CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 60333 of 2024

[Arising out of Order-in-Original No. COMMR/VG/LDH/CUSTOMS/05/2024 dated 29.03.2024 passed by the Commissioner of Customs, Ludhiana]

M/s Fire Stone Metal Pvt Ltd **......Appellant**
12626, Vishkarma Colony, Partap Chowk,
Ludhiana, Punjab 141003

VERSUS

Commissioner of Customs, Ludhiana **......Respondent**
Customs House, ICD GRFL Complex, G.T. Road,
Sahnewal, Ludhiana, Punjab 141120

APPEARANCE:

Mr. Kamaljeet Singh, Advocate for the Appellant

Mr. Varun Sharma, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60467/2026

DATE OF HEARING: 21.07.2026
DATE OF DECISION: 28.07.2026

S. S. GARG :

The present appeal is directed against the impugned Order-in-Original dated 29.03.2024 passed by the Commissioner of Customs, Ludhiana, whereby the learned Commissioner has rejected the value declared in the Bill of Entry under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (in short 'the CVR, 2007') and re-determined the same under Rule 9 of the

CVR, 2007 in terms of the guidelines issued under Directorate General of Valuation letter dated 15.11.2018, and has confirmed the demand of Rs.99,59,607/- under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act and also imposed equal penalty under Section 114A of the Customs Act.

2. Briefly stated facts of the present case are that the Appellant has been importing Aluminium Scrap falling under CTH 76020010 of different grades as per ISRI. An investigation was undertaken by the officers of Special Intelligence & Investigation Branch of Customs Commissionerate (i.e. SIIB) in respect of import of Aluminium Scrap by the Appellant during the last five years. The Appellant was directed to furnish the Bills of Entry, copy of invoices issued by the manufacturer and other documents which are required by the Customs department. After the investigation, the department entertained the view that the Appellant had mis-declared the value (undervalued) of the imported goods and had contravened the provisions of Section 14 of the Customs Act, 1962 read with Rule 11 of CVR, 2007, as much as the Appellant had made a wrong declaration about the value of the goods in the Bill of Entry filed for importation of the goods with sole intention to evade the customs duty; the Appellant had done so willfully by suppressing the facts with intent to evade payment of customs duty; and therefore, extended period of limitation under Section 28(4) of the Customs Act was invoked. On these allegations, a Show Cause Notice dated 21.11.2023 was issued to the Appellant proposing the demand of

Rs.99,74,690.93 under Section 28(4) of the Act along with interest under Section 28AA of the Act, after rejecting the transaction value. The Appellant filed detailed reply to the said Show Cause Notice and challenged the valuation made by the department. After following the due process, the learned Commissioner of Customs, vide impugned Order-in-Original, has rejected the declared value and confirmed the demand along with interest and equal penalty. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the Appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts & the law and the binding judicial precedents on identical issue.

4.1 He further submits that during the period 01.09.2018 to 31.08.2023, the Appellant has filed 183 Bills of Entry in respect of import of Aluminium Scrap, which was imported from UK, USA, Hong Kong, Germany, Saudi Arabia and UAE. Less than 20% of the Bills of Entry are in respect of imports from UK.

4.2 He further submits that in fact the scarp was imported/purchased from traders and not from manufacturers and this scrap comprised of old, used and defunct articles of aluminium and hence invoice of manufacturer was not available with the Appellant. He further submits that during the investigation, the appellant has placed on record all documents which were in the possession of the Appellant including the invoices of the suppliers.

4.3 He further submits that the entire case of the department is based on the allegation that the Appellant had not produced the invoice of manufacturer, though invoices of suppliers were fulfilled. He further submits that the Appellant was asked to fulfill a condition which was impossible to fulfill.

4.4 He further submits that all the necessary documents were filed by the Appellant at the time of clearance of the said scrap and the said 183 Bills of Entry have been assessed after proper scrutiny and verification by the concerned officers; in the case of three Bills of Entry, the imports were from Singapore and imports were made under Free Trade Agreement ('FTA'); even then, at the time of assessment, customs duty was charged from the Appellant; in respect of 72 Bills of Entry, the customs duty was levied on higher value of goods than what was declared by the Appellant; in some cases, higher customs duties were charged due to higher exchange value of US Dollar being adopted by the department. He also submits that all the Bills of Entry were not assessed at the transaction value and the assessments have been done by the proper officer only by applying the Customs Valuation (Determination of Price of Imported Goods) Rules. He further submits that it is not open to the department to again increase the assessable value by resorting to the Valuation Rules; no appeals were filed by the department against the said Bills of Entry and thus the assessments have attained finality, but the impugned order is silent on this aspect.

