietor Shri M.P. Babu, while the second appeal is by Shri N.C. Alexander.

1.2 The facts, in brief, are that the importer had imported apples from USA during the period March 2001 to March 2003 and declared values ranging from USD 10.5 to USD 12 per carton. Investigation conducted by the Directorate of Revenue Intelligence alleged that the importer had undervalued the goods by arranging for two sets of invoices—one reflecting actual higher value and another reflecting lower value for customs purposes. The case of the Department is built upon e-mails, alleged parallel invoices, insurance documents and overseas verification. Based on these materials, the adjudicating authority rejected the transaction value under Section 14 of the Customs Act, 1962 and re-determined the value under the Customs Valuation Rules, 1988, resulting in demand of differential duty of

approximately Rs. 98 lakhs, confiscation of goods valued at approximately Rs. 7.35 crores and imposition of penalties on both appellants.

2. Aggrieved by the Order-in-Original, the appellants have challenged the impugned order on facts and law and filed the present appeals before this Tribunal.

3. The Ld. Advocate Shri B. Satish Sundar appeared on behalf of the Appellant. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram appeared for the Revenue.

4.1 The Ld. Counsel for the Appellant submitted that the entire case of the Department is based on legally inadmissible and uncorroborated evidence and therefore the rejection of transaction value is wholly unsustainable. It is contended that the Department has failed to discharge the burden cast upon it under Section 14 of the Customs Act to establish that the declared value is not the transaction value. The learned counsel submits that all imports were supported by genuine commercial invoices, payments were made through banking channels and there is absolutely no evidence of any extra remittance or flow back of consideration.

4.2 It was further submitted that the reliance placed by the Department on alleged parallel invoices is wholly misconceived, inasmuch as such documents are unsigned computer-generated printouts whose origin and authenticity have not been established in accordance with law. No witness has been examined to prove these documents and no opportunity of cross-examination has been granted, thereby rendering such evidence inadmissible. The overseas verification reports are also challenged as being selective, incomplete and not subjected to cross-examination.

4.3 The Ld. Counsel further submits that the statements relied upon by the Department were retracted at the earliest opportunity on the ground that they were obtained under coercion and therefore cannot be relied upon in the absence of independent corroboration. It was argued that settled law requires that retracted statements must be corroborated by independent evidence, which is completely absent in the present case.

4.4 On limitation, it is contended that the entire demand is barred by limitation inasmuch as there is no suppression or wilful misstatement on the part of the importer. The value was declared in the Bills of Entry and accepted by the Department at the time of import. The

extended period cannot be invoked on mere suspicion or unsubstantiated allegations.

4.5 The Ld. Counsel places strong reliance on the decision of this very Bench in the case of National Fruits Agency, wherein under identical circumstances the Tribunal set aside the enhancement of value and penalties.

4.6 With regard to Shri N.C. Alexander, it is submitted that there is absolutely no evidence to establish abetment. Mere correspondence or association with the importer cannot attract penalty under Section 112(a). The penalty imposed is therefore liable to be set aside.

5.1 The Ld. Authorized Representative Smt. Anandalakshmi Ganeshram appearing for the Revenue reiterated the findings of the adjudicating authority and further submitted that the investigation conducted by the Directorate of Revenue Intelligence has clearly established that the importer had undervalued the goods. It was contended that the evidence gathered during investigation, including e-mails, overseas verification reports and parallel invoices, clearly demonstrates that two sets of invoices were maintained and that the declared value was not the actual transaction value.

5.2 The Ld. Authorized Representative submitted that the existence of parallel invoices stands corroborated by overseas verification and insurance documents indicating higher values. It is argued that such documentary evidence, read together with statements recorded under Section 108 of the Customs Act, clearly establishes undervaluation.

5.3 It was further submitted that the retraction of statements is an afterthought and does not affect the evidentiary value of statements recorded under statutory authority. The statements were voluntary and contain detailed admissions which cannot be ignored.

5.4 On the issue of limitation, the learned Authorized Representative submits that the importer had deliberately suppressed the actual value and therefore the extended period has been rightly invoked. The undervaluation came to light only upon detailed investigation and could not have been detected at the time of import.

5.5 With regard to penalty on Shri N.C. Alexander, it is submitted that he played a key role in coordinating with overseas suppliers and facilitating undervaluation, and therefore penalty under Section 112(a) has been rightly imposed.

5.6 Thus, she therefore has prayed for upholding the impugned order.

6. We have carefully heard the submissions advanced by both sides, examined the appeal records in detail, and considered the statutory provisions and the case laws cited.

7. Upon consideration the following questions arise.

- i. Whether rejection of transaction value under Section 14 of the Customs Act relying upon the documentary evidence gathered including the statements recorded under Section 108, parallel invoices, overseas verification, e-mails and insurance documents, is legally sustainable?
- ii. Whether re-determination of value, demand of differential duty, confiscation of goods and imposition of penalties including penalty on Shri N.C. Alexander are sustainable in law?
- iii. Whether the demand is barred by limitation, i.e., whether invocation of extended period under Section 28 is valid?

8. We now proceed to examine the issues arising for determination in the present appeal, one by one, seriatim.

Issue No.1: whether rejection of transaction value and reliance on documentary evidence is legally sustainable

9.1 The foremost issue for consideration is whether the adjudicating authority was justified in rejecting the declared transaction value under Section 14 of the Customs Act read with the Customs Valuation Rules on the basis of alleged parallel invoices, overseas verification reports, insurance documents, e-mails and statements.

9.2 It is trite law that transaction value is the primary basis of valuation and can be rejected only upon the existence of cogent and legally admissible evidence demonstrating that the declared price is not the price actually paid or payable. The burden to establish such circumstances lies squarely upon the Department.

9.3 In the present case, the rejection of transaction value is founded upon alleged parallel invoices which are admittedly unsigned computer-generated documents. Their origin, authenticity and evidentiary value remain unestablished. No person has been examined to prove these documents and no cross-examination has been afforded to the appellants. Such documents, in the absence of proof, cannot form the basis of adverse findings.

9.4 The overseas verification reports relied upon by the Department could not be treated as valid evidence as these are selective in nature, lack correlation with the specific consignments under dispute and have not been subjected to cross-examination. The denial of cross-examination, despite request, constitutes a violation of principles of natural justice.

9.5 We find that Insurance documents have been relied upon to suggest higher value; however, it is settled law that insurance values cannot be equated with transaction value. Similarly, the e-mails relied upon have not been authenticated and remain uncorroborated.

9.6 We also find that a crucial aspect which goes to the root of the matter is that the Department has failed to establish any financial flowback or additional consideration. There is no evidence of advance payments, no proof of parallel remittances through banking channels and no material indicating any structured money trail either in India or abroad. The allegation of additional payment rests only on statements which were subsequently retracted and remain uncorroborated. In valuation issue, documents indicating higher value are relevant only when duty supported by proof of corresponding payment. The burden cast upon the

Department to displace the declared transaction value has therefore not been discharged.

9.7 A detailed examination of paras 11 to 21 of the Order-in-Original shows that the allegation of undervaluation is sought to be supported through overseas investigation and a theory of cash payments. However, no evidence has been brought on record regarding movement of such cash, or its receipt by the overseas supplier. The alleged cash payment theory is therefore purely speculative.

9.8 Further, no reliable correlation has been established between the alleged higher values and the specific 37 consignments under dispute. In the absence of such linkage, the overseas data remains generic and cannot be applied to the imports in question.

9.9 It is also observed that the material gathered during overseas investigation has not been fully shared with the appellants. The appellants have thus been denied a meaningful opportunity to rebut the same, which amounts to violation of principles of natural justice.

9.10 The Department has placed reliance on statements recorded under Section 108 of the Customs Act;

however, it is not in dispute that such statements were retracted at the earliest opportunity. It is well settled that retracted statements cannot be relied upon unless corroborated by independent evidence, which is absent in the present case. The adjudicating authority has also denied cross-examination of persons whose statements and documents have been relied upon. Since the entire case rests on such material, denial of cross-examination vitiates the evidentiary value of such evidence.

9.11 In valuation matters, suspicion, however strong, cannot take the place of proof. In the absence of evidence of actual payment or financial flowback, the declared transaction value cannot be rejected.

9.12 We find that the issue is squarely covered by the decision of this very Bench in *National Fruits Agency v. Commissioner of Customs (Export), Chennai, 2016 (337) E.L.T. 232 (Tri.-Chennai)*, relied upon by the appellants, wherein on identical facts it was held that enhancement of value based on unsigned parallel invoices, uncorroborated overseas data and retracted statements is unsustainable. It is noted that the Department has filed an appeal against the said decision before the Hon'ble Supreme Court; however, no

stay has been granted. Therefore, the said decision continues to hold the field and is binding on this Bench.

9.13 The Hon'ble Supreme Court in *Union of India v. Kamlakshi Finance Corporation Ltd., 1991 (55) E.L.T. 433 (S.C.)*, has held that decisions of coordinate benches must be followed unless stayed.

9.14 The appellants have also relied upon the following decisions: -

- i. *Truwoods Private Limited v. Commissioner of Customs, 2006 (204) E.L.T. 288 (Tri.-Bang.), affirmed in 2016 (331) E.L.T. 15 (S.C.)*
- ii. *Mihir Enterprises v. Commissioner of Customs, 2008 (227) E.L.T. 75 (Tri.-Mumbai)*
- iii. *Commissioner v. Ganpati Overseas, 2023 (386) E.L.T. 802 (S.C.)*

These decisions consistently hold that transaction value cannot be rejected without proof of additional consideration and that enhancement based on unverified documents or suspicion is impermissible.

9.15 In view of the above, it is evident that the Department has failed to establish undervaluation through legally admissible evidence. The entire case suffers from absence of financial flowback, lack of correlation, reliance on unproven documents and violation of principles of natural justice.

9.16 Accordingly, we hold that the rejection of transaction value is unsustainable.

Issue No. (ii): Whether re-determination of value, demand, confiscation and penalties including penalty on Shri N.C. Alexander are sustainable

10.1 Once the rejection of the declared transaction value under Section 14 of the Customs Act is held to be unsustainable, the very foundation of the re-determination of value under the Customs Valuation Rules collapses. It is well settled that re-determination of value is only a consequential exercise and cannot survive independently when the primary basis for rejecting transaction value fails. In the present case, apart from the infirmities in rejection of transaction value, it is also observed that the adjudicating authority has not adhered to the mandatory sequential application of the Customs Valuation Rules and has not produced any reliable evidence of contemporaneous imports at higher values. Thus, even on this ground, the re-determination of value is legally untenable.

10.2 When the very basis of valuation fails, all consequential proceedings automatically collapse. In the absence of a legally sustainable re-determination of value, the demand of differential duty under Section 28 of the Customs Act cannot be sustained. Similarly, confiscation of

goods under Section 111(m) requires proof of misdeclaration of value, which necessarily presupposes that the declared value is incorrect. In the present case, since the Department has failed to establish undervaluation through admissible evidence, the charge of misdeclaration also fails and consequently the confiscation is unsustainable.

10.3 With regard to penalty on the importer, it is observed that such penalty is entirely consequential in nature and is dependent upon the establishment of undervaluation and suppression of facts. In the absence of proof of undervaluation and in view of the failure of the Department to establish any additional consideration or financial flowback, the imposition of penalty on the importer cannot be justified.

10.4 As regards the penalty imposed on Shri N.C. Alexander under Section 112(a) of the Customs Act, it is observed that the allegation of abetment is not supported by any independent, cogent or corroborative evidence. The entire case against him is based on assumptions and on statements which have been retracted and remain uncorroborated. Mere association, communication or correspondence with the importer does not establish active involvement or knowledge of any alleged undervaluation. In

an identical factual matrix, this Tribunal in *National Fruits Agency v. Commissioner of Customs (Export), Chennai, 2016 (337) E.L.T. 232 (Tri.-Chennai)*, set aside the penalty imposed on the importer/abettors, holding that in the absence of evidence of abetment, penalty is not sustainable. The said decision squarely applies to the present case.

10.5 Further, the Hon'ble Supreme Court in *Hindustan Steel Ltd. v. State of Orissa, 1978 (2) E.L.T. (J159) (S.C.)*, has held that penalty cannot be imposed merely because it is lawful to do so, and that penalty is not to be imposed unless there is deliberate defiance of law or conscious disregard of legal obligations.

10.6 In the present case, there is no material on record to establish any deliberate act, conscious knowledge or *mens rea* on the part of either the importer or Shri N.C. Alexander. The Department has failed to prove any act of commission or omission which would justify imposition of penalty. Accordingly, the penalties imposed on both appellants are liable to be set aside.

Issue No. (iii): Whether the demand is barred by limitation

11.1 The imports in question pertain to the period from March 2001 to March 2003, whereas the demand has

been raised subsequently by the SCN No. VIII/26/65/2004 DRI by invoking the extended period of limitation under the proviso to Section 28 of the Customs Act, 1962 on allegations of suppression of facts and wilful misstatement with intent to evade payment of duty.

11.2 It is well settled that invocation of the extended period is not automatic and requires the Department to establish, through cogent and reliable evidence, that there was deliberate suppression of facts or wilful misstatement with intent to evade duty. Mere allegation, suspicion or inference is not sufficient. The burden to establish such suppression lies entirely on the Department.

11.3 In the present case, as already discussed in detail while dealing with valuation, the Department has failed to establish undervaluation through legally admissible evidence. The entire case is based on unproven parallel invoices, uncorroborated overseas investigation and retracted statements. There is no evidence of any additional payment, financial flowback or extra remittance. In the absence of proof of undervaluation, the allegation of suppression automatically fails.

11.4 It is further observed that the importer had declared the value in the Bills of Entry and the same was

accepted by the Department at the time of assessment. There is no evidence on record to show that the importer withheld any material information or made any deliberate misstatement. When all relevant particulars were disclosed at the time of import, the question of suppression does not arise.

11.5 Further, in *National Fruits Agency v. Commissioner of Customs (Export), Chennai, 2016 (337) E.L.T. 232 (Tri.-Chennai)*, on identical facts, this Tribunal held that in the absence of reliable evidence of undervaluation and suppression, invocation of the extended period is not sustainable. The said decision is directly applicable to the present case.

11.6 When the very foundation of the demand is based on allegations of suppression which have not been established, the invocation of the extended period necessarily fails. Consequently, the demand is liable to be held as time-barred.

11.8 In view of the foregoing, it is held that the invocation of extended period under Section 28 is not justified and the entire demand is liable to be set aside and,

on this ground, also, the impugned demand cannot be sustained.

12. In view of the foregoing detailed findings on all the issues framed for determination, it emerges that the entire case of the Department is founded on assumptions, unverified documents and uncorroborated material. The rejection of transaction value under Section 14 of the Customs Act has been held to be unsustainable in the absence of cogent evidence of additional consideration or financial flowback. The alleged parallel invoices remain unproven, the overseas investigation does not establish any correlation with the imports under dispute, and the theory of cash payments is not supported by any tangible evidence. The statements relied upon by the Department stand retracted and remain uncorroborated, and the denial of cross-examination has resulted in violation of principles of natural justice.

13. Consequently, the re-determination of value, demand of differential duty, confiscation of goods and imposition of penalties, including penalty on Shri N.C. Alexander, are also held to be unsustainable. The Department has failed to establish any deliberate act,

knowledge or mens rea so as to justify imposition of penalties. Further, the invocation of the extended period of limitation under the proviso to Section 28 has also been held to be invalid, as the essential ingredients of suppression of facts or wilful misstatement with intent to evade duty have not been established.

14. In view of the above, the impugned Order-in-Original No. 6740/2007 dated 28.09.2007 is set aside in toto. The appeals filed by M/s. Em Pee Bee International and Shri N.C. Alexander are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 29.05.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

MK

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)