CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20324 of 2023

(Arising out of Order-in-Original No.BLR-CUSTM-COMM-08-2023 dated 29.03.2023 passed by the Commissioner of Customs, Bengaluru)

M/s. Krishna Sales Corporation
64/3, Jumma Masjid Road,
Bengaluru-560 002. ....**Appellant(s)**

VERSUS

Commissioner of Customs,
C.R. Building, PB No.5400,
Queens Road,
Bengaluru-560 001. ....**Respondent(s)**

WITH

(i) Customs Appeal No.20085 of 2024 (Shri. Gopal Soni, Partner of M/s.Krishna Sales Corporation, Bengaluru. Vs. CC, Bengaluru)

[Arising out of Order-in-Original No.BLR-CUSTM-COMM-08-2023 dated 29.03.2023 passed by the Commissioner of Customs, Bengaluru]

(ii) Customs Appeal No.20086 of 2024 (M/s. Soni Sales Corporation Vs. Commissioner of Customs, Bengaluru)

[Arising out of Order-in-Original No.BLR-CUSTM-COMM-07-2023 dated 29.03.2023 passed by the Commissioner of Customs, Bengaluru]

(iii) Customs Appeal No.20087 of 2017 (Mr. Gopal Soni Partner of M/s. Soni Sales Corporation Vs. Commissioner of Customs, Bengaluru)

[Arising out of Order-in-Original No.BLR-CUSTM-COMM-07-2023 dated 29.03.2023 passed by the Commissioner of Customs, Bengaluru]

APPEARANCE:

Mr. V.M. Doiphode, Advocate for the Appellant.
Mr. Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent.

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order Nos. 20858-20861 /2026</u>

Date of Hearing: 28.01.2026
Date of Decision: 17.07.2026

PER: P. A. AUGUSTIAN

The issue in the present appeal is regarding valuation of imported goods.

2. The brief facts are Appellant, M/s. Krishna Sales Corporation had imported Viscose Filament Yarn under 19(nineteen) Bills of Entry and Appellant, M/s. Soni Sales Corporation imported the very same goods under 9(nine) Bills of Entry. Alleging undervaluation, proceedings were initiated and statements were recorded from various persons including the Partner of the Appellant Shri. Gopal Soni. Thereafter alleging undervaluation, show cause notice dated 31.03.2016 was issued to M/s. Krishna Sales Corporation and thereafter the Adjudication authority as per the impugned order dated 29.03.202 confirmed the differential duty, confiscated the goods and imposed penalty on the appellant. Further penalty of Rs.5,00,000/-under Section 112(a) was imposed on Shri. Gopal Soni being the Partner. Appellant was allowed to redeem the goods on payment of Rs. 1 crore as redemption fine. Aggrieved by said order, Appeal Nos. C/20324/2023 and C/20085/2024 were filed.

3. Similarly, alleging illegality against the Appellant M/s. Soni Sales Corporation, proceedings were initiated and show cause notice was issued on 17.02.2006 and thereafter Adjudication authority as per the impugned order dated 29.02.2023 confirmed the differential duty with interest, confiscated the goods and imposed penalty. Further penalty of Rs.5,00,000/-under Section 112(a) was imposed on Shri. Gopal Soni being the Partner. The goods were allowed to be redeemed on payment of redemption fine of Rs.50,00,000/-. Aggrieved by said order, Appeal Nos. C/20086/2024 and C/20087/2024 were filed.

4. When the appeals came up for hearing, as regarding the appeal filed by M/s. Soni Sales Corporation, Learned Counsel for the Appellant submits that after issue of the show cause notice, the matter was adjudicated initially by the Adjudication authority vide Order-in-Original

No.11/2007 dated 27.06.2007 and confirmed the differential duty with interest and penalty as proposed in the show cause notice. Similarly in the matter of M/s Krishna Sales Corporation also the matter was adjudicated vide Order No. 13/2007 dated 23.07.2007 and confirmed the differential duty against 19 Bill of Entries and re-determined the value, differential duty with interest was confirmed with penalty and redemption fine. Aggrieved by said order, an appeal was filed before this Tribunal and this Tribunal as per the Final Order No. 26584-26587/2013 dated 16.09.2013 remanded the matter to the original authority to re-examine as to whether the statement of co-noticee alone would be sufficient to require the Appellant to pay differential duty, etc. The Tribunal further held that the Adjudicating authority has not at all considered the other submissions and has given grounds for rejecting other submission except only relying upon the statement given by the Appellant and the fact that the Appellant had approached the Settlement Commission. The Tribunal directed Adjudication authority should consider the issue afresh. Thereafter *denovo* adjudication was conducted and as per the impugned order confirmed the demand in both the cases. In Soni Sales against 9 Bill of Entries, impugned order says that statement of Shri Gopal Soni was in relation to all the consignments though he says in the same breath that in the middle of the statement there is a reference to live consignments. Thus, Adjudication Authority shows gross ignorance deliberately so as the entire basis of enhancing value was the last & 4th statement of Shri Gopal Soni dated 18.01.2006. Further, though Ld. Commissioner notes the submission in Para 20 G that the person who made Statement has to be examined before adjudicating authority as per Section 138 B (1) but conveniently does not deal in the findings.

4. Learned Counsel further submits that Adjudication Authority has erred in holding that the argument of the Appellants saying the undervaluation accepted in live consignments cannot be applied to the past consignments is against any imaginable logic, and relied on Apex Court Judgment in the case of **Ramchandra Rexin Pvt. Ltd. Vs.**

Commissioner reported in 2014 (302) ELT A61 (SC). Learned Counsel further submits that when this Tribunal in remand order gave specific direction, Adjudication Authority has not made any efforts to contact Shri. Henry and during interrogation no question was asked regarding Shri. Henry or his phone number. With regard to the first 3 Statements of Shri Gopal Soni, no question being asked regarding modus operandi adopted in past imports is a serious lacuna. In view of specific findings by Hon'ble Tribunal in remand order, Ld. Commissioner could not have relied upon statement of Shri Gopal Soni.

5. Learned Counsel for the appellant further submits that Adjudication Authority has not dealt with the contention of the Appellants to adopt contemporaneous import values. While remanding, this Tribunal held that the claim for adoption of contemporaneous prices has validity and if the price adopted by contemporaneous imports and the price at which the goods are sold in domestic market leave a reasonable margin, can one adopt value which results in loss to Appellants. On the basis of statement recorded on 18.01.2006, Shri Gopal Soni was shown DG valuation data for the period from March 2004 to July 2005 which showed higher prices. The Ld. Commissioner has erred in repeatedly referring to the statement of Shri Gopal Soni in para 37 and 38 to hold that imports made under nine bills of entry are undervalued. The Ld. Commissioner has erred in confirming demand on the basis of statement of Gopal Soni without any corroborative evidence. Learned Counsel further drew our attention to Order No. A/86237-86239/2023 dated 25.08.2023 in the case of **Junaid Kudia Vs. Commissioner of Customs, Import-II, Mumbai** wherein, it was held that, "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". This Judgement was upheld by Hon.ble Supreme Court as **reported in 2024 (388) ELT 529 (SC).**

6. As regarding Redemption fine, law is settled that when goods are not available for confiscation no redemption fine can be imposed. In this regard, Learned Counsel draws our attention to the judgment of Hon'ble Karnataka High Court in **GM exports case reported in 2012 (279) ELT 493 (Kar.)**. Learned Counsel also relied on following decisions.

(i) UPL Ltd. Vs. Union of India – 2023 (79) G.S.T.L 225 (Bom.) / (2023) 10 Centax 320 (Bom.)

(ii) Swatch Group India Pvt. Ltd. Vs. Union of India – 2023 (386) E.L.T. 356 (Del.)/ (2023) 10 Centax 5 (Del.)

(iii) Junaid Kudia, M/s. Plastic Cottage Trading Co., Zaid Kudia Vs. Commissioner of Customs, Mumbai vide Final Order No. A/86237-86239/2023 dated 25.08.2023

7. Learned Authorized Representative (AR) appearing for the Revenue reiterated the finding in the impugned order and submits that during investigation, substantial evidence regarding undervaluation was recovered including Bank remittance papers, import documents and miscellaneous papers recovered from the premises and facts received from the overseas supplier on 16.07.2005 accepting payment through other mode. Thus, based on the substantive evidence regarding undervaluation, Adjudication authority confirmed the demand with interest and penalty. As regards non-compliance of the Final Order issued by this Tribunal as alleged in the impugned order, Learned AR draws our attention to para 35 of the impugned order and the same is reproduced below:-

"35. *The Tribunal based on the submission of the noticee held that contemporaneous imports should have been relied upon. The noticee also in their contentions raised the issue of contemporaneous import valuation. In the Live Consignment it is settled case that the goods which are valued US $2.90 have been undervalued at US $2.20 by the noticee. The earlier consignments have also been admittedly undervalued. Further, the goods of* *same description, same supplier, same country of origin, same importer were of the same price. When the evidence in the form of imports by the same importer is available, there is no requirement to resort to contemporaneous price verification. As such, the matter is that of price paid or payable which is transaction value. It is settled law that when Transaction Value is available there is no need to proceed to the other valuation methods as the Transaction Value answers the definition of Value under Section 14 of Customs Act, 1962. Assuming, without admitting, that if the value is to be re-determined, the best available value of identical goods is that of the value of the goods of identical description imported by the same importer, i.e., the noticee from the same supplier".*

8. Heard both sides and perused the records.

9. We find that the matter was considered by this Tribunal and while remanding the matter specific directions were issued as follows:-

"7. Under these circumstances, we feel that the adjudicating authority needs to look at the issue afresh in the light of claims made by the appellants, decisions cited by them in support of their case, whether a statement alone would be sufficient to require the appellant to pay differential duty etc. We are constrained to do this in view of the fact that the Commissioner has not at all considered other submissions and discussed the same and has given grounds for rejecting such submissions excepting relying upon the only statement given by the appellant and the fact that the appellant had approached the Settlement Commission. Under these circumstances, without expressing any opinion, we remand the matter to the original adjudicating authority for fresh adjudication of the issue after giving reasonable opportunity to the appellants to present their case and pass a well-reasoned order considering all the submissions which may be made by them".

9. Further we find that when specific directions are issued considering the evidence on record and to consider the details regarding the contemporaneous import relied by the Appellant, we find that the Adjudication authority has given an evasive finding that when evidence in the form of import by same importer is available, there is no requirement to resort to contemporaneous price verification. Such method of Adjudication especially an issue after remand by this Tribunal amounts to non-compliance of the direction and for that reason alone, the impugned order is unsustainable. Further we find that during investigation, specific submission was made regarding details of contemporaneous import. However, though Appellants had submitted data obtained from Chennai Custom which showed that the prices were ranging from USD 2.2 to 2.5 per kg, contemporaneous data was selectively shown. Further we find that though the Appellants had requested for details of contemporary import data, Adjudication Authority does not even refer to the request. As per valuation rules, the lowest transaction value has to be adopted. The Ld. Commissioner has grossly erred in holding that Appellants had admitted higher value in the case of live consignments and that is best available value, which is contrary to Rule 5(3) of Customs Valuation Rules, 2007. However, we find that value prevailing in July 2007 cannot be adopted for the imports made from April 2004 as the value of the goods will vary over a period of time and particularly, when Appellants imported bulk quantity consignments. Further data related to contemporaneous import shows that others have imported less quantity of goods at comparable prices to the price declared by the Appellants and there is no reason to pay higher prices in free market to the supplier when the goods are sold by Appellant.

10. Accordingly, the impugned order confirming the differential duty along with interest alleging under valuation, imposition of penalty and redemption by the Adjudication authority on M/s Krishna Sales Corporation and M/s. Sony Sales Corporation are unsustainable. As regards co-noticees, since the goods are not liable for confiscation and

in the absence of any allegation, impugned order confirming penalties on co-noticees is also unsustainable.

11. In view of the above discussion the impugned orders are liable to be set aside, hence set aside. Accordingly, the appeals are allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in Open Court on 17.07.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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