4.5 He further submits that at the time of assessment of Bills of Entry, price of London Metal Exchange ('LME') was already available with the department; the Bills of Entry pertain to the period November 2020 to 31.08.2023, whereas the guidelines of Directorate of Valuation were issued on 15.11.2018 and the said guidelines were already available at the time of assessment of the impugned Bills of Entry; yet the department did not apply these guidelines at the time of assessment. He further submits that the department subsequently cannot apply the said guidelines which do not have the force of law to enhance the assessed value and it is not open to the department to re-open the assessed Bills of Entry and raise the demand of duty in respect thereof.

4.6 He further submits that the 'guidelines' issued by the Directorate of Valuation are just 'guidelines' and do not have any statutory force and are not binding like CBEC circulars, trade notices etc.; the transaction value cannot be rejected on the basis of guidelines issued by the Directorate of Valuation in the absence of evidence to show that the transaction value declared by the importer is not correct. In support of this submission, he places reliance on the following case-laws:

- **KVS Traders Vs. CC, Jamnagar (Prev.) - 2023 (385) ELT 390 (Tri-Ahmd.)**
- **Gian Castings Pvt. Ltd. Vs. CCE, Chandigarh-I - Final Order No. 60396-60420/2025 dated 10.03.2025 (Tri. Chan.)**
- **Panchgani Engineers Pvt. Ltd. Vs. CCE, Mundra - 2024 (387) ELT 334 (Tri. Ahmd.)**
- **Agarwal Metal & Alloys Vs. CCE, Kandla - 2021 (378) ELT 155 (Tri. Ahmd.)**

- **Modern Manufacturers Vs. CCE, New Delhi - 2018 (363) ELT 1020 (Tri. Del.)**
- **Niraj Silk Mills Vs. Commr. of Customs (ICD) Patparganj - Order dt. 27.11.2024 in CUSAA 26/2022 & CM APPL 22868/2022 (Stay) (High Court of Delhi)**
- **Gypsie Impex Vs. Commr. of Customs – Final Order No. 40131/2024 dated 05.02.2024 (Tri. Chennai)**
- **Neha International Pvt. Ltd. Vs. Commr. of Customs, Goa - 2006 (202) ELT 530 (Tri.- Mumbai)**
- **Commr. of Customs Vs. Modern Overseas - 2005 (184) ELT 65 (Tri-Del.)**
- **Akash Enterprises Vs. Commr. of Customs, Delhi 2017 (358) ELT 987 (Tri-Del.)**
- **Venture Impex Pvt. Ltd. Vs. Commr. of Customs (Import & General) - 2016 (338) ELT 759 (Tri-Del.)**
- **Commr. of Customs (Import), Nhava Sheva Vs. Bharathi Rubber Lining & Allied Services - 2013 (287) ELT 124 (Tri-Mumbai)**
- **Commr. of Customs, Mumbai Vs. FPS (India) Pvt. Ltd. - 2009 (234) ELT 268 (Tri-Mumbai)**
- **Ganesh Agro Vs. UOI - 2012 (276) ELT 459 (P&H)**

4.7 He further submits that the Appellant has not brought the scrap through LME, and therefore, LME prices cannot have any applicability to the imports by the Appellant. He also submits that the actual sale price depends on various factors like availability of buyers, the quantity/volume of purchase, payment terms, negotiation skills of the buyer & seller, regularity of purchase and whether the purchaser is a one-time customer or a regular buyer and so on. He also submits that the LME prices can merely serve as a guide for settling the price between the buyer and seller and cannot be used to determine the assessable value of the imported goods which is required to be determined as per the provisions of the Customs Act, 1962 and the Customs Valuation (Determination) of Price of Imported Goods) Rules, 2007; however, where goods have been imported in an arm's length transaction where buyer and seller are not related and there is no extra consideration for the purchase, the transaction price cannot be rejected.

