CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20160 of 2020

(Arising out of Order-in-Appeal No.COC-CUSTM-000-APP-85 TO 86/2019-20 dated 22.11.2019 passed by the Commissioner of Customs (Appeals), Cochin)

M/s. Tayash Trade and Impex Pvt. Ltd.,
Alummodu 29/621-1, 2nd Floor Jain Tower,
Vytilla, Cochin-682 019,Kerala. ....**Appellant(s)**

VERSUS

Commissioner of Customs,
Custom House, Willingdon Island,
Cochin, Kerala-682 009. ....**Respondent(s)**

WITH

Customs Appeal No. 20161 of 2020

(Arising out of Order-in-Appeal No.COC-CUSTM-000-APP-85 TO 86/2019-20 dated 22.11.2019 passed by the Commissioner of Customs (Appeals), Cochin)

Mr. Mohammed Rafiq,
1A1 Kent Glass House Vytilla,
Cochin-682 019, Kerala. ....**Appellant(s)**

VERSUS

Commissioner of Customs,
Custom House, Willingdon Island,
Cochin, Kerala-682 009. ....**Respondent(s)**

APPEARANCE:

Mr. M. S. Sanjeev Kumar, Advocate for the Appellant.
Mr. M. Sreekanth, Asst. Commissioner (AR) for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 20852-20853 /2026

Date of Hearing: 15.01.2026
Date of Decision: 14.07.2026

PER: P.A. AUGUSTIAN

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

2. The brief facts are the Appellant is a regular importer of PVC profile and other goods from China. Alleging mis-declaration regarding freight prepaid and freight collected in terms of Bill of lading, proceedings were initiated and as part of proceedings, office of M/s. Lords Freight India Pvt. Ltd., was searched. Thereafter based on the said search, premises of the Appellants were searched and alleging under valuation, show cause notice was issued and Adjudication authority as per the order dated 06.04.2018, rejected the declared value, enhanced the value, ordered confiscation of the goods and also demanded differential duty along with interest. Adjudication authority also imposed penalty under Section 114AA on the Appellant and the CEO, Mr. Mohammad Rafiq of the Appellant. Aggrieved by said orders, Appeals are filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order rejected the appeals filed by the Appellants herein. Aggrieved by said order, present appeals are filed.

3. When the appeals came up for hearing, Learned Counsel for the Appellant submits that Appellant had imported PVC Profiles, PVC Flooring Material, Rivets and Car Accessories from China during the period from 2013-14. Alleging mis-declaration regarding freight prepaid, investigation was conducted. During investigation, goods imported under various Bill of Entries were detained and released provisionally in April 2014. Thereafter show cause notice was issued on 19.04.2017 demanding differential duties on the latest two Bill of Entries which were provisionally assessed in April, 2014 and demand was also raised in respect of the goods covered by other Bill of Entries which were provisionally released during the period from March, 2014 to March, 2017

4. Learned Counsel further submits that the rejection of transaction value is prima facie unsustainable, since there is no evidence on record

to substantiate the allegation regarding undervaluation and evidence on contemporaneous import on higher value is also not available on record. The entire allegation is on the ground that during investigation, two performa invoices were recovered and based on said performa invoices, it is alleged that goods imported under 273 Bill of Entries which were cleared on provisional assessment are undervalued and declared value was rejected. Learned Counsel submits that though the show cause notice/ impugned order relied on the invoices, email as well as report of forensic experts, same are not part of the relied upon documents and copies of the same were also not made available to the Appellant. Therefore, rejection of transaction value made available based on a document which is not part of the show cause notice cannot be sustained in the eyes of law. Further submits that finding of the Adjudication Authority also relied on the statement recorded from the Appellant though the statements were retracted on 01.04.2014 and 07.04.2014. Learned Counsel relied on the following decisions:

a. ***Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd reported in 2007 (214) E.L.T. 3 (S.C.)***

b. ***Sanjivani Non-Ferrous Trading Pvt. Ltd. Vs. C.C.E. & S.T., Noida reported in 2017 (7) G.S.T.L. 82 (Tri.-All)***

c. ***Commissioner of Customs (Imports), Mumbai Vs. Ganpati Overseas and Ors reported in MANU/SC/1089/2023.***

5. As regards impugned order holding the goods liable for confiscation and penalty, the Learned Counsel submits that Section 28 is not attracted in case of provisional assessments, but in case of completed assessments, when duty had not been levied or had been short levied. The issue is considered by the Hon'ble Supreme Court in the matter of **Commissioner of C. Ex. & Customs, Mumbai Vs. M/s. ITC Ltd. - 2006 (203) E.L.T 532 (SC)** where it is held that:-

> "17. *Section 11A of the Act provides for a penal provision. Before a penalty can be levied, the procedures laid down therein must be complied with. For construction of a penal provision, it is trite, the*

golden rule of literal interpretation should be applied. The difficulty which may be faced by the Revenue is of no consequence. The power under Section 11A of the Act can be invoked only when a duty has not been levied or paid or has been short-levied or short-paid. Such a proceeding can be initiated within six months from the relevant date which in terms of sub-section (3)(ii)(b) of Section 11A of the Act (which is applicable in the instant case) in a case where duty of excise is provisionally assessed under the Act or the Rules made thereunder, the date of adjustment of duty after the final assessment thereof. A proceeding under Section 11A of the Act cannot, therefore, be initiated without completing the assessment proceedings”.

6. Learned Counsel submits that the issue was considered by the Hon’ble High Court of Calcutta in the matter of **M/s. A.S. Syndicate (Warehousing) P. Ltd. Vs. Commissioner of Cus. (Port) - 2011 (267) E.L.T 469(Cal.)** wherein it is held that:-

“8. *In International Computers Indian Manufacturers Ltd. and Anr. Vs. Union of India & Ors. reported in 1981 (8) E.L.T. 632 (Del.), cited on behalf of the petitioners, the Division Bench of Delhi High Court inter alia held that Section 28 was not attracted in case of provisional assessments, but in case of completed assessments, when duty had not been levied or had been short levied*.

21. *Mr. Datta’s argument of there being an element of finality attached to provisional assessment, is difficult to appreciate. There can be no question of any demand, and in any case no interest or penalty until final assessment. In any case the petitioners accepted that provisional assessment had correctly been made under Heading 2106.90*.

22. *There being no final assessment, the impugned demand-cum- show cause notice is without jurisdiction and the same is set aside and quashed*.

23. *The writ application is disposed of accordingly".*

7. Learned Counsel draws our attention to the paragraph 6 of the show cause notice (SCN) there is a mention that during the course of verification of the documents seized from the office of M/s. Lords Freight (India) (P) Ltd, "*it was observed that one M/s. Tayash Trade & Impex (P) Ltd, had imported and cleared a couple of consignments using manipulated Bills of Lading as mentioned*" No further details, or the copies of the documents allegedly seized from the office of M/s. Lords Freight (India) (P) Ltd were provided to the Appellant. The show cause notice (SCN) specifically mentions that Revenue suspected undervaluation in imports and therefore goods relating to Bills of Entry Nos. 4985076, 4985326, 4985336 and 4985322 all dated 24.03.2014 were destuffed and examined. Only a vague statement that *"though items of different specification were seen, the invoice and packing list did not reflect the same"*. After making the above observation, nothing further was mentioned in relation to the above allegation in the show cause notice (SCN. The above allegation was made just as an excuse to conduct a search, which was not justified at all. As is narrated in the show cause notice (SCN as well as in the impugned order, the above computers/ CPUs were examined by the Cyber Forensic Expert, Dr. Vinod Bhattathiripad on 8.4.2014 and 9.4.2014 in the presence of independent witnesses and under Mahazar. In the report submitted by the Cyber Forensic Report, it was reported that no relevant files were found in the Sony Vaio laptop. Two assembled PCs, Apple Mac Book Air & External Hard discs were also examined and as a result of which, commercial Invoices and Packing Lists addressed to the importer, in Microsoft Excel files that could be easily modified or files that probably might have been locally fabricated, were found. These files were copied and transferred to newly created separate folders viz TAYASH-CYBER-FORENSICS, TAYASH-COMPUTER4-FORENSICS, FORENSICS & TAYASH MAC TAYASH-Addl Harddisk-FORENSICS, respectively. For that the Respondent in the impugned order mentions about a statement recorded under Section 108 of Customs Act, 1962 from Mr. Vimal T. Such a statement was never made available to the Appellant, and the

same was not one of the documents attached to the show cause notice (SCN. Further submits that when the services of a Cyber Forensic Expert was engaged, the forensic examination of hard-disc will reveal if a document has been edited or not, as the evidence of previous versions are not permanently erased. There is no allegation that the hard-disc was subjected to any low level formatting. The First Appellate Authority instead of upholding the findings of the Adjudicating Authority, ought to have found that it is impossible to carry out any tampering with documents/ files without leaving tell-tale signs which a Cyber Forensic Expert could easily detect. In the absence of any such finding, the Respondent could not have concluded that invoices were edited after receipt from the manufacturer/ exporter. For that Respondent ought to have found that no staff had deposed that the invoices were edited. Ms. Sruthi had merely stated that *"Rafique forwards Invoices from mail ID ceo@tayash.com info@tayash.com*". This is an office procedure used for inter-office communication. There is no whisper about her knowledge of any invoice having been edited. Similarly Ms. Greeshma Aneesh has only to email ID stated that she has access to email ID info@tayash.com and that invoices and packing lists are forwarded to the above email ID by the CEO from his email ID. She has further stated that she has no idea as to whether the invoice details forwarded by Vimal, are being directly forwarded to the mail address info@tayash.com by Rafique without any modification or the same are forwarded after making changes in the invoice, packing list etc. In view of the above statements of the employees, the Respondent was wrong to come to the finding that invoices were edited by Rafique. As regards imports under Bill of entry No. 3538925 dated 15.10.2013, the Appellant had explained that the consignment was imported at the instance of Mr Noufel, who was intending to start a business of dealing with car accessories. The negotiations in respect of the above consignment were done by Mr. Noufel with the exporter and 2(two) sets of invoices were received by the Appellant from the exporter in China. Only the lower value was paid to the exporter. Therefore, there was no way for the Appellant to know the details of the arrangement between

Mr. Noufel and the exporter in China. The Appellant had taken instructions from Mr. Noufel as regards the import process and payment and the Appellant could not have done any manipulation in the value as the cost of the articles, including the cost of import, duty etc., were to be borne by Mr. Noufel. The Appellant had merely admitted that two sets of invoices were received as regards the imports done at the instance of Mr. Noufel. These facts were already stated by the Appellant before the Respondent. Mr. Noufal, the person behind the import and the owner and the beneficiary of the alleged undervaluation was never questioned by the investigating officers to ascertain the truth.

8. As regards the demand confirmed by invoking the extended period of limitation, Learned Counsel for the Appellant submits that the Respondent has very casually dealt with the issue by stating that as the show cause notice was issued under Section 28 of the Customs Act, 1962, extended period of limitation will apply. In this regard, Learned Counsel submits that there is no suppression of facts as regards undervaluation in related 237 Bill of Entries. Appellant had agreed to Revenue's suggestion to load the value marginally. The fact that Bills of Entry No. 2964813 and 2964751, both dated 12.08.2013 pertained to import of PVC flooring based on the then prevailing price of Rs.65 per kilo was not considered at all. Comparing the value of profiles imported during 2014 cannot be done with the declared value of PVC flooring imported during 2013. The goods are not similar and the period is also vastly different. The fact that both are petroleum products and the prices will vary depending on the international petroleum prices was also not considered by the Respondent. The contention that for the consignment in the Bill of Entry No. 4603627 dated 15.10.2013, the exporter had initially wanted to charge a higher price for the Rivets as stand-alone products. But on subsequent negotiations, the exporter had given a discounted price. Hence the finding that the invoices reflect the real price is not correct.

9. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that the

contention that the proposal to reject the declared value in respect of Bills of entries is without any basis is not correct since the value declared in the 4 (four) Bills of Entry viz. 2964751 and 2964813 both dated 12.8.2013, 3538925 dated 15.10.2013 and 4603627 dated 11.2.2014, filed by the Appellant does not appear to be indicative of the actual transaction value of the goods as per the invoices recovered and the statement recorded from Shri. Mohammed Rafique, one of the Directors of appellant during investigation. The Appellant had connived with the overseas suppliers and submitted false documents showing incorrect value with the intention to evade duties of Customs and made payments of the differential amounts to the supplier through illegal non-banking channels. Further since the Director himself had admitted that he resorted to under-invoicing in this consignment and also stated that the actual value of the consignment was USD 40260(FOB), the contention that there is no manipulation in the freight invoice and the story that the freight is paid in India on the basis of an agreement with the overseas agent that the said freight amount would be refunded to him upon achieving 10 USD million turnover is for mis-leading the department. The investigation put to light the modus operandi adopted by the Appellant in manipulating the actual freight memo with the terms "Freight Collect" to "Freight Prepaid". The investigation proved that it was the Director himself who corrected the Freight memo for filing the Bill of entry. The contention that there was no editing of the invoice is false for reasons mentioned in para above. Valuation of Imported Goods is governed by Section 14 of Customs Act, 1962 read with Customs Valuation (Determination of vale of Imported Goods) Rules, 2007. Appellant had submitted the actual Invoice showing USD 40,260/- and USD 6604.50 (FOB) during the investigation. As per Section 14 of Customs Act, value of imported goods is the value actually paid or payable for the goods when sold for export to India. Learned AR further submits that from the importer's submission, value actually payable was USD 40,260/- and USD 6,604.50 (FOB) in respect of goods imported under Bills of Entry Nos. 5002416/ 25.03.2014 and 5016017/ 26.03.2014. Further when the goods imported under Bills of Entry Nos.

5002416/ 25.03.2014 and 5016017/ 26.03.2014 were provisionally assessed, provisional assessment can be finalized under Section 18(2) based on the invoices submitted by the importer along with the voluntary statement.

10. Learned AR further submits that Clause (iii) of Explanation appended to Rule 12 of the Customs Valuation Rules 2007, sets out some of the conditions for the reason to doubt the declared value and on the basis of which it can be rejected. The same is as below:-.

> *(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -*
>
> *(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
>
> *(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
>
> *(c) the sale involves special discounts limited to exclusive agents;*
>
> *(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
>
> *(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;*
>
> *(f) the fraudulent or manipulated documents.*

11. Learned AR further submits that as per Section 14 of Customs Act, 1962 value of imported goods is the value actually paid or payable for the goods when sold for export to India. Hence the declared invoice value shown under each Bill of Entry listed in the Annexure is liable for rejection under Rule 12(1) of the Customs Valuation Rules and the value shown in Column 7 of the said Annexure against the respective

Bill of Entry, arrived at based on the actual invoices and other documents recovered during the investigation as well as the admissions made by the importer under Section 108 of the Customs Act is to be taken as the transaction value in terms of Rule 3(1) of the Customs Valuation Rules read with Section 14 of the Customs Act, 1962. Consequent to above, the importer is also liable for payment of differential duty amounting to Rs. 6,60,025/- under Section 18(2) along with applicable interest vide Section 18(3) of the Customs Act, 1962.

12. Heard both sides and perused the records.

13. We find that as per the show cause notice, investigation commenced on the ground that fraudulent practice of issuing bill of lading as freight prepaid when freight was collected on arrival of goods. On completion of the investigation, show cause notice was issued proposing demand of differential duty with fine and penalty. We find that the entire allegation regarding under valuation is made on the ground that during investigation recovery of invoice was made related to Bill of Entry Nos. 2964813 and 2964751 both dated 12.08.2013 and while recording the statement, Shri. Mohammed Rafique admitted that they have resorted to declaring lower value. Further as regarding import of car washers and rivets under Bill of Entry Nos. 5016017 dated 26.03.2014 and 5002416 dated 25.03.2014, as per the impugned order invoices reflecting higher value was recovered and other evidences in the form of account statement were also recovered. Thus, we find that during investigation, recovery of invoice was made related to Bill of Entry Nos. 2964813 and 2964751 both dated 12.08.2013, Bill of entry No.3538925 and 4603627 both dated 15.10.2013. The differential duty payable against all these bills of entries is Rs.6,60,025/- as per. Annexure-A of show cause notice (SCN). As per evidence available on record, we find that there was under valuation in said bills of entries. Accordingly, impugned order confirming differential duty payable against the bills of entry of Rs.6,60,025/- as per Annexure-A of SCN is upheld and goods are liable for confiscation.

14. As regards redemption fine and penalty, we find that there is no finding regarding market value of the goods to ascertain the margin of profit and following the ratio of the decisions of this Tribunal in similar cases which were upheld by the jurisdictional High Court of Kerala in the matter of **CC Cochin Vs. Office Devices (2009 (240) E.L.T. 336 (Ker.),** wherein it is held that:-

> *"8. The dispute being only on the rate of redemption fine and penalty which inter alia depends on the totality of the facts and circumstances in each case, we fail to see how any question of law, much less any substantial question of law could arise. A quasi-judicial authority in exercising a power of discretion has to do it in an objective manner and cannot do so in a mechanical way. But we find that no peculiar facts were pleaded or materials placed to show that the redemption fine imposed at 10% and penalty at 5% is on a lower side. True that in earlier cases as pointed out in the Tribunal's order, redemption was at the rate of 10% and penalty at 5%. If the facts in this case cannot be differentiated, then for parity of reasons, necessarily, the Tribunal has to follow its precedence while imposing the redemption fine and penalty as otherwise, such decision can also be characterised as arbitrary and discriminatory. Coming to the facts of this case, the Tribunal found that the value as fixed by the Chartered Engineer's certificate is an enhanced value from the one declared by the assessee. That duty was imposed reckoning the value as fixed by the Chartered Engineer's certificate. Therefore, the redemption fine imposed being on such rate as fixed in the certificate issued by the Chartered Engineer, there was escalation in the redemption fine and penalty imposed. Thus, the Tribunal has given its own reasons in the matter of fixing a rate at which the fine should be imposed. Therefore, it cannot be said that it is a perverse finding. What would have been the rate had the matter been dealt with by this Court sitting in the armchair of the Appellate Authority, however, cannot be substituted".*

15. Following the above and considering the enhanced value of the impugned goods, redemption fine of Rs.3,00,000/- imposed by Adjudication Authority is reduced to Rs. 70,000/- as 10% and penalty of Rs.1,00,000/- imposed under Section in 112(a) of the Customs Act, 1962 is reduced to Rs. 35,000/- as 5% of the enhanced value of the impugned goods attempted to be imported by suppressing the value as per the Annexure-1 to the show-cause notice. As regards penalty in Appeal No. C/20161/2020, we find that the appellant was aware about the illegality in import of goods covered under Annexure-A to show cause notice (SCN). However, since Adjudication Authority has not imposed any penalty on the appellant related to import of goods covered under Annexure-A to show cause notice (SCN) no penalty is imposed on appellant in Appeal No. C/20161/2020.

16. Further as regards remaining goods imported under 273 bills of entries as per Annexure-2 of the show-cause notice, there is no quantification of the differential duty shown separately and as per the impugned order, confirmed differential duty on PVC profiles against 273 bills of entries based on the PVC flooring imported during 2013. However, raw material for the product being manufactured from crude oil and having frequent changes in value cannot be considered as basis for assessing the price @ Rs.70/kg. Further we find that the allegations of mis-declaration, suppression of facts and non-payment or short payment of Customs Duty would arise only after finalization of assessments and adjustment of the duty paid or payable in terms of Section 18 (2) of the Customs Act, 1962. There was no legal justification for issue of show cause notice (SCN) for finalization of the assessments by the Commissioner of Customs under Section 18 (2) of the Customs Act, 1962, instead of the Proper Officers. The issue whether show-cause notice under Section 28 of the Customs Act, 1962 can be issued in such cases where assessment is not finalised, Hon’ble High Court of Calcutta in the matter of **A.S. Syndicate (Waterhousing) P. Ltd. Vs. CC, (Port) – 2011 (267) E.L.T. 469 (Cal.)** held that there being no final assessment, impugned demand cum show-cause notice is without jurisdiction. Further Larger Bench of

the Tribunal in the case of **ITC Ltd Vs CCE, Mumbai - 2004 (170) ELT 33 (Tri - LB)** has held that when the assessments are provisional, the show cause notice (SCN) could not have been issued. However, Revenue can use any material contained in the impugned notice as independent material to support the finalization of assessment, after making this material known to the appellants in writing and after considering their response thereto both in writing and in personal hearing. Accordingly, finding regarding alleged illegality against 273 Bills of Entry and enhancing its value is set aside. Accordingly differential duty was confirmed along with interest and penalty imposed on appellant M/s. Tayash Trade & Impex Pvt. Ltd. under section 114A and Section 114AA and under and Section 114AA on Shri. Mohammed Rafique, CEO of the appellant are also set aside.

17. Accordingly, Confiscation of goods imported under Bill of Entry Nos. 2964813 and 2964751 both dated 12.08.2013, Bill of entry No.3538925 and 4603627 both dated 15.10.2013, and demand of differential duty is Rs.6,60,025/- against said imports are upheld. As regarding redemption fine and penalty, redemption fine is reduced to Rs. 70,000/- and penalty reduced to Rs. 35,000/-. The impugned order in respect of finalization of Provisional assessment of the goods imported under 273 Bills of Entry on enhanced value is set aside. The Jurisdictional Assistant Commissioner is directed to expeditiously address himself to the finalization of the provisional assessments as already detailed above in accordance with law.

(Order was pronounced in Open Court on 14.07.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Sasi ...