CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT No. I

Customs Appeal Nos. 41090 to 41092 of 2019

(Arising out of Order-in-Appeal C.Cus.II Nos. 34-36/2019 dated 31.01.2019 passed by the Commissioner of Customs (Appeals-II), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Sabari Infra Private Limited **...Appellant**
No. 5, Gee Gee Emarald Building,
18/31, Valluvar Kottam Road,
Nungambakkam,
Chennai – 600 034.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Rajaji Salai,
Custom House,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. N. Viswanathan, Advocate
For the Respondent : Ms. Rajini Menon, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40697-40699 / 2026

DATE OF HEARING : 27.01.2026
DATE OF DECISION : 02.06.2026

Per Mr. VASA SESHAGIRI RAO

The present batch of 3 appeals is filed by M/s. Sabari Infra Pvt. Ltd. (hereinafter referred to as the "Appellant") against the Orders-in-Appeal Nos. 34 to 36/2019 dated 31.01.2019 (hereinafter referred to as the "impugned orders"), whereby the appeals filed by the appellant against the respective Orders-in-Original relating to import of used garments were rejected, upholding the enhancement of assessable value, confiscation of goods and imposition of redemption fine and penalties.

1.2 The facts briefly stated are that the appellant is engaged in the import and trading of used clothing. During the period from July 2017 to May 2018, the appellant filed several Bills of Entry at Chennai declaring the goods as "old and worn unmutilated clothing fumigated" under CTH 6309 0000 and declared the transaction value based on supplier invoices. On examination, the goods were found to be mixed used garments. The adjudicating authority rejected the declared value under Rule 12 of the Customs Valuation Rules, 2007 and re-determined the value under Rule 5 based on alleged contemporaneous imports. The goods were also held to be restricted under the Foreign Trade Policy for want of a DGFT licence and were confiscated under Sections 111(d) and 111(m) of the Customs Act, 1962, with an option for redemption under Section 125. Penalties were imposed under Section 112(a). The Commissioner (Appeals), by the impugned orders, upheld these findings.

2. Being aggrieved by the impugned appellate orders, the appellant has filed the present appeals before

this Tribunal. Since all the appeals arise out of a common set of facts and involve identical issues relating to valuation of imported used clothing, they are taken up together and disposed of by this common order. The details of the appeals are tabulated below: -

Name of Importer / Appellant	Appeal Numbers	No. of Appeals	Order-in-Appeal No. & Date (Impugned Orders)
M/s Sabari Infra Pvt. Ltd.	C/41090/2019, C/41091/2019, C/41092/2019	3	OIA No34 to 36/2018 dated 31.01.2019

3. The Ld. Advocate Shri Viswanathan appeared on behalf of the Appellant and advanced detailed submissions in support of the Appeal and the Ld. Authorized Representative Ms. Rajini Menon appeared for the Revenue.

4. The Ld. Advocate Shri Viswanathan for the Appellants, made detailed submissions which are summarized as follows: -

4.1 The Ld. counsel submitted that the enhancement of value is arbitrary and contrary to the Customs Valuation Rules. It was contended that the declared transaction value was duly supported by invoices and import documents, and no evidence has been brought on record to show that the value was incorrect or that any additional consideration had flowed from the importer to the supplier. It was argued that rejection of transaction value under Rule 12 requires valid grounds supported by cogent evidence, which is absent in the present case. The reliance on alleged contemporaneous imports without producing supporting documents or establishing comparability in terms of quality, quantity and commercial level was also challenged.

4.2 It was further submitted that the goods consisted of mixed lots of used clothing varying in quality, condition and usability, and therefore cannot be compared with other consignments for valuation purposes. The adoption of a uniform value per kilogram without examining the characteristics of each consignment was argued to be contrary to the valuation rules. The learned counsel also contended that the adjudicating authority failed to follow the mandatory sequential application of valuation methods and mechanically invoked Rule 5.

4.3 On confiscation and penalties, it was submitted that there was no misdeclaration as the goods were correctly declared as used clothing and the examination reports support the same. Even if treated as restricted, confiscation and penalties are not automatic and the redemption fine imposed is excessive and disproportionate.

5. The Ld. Authorized Representative appearing for the department supported the findings of the adjudicating authority and the Commissioner (Appeals). It was submitted that the goods imported by the appellants are restricted items under the Foreign Trade Policy and therefore their import without a valid licence renders them liable for confiscation under the provisions of the Customs Act. The departmental representative further argued that the declared value of the goods was unreasonably low and did not reflect the prevailing market value of similar goods. According to the department, the enhancement of value was based on contemporaneous import data available with the department and was therefore justified. The learned Authorised Representative also contended that the redemption fine and penalty imposed in the present case are reasonable and necessary in order to discourage import of restricted goods in violation of policy restrictions.

6. Upon consideration of the rival submissions made by the appellants and the Revenue and on perusal of the records of the case, the following questions arise for determination in these appeals: -

i. Whether the rejection of the declared transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the consequential re-determination of value under Rule 5 of the said Rules are legally sustainable.

ii. Whether the confiscation of the imported goods under Sections 111(d) and 111(m) of the Customs Act, 1962 is legally sustainable

iii. Whether the redemption fine imposed under Section 125 and the penalties imposed under Section 112 of the Customs Act are sustainable and proportionate.

7. We now proceed to examine the above issues separately.

ISSUE No. (i): Whether rejection of the declared transaction value and enhancement of value under the Customs Valuation Rules is sustainable

8.1 The Department has contended that the importers had accepted the enhancement of value at the time of clearance of the goods and, having done so, are precluded from challenging the same in appeal. It is argued that once the importer agrees to the enhanced value and clears the goods on that basis, the correctness of such value cannot be subsequently disputed.

8.2 The Ld. counsel for the appellants, however, submitted that the transaction value declared in the Bills of Entry represents the actual price paid to the overseas suppliers and that the Department has not produced any evidence to establish that the declared value is incorrect or that it does not reflect the true transaction value. It was further contended that the alleged acceptance of enhanced value was not voluntary but was made under compulsion to secure release of goods and to avoid demurrage and detention charges.

8.3 In this context, reliance has been placed by the Appellant on the judgment of the Hon'ble Supreme Court in *Laxmi Colour Labs vs. Collector of Customs [1997 (90) ELT A183 (SC)],* wherein it has been held that there is no estoppel in taxation matters and that acceptance of enhanced value or compliance with departmental directions at the time of clearance does not preclude the importer from subsequently challenging the same. Therefore, the Department's contention that the appellants are barred from disputing the enhancement is legally untenable and cannot be sustained.

8.4 The appellants placed reliance upon the decision of the Tribunal in *Crystal Dot Scan Pvt. Ltd. v. Commissioner of Customs – 2011 (263) E.L.T. 401 (Tri.-Bang.),* wherein the Tribunal reiterated that transaction value cannot be rejected merely because the declared price appears lower than prices of other imports. The Tribunal observed: -

Transaction value cannot be rejected merely because the declared price appears low in comparison with other imports. Unless reliable evidence is produced to establish that the declared price is not genuine, the transaction value must be accepted.

8.5 The nature of the goods involved in the present case has also been addressed in the decision of the Tribunal in *Prayas Woollens Pvt. Ltd. v. Commissioner of Customs – 2016 (332) E.L.T. 376 (Tri.-Mumbai),* which was also relied upon by the appellants. The Tribunal observed that where goods consist of mixed consignments of second-hand garments or rags, the valuation cannot be based on generalized assumptions. The Tribunal held in Para 5 & 6 of the Order that: -

> *"5. We have carefully considered the submission made by both the sides. We find that though in the adjudication order the authority has relied upon the price of contemporaneous goods, but no any evidence in support of contemporaneous import was adduced. The goods imported by the appellant is rags which admittedly a residual product. The residual product cannot be of standard quality. As regards its characteristics, quality, size, shape, colour etc. it various from consignment to consignment.*
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> *6. Since no evidence was produced by the Revenue, enhancement of the price of the impugned goods appears to be without any basis. It is a trite law that for applying the price of contemporaneous goods, it is necessary to ascertain that the goods is of same character, quality, quantity, country of origin etc. and without ascertaining the same, the adoption of price of contemporaneous goods*

> *cannot be treated as price of contemporaneous goods. Due to the said deficiency in the whole proceeding, we are of the considered view that there is no sufficient basis for revenue to enhance the value of imported goods. We, therefore, modify the impugned order and allow the appeal."*

8.6 The appellants further relied upon the decision in *BIL Power Ltd. v. Commissioner of Customs – 2017 (357) E.L.T. 956 (Tri.-Kolkata),* wherein the Tribunal in Para 4.2 of the order held: -

> *"…………..Other factors like nature of contract with the seller, quantum of goods imported etc. are also relevant while applying DOV data to establish contemporariness of imports. There is no iota of evidence that appellant has repatriated any excess money to the foreign supplier over and above the invoice value. Under the existing factual matrix it cannot be held that relied upon documents of imports were of contemporary nature. Accordingly, enhancement of assessable value ordered by the Adjudicating authority is not sustainable and needs to be set aside."*

8.7 Applying the principles laid down in the above decisions to the facts of the present case, we find that the adjudicating authority has rejected the declared value primarily on the ground that it appeared lower than certain other imports. However, we find that that the impugned orders do not contain any detailed comparison demonstrating that the goods relied upon for valuation were identical or similar in terms of quality, condition or commercial level. Nor has the department produced any evidence to show that additional consideration has flowed from the importers to the suppliers.

8.8 It is also relevant to note that the goods imported by the appellants consist of mixed consignments of used garments which inherently vary in quality, condition and composition. In such circumstances, the adoption of a uniform benchmark value without establishing comparability is contrary to the scheme of the valuation rules.

8.9 In the absence of reliable evidence demonstrating that the declared value is incorrect, the rejection of the transaction value cannot be sustained. Consequently, the enhancement of value carried out in the impugned orders is liable to be set aside, and we accordingly set aside the same.

ISSUE No. (ii): Whether confiscation of the imported goods is justified

9.1 The next issue concerns the confiscation of the imported goods under Sections 111(d) and 111(m) of the Customs Act, 1962. The adjudicating authority has held that the goods imported are second-hand garments, the import of which is restricted under the Foreign Trade Policy unless supported by a valid licence issued by the Director General of Foreign Trade. The appellants have not disputed that the goods are second-hand garments; however, they have contended that the goods were correctly declared in the Bills of Entry and that there was no deliberate attempt to violate the import policy.

9.2 The appellants have also relied upon CBEC Circular No. 22/2010-Cus dated 26.07.2010, which prescribes procedural requirements such as fumigation and compliance with health and safety regulations for import of worn clothing. While the said circular governs procedural compliance, it does not override the substantive requirement under the Foreign Trade Policy that import of second-hand goods, other than capital goods, is restricted and requires a valid licence. In the present case, it is an admitted position that no such licence was produced by the appellants.

9.3 In these circumstances, the import of the goods without the requisite authorisation constitutes a violation of the import policy and renders the goods liable to confiscation under Section 111(d) of the Customs Act. However, in the absence of any evidence of misdeclaration with respect to description, quantity or value, confiscation under Section 111(m) is not sustainable. Accordingly, while the enhancement of value is set aside, the confiscation is upheld only under Section 111(d) of the Act.

ISSUE No. (iii): Whether redemption fine and penalties are proportionate

10.1 The final issue concerns the redemption fine imposed under Section 125 and the penalties imposed under Section 112 of the Customs Act. In the present case the goods consist of used garments imported in mixed lots intended for resale in low-value markets. Further, the goods were declared as used garments and there is no evidence of deliberate misdeclaration, suppression of facts or fraudulent intent on the part of the appellants as seen from the Examination report recorded in the Para 4 of the relevant Orders in Original.

10.2 The appellants relied upon the decision of the Tribunal in Dharshan Singh & Company v. Commissioner of Customs – 2015 (316) E.L.T. 279 (Tri.-Del.), wherein it was held: -

Redemption fine should correspond broadly to the margin of profit available to the importer and should not be fixed arbitrarily without evidence.

10.3 Similarly, reliance was placed on *Commissioner of Customs v. K. M. Cherian – 2014 (312) E.L.T. 663 (Tri.-Chennai)* where the Tribunal observed that redemption fine must be reasonable and proportionate to the circumstances of the case.

10.4 We have carefully considered the submissions made by both sides and perused the records. While the import of second-hand garments without the requisite licence renders the goods liable for confiscation under Section 111(d) of the Customs Act, the absence of any deliberate misdeclaration or intent to evade duty is a significant mitigating factor. It is also noted from the Grounds of Appeal that the imported goods consist of low-value used clothing intended for resale in economically weaker segments, particularly in markets such as the North-Eastern region, where such goods cater to the needs of underprivileged sections of society. This aspect weighs with us while arriving at a just and equitable determination of the quantum of redemption fine. Further, we find that the appeal records do not indicate that any market survey or study was conducted in the presence of the importer to ascertain the prevailing market value of the goods or ascertain the margin of profit available in such trade.

10.5 We also find that the nature of the trade in used clothing, being highly heterogeneous and catering to price-sensitive segments, inherently involves limited and uncertain profit margins. The socially sensitive end-use of such goods, coupled with the absence of any reliable market study or evidence of higher realizable value, cannot be ignored while determining the quantum of fine. It is well settled that redemption fine should bear a reasonable nexus to the margin of profit and should not assume a punitive character. In the absence of any evidence indicating substantial profit or undervaluation, fixation of redemption fine at a higher percentage is not justified. Accordingly, we hold that redemption fine at 10% of the declared Invoice value would be fair, reasonable and proportionate to the facts and circumstances of the case.

10.6 As regards penalty under Section 112 of the Customs Act, though there is no evidence of mens rea or deliberate violation, the import of restricted goods without a valid licence constitutes a contravention of statutory provisions. Such non-compliance cannot be ignored and warrants imposition of penalty, albeit at a moderate level. Taking into account the overall facts and circumstances, including the nature of goods, the absence of any fraudulent intent, and the considerations discussed above, we are of the view that penalty at 5% of the declared value would be appropriate, as it would serve as a measured deterrent against improper import without authorisation while avoiding imposition of excessive or harsh penalties. Ordered accordingly.

11. In view of the foregoing, we hold that the rejection of the declared transaction value and the consequent enhancement are unsustainable and are accordingly set aside, with the declared value ordered to be accepted. However, as the imported goods are admittedly second-hand garments falling under the restricted category and no DGFT licence has been produced, confiscation under Section 111(d) of the Customs Act, 1962 is upheld, while confiscation under Section 111(m) is set aside. Taking into account the nature of the goods, limited profit margins and absence of *mens rea*, the redemption fine is reduced to 10% of the declared value and the penalties imposed is upheld at 5% of the declared value. The impugned Orders-in-Appeal are modified accordingly and the appeals are partly allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 02.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

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

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