4.8 He further submits that in the present case, there is no allegation that the price is not the sole consideration for sale or that the buyer and the seller are related to each other; in the absence of this allegation, there can be no justification for rejection of the transaction value as has been held in the following decisions:

- **Commissioner of Customs Port Vs. JJR Associates - 2023 (386) ELT 877 (SC)**
- **JJR Associates Vs. Commissioner - 2023 (12) Centax 269 (Tri. Kolkata)**
- **Unik Traders Vs. CC, Tuticorin - 2023 (386) ELT 759 (Tri-Chennai)**
- **National Steel & Agro Pvt. Ltd. Vs. CC, Mumbai-I - 2022 (381) ELT 693 (CESTAT-MUMBAI)**
- **Peekay Steel Castings Pvt. Ltd. Vs. CC, Kochi – 2016 - CESTAT-Bangalore**
- **B.B. Impex Pvt. Ltd. Vs. CC (Prev.), New Delhi - 2021 (376) ELT 743 (Tri. Delhi)**
- **Sachin K. Shirsagar Vs. CC (Import-I), Mumbai - 2023 (383) ELT 190 (Tri-Mumbai)**
- **Rajendra Textiles - 2023 (386) ELT 597 (Tri. Chennai)**

4.9 He also questions the invocation of extended period on the ground that there is no evidence of any collusion, willful mis-statement or suppression of facts against the Appellant. He also submits that the present issue relates to interpretation of statutory provisions and therefore, the extended period cannot be invoked if the dispute is due to interpretation. For this, he relies on the following cases:

- **Diamond Cements Ltd. Vs. CCE - 2012 (283) ELT 226 (CESTAT)**
- **Continental Foundation Jt. Venture Vs. CCE, Chandigarh-I - 2007 (216) ELT 177 (SC)**
- **Mentha and Allied Products Ltd. Vs. CCE, Meerut - 2004 (167) ELT 494 (SC)**
- **Pushpam Pharmaceutical Co. Vs. CCE, Bom. - 1995 (78) ELT 401 (SC)**
- **Uniflex Cables Ltd. Vs. CCE - 2011 (271) ELT 161 (SC)**
- **Murugappa Morgan Thermal Ceramics Ltd. Vs. CCE, Chennai-III - 2016 (45) STR 74 (Tri.-Chennai)**
- **CCE & ST, Jamshedpur Vs. Tata Pigments Ltd. - 2016 (45) STR 265 (Tri.-Delhi)**
- **CCE & ST (LTU), Mumbai Vs. Reliance Industries Ltd. - 2016 (45) STR 341 (Tri.-Mumbai)**

5. On the other hand, the learned Authorized Representative for the Respondent-Revenue reiterates the findings of the impugned order.

6. We have considered the submissions made by both the parties and perused the material on record as well as the decisions relied upon by the learned Counsel for the Appellant. We find that the only issue which arises for determination in the present case is whether the transaction value declared by the Appellant can be disregarded and the imported goods be reassessed, long after the assessment and clearance, on the basis of circular issued by the Department of Valuation which was issued on the basis of prices declared in the LME.

7. Further, we find that in the present case, during the period 01.09.2018 to 31.09.2023, the Appellant filed 183 Bills of Entry in respect of import of Aluminium Scrap which was imported from different countries and the assessment was finalized after following the due procedure, and Bills of Entry were assessed after proper scrutiny and verification by the concerned officer, and in certain cases, the valuation was also increased which was accepted by the Appellant. We further find that subsequently on the basis of the guidelines issued by the Directorate of Valuation, the department entertained the view that the Appellant mis-declared the value and not paid the correct customs duty. We find that once the assessment has been finalized and the department has not challenged the same, then subsequently on the basis of the guidelines issued by the Directorate of Valuation, the transaction value cannot be rejected because there is no evidence on record to show that the transaction value declared by the importer is not correct. Further, we find that these guidelines do not have any statutory force and they cannot override the provisions of Valuation Rules as has been held in the case of **Commr of Customs (Import) Nhava Sheva vs. Bharathi Rubber Lining & Allied Services – 2013 (287) ELT 124 (Tri. Mumbai)**.

8. Further, we find that the Hon’ble High Court of Delhi, in a bunch of appeals, has considered the identical issue in detail after considering the various judgments of the Tribunal as well as of the Supreme Court. After considering all the judgments, the Hon’ble High Court of Delhi in the case of **Niraj Silk Mills**

vs. Commr of Customs (ICD) Patparganj – CUSAA 26 of 2022 vide its **order dated 27.11.2024**, has decided the issue in favour of the importers-assessees. Here, it is pertinent to reproduce the relevant paras of the judgment of the Hon'ble Delhi High Court passed on **27.11.2024**, which are reproduced herein below:

> "**58**. Before we proceed to analyse Section 17 of the Act and its application to the appeals before us, it would be pertinent to preface the discussion by acknowledging the statutory position as it exists. An entity intending to import goods is firstly required to self-assess the duty which would be leviable. This obliges the importer to comply with the prescriptions set out in Section 46 of the Act. As that provision stands in its present avatar, the importer of any goods is required to electronically present on the customs automated system, the BoE for the consideration of the proper officer. The BoE is to include all particulars required in terms of the provisions made in the Act and corresponding rules. In addition to the presentation of a BoE, the importer is also statutorily obliged to submit a declaration as to the truthfulness of the contents of such BoE and in support thereof produce before the proper officer the invoice and other documents relating to the imported goods as may be prescribed. In terms of sub-section (4A) of Section 46, the importer who presents a BoE is to ensure that the said document is accurate and complete in respect of the information disclosed therein, the authenticity and validity of documents filed in support thereof and the import itself being compliant with any restriction or prohibition imposed in relation to those goods by law.
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> **59**. Upon the proper officer being satisfied that the goods entered for home consumption are not prohibited and import duty has been paid, it would pass an order permitting clearance of those goods for home consumption. This flows from a reading of Section 47 of the Act. In terms of Sections 48 and 49, an importer is also entitled to warehouse the imported goods after the same have been unloaded at a customs station or even transhipped within 30 days therefrom. The goods can thereafter remain in the warehouse pending clearance for removal.

60. Undisputedly, a self-assessed BoE which is submitted by an importer, if accepted and endorsed by the proper officer, would be deemed to have been duly assessed. This clearly flows from the manner in which the word 'assessment' has been defined in Section 2(2) of the Act and is in any case, an issue that is no longer *res integra*, bearing in mind the decision of the Supreme Court rendered in the matter of ITC Ltd. vs. CCE – (2019) 17 SCC 46.

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71. On an overall consideration of the statutory scheme governing the valuation of imports and reassessment, it becomes clear that the reasonable doubt which is spoken of in Rule 12 is indelibly connected to the aspect of the valuation of imported goods and the identification of the transaction value which is spoken of in Section 14. Section 14 introduces a deeming fiction when it provides that the value of the imported goods "shall be the transaction value" and which is ordained to be the price actually paid or is payable for the goods when sold. The 2007 Rules themselves owe their genesis to the identification of transaction value and which subject is principally regulated by Section 14 of the Act.

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75. The imperative of reasons being recorded in support of the doubt with respect to declared value and the same being communicated to the importer were aspects on which due emphasis was laid by the Supreme Court in *Century Metal Recycling* as is evident from a reading of para 25 of the report. In fact, the Supreme Court pertinently observed that the aforenoted mandate of Rule 12(2) cannot be "ignored or waived". The statutory obligations flowing from Rule 12 in this regard were reemphasized by the Supreme Court in that decision when their Lordships observed that the same would constitute the only manner in which the proper officer could proceed to make an assessment under Rules 4 to 9. The interplay between Sections 14 and 17, and the 2007 Rules was lucidly explained by the Supreme Court in Century Metal Recycling and where the Supreme Court was faced with a somewhat similar situation of an appellant who alleged that they had been coerced and intimidated into submitting a letter of consent conceding to the assessment and valuation exercise undertaken by the customs authorities compelled by the delay being caused in the clearance of imported articles and the continued levy of demurrage, warehousing charges and other liabilities. After noticing the language in which Rule 12 stood couched, the Supreme Court in *Century Metal Recycling* observed that while the expression "reason to doubt" may not be akin to a "reason to believe" or a subjective satisfaction being arrived at, it would clearly have to be reasonable and thus the doubt formed would have to be informed by a degree of objectivity.

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78. The key takeaways from the decision in *Century Metal Recycling* would thus be the reasonable doubt being based on empirical and legally justifiable factors illustratively spelt out in Rule 12, the mandate to record reasons in support of the formation of that opinion and the mandatory requirement of communicating that material to the importer upon request.

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84. We find ourselves unable to construe Rule 12(2) as contemplating any concession or waiver at least in explicit terms. All that Rule 12(2) stipulates is that the proper officer would intimate to the importer the grounds for doubting the declared value at its request. It is in the aforesaid context that we would thus have to adjudge whether the CESTAT was correct in holding that the exchange of communications amounted to a waiver or abandonment not just of the right to question and assail the reassessment but to impugn it in further proceedings in accordance with the procedure prescribed under the Act.

85. In our considered opinion, the perceived concession made in respect of the opinion harboured by the proper officer cannot possibly be interpreted or construed as detracting from or depriving the importer of the right to question the decision of the proper officer in accordance with law. The right to question the correctness of the decision of the proper officer, be it with respect to the formation of opinion or even on merits, is one which is protected by statute. The question, which as a sequitur, arises is whether that right itself can be said to have been abandoned.

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89. The question of abandonment arose for consideration again before a Constitution Bench of the Supreme Court in *Bhau Ram vs. Baij Nath Singh – 1961 SCC OnLine SC 292*. The issue itself arose in light of the stand of the respondents that the appellants upon withdrawing the pre-emption price would be deemed to have accepted the decree and thus being deprived of the right to assail or question the same.

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97. By virtue of Section 17(5) of the Act, the proper officer stands relieved of the obligation to pass a speaking order only in cases where the importer confirms his acceptance of the reassessment in writing. However, and as was noted in the preceding parts of this decision, the different Benches of the CESTAT have consistently taken the position that letters of consent of the like submitted by the appellants in this batch cannot be viewed as a complete or abject surrender of the right to assail or question a reassessment. However, the host of past precedents rendered on this aspect have come to be overlooked and ignored by the CESTAT which has merely proceeded to toe the line taken in the *Advanced Scan Support* and *Vikas Spinners*. We have already taken note of the distinguishing features which inform the aforementioned two decisions.

98. Therefore, the proper officer could not be said to have been relieved of its obligation to pass a speaking order in terms of Section 17(5). The process of rejecting the declared value and reassessing the transaction value is statutorily required to be preceded by the proper officer having drawn an opinion of why the declared value was not liable to be accepted before consequently proceeding to reassess the value. While the said reassessment may not be framed in elaborate terms, it would necessarily have to be reflective of the reasons which weighed upon the respondent to form the opinion that the declared value was not liable to be accepted.

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100. Insofar as the aspect of whether the enhancement or reevaluation of the 'declared value' can be based solely on the data available in the NIDB, in *Agarwal Foundries*, the Hyderabad Bench of the CESTAT had held that the customs authorities would be unjustified in enhancing the declared import values solely on the basis of NIDB data. It emphasized that transaction values cannot be rejected arbitrarily and that the authenticity of importer-issued invoices must be accepted unless discredited on the basis of cogent evidence.

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103. The Chennai Bench of the Tribunal in *M/s Gypsie Impex vs. Commissioner of Customs [Final Order No. 40131/2024 dated 5.2.2024]* addressed the limitations besetting the usage of NIDB data as the sole basis for re-determining transaction values. It is pertinent to note that Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, as analysed by the CESTAT in this decision, was similar to Rule 12 of the 2007 Rules. The CESTAT ruled in favour of the appellant, holding that NIDB data alone would be insufficient for value reassessment without corroborative evidence or contemporaneous import comparisons. This decision underscored the importance of comprehensive evidence and procedural compliance in customs disputes, cautioning against arbitrary reliance on NIDB data.

104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a valuation addition based solely on NIDB data would wholly unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. The legal position so articulated would ensure fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs valuation and a deviation from declared values being founded on tangible and justiciable material. A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the aforenoted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences.

105. Accordingly, and for all the aforesaid reasons, we would answer the question framed in the affirmative and in favour of the importers. The appeals are consequently allowed and the impugned orders of the CESTAT set aside. The order of the Commissioner (Appeals) shall in consequence stand restored."

9. Further, we find that the ratio of the above-cited judgment of Hon'ble Delhi High Court has been followed by this Tribunal in the case of **Gian Casting Pvt Ltd** (supra), wherein also the identical issue was involved.

10. In view of our discussion above and by following the ratio of the judgment of Hon'ble High Court of Delhi dated 27.11.2024, we are of the considered opinion that the impugned order is not sustainable in law, accordingly, we set aside the same and allow the appeal of the Appellant, with consequential relief, if any, as per law.

(Order pronounced in the open court on 28.07.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi