

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

REGIONAL BENCH - COURT No. I

Customs Appeal No. 41684 of 2015

(Arising out of order in Appeal No.27/2015, dated 05.05.2015 passed by Commissioner of Customs & Central Excise (Appeals – 2), No.3, Williams Road, Cantonment, Tiruchirappalli 620 001)

Shri Hari Enterprises

Flat No.7, 47, Rajalakshmi Nagar
1st Main Road, Velachery
Chennai 600 042

.... Appellant

VERSUS

Commissioner of Customs

Custom House,
Tuticorin

...Respondent

APPEARANCE :

Shri B. Satish Sundar, Advocate for the Appellant

Shri N. Satyanarayana, Authorised Representative for the Respondent

CORAM :

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

HON'BLE MR. AJAYAN T.V, MEMBER (JUDICIAL)

FINAL ORDER NO.40624/2026

DATE OF HEARING: 27.01.2026

DATE OF DECISION:27.05.2026

Per Mr. Ajayan T.V.

Shri Hari Enterprises, the appellant herein, is assailing the Order in Appeal No.27/2015, dated 05.05.2015 (the impugned order) whereby the Appellate Authority rejected the appeal preferred by the appellant and upheld the assessment of Bill of Entry No.7868851 dated 31.12.2014.

2. The relevant facts are that the appellant filed a Bill of Entry No.7868851 dated 31.12.2014 for the import of six numbers of used Fuji Printer Processors classifying the same under CTH No.90101000 declaring the value at JPY 640,000. The Department, being of the view that the value declared by the appellant appeared to be very low, enhanced the value of the said goods to JPY 36,00,000 and assessed the Bill of Entry.

Aggrieved by the said assessment order, the appellant filed an appeal before the Commissioner of Central Excise (Appeals – II), Tiruchirappalli. The Appellate Authority found that the appellant had declared the value at JPY 640,000 while showing the residual life of the said machines as at least ten years. It was held that the department has assessed the said imported goods after considering depreciation of 70% as per the customs valuations Rule 2007 and had enhanced the value to JPY 36,00,000. It was also held that the appellant had not put forth any documentary evidences to prove that their declared value is correct. The Appellate Authority accordingly rejected the appeal and upheld the assessment that had been made.

3. Shri B. Satish Sundar, Ld. Advocate appearing for the appellant contended that the Appellate Authority has merely stated that the depreciation at 70% has been given without any basic data or proof to substantiate the finding. It is contended that the Appellate Authority had rendered an incorrect finding that the appellant had not produced any documents to substantiate the declared value. It was contended that the appellant had furnished the invoice, PL, BL and copy of Load Port Chartered Engineer's Certificate and yet the Appellate Authority had passed the impugned order without appreciating the submissions made in the grounds of appeal before the Appellate Authority.
4. Ld. Counsel further argued that the department has disregarded the contemporaneous Certificate and had arbitrarily enhanced the value on the basis of a local Chartered Engineer's Certificate without recourse to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and without citing any valid grounds for rejection of the declared transaction value under Rule 12. It was contended that the appellant had lodged a protest dated 27.01.2015 duly registered by the department, specifically requesting for a speaking order. It was argued that despite the statutory mandate under Section 17 (5) of the Customs Act, 1962, no speaking order was issued and thus the appellant was denied a reasoned order and the opportunity to contest the enhancement at the assessment stage. Ld. Counsel would submit that the Appellate Authority has failed to appreciate the binding nature of the Load Port Chartered Engineer's Certificate, ignored the absence

of comparable imports and also overlooked the violation of natural justice in the department's failure to issue a speaking order. Ld. Counsel contended that the rejection of the declared value was wholly unjustified, the reliance on a local Chartered Engineer's Certificate over a load port certificate issued prior to shipment was misplaced and thus the enhancement of value for the purpose of assessment was contrary to law and settled consequences of valuation. It was therefore prayed that the impugned order be set aside. Ld. Counsel placed reliance on Board's Circular No.4/2008 – Customs dated 12.02.2008 on the subject of valuation practice of second-hand machinery to be adopted by all Customs Houses /Customs Commissionerate. Reliance was also placed on the decisions in ***Eicher Tractors Ltd. Vs.CC, Mumbai, 2000 (122) ELT 321 (SC)***, ***M/s. Tolin Rubbers Pvt. Ltd. Vs. Commissioner of Customs, Cochin 2004 (163) ELT 289 (SC)***, ***M/s. Motor Industries Co. Ltd. Vs. Commissioner of Customs 2009 (244) ELT 4 (SC)***, ***Commissioner of Customs, New Delhi v. Prodelin India (P) Ltd., 2006(202)ELT13(SC)***, ***Commissioner of Central Excise Rohtak Vs. Sai Sales Corporation, 2012 (278) ELT 197 (Tri.-Del.)*** ***Bureau Veritas Vs. CC 2005 (181) ELT 3 SC***, ***Nova Office Systems v CC, Trichy, 2009 (9246) ELT 713 (Tri-Chennai)***, ***Anish Kumar Spinning Mills v CC, Tuticorin, 2004 (172) ELT 394 (Tri-Chennai)*** and ***Victory Press (P) Ltd v CCE, Cochin, 2006 (205) ELT 1125 (Tri-Bang)***.

5. Shri N. Satyanarayana, Ld. Authorised Representative appearing for the Respondent, reiterated the findings in the impugned order.
6. We have heard both sides, perused the materials available on record.
7. The sole issue that arises for consideration is whether the impugned order whereby the rejection of the value of the imported used Fuji Printer Processors as declared by the importer and the consequent redetermination of value, that has been upheld is tenable.
8. We note that as per the provisions of Section 14 of the Customs Act, 1962 which were in force w.e.f. 10-10-2007, for the purpose of Customs Tariff Act, 1975 or any other law for the time being in force,

the value of the imported 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 where the buyer and seller are not related and the price is the sole consideration for sale, subject to such of the conditions as may be specified in the Rules in this behalf.

9. In the instant case the appeal records reflect that the appellant had paid duty under protest and vide their letter dated 27.01.2015 submitted to the Asst.Commissioner, Custom House, Tuticorin, expressed their disagreement with the value enhancement as per the local chartered engineer's certificate contending that the enhancement of value is highly unreasonable. They have further contended that they had obtained the Chartered Engineer Certificate from the country of supply wherein the Chartered Engineer has certified the invoice value as fair and reasonable and furnished all details as required in the Board's Circular No.4/2008-Customs dated 12-02-2008. They had stated in the said letter the reason for paying the duty on the enhanced value to be that the cargo is urgently needed and the demurrage charges are mounting, clearly requesting for a speaking order as per Section 17(5) of Customs Act, 1962 reserving liberty to file appeal against the assessment of the BE. The record of personal hearing dated 28.01.2015 indicating the subject as request for payment of duty under protest, issued by the said Assistant Commissioner has recorded the appellant's contention that the load port CE report is submitted and that they have given their representation. The copy of the appeal preferred before the appellate authority in the appeal records reflect that the import documents such as copy of BE, invoice, packing list, bill of lading, copy of load port chartered engineer's certificate, copy of their letter requesting for speaking order, record of personal hearing dated 28-01-2015, all have been filed. The written submissions filed before the appellate authority is also attached to the Appeal records. The averment that such documents have been filed, nor the contentions raised in the grounds of appeal before this Tribunal, have been controverted by the Revenue either by cross objections or in the submissions in any manner and we find no reason to disbelieve the same. Moreover, we also notice that the Ld. Appellate Authority has

despite recording the appellant's contentions in the impugned order, has not controverted the same. In such circumstances, we deprecate the non-issuance of a speaking order by the Assistant Commissioner despite the appellant's specific request and find it even more appalling that the Appellate Authority has not chosen to controvert the specific contentions.

10. It is not the allegation of the department that the importer and the foreign supplier are related persons and that relationship has influenced the transaction value. There is no allegation that the situations in which the transaction value cannot be accepted, as mentioned in proviso to Rule 3(2) of the Customs Valuation Rules, 2007 are present. There is no evidence that the appellant has surreptitiously remitted to the foreign supplier any amount more than the amount the appellant actually paid as the transaction value declared. There must be some reasonable basis for arriving at the belief that the transaction value is unacceptable, which belief should not only be supported by cogent evidence, but also be clearly communicated by way of a reasoned order. Mere suspicion that the importers are out to take advantage and thereby deprive the exchequer of legitimate revenue would be an approach which is antithetical to nurturing a conducive environment to conduct business.
11. We have perused the Load Port Chartered Engineer's Certificate as well as the Local Chartered Engineer's Certificate annexed to the Appeal. The local CE Certificate states that on inspection of the imported consignment the second hand machines in the import documents were identified and found matching. The machines with accessories are stated to have been found received in a rapidly used condition. The make and the model found on the machines were found matching with the BE, BL & Invoice. Name plates were stated to be available on all the machines and they were found as 'Used & Not Reconditioned'. While these observations are in sync with that of the Load Port CE Certificate, we notice that the local CE Certificate, while also stating that the ex-factory price of the machines could not be ascertained, has merely stated that based on the local market enquires regarding similar second hand machines and having regard to the condition of these machines

the value of these machines are assessed to be JPY36,00,000/-, without more. The CE Certificate has failed to indicate details of the market enquiry conducted or elaborated the rationale for such value arrived at. In fact, the local CE Certificate is silent on whether they had carried out any test as to the operational condition of these machines and only states about the machines being visually checked, in contradistinction to the load port CE certificate which has stated the assessment/technical details of the models and stated the machines to be in working condition. Thus, in the absence of any reference to any technical manual or additional information based on which value of the machines have been reassessed by the local chartered Engineer, we find no justifiable reason emanating that would warrant the load port CE certificate to be discarded.

12. In the light of the above, we are of the view that Customs authorities have merely transposed the local CE Certificate for that of the load CE Certificate which tantamount to mere substitution of the opinion of one expert for that of another, without any sufficient independent basis for its adoption. It is also pertinent that the customs authorities have not impugned the load port certificate as not genuine or as one obtained by fraud. We are therefore of the considered opinion that such rejection of the load port CE Certificate in favour of the one issued by the local CE Certificate cannot sustain and the consequent rejection of transaction value and enhancement of the same as carried out in the assessment of the Bill of entry No. 7868851 dated 31.12.2014 is untenable and is liable to be set aside.
13. We notice that such rejection of load port CE certificate in favour of the local CE certificate has been held to be untenable given that the load port CE Certificate has not been impugned for its genuineness or as fraudulently obtained in the decision of this Tribunal in ***Mech and Tech v Commissioner of Customs, Tuticorin, 2009 (247) ELT 305 (Tri-Chennai)***. It is also seen that in the Circular No.4/2008-Cus dated 12-2-2008 prevailing for the relevant period, the Board, in para 8(c) while enumerating the guidelines in respect of valuation of second hand machinery has stipulated that in the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted,

thereby indicating the primacy of the Load Port Certificate. The reliance placed by the appellant on the decisions cited, including ***Nova Office Systems v CC, Trichy, 2009 (9246) ELT 713 (Tri-Chennai)***, ***Anish Kumar Spinning Mills v CC, Tuticorin, 2004 (172) ELT 394 (Tri-Chennai)*** and ***Victory Press (P) Ltd v CCE, Cochin, 2006 (205) ELT 1125 (Tri-Bang)***, are found to be apposite.

14. Resultantly, we hold that the declaration, by the appellant, of the value of the imported second-hand machinery premised on the load port certificate is liable to be accepted for all purposes. The declared value (transaction value) is liable to be accepted in terms of Section 14 of the Customs Act for assessment of the goods for duty of Customs, there being no misdeclaration on the part of the appellants. Accordingly, the impugned order in appeal cannot sustain and is hence set aside.

The appeal is allowed with consequential relief(s) in law, if any.

(Order pronounced in open court on 27.05.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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