CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. 5

Customs Appeal No. 87761 of 2014

[Arising out of Order-in-Appeal No. 1697(Gr. IV)/2014(JNCH)/IMP-1638 dated 08.04.2014 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai Customs Zone-II.]

A.P. Trading Company **.... Appellant**
694, Kunda Compound
Rehnal Village Road, Bhiwandi
District Thane, Maharashtra – 421 302.

Versus

Commissioner of Customs (Import) **.... Respondent**
Nhava Sheva Customs Commissionerate
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

Appearance:

Shri S.K. Mathur, Advocate for the Appellant

Shri Mahesh Patil, Authorized Representative for the Respondent

FINAL ORDER NO. A/86001/2026

Date of Hearing: 30.04.2026
Date of Decision: 10.08.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s A.P. Trading Company, Bhiwandi (herein after, referred to as “the appellant”, for short) assailing the Order-in-Appeal No. 1697(Gr. IV)/2014(JNCH)/IMP-1638 dated 08.04.2014 (herein after, referred to as “the impugned order”) passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai Customs Zone-II.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2. The appellant herein is *inter alia* engaged in import and sale of brass scrap. For the purpose of import and clearance of the goods described as ‘Brass Scrap Pallu as per ISRI’ imported from overseas supplier M/s Wadi Al Arab Metal Trading Company, Sharjah, United Arab Emirates, the appellant had filed the Bill of Entry (B/E) No. 2946504 dated 05.05.2013 by classifying the goods under Customs Tariff Item (CTI) 7404 0022 and declared the value of goods as Rs.62,27,262/-. The imported goods were subjected to examination on 'Second Check' basis by the customs department at the port of import. During such examination by the Customs Officers posted at the Docks examination, in the presence of Container Scanning Division (CSD) supervision, it was found that the imported goods actually contain 25% Brass Scrap "Pallu' i.e., 6.61 MTs and 75% secondary defective brass pipes i.e., 19.82 MTs measuring approximately 14 feet of identical size brass pipes which are serviceable in nature.

2.3 Since the description of the goods was mis-declared by the appellant importer, the transaction value was rejected under Rule 12 and the department proposed for re-determination of value of goods on the basis of contemporary value and LME prices under Rule 5 of the Customs Valuation Rules, 2007. It was also proposed to confiscate the goods under Section 111(m) of the Customs Act, 1962 and for imposition of penalty on the importer under Section 112(a) ibid. On the basis of the waiver of issue of Show Cause Notice, the original authority after giving a personal hearing on 13.09.2013 had re-determined the value of goods and confirmed the differential duty of Rs.5,25,460/-; confiscated the goods and allowed the same on payment of redemption fine of Rs.1,50,000/- and imposed penalty on the appellant for Rs.75,000/-. Being aggrieved with the said order of the original authority, the appellant had filed an appeal before the Commissioner of Customs (Appeals). In disposing of the appeal, learned Commissioner of Customs (Appeals) vide Order-in-Appeal dated 08.04.2024 by upholding the order of the original authority, had rejected the appeal filed by the appellant. Feeling aggrieved with the said order passed by the Commissioner of Customs (Appeals), which is impugned herein, the appellant have filed this appeal before the Tribunal.

3.1 Learned Counsel appearing for the appellant stated that they are engaged in trading of metal scrap and had placed an order for supply of total quantity of 27 MT 'Brass Scrap Pallu' as per Institute of Scrap Recycling Industries Inc. (ISRI) specification with the foreign supplier M/s Wadi Al Arab Metal Trading Company, Sharjah, vide contract No. WAMT/07/2013 dated 31.07.2013 at CIF value of USD 5000/- per MT. The same was supplied vide Invoice No. WAMT/013/2013 dated 01.08.2013 for a quantity of 26.430 MTs having total value of CIF USD 132150/-. Accordingly, they had filed B/E No. 2946504 dated 05.05.2013 along with supporting documents of invoice, packing list and certificate of origin.

3.2 However, upon examination of goods, when the customs officers have found that 75% of the goods are secondary brass pipes which are serviceable and not brass scrap pallu as declared by the appellant, they had requested for mutilation of such goods and also for re-examination of goods. In the examination report dated 25.09.2013 by Chartered Engineer it has been reported that on physical and visual verification and examination of the imported goods it was found to be "rejected/discarded heat exchanger/boiler tubes and its length vary from 5′ (feet) to 14′; the cargo in the present form is not serviceable." However, the customs officers had reported that the secondary defective brass pipes measure around 14 feet of identical size and serviceable in nature. Since, this is contrary to the report given by independent chartered engineer, and as per ISRI specification of red brass scrap for which they placed order, no piece is to measure more than 12′, they pleaded that there was no mis-declaration on the part of the appellant.

3.3 Learned Counsel further pleaded that since there is no contemporaneous price of similar or identical goods provided by the authorities below and no evidence of any flow back of additional consideration established, the enhancement of value by the department under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is not sustainable. Learned Counsel in support the above plea, relied upon the judgement of the Hon'ble Supreme Court in the case of *S.S. Impex Vs. Commissioner of Customs (Port), Kolkata* - 2012 (286) E.L.T. 401 (Tri. - Kolkata).

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order.

5. We have heard both the learned Counsel appearing for the appellant and the learned Authorized Representative of the Department and perused the case records and the synopsis given in the form of written submissions.

6. The following issues arise for determination before the Tribunal:

(i) whether upholding of duty demands confirmed by the original authority under Section 28 of the Customs Act, 1962 by re-determination/enhancement of the assessable value of imported goods in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 [herein after, for short, referred to as "the CVR, 2007"] is sustainable;

(ii) Whether imposition of redemption fine under Section 125 ibid and penalty on appellant under Section 112(a) ibid are legally sustainable;

7. The dispute between the appellant-importer and the department lies in determination of appropriate duties of customs payable on the imported goods, duly determining its assessable value for the purpose of calculation of duty under Section 14 of the Act of 1962 read with CVR, 2007. Further, it is also required to be determined whether the imported goods are liable for confiscation and the appellant having imported 'secondary defective brass scrap/pipes (Pallu)' is liable for fine/penalty under the various provisions of Customs Act, 1962.

8.1 Before we consider the issues under dispute along with the submissions made by both sides, it is important to note that the undisputed facts with the respect to the factual matrix of the case are as follows:

(i) the appellant importer had placed an order with the supplier abroad M/s Wadi Al Arab Metal Trading Co. LLC, Sharjah, U.A.E. for supply of 'Brass scrap Pallu' as per ISRI specification in terms of sales contract dated 31.07.2013;

(ii) ISRI specification for red brass scrap consist of valves, machinery bearings, other machinery parts, casting made of copper, tin, zinc, lead etc., which in individual piece measure not more than 12" over any one part or weigh over 100 pounds;

(iii) on examination of the imported goods by customs officers, it was found they contain 25% Brass Scrap "Pallu' i.e., 6.61 MTs and 75% secondary defective brass pipes i.e., 19.82 MTs measuring approximately around 14 feet of identical size and serviceable in nature. Therefore, in the B/E No. 2946504 dated 05.05.2013, the department had redetermined the duty of imported goods by allowing the declared classification in respect of 25% Brass Scrap at tariff item 7404 0022 and revising the classification of 75% secondary defective brass pipes at tariff item 7411 2100 arriving at differential duty liable to be paid as Rs.5,25,460/-.

(iv) the appellants, had subsequently paid the differential duty along with fine and penalty, for clearance of the imported goods.

8.2 In terms of the legal provisions under the Customs Act, 1962, determination of the duty liability of imported goods including *inter alia* in arriving at the appropriate valuation of such imported goods are carried out in accordance with the provisions of Section 14 ibid and Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 framed thereunder. These are extracted for convenience of reference and given below:

Section 12. Dutiable goods. *-*
(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

Section 14. Valuation of goods for purposes of assessment. *-*
(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods 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 of importation or exportation, as the case may be, in the course of international trade, where—
(a) the seller and the buyer have no interest in the business of each other; or
(b) one of them has no interest in the business of the other,
and the price is the sole consideration for the sale or offer for sale :

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50.

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf…..

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Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
Rule 2. Definitions

(1) In these rules, unless the context otherwise requires, -

xxx xxx xxx xxx

(b) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(c) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,
but shall not include imported goods where engineering, development work, art work, design work, plant or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(e) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(f) "transaction value" means the value determined in accordance with Rule 4 of these rules.

Rule 3. Determination of the method of valuation -

For the purpose of these rules, -
(i) the value of imported goods shall be the transaction value;
(ii) if the value cannot be determined under the provisions of Clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

Rule 4. Transaction value.
- (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted;

Provided that -
(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
(i) are imposed or required by law or by the public authorities in India; or
(ii) limit the geographical area in which the goods may be resold; or
(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

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Rule 5. Transaction value of identical goods. – *(1) (a) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued."*

9.1 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the duties of customs payable on imported goods by properly classifying it under appropriate classification as per the First Schedule to the Customs Tariff and determining the assessable value under Section 14 ibid read with the CVR of 2007. In the present case, the proper officer of customs at the port of import had assessed the duty payable on the imported goods on the basis of examination of goods which found that there was mis-declaration to the extent of 75% of the goods. Accordingly, the proper officer revised the classification of such goods and rejected the declared transaction value and based on the contemporaneous price of identical goods, had demanded the differential duty of customs in terms of CVR of 2007.

9.2 In terms of the 'The Institute of Scrap Recycling Industries (ISRI)' prescribed Guidelines for Nonferrous Scrap: NF-2023 relied upon by the appellant importer, the composition of *'Ebony' red brass* is as follows:

It shall consist of red brass scrap, valves, machinery bearings and other machinery parts, including miscellaneous castings made of copper, tin, zinc, and/or lead. Shall be free of semi-red brass castings (78% to 81% copper); railroad car boxes and other similar high-lead alloys; cocks and faucets; closed water .01% Iron .05% meters; gates; pot pieces; ingots and burned brass; aluminum, silicon, and manganese bronzes; iron and non-metallics. No piece to measure more than 12" over any one part or weigh over 100 lbs. However, heavier pieces of any size, length and weight acceptable upon mutual agreement between buyer and seller.

Similarly, the "Melon Brass pipe" was described as follows:

Melon BRASS PIPE Shall consist of brass pipe free of plated and soldered materials or pipes with cast brass connections. To be sound, clean pipes free of sediment and condenser tubes.

9.3 In terms of the scope of coverage of goods under customs tariff entry for 7404 00 22, it includes various types of 'Brass scrap', namely the following:

"brass pipe covered by ISRI code word 'Melon'; yellow brass rod turnings covered by ISRI code word 'Night'; refinery brass scrap covered by ISRI

code word 'Drink'; composition of red brass scrap covered by ISRI code word 'Ebony'; red brass composition turnings scrap covered by ISRI code word 'Enerv'; genuine babbit-lined brass bushings scrap covered by ISRI code word 'Elder'; machinery or hard brass solids scrap covered by ISRI code word 'Engel'; machinery or hand brass solids scrap covered by ISRI code word 'Erin'; cocks and faucets scrap covered by ISRI code word 'Grape'; yellow brass scrap covered by ISRI code word 'Honey'; yellow brass castings covered by ISRI code word 'Ivory'; new brass clippings covered by ISRI code word 'Label'; yellow brass primer covered by ISRI code word 'Lark'; brass pipe covered by ISRI code word 'Melon'; yellow brass rod turnings covered by ISRI code word 'Night'; new yellow brass rod ends covered by ISRI code word 'Noble'; yellow brass turnings covered by ISRI code word 'Normad'; mixed unsweated auto radiators covered by ISRI code word 'Ocean'; admiralty brass condenser tubes covered by ISRI code word 'Pales'; aluminium brass condenser tubes covered by ISRI code word 'Pallu'"

On perusal of the above, it transpires that the scope of coverage of goods under 'Brass scrap' is of wide variety of atleast 20 types including 'pallu', 'ebony', 'melon'. The sales contract dated 31.07.2013 entered between the appellant importer and overseas supplier, it clearly establishes that the goods ordered for import are brass scrap of ISRI specification 'pallu'. Further, the size, length and/or weight of the scrap pieces as per ISRI are also a subject matter that is mutually agreed between buyer and seller. The customs tariff also do not provide for any separate definition in terms of Notes to chapter heading/sub-heading for prescribing the length of the scrap items, so as to include a particular size or length of brass tubes alone under the coverage of the phrase 'brass scrap'. Furthermore, there is apparent contradiction in the assessment of the length of the brass tubes by the examining officers of the department and the report given by the chartered engineer. Therefore, part of the imported consignment being as per declaration and rest of the same categorized as other than 'brass scrap' by the department for the reason that it is being serviceable in nature and of uniform size of higher length, in our considered view, does not enable the imported goods as mis-declared for the purpose of Section 111(m) ibid and for imposition of penalty on the appellant importer.

9.4 Further, the original authority had not discussed about revision in classification of the imported goods arising on account of 75% secondary defective brass pipes i.e., 19.82 MTs measuring approximately around 14 feet of identical size found to be serviceable in nature, and are not as per declaration made out by the appellant importer as 'brass scrap'. Further, both the authorities below have also not discussed about the grounds on which they had categorized the action of the appellant as mis-declaration of the description of imported goods and provided the specific details of contemporaneous value of identical goods for determining the value of imported goods under Rule 5 of CVR, 2007. It is also not the case of the department, that they had produced any document evidencing such mis-declaration or for adoption of the price of identical goods. Rather, it is only the visual inspection or examination of the customs officers, which have led to such conclusion being drawn by the department, that the goods are not as per declaration of 'brass scrap'. Therefore, we find that the department had not made out a case for mis-declaration of the goods by the appellant importer in terms of Section 111(m) ibid for confiscation of the imported goods and for imposition of resultant penalty on the appellant.

9.5 In this regard, we find that the Co-ordinate Bench of the Tribunal in the case of *Prateek Traders Vs. Commissioner of Customs, Ahmedabad* – 2009 (248) E.L.T. 462 (Tri.-Ahmd.) dealing with identical facts of the present case, have held that conclusion arrived by the department on their visual examination of goods for categorizing imported goods as serviceable nature and not as 'scrap', contradicting the expert opinion, cannot be acceptable and the benefit has to be extended to the importer. The relevant paragraph of the said order is extracted and given below:

> *"**4.** After having considered the submissions made by both sides, we find that there is no dispute about the fact that the consignment consisted of old, used and discarded automobile vehicles and their parts. The dispute only relates to as to whether the same can be considered as serviceable so as to classify them as vehicles and their parts. The impugned have relied upon the re-examination conducted at the time of drawing of panchanama. We find that such views, as reflected in Panchanama, are based upon the visual examination of the goods by the officers or by the Panchas, which cannot be considered to be an expert. On the other hand, the appellants have relied upon the opinion of the expert indicating that the goods are not of serviceable condition. Serviceability may be a possibility, but not a commercial reality. Hon'ble Punjab & Haryana High Court in case of M/s. Patiala Castings Pvt. Ltd. v. UOI as reported in 2003 (156) E.L.T. 458* (P&H) *and Tribunal in case of SPS Metal Cast & Alloys Ltd. v. CC (Port) Kolkata as reported in 2004 (163) E.L.T. 265* (Tri.-Kolkata)*, has held that old and used pipes of iron and steel have to be considered as scrap. We find that there being no expert opinion on the record, indicating that such goods were in fact in serviceable condition, and an expert opinion being to the contrary, we are of the view that benefit has to be extended to the appellant.*
>
> ***5.** We also note that during the course of adjudication, the appellants had made a request of mutilation of the goods. We find that such request made by the appellant, ought to have been accepted by the Revenue, if they were of the view that the goods could be put to use as such. Request of mutilation made by the appellant would enhance their case*

> *to the effect whatever was imported was waste and scrap and not of serviceable nature. Such request stand accepted by the Tribunal in number of cases. Reliance can be made to Hon'ble Kolkata High Court in case of M/s. Taiping International v. Collector of Customs as reported in 1997 (89) E.L.T. 457.*"

10. In view of the above analysis of the statutory provisions vis-à-vis the factual matrix of the case, and our observations and findings on such issues, we are of the opinion that the duty demand confirmed against the appellants-importer and fine and penalty imposed upon him are not sustainable. Accordingly, we find that the impugned order upholding the order of the original authority in confirmation of adjudged demands cannot stand the scrutiny of law.

11. In the result, the impugned order dated 08.04.2014, is set aside and the appeal is allowed in favour of the appellant.

(Order pronounced in open court on 10.08.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha