IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75521 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR.COMMISSIONER/PORT/ ADJN/15/2026 dated 13.02.2026 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Surabhi Enterprises Private Limited **: Appellant**
4/1, Camac Street, Ground Floor,
Kolkata – 700 016 (West Bengal)

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

AND

Customs Appeal No. 75520 of 2026

(Arising out of Order-in-Original No. KOL/CUS/PR.COMMISSIONER/PORT/ ADJN/15/2026 dated 13.02.2026 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

Shri Nand Kishore Chauhan, Director, **: Appellant**
M/s. Surabhi Enterprises Private Limited
4/1, Camac Street, Ground Floor,
Kolkata – 700 016 (West Bengal)

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001 (West Bengal)

APPEARANCE:

Shri Indranil Banerjee, Advocate, for the Appellant(s)

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76017-76018 / 2026

DATE OF HEARING: 15.07.2026

DATE OF DECISION: 05.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeals have been filed by M/s. Surabhi Enterprises Pvt. Ltd. [hereinafter referred to as the 'appellant-company'] and its Director, Shri Nand Kishore Chauhan, assailing the de novo Order-in-Original No. KOL/CUS/ PR.COMMISSIONER/PORT/ADJN/15/2026 dated 13.02.2026 passed by the Principal Commissioner of Customs (Port), Kolkata, whereby the declared transaction value in respect of fifty-two Bills of Entry covering imports of Slack Wax during the period from April, 2008 to December, 2011 was rejected, differential customs duty amounting to Rs.2,71,92,265/- was confirmed under Section 28(8) of the Customs Act, 1962 together with applicable interest under Sections 28AB/28AA, an equivalent penalty was imposed upon the appellant-company under Section 114A of the Customs Act, the imported goods were held liable to confiscation under Section 111(m) with an option to redeem the same on payment of redemption fine of Rs.2,15,14,396/- under Section 125, and a separate penalty of Rs.20,00,000/- was imposed upon Shri Nand Kishore Chauhan. The impugned order has been passed pursuant to the remand ordered by this Tribunal vide Final Order No. 75245/2025 dated 28.01.2025.

2. The dispute traces its origin to imports of Slack Wax of Iran/UAE and Indonesian origin effected by the appellant-company through fifty-two Bills of Entry filed at Kolkata and Haldia Ports during the period April, 2008 to December, 2011. Slack Wax is a petroleum-based semi-solid mixture of paraffin wax and mineral oil, generated as a by-product during the refining of lubricating oil and widely used as the basic

raw material for manufacture of various grades of paraffin wax after de-oiling and bleaching. It is extensively utilized in the manufacture of candles, polishes, waterproofing compounds, adhesives and allied industrial products. During the relevant period, the appellant herein imported such consignments primarily from overseas suppliers including M/s. Uniexcel Ltd. and M/s. Grand Dignity Industrial Co. Ltd., Taiwan, through Kolkata and Haldia Ports, during which the declared transaction values of imported Slack Wax of Iran/UAE and Indonesian origins, as noticed by the Revenue, were usually in the range of about USD 400 to USD 500 per Metric Tonne.

3. The genesis of the dispute lies in investigations initiated by the Directorate of Revenue Intelligence into the alleged under-valuation of imports of Slack Wax and Residue Wax of Iran/UAE and Indonesian origin by several importers across the country, on the basis of suspicion that the declared prices of such goods by various importers across the country during the period 2008 to 2012 did not represent the true transaction value. The investigation, admittedly commodity-specific and not importer-specific, was not confined to the appellant alone but formed part of a wider investigation covering several importers. The investigation so undertaken inter alia comprised the following: -

(a) <u>Investigation in respect of other importers</u>: Investigation was undertaken in respect of several other importers dealing in Slack Wax, including M/s. Abhisek India, Sivakasi, M/s. Kavya International, New Delhi, and certain Kolkata-based importers. Searches were conducted at the premises of such entities, during which, according to the Revenue, various incriminating documents and electronic records were recovered. In the case of M/s. Abhisek India, inter alia, a computer CPU was seized and examined, whereupon certain e-mail correspondences, proforma invoices, account statements and other documents were recovered, which allegedly indicated discrepancies between the values declared in the Bills of Entry and the corresponding commercial documents. Statements of persons connected with the said concern were also recorded and relied upon by the Revenue to allege that the actual consideration paid to overseas suppliers exceeded the values declared before Customs and that records had been manipulated to suppress the true import value. The Revenue further compared the prices reflected in the seized documents with those declared by other importers and treated the same as indicative of a larger pattern of under-valuation in imports of Slack Wax.

(b) Analysis of Petrosilicon price data: The Revenue further placed reliance upon month-wise international price data published by M/s. Petrosil Group, Mumbai, to contend that the transaction values declared by several importers, including the appellant, were substantially lower than the prevailing international prices. According to the Revenue, the values declared by the appellant were comparable to those declared by other importers sourcing identical goods from suppliers based in Iran, the UAE and Taiwan. On the basis of such comparative price analysis, it was alleged that the declared transaction values did not represent the true transaction value and were, therefore, liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, with consequential re-determination of assessable value.

4. In the course of such investigation, simultaneous searches were conducted on 02.02.2012 at the premises of several importers, Customs House Agents and other entities, including the office premises of the appellant-company situated at 4/1, Camac Street, Kolkata. Certain documents and records were resumed under Panchnama. Statement of Shri Surojit Bhattacharjee, Accountant of the appellant-company, was recorded under Section 108 of the Customs Act on the same day, wherein he, inter alia, stated that Shri Nand Kishore Chauhan and Smt. Radha Chauhan were the Directors of the company, that Shri Nand Kishore Chauhan was looking after the affairs of the company, that the company had imported Slack Wax of UAE origin from M/s. Grand Dignity Industrial Co. Ltd., Taipei, Taiwan, and that no imports of Residue Wax had been undertaken by the appellant since he had joined the company in February, 2008. Subsequently, statements of Shri Nand Kishore Chauhan were also recorded on 15.02.2012 and 22.03.2013. According to the Revenue, Shri Chauhan admitted that although the shipments originated from Iran and UAE, invoices were issued by Taiwan-based entities, one of which was stated to have ownership interest of his elder brother. The investigating agency entertained the view that routing of invoices through Taiwan had been adopted to facilitate undervaluation while the actual

commercial arrangement remained similar to those allegedly adopted by other importers.

5. Based on the materials and comparative price analysis, the Revenue formed a prima facie opinion that several importers, including the present appellant, had systematically understated the transaction value of imported Slack Wax and that the values declared by the appellant closely corresponded with those declared by other importers who were allegedly involved in undervaluation. Consequently, beginning from 17.02.2012, pending completion of investigation and receipt of test reports, imports of Slack Wax and Residue Wax were provisionally assessed under Section 18(1) of the Customs Act at values estimated by the Department, which were higher than the invoice values declared by the importers, including the appellant. The details of these 52 Bills of Entry are provided below: -

Sl. No.	**Bill of Entry No.**	**Bill of Entry Date**	**Goods**
1	401776	02.04.2008	Slack Wax
2	404326	16.04.2008	Slack Wax
3	405815	25.04.2008	Slack Wax
4	407556	06.04.2008	Slack Wax
5	410297	21.05.2008	Slack Wax
6	411483	27.05.2008	Slack Wax
7	416700	25.06.2008	Slack Wax
8	419288	09.07.2008	Slack Wax
9	420374	15.07.2008	Slack Wax
10	426577	19.08.2008	Slack Wax
11	429752	03.09.2008	Slack Wax
12	431727	15.09.2008	Slack Wax
13	433878	25.09.2008	Slack Wax
14	434401	29.09.2008	Slack Wax
15	435142	01.10.2008	Slack Wax
16	441543	12.11.2008	Slack Wax
17	466680	23.04.2009	Slack Wax

18	467053	24.04.2009	Slack Wax
19	468435	01.05.2009	Slack Wax
20	472560	25.05.2009	Slack Wax
21	475453	10.06.2009	Slack Wax
22	477460	19.06.2009	Slack Wax
23	479240	19.06.2009	Slack Wax
24	480419	06.07.2009	Slack Wax
25	484436	27.07.2009	Slack Wax
26	550526	10.07.2010	Slack Wax
27	522164	08.02.2010	Slack Wax
28	528727	16.03.2010	Slack Wax
29	539352	14.08.2010	Slack Wax
30	545033	10.06.2010	Slack Wax
31	545032	10.06.2010	Slack Wax
32	548926	01.07.2010	Slack Wax
33	553901	26.07.2010	Slack Wax
34	556283	05.08.2010	Slack Wax
35	566725	24.09.2010	Slack Wax
36	569521	07.10.2010	Slack Wax
37	570471	11.10.2010	Slack Wax
38	4781765	28.09.2011	Slack Wax
39	5604206	29.12.2011	Slack Wax
40	464660	13.04.2009	Slack Wax
41	469921	11.05.2009	Slack Wax
42	475712	12.06.2009	Slack Wax
43	482080	14.07.2009	Slack Wax
44	555591	02.08.2010	Slack Wax
45	556566	06.08.2010	Slack Wax
46	406488	29.04.2008	Slack Wax
47	406489	29.04.2008	Slack Wax
48	419171	08.07.2008	Slack Wax
49	427815	26.08.2008	Slack Wax
50	427981	26.08.2008	Slack Wax
51	465369	16.04.2009	Slack Wax
52	422132	24.07.2008	Slack Wax

6. Following the investigation, a Show Cause Notice dated 27.06.2013 came to be issued to the appellants proposing rejection of the declared transaction values under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, re-determination of assessable value, recovery of differential duty together with interest, confiscation of the goods in question and imposition of penalties under the provisions of the Customs Act, 1962.

6.1. During the said period, similar Show Cause Notices were also issued against other importers, including M/s. Shri Hari Wax-O-Chem Pvt. Ltd., M/s. Deep Jyoti Wax Traders, M/s. Chowdhary Udyog and other connected parties, which came to be challenged before the Hon'ble Calcutta High Court in W.P. Nos. 224, 226 and 229 of 2014. The Hon’ble Single Bench of the High Court of Calcutta vide Order dated 12.08.2014 directed the appropriate authorities of Customs to adjudicate upon the relevant Show Cause cum Demand Notices, subsequent to which the assessments in the cases of the above importers were finalized by the concerned Proper Officer(s) of Customs at Haldia/Kolkata. An appeal along with Stay Petition was filed [A.P.O. No. 352 of 2014 / G.A. No. 2998 of 2014] before the Hon’ble Division Bench of the High Court at Calcutta, by M/s. Deep Jyoti Wax Traders Pvt. Ltd., one of such importers, against the above Order of the Hon’ble Single Bench of the High Court dated 12.08.2014, Thereafter, an Order dated 10.11.2014 was passed by the Hon'ble Division Bench in the case of M/s. Deep Jyoti Wax Traders Pvt. Ltd., setting aside the Show Cause Demand Notice, holding that fresh Show Cause Notices could only be issued after finalisation of provisional assessment.

6.2. In view of the above Order of the Hon'ble Division Bench of the High Court at Calcutta dated 10.11.2014, the Commissioner of Customs (Port), Kolkata, vide Order-in-Original dated 13.01.2017, set aside the Show Cause Notice dated 27.06.2013 in the appellant's case and directed the jurisdictional assessing groups to first finalise the provisional assessments in respect of the 52 Bills of Entry relevant herein, while granting liberty to initiate fresh proceedings by way of Show Cause Notices after finalization of the assessments thereof in accordance with law.

7. Pursuant thereto, the provisional assessments in the instant case pertaining to 52 Bills of Entry were finalised by five separate Final Assessment Orders dated 23.03.2017, 17.05.2017, 10.01.2018, 20.02.2018 and 04.07.2018 by adopting the enhanced values determined by the Department during provisional assessment.

<u>Proceedings arising out of Final Assessment</u>

8. The aforesaid Final Assessment Orders were challenged by the appellant before the Commissioner of Customs (Appeals), Kolkata. Vide Order-in-Appeal Nos. KOL/CUS/PORT/95 & 96/2019 dated 28.08.2019, the Commissioner (Appeals) set aside the enhancement of value and directed reassessment of all the 52 Bills of Entry by accepting the transaction values originally declared by the appellants.

8.1. The Revenue did not prefer any appeal against Order-in-Appeal No. KOL/CUS/PORT/95/2019 dated 28.08.2019 since the disputed duty involved therein was below the then prevailing monetary limit of Rs.10,00,000/- prescribed for filing appeals before the

Tribunal as per the National Litigation Policy in force. KOL/CUS/PORT/96/2019 dated 28.08.2019 was challenged before this Tribunal, the said departmental appeal subsequently came to be dismissed vide Final Order No.75301/2026 dated 26.02.2026 in view of the revised litigation policy enhancing the monetary threshold to Rs.50,00,000/-.

8.2. Consequently, both the Orders-in-Appeal dated 28.08.2019 attained finality in favour of the appellant.

Present Proceedings culminating in the De Novo Order

9. Meanwhile, in accordance with the liberty granted under the Order-in-Original dated 13.01.2017, the Department issued a fresh Show Cause Notice dated 20.03.2018, read with Addendum-cum-Corrigendum dated 14.08.2018, substantially reiterating the allegations contained in the earlier notice and proposing recovery of differential duty, interest, confiscation and penalties.

9.1. The said Show Cause Notice dated 20.03.2018 was adjudicated vide Order-in-Original dated 16.07.2019, read with Corrigendum dated 27.08.2019, whereby the declared assessable value for the goods imported by M/s. Surabhi Enterprises Pvt. Ltd. vide impugned 52 Bills of Entry amounting to Rs.11,72,59,851/- was rejected under Rule 12 of the Customs Valuation Rules, 2007 and re-determined at Rs.21,51,43,958/- under Rule 9 of the said Rules, differential duty demand of Rs.2,71,92,265/- was confirmed, along with interest, imported goods were held liable to confiscation under Section 111(m) of the Act, a penalty equivalent to the differential duty demand above was imposed under Section 114A of the Act upon M/s. Surabhi Enterprises Pvt. Ltd. and a separate penalty of Rs.20,00,000/- under Section 114AA ibid. was imposed upon Shri Nand Kishore Chauhan.

9.2. Aggrieved by the non-imposition of penalty upon the appellant-company under Section 114AA of the Customs Act, the Revenue preferred an appeal before this Tribunal, while the appellant herein had filed Cross Objections thereto. Vide Final Order No.75245/2025 dated 28.01.2025, this Tribunal set aside the adjudication order and remanded the matter for de novo adjudication after supplying the relied upon documents, affording adequate opportunity of hearing and adhering to the principles of judicial discipline.

9.3. The above CESTAT order directing remand was accepted by the Department on 14.05.2025.

10. In terms of the Final Order No. 75245/2025 dated 28.01.2015 passed by the Tribunal, the matter was taken up for adjudication by the Principal Commissioner of Customs (Port), Custom House, Kolkata.

10.1. During the course of de novo adjudication proceedings, the appellant had inter alia made reference to the specific case of, in different but similar matters, pertaining to (i) M/s. Shri Hari Wax-O-Chem Pvt. Ltd.; (ii) M/s. Shiv Chemical Industries; (iii) M/s. Chowdhury Udyog & Others, arising out of the similar investigations into the alleged under-valuation of imports of Slack Wax and Residue Wax in different but similar matters. In this regard, it was pointed out that the adjudication proceedings in the cases of M/s. Shri Hari Wax-O-Chem Pvt. Ltd., M/s.

Deep Jyoti Wax Traders Pvt. Ltd. and other similarly placed importers had culminated in three separate Orders-in-Original, which were challenged before this Tribunal and decided vide Final Order Nos. 75964-75971/2018 dated 03.05.2018. The said order was thereafter carried in appeal by the Revenue before the Hon'ble Supreme Court, which, vide order dated 12.04.2019, remanded the matter to this Tribunal for fresh consideration. Pursuant thereto, this Tribunal, upon re-hearing the batch of appeals, passed Final Order Nos. 77044-77051/2019 dated 09.08.2019 in favour of M/s. Shri Hari Wax-O-Chem Pvt. Ltd. and the other connected importers. The appellants had thus placed reliance on the above decision of the Tribunal, apart from other submissions on merits, and prayed for dropping the proceedings initiated against them.

10.2. Thereafter, the impugned Order-in-Original No. KOL/CUS/PR.COMMISSIONER/PORT/ADJN/15/2026 dated 13.02.2026 came to be passed by the Principal Commissioner of Customs (Port), Custom House, Kolkata substantially reiterating the findings recorded in the earlier adjudication order and once again rejected the declared assessable value of the imported goods by redetermination of the same, confirmed the demand of differential duty, interest, order of confiscation and imposition of penalties against both the appellants, to the extent as had been done in the earlier adjudication order.

11. Aggrieved by the aforesaid de novo Order-in-Original dated 13.02.2026, the present appeals have been preferred before this Tribunal.

12. The Ld. Counsel appearing on behalf of the appellants made various submissions in support of his contentions, which can be broadly summarized as under: -

<u>I. There was no evidence on record implicating the instant appellant and framing of demands under Sections 28 and 124 of the Customs Act, 1962 was without jurisdiction</u>

(i) The allegations vis-à-vis the instant appellant levelled in the purported show cause notice dated 20.03.2018 read with its addendum were wholly arbitrary and unsubstantiated and demands for differential duty, interest, redemption fine and penalty under the Customs Act were liable to be dropped outright. The very initiation of proceeding was a non-starter, since there was nothing on record connecting the appellant with any alleged incriminating material recovered by the DRI authorities during the course of their investigations into purported under-valuation of imported wax indulged in by unscrupulous importers of India. Without entering into any other aspect of the matter, it is demonstrable that the purported parallel invoices, proforma invoice, email communications, clandestine account details of payments made to overseas suppliers and outstanding dues etc. do not relate to the instant appellant in any manner whatsoever. There is no evidence establishing any dealing between the instant appellant and the alleged M/s Abhisek India, M/s Shree Abhisek India, Sri Ram Dev Purva, Sri Noor Mohammed, M/s Fajar Tabandeh International Trading, M/s Ramel

International FZE, Jaju Petrochemical Pvt. Ltd, M/s Harmony Impex FZE, Global Future Expander Corp, M/s Barasat Wax Refiner, M/s Kavya International, M/s Universal Traders, Usha Lube Pvt. Ltd., M/s Jemasco Utama PT and Sri Ramesh Parekh and the Customs Department wholly failed to prove the contrary. Section 28 of the Customs Act read with Section 124 thereof was ab initio unavailable to the Department in view of such undeniable factual position.

(ii) It was specifically demonstrated during the course of hearing before the adjudicating authority in de-novo proceedings that the annexures and relied upon documents to show cause notice did not contain anything incriminating insofar as the appellant's imports were concerned, which the Principal Commissioner of Customs (Port), Kolkata failed to acknowledge. It is submitted that the same is evident on the face of the records and the Customs Department was altogether unjustified in seeking to re-determine the assessable value of the appellant's import consignments simply because the declared prices were in the similar range as those declared by the purported unscrupulous importers of wax. Paragraphs 6.3.2 and 6.3.3 of the purported show cause notice cannot be accepted as legitimate grounds for resorting to redetermination of transaction values insofar as the appellant's imports are concerned.

II. Appellant's bonafides were never controverted on the strength of importer-specific evidence of under-invoicing.

(i) There is also no material on record to disprove the appellant's bona fides. Sri Nand Kishore Chauhan aforesaid, the instant appellant's Director, had clarified in its statement dated 15.02.2012 that Surabhi Enterprises Pvt. Ltd. had not made any payment over and above the invoice value in any mode whatsoever. During the recording of his further statement on 22.03.2013 before the DRI authorities, Sri Nand Kishore Chauhan had been requested to go through copies of few statements of certain persons which purportedly contained admissions or allegations concerning under invoicing of wax imported from Iran, UAE and Indonesia by Indian importers, when the deponent again clarified that the said documents and statements did not relate to the business affairs of the instant appellant. The instant appellant's factual stand/defence remained consistent throughout, which ought to have been appreciated. It was unjustified and arbitrary for the revenue to invoke Sections 28 and 124 of the Customs Act without bringing on record specific material or evidence pointing to the appellant's involvement in illegal activities or under-valuation in any manner. Consequently, it ought to be held that the Customs Department had no basis for rejecting the appellant's declared values under Rule 12 of CVR.

III. The decision of this Hon'ble Tribunal in the appeal filed by Shri Hari Wax-O-Chem was a binding precedent, which should have been followed and all demands dropped. Factually, the instant appellant's case rested on better footing

(i) Even otherwise, the issues raised in show cause notice dated 20.03.2018 stand squarely decided in favour of the importers/similarly placed assessees and against the Revenue by the aforesaid final order dated 09.08.2019 of this Tribunal passed in the case of *Shri* Hari *Wax-O-Chem Pvt. Ltd. v. Commissioner of Customs (Port), Kolkata and connecting appeals (C/75687/2018 with other appeals)*. The said appeal had also originated from investigations conducted by DRI authorities in relation to purported evasion of customs duty by way of under valuation of slack wax and residue wax indulged in by few Indian importers. When the respective appeals travelled up before this Tribunal from confirmation of demands by the adjudicating authorities, this Hon'ble Tribunal was pleased to set aside all demands and allow each of the appeals by holding, inter alia, that the adjudicating authority could not have denied cross-examination of prosecution witnesses in contravention of Section 138B of the Customs Act and that the entire investigation had erroneously proceeded on the basis of electronic communications available in the computers of third parties who were unconnected when the respective importers and that too without adhering to Section 138C of the Customs Act. This Tribunal was also pleased to hold that no separate investigation had been conducted against the respective appellant-importer and that it was not open to the adjudicating authority to discard transaction values of the imported goods under Rule 12 of CVR without following the sequential application of Rules 3, 4, 5, 7 and 8 thereunder and by disregarding Section 14 of the Customs Act. The Hon'ble Tribunal further held that the enhanced valuation could not sustain inasmuch as several cases of imports of slack wax and residue wax as per NIDB had been provided showing about the same price as those declared by the respective appellant-importer and, in any event, the revenue could not have proceeded to raise demands without challenging the finalization of provisional assessment under Section 18 of the Customs Act.

(ii) All the aforesaid findings by this Tribunal as regards denial of cross-examination, inadmissibility of electronic evidence in view of Section 138C of the Customs Act, lack of specific investigation against the importer concerned, erroneous rejection of transaction values and misinterpretation of the provisions of CVR and furnishing of NIDB data showing similar imports at about the same prices as those declared by the instant appellant are applicable in the instant appellant's case. Accordingly, parity requires that all impugned demands be similarly dropped and the order under challenge dated 13.02.2026 be set aside. Given the averments at paragraph No. 11 of the show cause notice, the Principal Commissioner of Customs (Port), Kolkata could not have taken a contrary view of the matter on the untenable basis that records were unavailable to show that the aforementioned Final Order No. 77044-77051/2019 dated 09.08.2019 had been accepted by the Department. This is all the more so since the instant appellant's case stands on better factual footing and there is no iota of evidence linking the appellant's imports with any purported incriminating material or evidence gathered by DRI in course of its commodity-specific investigations.

IV. Inasmuch as both orders of the Commissioner of Customs (Appeals), Kolkata had attained finality in the appellant's case, there could arise no question of further re-determination of transaction values or piecemeal assessments specific to the issue of under-valuation

(i) Further, it has been demonstrated that Orders-in-Appeal bearing No. KOL/CUS/PORT/95/2019 and KOL/CUS/PORT/96/2019, both dated 28.08.2019, had attained finality in the instant appellant's case, whether under it had been held that enhancement of assessable values was liable to be set aside. In view of the decisions of *ITC Limited v. Commissioner*, reported in 2019 (368) ELT 216 (SC) and *Rumen Dey v. Commissioner of Customs (Prev.), Shilling* reported in 2023 (386) ELT 894 (T), no demand for differential duty could have sustained. The Principal Commissioner of Customs (Port), Kolkata erroneously decided the said issue of jurisdictional bar on the mis-conceived basis that the said Orders-in-Appeal dated 28.08.2019 did not involve the aspect of under valuation raised by DRI authorities which formed subject matter of the purported show cause notice dated 20.03.2018. The adjudicating authority clearly fell in error by refusing to acknowledge that there could not have been piecemeal assessments or simultaneous proceedings regarding valuation, in the absence in a particular provision under the Customs Act or the CVR authorizing so. On such ground alone, the de-novo confirmation of demands deserves to be interfered with.

<u>V. Furthermore, the de-novo order under challenge suffers from non-application of mind and failure to deal with the appellant's defences. All demands are ex-facie contrary to the settled principles of law</u>

(i) It is also submitted that the Principal Commissioner of Customs (Port), Kolkata ought to have independently applied his mind in remand proceeding and given his specific findings after dealing with the appellant's defences and it was not open to him to adopt the findings in the earlier Order-in-Original dated 16.07.2019. The error/omission in this behalf becomes apparent on a comparison of pages 52 to 68 of the earlier order of adjudication vis-a-vis pages 39 to 47 of the de-novo adjudication order. Neither re-determination of declared values with consequent demands for differential duty nor invocation of the extended period of limitation can sustain in such a scenario.

(ii) Both on the grounds of procedural impropriety by the adjudicating authority and on merit, the instant appeal deserves to be allowed.

(iii) The allegations framed in the purported show cause notice vis-a-vis the instant appellant are wholly lacking in substance. It is settled law that burden of proof for establishing under-valuation lies on the Department which must procure cogent evidence directly connecting the noticee i.e. instant appellant with the alleged under invoicing, which evidences are conspicuously absent in the instant case. In this regard, the appellant's submissions are supported by the principles laid down in -

> i) *Commissioner of Customs, Mumbai Import-II v. Junaid Kudia, reported in 2024 (388) ELT 529 (SC)*
>
> ii) *Elegant International v. Commissioner of Central Excise (Adjudication), reported in 2025-TIOL-1111-CESTAT-DEL.*

(iv) In the instant case the Customs Department failed to adduce evidence demonstrating wilful mis-statement or suppression of facts on part of the instant appellant and Sri Nand Kishore Chauhan as there could not have been any. Invocation of Sections 28, 28AB, 28AA, 114A and 124A of the Customs Act was arbitrary and illegal and all consequential demands were also barred by limitation.

<u>VI. Departmental authorities, including DRI, had mis-construed the principles of valuation and acted de-hors the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007</u>

(i) Even otherwise, the purported show cause notice erroneously proposed rejection of declared values under Rule 12 of CVR and re-determination of value in terms of Rule 9 thereof. The Customs Department sought to question the genuineness and reliability of data pertaining to import of identical goods into India during the contemporaneous period, which is illegal and unreasonable. It is also denied and disputed that the values adopted under the residual method, details whereof are given at paragraphs 16.1 to 16.5 of the de-novo order of adjudication under challenge read with page Nos. 38 to 43 of the show cause notice, can be understood as valuation determined using reasonable means consistent with the principles encapsulated in CVR and on the basis of data available in India. There is no concrete finding in the impugned Order–in-Original as to why loading of values in the range of 300 USD to 700 USD should be accepted in the instant case. The computation of differential duty at Table-I of the purported show cause notice dated 20.07.2018 at page No. 48 thereof read with Annexures E and E1 stands vitiated.

(ii) The appellant also states that, in his attempt to re-produce findings of the earlier order dated 16.07.2019, the adjudicating authority failed to controvert the several instances of contemporaneous imports at lesser values and data of sales at whole sale level, which the instant appellant had cited as part of its reply to show cause notice. The Customs Department could not have placed reliance on the unrecognized and private data maintained by M/s Petro Silicon of Petrosil Group, Mumbai, especially since it had failed to demonstrate comparison of subject imported goods with those with which they had been compared. The

Customs Department's interpretation of CVR is misconceived, illegal and unacceptable. The Interpretative Notes specified in the Schedule to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were also not considered while confirming the impugned demands in remand proceeding, despite the appellant having raised specific defence in this behalf.

(iii) In its combined written submissions dated 06.11.2025 the instant appellant had also highlighted that it could not have been charged with under valuation or manipulation of import documents based on the actions by a few unscrupulous importers. The appellant had also drawn attention therein to the representation dated 10.02.2009 filed by the Wax Importers and Manufacturers Association with the office of the Commissioner of Customs, Kolkata and its further letters dated 05.11.2012, 09.11.2012 and 18.10.2013, whereby the matter had been taken up with the Central Board of Indirect Taxes and Customs, New Delhi. On such representation being made, the Central Board of Indirect Taxes and Customs, New Delhi had issued a circular for mandatory chemical testing. It is already on record that in the present case, nothing incriminating had been found in the test reports relating to the samples tested from the disputed consignments. Consequently, the allegations raised in the show cause notice and purported findings that under valuation of imported wax was rampant at all ports of India cannot be accepted on merit. The Principal Commissioner of Customs (Port), Kolkata ought to have dropped all demands in de-novo adjudication after accepting the declared values of the appellant's imports in tune with Section 14(1) of the Customs Act read with Rule 3 of CVR, which he failed to do.

(iv) All demands for differential duty, interest, redemption fine and penalties are ab-initio unsustainable.

12.1. In view of the aforesaid submissions, the Ld. Counsel for the appellants prayed that the impugned demands against the appellants be set aside, with consequential reliefs.

13. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings recorded in the impugned order and submitted that the investigation had unearthed a systematic and widespread modus operandi adopted by a cartel of importers for undervaluation of imported Slack Wax and Residue Wax through suppression of the actual transaction value. It was contended that the Department's case is founded upon extensive documentary evidence recovered during searches conducted at various premises, statements recorded under Section 108 of the Customs Act, 1962 from several persons connected with the transactions, contemporaneous import data, published international price data of M/s. Petrosilicon depicting prevailing FOB prices of Slack Wax and Residue Wax, as well as comparative Customs import data relating to similarly imported goods by independent importers outside the alleged cartel. It is his submission that the declared values remained abnormally static over an extended period despite fluctuations in international oil prices, thereby rendering the declared transaction

values unacceptable and justifying their rejection and re-determination in terms of the impugned Show Cause Notice. According to the Revenue, the appellant had deliberately mis-declared and suppressed the actual transaction value with intent to evade payment of customs duty, warranting invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 along with the consequential demands, interest and penalties. Accordingly, he prayed that the appeals be dismissed.

14. Heard both sides and perused the documentary evidence placed before us.

15. After considering the submissions made by the parties, we find that the principal issue that emerges for a decision in these appeals is: whether the Department has succeeded in adducing sufficient and cogent evidence to substantiate its allegation that the appellants had resorted to under-invoicing of imports of Slack Wax of Iran/UAE and Indonesian origin covered by the 52 Bills of Entry in question, so as to justify rejection of the declared transaction value thereof, re-determination of assessable value, the order of confiscation and the consequential demands of interest and penalties, as confirmed in the impugned order, or otherwise.

16. Before adverting to the evidentiary aspects of the matter, it would be apposite to notice the precise case sought to be set up by the Revenue. The principal allegation levelled against the appellant-company is that it had deliberately under-valued imports of Slack Wax of Iran/UAE and Indonesian origin covered by 52 Bills of Entry during the period from April, 2008 to December, 2011 by suppressing the actual transaction value and producing fabricated

commercial invoices in collusion with overseas suppliers, thereby wilfully mis-declaring the actual transaction value and rendering the declared value liable to rejection under the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The imports in question were admittedly effected by the appellant from overseas suppliers namely M/s. Uniexcel Ltd. and M/s. Grand Dignity Industrial Co. Ltd., Taiwan, through Kolkata and Haldia Ports. The Revenue entertained the belief that the transaction values declared by the appellant did not represent the true transaction values and, on such premise, initiated the present proceedings culminating in the impugned order.

17. Having considered the records in detail, we find that the investigation admittedly commenced as a commodity-specific investigation into the alleged under-valuation of imports of Slack Wax and Residue Wax by several importers across the country. The present case pertains solely to imports of 'Slack Wax'. During the course of such investigation, searches were conducted at the premises of several importers and other entities including M/s. Abhisek India, M/s. Kavya International and other entities believed to be involved in under-invoicing and under-valuation of similar imports, from where certain documents, parallel invoices, proforma invoices, e-mail communications, payment records and other materials were recovered, which is the edifice on which the Revenue's case rests. However, a careful examination of the relied upon documents placed on record reveals that none of such incriminating materials pertains to, or even remotely implicates, the present appellant. Equally, there is nothing on record to establish any business dealings or nexus

whatsoever between the appellant and the aforesaid entities or any of the alleged unscrupulous importers, intermediaries or overseas agents who formed the subject matter of the wider DRI investigation. As the entire edifice of the Department's case rests upon investigations conducted in respect of other importers and the documents allegedly recovered therefrom, the absence of any cogent, independent and legally admissible evidence establishing a nexus between such material and the present appellants, we are of the view that the said evidence cannot, by itself, be made the foundation for fastening liability upon them. Mere similarity in the pattern of imports or in the range of declared values cannot substitute proof of collusion or under-invoicing. Without first demonstrating such nexus through cogent and reliable evidence, the allegation of deliberate under-invoicing cannot be said to have been proved in accordance with law and the consequential proceedings cannot be sustained merely on assumptions, presumptions or guilt by association.

17.1. In this connection, we find considerable force in the contention of the appellant that its name does not figure in any of the statements relied upon by the Department, nor has any alleged participant in the purported under-valuation network implicated the appellant in the alleged modus operandi. The purported parallel invoices, proforma invoices, electronic communications, alleged records of clandestine remittances, outstanding payment statements and other documents relied upon by the Department admittedly relate to investigations concerning other importers and have no discernible connection with the business affairs or import transactions of the present appellant. In spite thereof, proceedings came to be initiated against the appellant essentially because the prices declared by it broadly fell within the range of prices declared by certain other importers who were under investigation. Such a premise, in our considered view, cannot constitute a legally sustainable basis either for rejection of the declared transaction value under Rule 12 of the Customs Valuation Rules, 2007 or for fastening allegations of suppression, collusion or under-invoicing upon the appellant.

17.2. Furthermore, it is revealed from the records that during the course of investigation, Shri Nand Kishore Chauhan, Director of the appellant-company, in his statement dated 15.02.2012 recorded under Section 108 of the Customs Act, inter alia, had categorically stated that M/s. Surabhi Enterprises Pvt. Ltd. had never made any payment, directly or indirectly, over and above the invoice value in respect of the imports under dispute, in any mode whatsoever. Significantly, this statement itself forms part of the relied upon documents accompanying the Show Cause Notice. Subsequently, when his further statement was recorded on 22.03.2013 and he was confronted with copies of statements and documents relating to investigations against other importers, including M/s. Abhisek India, M/s. Kavya International and others, Shri Nand Kishore Chauhan had clarified that such statements and documents did not pertain to the business affairs or import transactions of the present appellant. We find nothing on record to indicate that the Department was able to controvert these categorical assertions by producing any independent evidence demonstrating payment of consideration over and above the declared invoice value or any nexus between the appellant and the alleged under-valuation on its part.

17.3. It is equally significant that, despite the specific contention raised before the adjudicating authority during the de novo proceedings that the annexures and relied upon documents accompanying the Show Cause Notice did not contain any incriminating material relatable to the appellant, the impugned order does not record any independent finding identifying a single document recovered during investigation which could establish the appellant's involvement in the alleged under-invoicing. The impugned order merely proceeds on the premise that since the appellant had declared values comparable to those declared by certain other importers under investigation, its declared transaction values also deserved to be rejected. Such reasoning, in our view, falls considerably short of the standard of proof required under the Customs Valuation Rules, particularly when the allegation is one of deliberate suppression and fabrication of commercial documents.

Valuation Methodology Adopted by the Revenue

18. We further find that the re-determination of value undertaken by the Department under the residual method also does not disclose any legally sustainable basis. The discussion contained in paragraphs 16.1 to 16.5 of the impugned order merely reproduces the Department's conclusions without demonstrating how the enhanced values adopted therein satisfy the mandate of the Customs Valuation Rules, 2007 or constitute values determined by reasonable means consistent with the principles embodied therein. There is no independent reasoning

explaining why loading of the declared values in the range of approximately USD 300 to USD 700 per Metric Tonne ought to be accepted in the appellant's case. Likewise, the ld. adjudicating authority while passing the de novo adjudication order, has not dealt with, much less distinguished, the instances of contemporaneous imports at comparable or lower values and the wholesale sale data specifically relied upon by the appellant in its replies to the Show Cause Notice. Consequently, the differential duty computation reflected in Table-I to the Show Cause Notice remains unsupported by any cogent valuation analysis.

18.1. Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, lays down that the transaction value, namely, the price actually paid or payable for the goods when sold for export to India, constitutes the primary basis for determination of assessable value. Such declared transaction value can be rejected only upon the existence of cogent and tangible evidence satisfying the requirements of Rule 3(2) or Rule 12 of the said Rules. Mere suspicion arising from investigations conducted against other importers cannot, by itself, justify rejection of the appellant's declared transaction value in the absence of any direct evidence specifically connecting the appellant with the alleged undervaluation. No parallel invoices, clandestine payment records, hawala transactions, email correspondence, or any other incriminating material relatable to the appellant have been brought on record. The principle of res inter alios acta is significant in this case which states that evidence collected against third parties cannot automatically be relied upon against an independent importer unless a clear nexus or common design is first established. Valuation is necessarily specific to each transaction, and cannot be determined merely on the basis of allegations or investigations concerning other parties, without adducing adequate evidence therefor.

18.2. We also find merit in the contention of the appellants that the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 contemplate a sequential application of the valuation methods prescribed thereunder. Before resorting to the residual method, the adjudicating authority is required to examine the applicability of Rules 4 to 8 in their prescribed sequence and record cogent reasons as to why the preceding methods are inapplicable. A careful perusal of the impugned order reveals that the reasons assigned for discarding the sequential methods and proceeding to the residual method are largely general in nature and do not disclose any satisfactory analysis so as to justify such an approach. The findings recorded in this regard, therefore, do not inspire confidence and cannot be regarded as a legally sustainable basis for invoking the residual method of valuation.

18.3. It has been settled by way of a catena of decisions that the burden of proof for establishing allegations of undervaluation lies on the Revenue and such burden must be discharged by means of cogent and corroborative evidence in connection with the imports under scrutiny. In the case of *Junaid Kudia v. Commissioner of Customs, Mumbai Import-II [(2024) 16 Centax 503 (Tri.-Bom)],* while dealing with a similar case of enhancement of value on allegations of undervaluation and mis-declaration, it has been held as under: -

"6. Rejection of declared value on Bill of Entry is a serious charge and the same could have been rejected on the basis of cogent examination of evidences and justifiable reasons. We find that the DRI officers conducted search operation in the business premises of M/s Plastic Cottage Trading Co. and M/s Winsor Enterprises. Panchama's both dated 11-4-2017 were prepared in respect of recovery of records/documents/files/print outs of emails and sets of invoices retrieved from emails/computers/mobile phones and laptop. The Officers also recorded statement of Shri Junaid Kudia, Shri Mukhtar Kudia on different dates. On the basis of mails retrieved from the email ID of Shri Mukhtar Kudia, i.e., mukhtarkudia@yahoo.in or Shri Zulfikar Shaikh, office Assistant at M/s Winsor Enterprises i.e., zeeshu666@rediffmail.com it was contended that the actual rate of commodities imported by the appellant were different from that declared before the customs authorities. Accordingly, the demand of customs duty was confirmed for the period from January, 2014 to April, 2017 on the importation of Varieties of Bags etc. on the ground of under valuation. The issue involved in these cases is mainly confined for determination, as to whether, the transaction values declared by the importer/appellant are correct or otherwise. The adjudicating authority observed that the evidence for the actual price was retrieved from the E-mails and invoices retrieved from E-mails. The authenticity of all the said Email printouts was admitted by partners of the appellant in their statements. On the other hand, the appellants disputed the veracity and authenticity of the evidences, collected through electronic devices.

7. In this context, we find that Section 138C of the Act, 1962 provides admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence. For the proper appreciation of the case, Section 138C of the Act, 1962 is reproduced below:

….

8. On reading of Section 138C of the Customs Act, 1962, it is seen that the Legislature had prescribed the detailed procedure to accept the computer printouts and other electronic devices as evidences. It has been stated that any proceedings under the Act, 1962, where it is desired to give a statement in *evidence of electronic devices, shall be evidences of any matter stated in the certificate. In the present case, we find that the provisions of Section 138C of the Act were not complied with to use the computer printouts as evidence. It is noted that the certificate was not prepared during the seizure of the electronic devices, as required under the law. The investigation is normally started after collecting the intelligence/information from various sources. The investigating officers procure the evidences in the nature of documents, statements, etc., to establish the truth. During the evolution of technology, the electronic devices were used as evidence. In this context, the law is framed to follow the procedure, while using the electronic devices as evidence for authenticity of the documents, which would be examined by the adjudicating authority during adjudication proceedings. In the instant case, it is found that the entire case proceeded on the basis of the electronic documents as evidence. But the investigating officers had not taken pain to comply with the provisions of the law to establish the truthfulness of the documents and merely proceeded on the basis of the statements. Hence, the evidence of electronic devices, as relied upon by the adjudicating authority cannot be accepted.*

….

10. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceedings. We note that the Section 138C of the Customs Act is parimateria to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted in the present proceedings, only subject to the satisfaction of the sub-section (2) of Section 138C ibid. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices, have not been accompanied by a certificate as required by Section 138C(2) ibid as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme

Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices in respect of which the requirement of Section 138C(2) ibid has not been satisfied. On this ground, the impugned order suffers from uncurable error and hence, is liable to be set aside.

11. The Learned AR for Revenue relied upon the decision of the Tribunal in the case of M/s. Laxmi Enterprises (supra), in which the Tribunal has upheld the charge of undervaluation and demand for differential duty. In the said decision, Tribunal overruled the objection of the appellant in connection with Section 138C, by holding that the documents printed out from laptop will be admissible as evidence, in view of the fact that the truth of such documents stand admitted by the proprietor in his statement. We have gone through the said decision of the Tribunal and we note that the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra) has not been cited and was never brought to the notice of the Bench. Consequently, we are of the view that the decision in the case of Laxmi Enterprises is not applicable to the facts of the present case.

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).

> *15. In view of our above observations and findings, we are of the opinion that the duty demand confirmed against the appellant M/s. Plastic Cottage Trading Co. and penalties imposed upon it is not sustainable. For the same reason, the penalty imposed on the co-appellants namely, Shri Junaid Kudia and Shri Zaid Kudia is 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, as per law."*

18.3.1. The above order has been affirmed by the Hon'ble Apex Court as reported in *2024 (388) E.L.T. 529 (S.C.).*

18.4. It may also be pertinent to refer to the decision rendered by the Principal Bench of the CESTAT in the case of *M/s. Elegant International v. Commissioner of Central Excise (Adjudication), New Delhi [2025-TIOL-1111-CESTAT-DEL],* wherein the same view has been reiterated by the Tribunal. The relevant observations therein read as under: -

> *"18. The burden to prove undervaluation is on the department, as was observed by the Supreme Court in Mirah Exports Pvt. Ltd. vs. Collector of Customs 1998 (98) E.L.T. 3 (S.C.) = 2002-TIOL-284-SC-CUS. The relevant observations contained in paragraph 12 of the judgment are produced below:*
>
> > *"12. The legal position is well settled that the burden of proving a charge of under-valuation lies upon Revenue and Revenue has to produce the necessary evidence to prove the said charge. "Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs" and what is to be examined is "whether the revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the true sale price." [See: Union of India v. Mahindra & Mahindra, (supra), at P. 487]."*

19. It would also be pertinent to refer to the decision of the Supreme Court in Commissioner of Customs, Calcutta vs. South India Television (P) Ltd. 2007 (214) E.L.T. 3 (S.C.) 2007-TIOL-126-SC-CUS, wherein the Supreme Court again observed:

> *"6. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports."*

20. In Commissioner of Cus., Vishakhapatnam vs. Aggarwal Industries Ltd 2011 (272) E.L.T. 641 (S.C.), the Supreme Court analyzed the provisions of section 14(1) of the Customs Act and rule 4(2) of the 1988 Valuation Rules and observed that save and except for the circumstances indicated in section 14(1) of the Customs Act and particularized in sub-rule (2) of rule 4 of the 1988 Valuation Rules, the invoice price is the basis for determination of the transaction value. The Supreme Court also observed that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports were at a higher price and for this rule 10A of the 1988 Valuation Rules would have to be resorted to. The relevant portions of the judgment of the Supreme Court are reproduced below:

> *"11. On a plain reading of Sections 14(1) and 14(1A), it is clear that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in Section 14(1) of the Act. Section 14(1) is a deeming provision as it talks of deemed value of such goods. The determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1) of the Act. Conjointly read, both Section 14(1) of the Act and Rule 4 of CVR, 1988 provide that in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of CVR 1988, the price paid or payable by the importer to the vendor, in the ordinary course of international trade and commerce, shall be taken to be the transaction value. In other words, save and except for the circumstances mentioned in proviso to Sub-rule (2) of Rule 4, the invoice price is to form the basis for determination of the transaction value.*

Nevertheless, if on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the correct price, it would be justified in rejecting the invoice price and determine the transaction value in accordance with the procedure laid down in CVR, 1988. It needs little emphasis that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports, which obviously would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation, Rule 10A of CVR, 1988 contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that 'reason to doubt' does not mean 'reason to correctness of the invoice produced by an importer is not sufficient to reject it as evidence of o suspect'. A mere suspicion upon the the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. We may hasten to add that although strict rules of evidence do not apply to adjudication proceedings under the Act, yet the Adjudicating Authority has to examine the probative value of the documents on which reliance is sought to be placed by the revenue. It is well settled that the onus to prove undervaluation is on the revenue but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct.

12. In Eicher Tractors Ltd. (supra), relied upon by the Tribunal, this Court had held that the principle for valuation of imported goods is found in Section 14(1) of the Act which provides for the determination of the *assessable value on the basis of the international sale price. Under the said Act, customs duty is chargeable on goods.*

According to Section 14(1), the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed it has to be decided under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place and importation in the course of international trade. The word "ordinarily" implies the exclusion of special circumstances. This position is clarified by the last sentence in Section 14(1) which describes an "ordinary" sale as one where the seller or the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances stand fulfilled, the price of imported goods shall be decided under Section 14(1A) read with the Rules framed thereunder. The said Rules are CVR, 1988.It was further held that in cases where the circumstances mentioned in Rules 4(2)(c) to (h) are not applicable, the Department is bound to assess the duty under transaction value. Therefore, unless the price actually paid for a particular transaction falls within the exceptions mentioned in Rules 4(2)(c) to (h), the Department is bound to assess the duty on the transaction value. It was further held that Rule 4 is directly relatable to Section 14(1) of the Act. Section 14(1) read with Rule 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14(1). Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in Rule 4(2). (Also See: Rabindra Chandra Paul v. Commissioner of Customs (Preventive), Shillong, (2007) 3 SCC 93-2007

(209) E.L.T. 326 (S.C.)) 2007-TIOL-28-SC-CUS"

.....

28. Thus, for the reasons stated above, the transaction value of silk fabric imported by the appellant c not have been rejected under rule 10A of the 1988 Valuation Rules. In such a situation, re-determination of the transaction value would not arise."

18.5. We also find considerable substance in the appellant's objection regarding the reliance placed upon the price publications of M/s. Petrosilicon, a publication of the Petrosil Group, Mumbai. The said publication is admittedly a privately maintained compilation of market information and does not constitute any statutory or officially recognized database under the provisions of the Customs Act, 1962 or the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. No material has been brought on record to establish the source, authenticity, methodology or reliability of the said data, nor has the Revenue demonstrated that the prices reflected therein pertained to goods identical or similar in terms of origin, grade, quality, specifications, commercial level, quantity or other relevant parameters as the goods imported by the appellants. In the absence of such foundational evidence, the Petrosil data can, at best, constitute a general market indicator and cannot be accorded such high evidentiary value as to displace the declared transaction value or constitute the sole basis for re-determination of value under the Valuation Rules.

18.5.1. Even considering the Revenue's stand that M/s. Petrosil Group is a reputed industry reporting agency publishing market information relating to petroleum products, it goes without saying that such published trade prices or market indices cannot, by themselves, be equated with the actual transaction value agreed between a particular buyer and a particular seller in an international commercial transaction. Such publications merely reflect indicative market trends and cannot substitute genuine contractual prices unless supported by independent and corroborative evidence establishing that the declared consideration does not represent the price actually paid or payable. In the absence of any such evidence indicating extra-commercial consideration or additional payments by the appellants, reliance solely upon Petrosil data for redetermination of assessable value cannot be legally sustained.

18.6. The above issues have been dealt with by the Hon'ble Supreme Court in the case of *M/s. Century Metal Recycling Pvt. Ltd. v. Union of India vide judgement dated 17.05.2019 in Civil Appeal No. 5011 of 2019 (S.C.),* wherein it has been ruled as follows: -

> *"22. In Commissioner of Customs vs. Prabhu Dayal Prem Chand, this Court had rejected the plea that the Revenue was justified in redetermining the value of brass and copper scrap on the basis of information received from London Metal Exchange on the price of the said metals on the ground that the importer was not confronted with any contemporaneous material for enhancing the transaction value. This Court affirmed the order of the Tribunal in Prabhu Dayal Prem Chand (supra) and held that the order in original had not 2010 (13) SCC 535 indicated details of any contemporaneous import or other material in the form of corroborative material which had necessitated the enhancement in the transaction valuation.*
>
> *23. We would now refer to the findings of the order in original in the present case which observes that the appellants had declared value of the aluminium scrap as Rs.81.31 per kg, albeit the*

contemporaneous import data in the form of different bills of entry had indicated aluminium scrap values between Rs. 83.26 to Rs. 120.897 per kg. The said portion of the order refers to at least four bills of entries declaring assessable value of less than Rs. 85 per kg. Interestingly, the order in original also records that the imported goods being aluminium scrap was not a homogeneous commodity and therefore, cannot be evaluated on the basis of the samples or lab testing. Further, the order holds that it was very difficult to find any identical/ similar goods imported in India having same chemical and physical composition and that the values of aluminium scrap identical/similar to the imported goods in nature and specification were not available. Without commenting correctness of the said statements, we would observe that the aforesaid reasoning for rejection of the transactional value, would not meet the mandate of Section 14 and the Rules as elucidated in M/s Sanjivini Non- Ferrous Trading Pvt. Ltd. (supra) wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry."

19. We are therefore unable to discern any cogent, independent or legally admissible evidence brought on record by the Department establishing the appellant's involvement in the deliberate under-invoicing or suppression of the actual transaction value by the appellants in respect of the 52 Bills of Entry under consideration. The investigation undertaken by the Revenue undoubtedly unearthed certain incriminating materials in relation to other importers; however, no tangible material has been brought on record to establish any nexus whatsoever between the appellants and such alleged modus operandi. The entire edifice of the impugned proceedings, insofar as the present appellants are concerned, rests

substantially upon assumptions, generalized inferences and comparative price data, none of which, either individually or cumulatively, can substitute the statutory requirement of establishing undervaluation by credible and independent evidence relatable to the imports effected by the appellants. In the absence of any evidence demonstrating payment of consideration over and above the declared invoice value, any contemporaneous material directly attributable to the appellants, or any legally sustainable basis for rejection of the declared transaction value in terms of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the very foundation of the impugned demand cannot be sustained. We are, therefore, of the considered view that the principal allegation of under-valuation levelled against the appellants remains unsubstantiated.

Applicability of the decision in Shri Hari Wax-O-Chem Pvt. Ltd. and connected matters

20. Even otherwise, we find that the very same issue involved in the present appeals is no longer res integra. It is a fact that the foundation of the present proceedings emanates from the common investigation undertaken by the Directorate of Revenue Intelligence into the alleged under-valuation of imports of Slack Wax and Residue Wax by various importers across the country. One such batch of proceedings against importers in different but similar matters, culminated in the decision of this Tribunal in *M/s. Shri Hari Wax-O-Chem Pvt. Ltd. & Others v. Commissioner of Customs (Port), Kolkata [Final Order Nos. 77044–77051/2019 dated 09.08.2019 in Customs Appeal No. 75687 of 2019 & ors. – CESTAT, Kolkata],* wherein substantially identical allegations, founded upon the

very same investigation and relying upon similar evidentiary materials, came to be examined in detail.

20.1. Having regard to the facts and evidence of the case, the Tribunal, in the aforesaid case, while allowing the appeals therein, held, inter alia, that the adjudicating authority was not justified in denying cross-examination of prosecution witnesses in contravention of Section 138B of the Customs Act, 1962 and that the investigation had substantially proceeded on the basis of electronic records recovered from computers belonging to third parties unconnected with the respective importers, without complying with the mandatory requirements of Section 138C of the Act. The Tribunal further found that no independent or importer-specific investigation had been undertaken against the concerned appellants and that the declared transaction value could not have been discarded under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 without adhering to the sequential scheme of valuation prescribed under the said Rules read with Section 14 of the Customs Act. It was also held that the enhancement of value was unsustainable in view of the contemporaneous NIDB data evidencing imports at prices comparable to those declared by the importers. We find that the aforesaid findings have a direct bearing on the controversy involved in the present appeals. The allegations of undervaluation herein also emanating from substantially similar investigations and evidentiary materials and involving identical questions such as the admissibility of evidence, absence of importer-specific investigation, rejection of transaction value under the Customs Valuation Rules and reliance upon contemporaneous valuation data, we are of the considered view that the ratio laid down in the case of *M/s. Shri Hari Wax-O-Chem Pvt. Ltd.* (supra) is, therefore, clearly applicable to the facts of the present case and lends considerable support to the case of the appellants. It was, therefore, incumbent upon the adjudicating authority to closely examine the applicability of the ratio laid down therein and to record cogent reasons if it intended to distinguish the said decision. It is the specific case of the appellants that the above decision of the Tribunal in *M/s. Shri Hari Wax-O-Chem Pvt. Ltd.* (supra) has not been appealed against by the Revenue and thus the same has attained finality. We also find that the Revenue has failed to place any material on record to demonstrate that the aforesaid Final Order of this Tribunal in *M/s. Shri Hari Wax-O-Chem Pvt. Ltd. (supra)* has either been stayed, reversed or otherwise interfered with by any higher judicial forum. In the absence of any such material, the said decision continues to hold the field and are squarely applicable to the facts and circumstances of this case.

20.2. Applying the ratio laid down therein to the facts of the present case, which, as discussed hereinabove, arise from the very same investigation and involve substantially identical issues of fact and law, we are of the considered view that the impugned order and the consequential demands raised thereunder cannot be sustained in the eyes of law and are, therefore, liable to be set aside.

Effect of the Final Assessment proceedings attaining finality

21. We also cannot lose sight of the fact that the very same provisional assessments forming the genesis of the present proceedings were carried in appeal by the appellants before the Commissioner (Appeals), who, vide Order-in-Appeal Nos. KOL/CUS/PORT/95/2019 and KOL/CUS/PORT/96/2019, both dated 28.08.2019, set aside the enhancement of assessable value and directed re-assessment of all the 52 Bills of Entry by accepting the values declared by the appellants. It is an admitted position that one of the said Orders-in-Appeal was not challenged by the Revenue on account of the monetary limits then prevailing for filing appeals before this Tribunal, while the other Departmental appeal ultimately came to be dismissed by this Tribunal vide Final Order No.75301/2026 dated 26.02.2026 in terms of the revised litigation policy on account of the enhanced monetary threshold. Consequently, the appellate orders in respect of the final assessments have attained finality. The Revenue has sought to distinguish the aforesaid Orders-in-Appeal dated 28.08.2019 by contending that the issue of under-valuation or under-invoicing investigated by the DRI did not fall for consideration therein and that the appellate authority had principally proceeded on the basis of the test reports. We are unable to subscribe to such a narrow construction. Further, while it may be true that the present proceedings arise from a separate show cause notice issued after finalisation of assessment and, therefore, the finality attained by the assessment proceedings may not, by itself, be determinative of the controversy before us, the same nevertheless constitutes a relevant and

significant circumstance which cannot be ignored. The fact that the enhancement of value in respect of the very same Bills of Entry has already been disapproved in appellate proceedings undoubtedly lends further support to the appellants' case and reinforces the conclusion already arrived at by us on the principal issue. Therefore, although the above may not be the sole determinative factor, it nevertheless serves as an additional factor buttressing the appellants' case.

22. In view of the discussions hereinabove and by applying the ratio of the decision of this Tribunal in *M/s. Shri Hari Wax-O-Chem Pvt. Ltd. (supra)*, we are of the considered opinion that the Revenue has failed to establish, by sufficient, cogent and legally admissible evidence, the allegation of deliberate under-invoicing or suppression of the actual transaction value in respect of the 52 Bills of Entry forming the subject matter of the present proceedings. The rejection of the declared transaction value under the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 vide the impugned order having thus been found to be legally unsustainable, we hold that the consequential demand of differential customs duty cannot, therefore, be sustained. Consequently, the order for confiscation of the imported goods under Section 111(m) of the Customs Act, 1962 along imposition of redemption fine under Section 125, recovery of interest under the applicable provisions of the Act, and all other consequential liabilities flowing from such re-determination of value are equally liable to be set aside.

22.1. We also find that, once the very foundation of the proceedings alleging wilful mis-declaration and under-valuation fails, the penalties imposed upon M/s. Surabhi Enterprises Pvt. Ltd. under Section 114A of the Customs Act, 1962 and upon Shri Nand Kishore Chauhan under Section 114AA of the said Act cannot survive independently and are accordingly liable to be quashed.

23. Therefore, the impugned de novo Order-in-Original No. KOL/CUS/PR.COMMISSIONER/PORT/ADJN/15/2026 dated 13.02.2026 is hereby set aside in toto. The impugned demands, along with interest and penalties thereon, thus stand set aside.

24. In the result, both the appeals are allowed, with consequential reliefs, if any, in accordance with law.

(Order pronounced in the open court on **05.08.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd