CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal Nos. 40511 to 40514 of 2024
with
Customs Cross Appeal Nos. 40766 to 40769 of 2025

(Arising out of Orders-in-Original Nos. 768-771/2023-CH-AIR dated 22.05.2023 passed by Commissioner of Customs (Chennai-VII), New Custom House, Meenambakkam, Chennai – 600 027)

Principal Commissioner of Customs **...Appellant**
Chennai VII Commissionerate,
New Custom House,
Meenambakkam,
Chennai – 600 016.

Versus

M/s. Conybio Healthcare (India) Pvt. Ltd. **...Respondent**
No. 137A, Jawaharlal Nehru Salai,
Ekkattuthangal,
Chennai – 600 097.

APPEARANCE:

For the Appellant : Mr. Anoop Singh, Authorised Representative
For the Respondent : Mr. S. Jaikumar, Advocate
Mr. M. Karthikeyan, Advocate

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 40913-40916 / 2026

DATE OF HEARING : 02.02.2026
DATE OF DECISION : 28.07.2026

Per Mr. VASA SESHAGIRI RAO

M/s. Conybio Healthcare (India) Pvt. Ltd. (Conybio India/Respondent) are a Private Limited Company registered in India and engaged in import and sale of Far InfraRed Bio-Ceramic healthcare products through multi-level marketing. Based on the intelligence, the SIIB carried out investigation against Conybio India which culminated into issue of four show cause notices for the period from April 1999 to March 2004 and culminated into passing of O-in-O. 768-771/2023-AIR dated 23.05.2023 wherein the following differential duties were demanded: -

Sl. No	**Details**	**SIIB/63/2004 dated 25.06.2004**	**S.MISC. 45/2002-SIIB (ACC) dated 27.01.2005**	**SCN/SIIB/71/2005 dated 03.08.2005**	**SCN/SIIB/74/2006 dated 19.12.2006**
1	Disputed Period	30.04.1999 to 16.03.2000	06.04.2000 to 22.04.2002	09.08.2000 to 29.10.2001	25.01.2001 to 15.03.2004
2	Duty demand - Undervaluation	10,95,924	10,01,35,750	1,23,68,551	19,60,92,849
3	RSP based Additional Duty	0	41,89,435	34,55,614	0
4	Classification - Conytakara	0	79,36,329	0	0
5	**Total Duty**	**10,95,924**	**11,22,61,514**	**1,58,24,165**	**19,60,92,849**
6	**Rs. 32,52,74,412/-**				

2.0 The Show Cause Notices allege that Conybio India was established and operated under the control of Conybio (M) Sdn. Bhd., Malaysia, (Conybio Malasiya). It is alleged that intermediary entities such as Bryncoch United Sdn. Bhd., Reka Network Sdn. Bhd. and Reka Macro Resources Sdn. Bhd. were merely facade suppliers used to conceal the identity of the real supplier and the relationship between the parties.

2.1 The Notices further allege that the declared transaction values did not represent the actual consideration paid for the imported goods and that the importer had made payments over and above the invoice values. Reliance is placed on correspondence, internal statements of account, purchase orders and other seized documents to allege undervaluation of imports.

2.2 It is also alleged that Conybio Malaysia exercised control over the import transactions by determining prices and managing the commercial affairs of the Indian company. The Department further alleges that personnel, marketing material, technical know-how and business strategies were provided by Conybio Malaysia and that the Indian company functioned as part of the Conybio group rather than as an independent business entity.

2.3 The Show Cause Notices also contend that the importer and the Malaysian entities acted in concert to conceal their relationship, mis-declared the value of imported goods and evade customs duty. On these allegations, the Notices propose rejection of the declared transaction values, proposed recovery of differential duty and confiscation of goods and imposition of penalties.

3.0 However, Conybio India denied the allegations contained in the Show Cause Notices and contended that the proceedings were founded on assumptions, conjectures and inferences rather than legally admissible evidence. They asserted that the imports were made on a principal-to-principal basis from independent overseas suppliers and that the declared transaction values represented the actual price paid or payable for the imported goods.

3.1 They further contended that the Department had failed to establish any relationship within the meaning of the Customs Valuation Rules that could justify rejection of the declared transaction value. It was submitted that the correspondence, internal documents and statements relied upon by the Department neither established undervaluation nor proved any additional consideration flowing from the importer to the overseas suppliers. The reliance placed on seized documents, statements of account and correspondence was challenged on the ground that they were either incomplete, taken out of context or did not relate to the imports in question.

3.2 Conybio India also disputed the allegations relating to foreign investment, shareholding and violations of the foreign exchange laws, contending that such allegations were outside the scope of customs valuation and, in any event, had no bearing on the determination of the assessable value of the imported goods. They further submitted that the Department had failed to produce contemporaneous import evidence or any legally acceptable material for rejecting the declared transaction values.

4.0 The adjudicating authority, after considering the allegations in the Show Cause Notices and the replies filed by the noticees, held that Conybio India was not dealing with the overseas suppliers on a principal-to-principal basis and that Conybio (M) Sdn. Bhd., Malaysia was the real supplier and controlling entity behind the imports. According to the adjudicating authority, the evidence on record, including correspondence, statements, seized documents and financial records, established a close commercial and operational relationship between the Indian importer and Conybio Malaysia.

4.1 The adjudicating authority further held that the relationship between the parties influenced the prices of the imported goods and that the declared transaction values did not represent the true price actually paid or payable. Consequently, the declared transaction values were rejected under the Customs Valuation Rules.

4.2 The adjudicating authority also held that the Department had successfully discharged the burden of proving undervaluation and that the explanations offered by Conybio were insufficient to dislodge the documentary evidence relied upon by the Department. Accordingly, the assessable value of the imported goods was redetermined by rejecting the declared transaction values and adopting the values derived from the evidence relied upon during the investigation.

4.3 The adjudicating authority further held that the nature, composition, characteristics and intended use of the imported products supported the Department's proposed classification. The explanations offered by the noticees in support of the declared classification were rejected as being unsupported by the evidence on record. Consequently, the authority confirmed the classification proposed in the Show Cause Notices and held that the imported goods were liable to assessment under the revised tariff headings.

4.4 In view of the above findings, the adjudicating authority *vide* common O-in-O No. 768-771/2023-AIR dated 23.05.2023 confirmed the entire demand of differential duty, interest and imposed penalties as proposed in the show cause notices. However, he did not impose redemption fine as the imported goods are not available for confiscation.

5.0 Aggrieved by the non-imposition of redemption fine on the grounds of the non-availability of the imported goods despite holding that the imported goods were liable to confiscation, Appeals were filed by the Principal Commissioner of Customs, Chennai – VII, the Appellant herein, under Section 129D(4) of the Customs Act, 1962 on the directions of the Committee of Chief Commissioners challenging the common O-in-O No. 768-771/2023-AIR dated 23.05.2023 in so far as it relates to non-imposition of redemption fine and also for not including the interest payable in penalty imposed under Section 114A of the Customs Act, 1962.

5.1 The Appellant department filed a Miscellaneous Petition dated 15.10.2024 requesting for early hearing of the Appeals citing huge revenue involvement. Upon receiving the Intimation fixing the Misc. Petition for hearing before the Bench on 16.06.2025, the Respondent through their Authorised counsel requested for copies of the Appeals filed by the Appellant department and the same were forwarded to the authorised counsel of the respondent on 11.06.2025. The request for out of turn hearing was turned down by the Bench, vide Misc. Order Nos. 40642 to 40645/2025 dated

16.06.2025. Respondent filed Cross-objections under Section 129A(4) of the Act on 23/25.07.2025 challenging the substantive portions of the impugned common Order confirming the charge of under-valuation of the goods imported and the proposal for re-classification.

6.0 Both the Appeals and Cross-objections were heard on 02.02.2026. The Ld. Authorized Representative Shri. Anoop Singh, Joint Commissioner (AR) represented the Appellant department and the Ld. Advocate Shri. S. Jaikumar represented the Respondent importer. The Ld. AR raised a preliminary objection that Cross-objection was different from Cross Appeal and the provisions of Section 129A (4) of the Act enabling filing of cross-objection cannot be used as a means to challenge an entire Order without filing appeal against the impugned Order and the scope of cross-objection is restricted to contents of appeal i.e. only that part of the Order appealed against. The Ld. AR also said that such a long delay in filing Cross-objection is unexplained and therefore is not maintainable. Referring to the findings in the impugned Order as contained in paras 194 to 196 and 197.2 relating to related party, valuation and classification, he requested for decision on merits.

6.1 The Ld. Advocate Shri. S. Jaikumar referring to the provisions of Section 129A (4) of the Act argued that in terms of the said provision, Respondent not only gets an opportunity to rebut the grounds of appeal filed by the Appellant but is also extended the benefit of contesting any part of the Order which has been appealed against. He said that since the provision clearly holds that such a cross objection should be disposed of by the CESTAT as if it were an appeal, the contention of the Appellant that cross-objection cannot be equated with cross-appeal does not stand to reason. The learned Advocate supported his contention placing reliance on the following decisions: -

i. *CC Vs Kamal Bajaj – 2016 (2) TMI 142 –CESTAT New Delhi (LB)*
ii. *Ispat Traders Vs CC, Jamnagar – 2007 (8) TMI 469 – CESTAT, Ahmedabad*
iii. *CCE Vs Kapish Print Pack Pvt. Ltd. – 2016 (8) TMI 290 – CESTAT, New Delhi*

6.2 The Ld. Advocate further argued that Section 129A (4) of the Act embodies a statutory mechanism analogous to Order XLI Rule 22 of the Code of Civil Procedure, 1908 which permits a Respondent to file cross-objections against any part of an Order impugned and, in this connection, placed reliance on the Supreme Court judgment in the case of *Dheeraj Singh Vs Greater Noida Industrial Development Authority and Others* reported in *(2023) 19 SCC 214*. He thus emphasised that cross-objections need not be confined to that portion of the Order appealed against but can also be against the entire or any part or portion of the Order. In as much as cross-objections had been filed within 44 days from the date of receiving copies of appeals from the Registry, the learned Advocate requested that the same may be taken on file and disposed of as appeals as envisaged in Section 129A (4) of the Act.

7.0 After hearing the rival contentions at length, we were convinced that the preliminary objection raised by the AR was legally flawed and we called upon both sides to argue on the merits of the case. We discuss below the reasons which weighed with us for overruling the objection.

7.1 Section 129A (4) of the Act reads as below: -

> *"(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3)."*

7.2 It is clear from Section 129A(4) of the Act that the Respondent in an appeal filed by the other party, in spite of not having filed an appeal under Section 129A(1)(a) of the Act, can still file a cross-objection contesting the Order as a whole or a part / portion thereof within a time-limit of 45 days from the date of receiving the appeal papers filed by the other party and the CESTAT is legally obliged to dispose of the said cross-objection as if it is an appeal filed against the impugned Order and against which an appeal has already been filed by the other party. This, we feel, is the plain, true and only meaning of Section 129A (4) of the Act. As rightly argued by the Ld. Advocate for the Respondent, by virtue of this statutory provision, Respondent gets an opportunity to challenge as a whole or a part / portion of an Order appealed against by the other party in addition to contesting the points raised in the appeal memorandum by the other party. As the words in the statutory provision are clear and categorical as discussed above, we are not persuaded to accept the Appellant's argument that cross-objection should be restricted to the points contained in the appeal filed by the other party.

7.3 The following case laws cited by the Respondent fully support the view we have taken.

i. *Commissioner of Customs vs. Kamal Bajaj - 2016 (2) TMI 142 – Larger Bench of CESTAT, New Delhi*

> *"5. From the perusal of the aforesaid sections, it is evident that under section 129D, the Commissioner is directed by the Committee of Chief Commissioners to apply to the Appellate Tribunal for the determination of such points arising out of the decision or the order of the Commissioner as may be specified by the Committee of Chief Commissioners in its order and the Appellate Tribunal is to hear such application as if it was an appeal against the decision or order of the adjudicating authority. Further, by virtue of Section 129A(4), which comes into play by virtue of Section 128D(4), memorandum of cross-objections filed by the respondent is to be disposed of by the Appellate Tribunal as if it were an appeal. The*

respondent can file cross-objections against any part of the order appealed against. The Appellate Tribunal can not only go into points arising out of the decision or order as may be specified by the Committee of Chief Commissioners, but also go into the points raised by the respondent in its cross-objections. In other words, the Tribunal is not obligated to confine its scope only to the decision on the points arising out of the order or decision as may be specified by the Committee of Chief Commissioners, but also cover the points raised in the memorandum of cross-objections but in the absence of the cross-objections , the Tribunal is to confine itself only for the determination of such points arising out of the order of the Commissioner as may be specified by the Committee of Chief Commissioners in its order."

ii. *Ispat Traders vs. Commissioner of Customs, Jamnagar - 2007 (8) TMI 469 CESTAT, Ahmedabad*

"5.2 If the Original Authority decided the issue against the party on merit (say on liability to duty or eligibility of an exemption notification) but gives full relief on limitation, then the Department may file an appeal against the order quashing the demand of limitation. Even though no demand was due from the assessee, the assessee may also file an appeal seeking relief on merits as the issue may be of recurring nature. If the assessee has not chosen to file an appeal within the prescribed time, challenging the adverse decision on merits but the department may come up on appeal challenging the decision on limitation. In such a situation the law provides for cross-objection being filed within the specified time, even if appeal against the adverse findings has not been made by the assessee within the originally prescribed time. Such a cross-objection will be treated as an appeal and decided. This is only a deemed appeal in relation to the order of the Original Authority which was against the assessee in the first place."

iii. *Commissioner Central Excise vs. M/s. Kapish Print Pack Pvt. Ltd. And Vice Versa - 2016 (8) TMI 290 - CESTAT NEW DELHI*

"9. In any case, we find that another decision of the Tribunal in the case of Amar Beverages Pvt. Ltd. Versus Commissioner of Central Excise, Haldia [2009 (248) ELT 513 (Tri.-Kolkata) laying down that if cross objections filed before Commissioner (Appeals) are not considered as an appeal, the very purpose of provision of filing cross-

> *objections would be defeated. To the similar effect is the decision of the Tribunal in the case of Commissioner of Central Excise Allahabad Vs. Bajaj Hindustan Sugar and Industries Ltd. 2010 (253) ELT 614 (Tri.-Del). By taking note of both the provisions of the Central Excise Act, it stands held that when such a cross-objection stands filed by the assessee, the Commissioner (Appeals), should have dealt with all the pleas raised in it as the same has to be treated as an appeal. To the similar effect is the Tribunal decision in the case of Commissioner of Central Excise, Bhopal Vs. Optal Telecommunication Ltd. [2006 (4) S.T.R. 91 (Tri.-Del).*
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> *10. We also find that the Hon'ble Karnatka High Court in the case of Southern Auto Products Vs. Commissioner of Central Excise, Bangalore-I 2009 (244) ELT 348 (Kar.) has considered an identical issue and has held that cross-objections filed by the assessee before Commissioner (Appeals) are required to be disposed of as an appeal filed by the assessee. Inasmuch as the issue stands decided by the Hon'ble Karnataka High Court, we are bound to follow the same. Accordingly, we set aside the impugned order and remand the matter to Commissioner (Appeals), for fresh decision on the Revenue s appeal as also on the appeal filed by the assessee, by treating the cross-objections as appeal."*

Though the above decision was rendered under the Central Excise Act, 1944, since the provisions of Section 35B (4) of CEA and 129A (4) of the Act are *pari materia*, the ratio therein applies to the facts of this case as well.

8.0 Turning to the merits of the case, the Respondent, Conybio India Private Limited, are importers of Bio-Ceramic Far Infrared (FIR) healthcare products of "Conybio" brand (henceforth referred to as the subject goods) like T-shirts, Socks, Belts, Knee Bands and Beads from Malaysia. Acting on intelligence that the Respondent resorted to mis-declaration of transaction value and remitted foreign exchange far in excess of the value declared in the Bills of Entry (B/Es), the officers attached to SIIB, Air cargo Complex, Chennai conducted search of the business and residential premises of the Respondent and recovered various documents including balance sheet, parallel invoices, statement of accounts, number of communications, slides and CDs besides seizing a cash amount of Rs. 30.98 lakhs. On the direction of the High Court of Judicature at Madras, Respondent executed a Bank guarantee in a sum of Rs. 2.69 crores and the cash amount seized was retained by the department. Proceedings were initiated against the Respondent alleging under-valuation of the subject goods and mis-classification of a product called 'Cony Takara'. As already observed, there were 4 Show Cause Notices dated 25.06.2004, 27.01.2005, 03.08.2005 and 19.12.2006 and except the SCN dated 27.01.2005 which was issued by Air Customs, Chennai, all other SCNs were issued by Sea Customs, Chennai. The details of SCNs are as below: -

i. SCN dated 25.06.2004 issued by the ADC Customs (Appraising), Seaport

   3 Bills of Entry dated 30.04.1999, 18.02.2000 and 16.03.2000 all finally assessed. Imports took place from M/s Bryncoch United Sdn. Bhd, Malaysia (Bryncoch for short). Differential duty Rs. 10,95,924/-.

ii. SCN dated 27.01.2005 issued by the Commissioner of Customs (Airport & Air cargo)

Except a Bill of Entry dated 06.04.2000 which relates to M/s Bryncoch, all other imports were made from M/s Reka Network, Malaysia and M/s Rekamacro Resources Private Limited, Malaysia. 141 B/Es finally assessed on which duty short-levied works out to Rs. 9,58,85,080/-. 1 B/E dated 24.11.2001 relating to the product "Cony Takara" finally assessed with short-levy of Additional Duty of Customs (ADC) after re-classification to CTH 3304 (RSP) from CTH 3004. 16 B/Es finally assessed relating to Conybio slippers and Conybio soap (RSP) – ADC Rs. 41,89,435/-. 16 B/Es provisionally assessed relating to products other than Cony Takara –duty short levied is Rs. 42,50,670/-. For Cony Takara, 6 B/Es provisionally assessed – Reclassified (RSP) and ADC short levied is Rs. 71,28,889/-.

iii. SCN dated 03.08.2005 issued by the Commissioner of Customs (Seaport – Import)

Short-levy of duty amounting to Rs. 1,23,68,551/- and short-levy of ADC amounting to Rs. 34,55,614/- based on RSP on products such as Cony-bio slippers, soap, shampoo, body lotion, hair cream and water purifier relating to 7 B/Es finally assessed.

iv. SCN dated 19.12.2006 issued by the Commissioner of Customs Imports (Seaport)

Short-levy of duty amounting to Rs.3,95,01,494/- due to re-determination of AV and RSP relating to 9 B/Es finally assessed for products Food container, Slippers, Water purifier, etc. Proposal for finalization of provisional assessment relating to 56 B/Es consequent to re-determination of AV and RSP - Demand not quantified.

8.1 The crux of the allegations made in the SCNs was that though it has been shown on record by the Respondent that imports had taken place from M/s. Bryncoch United, Malaysia (Bryncoch for short), M/s. Reka Network, Malaysia and M/s Rekamacro Resources (M) Sdn Bhd, Malaysia respectively as per the prices mentioned in the respective invoices, the goods were actually exported by M/s Conybio (M) SDN. BHD, Malaysia (Conybio Malaysia for short) as per the prices shown in the parallel invoices issued by M/s. Conybio (Malaysia) to the Respondent and which was 50% more than the value adopted for duty payment i.e the value declared for assessment was 50% of the prices shown in the invoices raised by Conybio (Malaysia) to the Respondent and these units were used on paper to suppress the business interest of Conybio Malaysia in the Respondent firm.

9.0 After considering the submissions made by the Respondent, the Appellant Adjudicating Authority (AAA), in the impugned Order held that the charge of under-valuation of the subject goods including RSP on notified imported goods was established and the product "Cony Takara" merited classification as skin care product under CTH 3304 as proposed by the department and not as medicament under CTH 3004 as claimed by the Respondent. The proposals in the SCNs demanding interest and imposition of penalty were also confirmed. After finalizing the provisional assessment of 56 B/Es connected to SCN dated 19.12.2006, differential customs duty amounting to Rs. 15,65,91,315/- was demanded. As already said, though the imported goods were held liable to confiscation, in view of non-availability of goods, Appellant Adjudicating Authority (AAA) did not order confiscation thereby not imposing redemption fine.

9.1 The adjudicating authority in the impugned Order recorded the following findings on the merits of the case: -

i. Letters / E-mails from Mr. Richard K. Lau, Executive Director, Conybio (Malaysia) and Mr. A.K. Lee, International department, Conybio (Malaysia) to Mr. N. Kanagendran, president of the Respondent importer (listed and discussed in para 195.5 of the impugned Order) calling for Respondent's bank accounts, balance sheet, shareholder details, authorized paid-up capital and stock inventory pointed to Conybio (Malaysia) having an active participation in the financial and business affairs of the Respondent unit despite Mr. Lau, Director & shareholder of Conybio (Malaysia) and Yeeh Hong Leong, shareholder of Conybio (Malaysia) tendered resignation from the Board of Directors of the Respondent unit on 08.01.1999.

ii. Though the communications afore-said were from Conybio (Malaysia) to the Respondent, they were faxed from the office of Bryncoh indicating thereby that Bryncoh was used by Conybio (Malaysia) to suppress / not disclosing the identity of the actual supplier of the goods i.e Conybio (Malaysia).

iii. Mr. Logendran and Mrs. Ratnam, directors of M/s Rekamacro Resources, Malaysia are respectively brother and mother of Mr. N. Kanagendran, president of the Respondent unit. Being members of the same family, Rekamacro Resources and the Respondent are related parties attracting the mischief of Rule 2(2) of Customs Valuation Rules, 1988.

iv. For supplies made from Bryncoch to the Respondent, parallel invoices (listed in para 196.6 of the impugned Order) were raised by Conybio (Malaysia) on the Respondent; on each of the parallel invoices the remarks "ACCEPTED ALL" were hand-written by Mr. Kanagendran; and each parallel invoice had a debit entry in the "Statement of Accounts as on 31.03.2000" prepared by Conybio Malaysia for the Respondent, proving that the actual supplier was Conybio Malaysia and the actual prices for the goods imported by the Respondent are the prices mentioned in the parallel invoices.

v. Invoice towards Freight and Insurance charges for supplies made by Bryncoch, Malaysia was raised by Conybio Malaysia; the invoice found mention in the "Statement of Accounts as on 31.03.2000"; and the invoice contained a hand-written remark of Mr. Kanagendran "accepted" thereby making it clear that the actual supplies were from Conybio, Malaysia at the prices mentioned in the parallel invoices raised by Conybio, Malaysia.

vi. Invoices raised by Conybio, Malaysia on the Respondent towards ticket charges for various persons and the same figuring in the Statement of Accounts clearly indicated that the goods were actually supplied by Conybio, Malaysia.

vii. Rekamacro Resources was registered as a private limited company on 15.01.2001 whereas a Consultancy Agreement was entered into between the Respondent and Rekamacro Resources on 01.04.2000 for provision of services like product identification, quality control and marketing network and by virtue of the Agreement Respondent had paid USD 3,00,000 to Rekamacro Resources, Malaysia at the rate of USD 1 lakh per annum for the years 2000-01 to 2002-03. Rekamacro Resources having not been in existence on the date of signing of the Consultancy Agreement and further having been signed by Mr. N. Kanagendran when he was not the Director of the Respondent unit, the agreement is void ab-initio and there can be no rights or liabilities over the void agreement. The plea that it was in the nature of pre-incorporation agreement or contract cannot be accepted because entering into such an agreement before incorporation is violative of

Section 34 of the Companies Act, 1956. In the normal course, once the remittances are found to be in violation of RBI guidelines, FEMA Rules and FEMA, 1999 as in this case, such payments should be added to the cost of imported goods in terms of Rule 9 of the Customs Valuation Rules.

viii. Respondent had mis-declared the Retail Selling Price (RSP) for Slippers & Toilet Soaps and did not declare the RSP for items like Food Container, Body Lotion, Hair Cream and Water Purifier and the under-valuation was found out upon perusing the price list and sales invoices for a few items submitted to the department.

ix. Being a Malaysian citizen, Mr. Kanagendran contravened Section 29 of the FERA, 1973 and the rules made thereunder by the RBI by not intimating acquisition of shares by him in the Respondent unit. The balance sheet for the year 2000-01 shows that an amount of Rs. 45.24 lakhs was returned to Mr. Kanagendran as "refund of shares application money" and Mr. Kanagendran had invested this amount without any advertisement from the company for receipt of deposit thereby contravening Section 58A of the Companies Act, 1956 and Rule 3(ii) & Rule 11 of the

Company (Acceptance of Deposit) Rules, 1975. For the period from 01.04.99 to 31.03.2000, an amount of Rs. 44.05 lakhs was invested by Mr. Kanagendran to meet expenses like office rent, purchase of computer and payment of salaries to employees without any approval from RBI. Dividend was announced for the year 2002-2003 once loyalists of Mr. Kanagendran became directors of a company by name M/s Kaizen Commerce Private Limited which is a shareholder of Respondent unit apart from Mr. Kanagendran. Mr. Kanagendran and M/s Kaizen Commerce Private Limited got dividend amounts of Rs. 1.53 crores and Rs. 1.47 crores respectively. The dividend amount of Rs. 1.47 crores announced and parked in M/s Kaizen Commerce is an income acquired from the import of grossly undervalued goods and the department is entitled to appropriate the said dividend amount for duty liability. The dividend amount of Rs. 1.53 crores was utilised or disposed of by Mr. Kanagendran to pay the portion of the undisclosed value. As per his version before the IT department, his monthly salary was Rs. 1.5 lakhs. Thus, while his salary income from the date of incorporation of the Respondent unit till July 2003 was Rs. 69,00,000/-, he repatriated Rs. 1,18,00,000/- till July 2003. The surplus amount of Rs. 49,00,000/- is the portion of the under-declared value remitted illegally from the sale proceeds of the smuggled (imported) goods.

x. Respondent's claim that nothing was paid over and above the invoice price cannot be accepted since, as discussed, sufficient evidence is available proving payments over and above the invoice price.

xi. In view of existence of parallel invoices; negotiations between the importer and the suppliers; and remittance of extra consideration other than the declared value, in terms of Rule 8 of the Customs Valuation Rues, 1988, the price at the country of exportation has to be taken as the actual assessable value of the goods. Except for the item "Cony Takara", parallel invoices are available for all the goods imported which find corroboration from e-mails, fax letters, statement of accounts and payment of extra consideration other than the value declared in the B/Es. The same i.e the price mentioned in the parallel invoices is therefore accepted as the actual transaction value for purpose of re-determination of value.

xii. The contention of the Respondent that sales invoices based on which RSP was arrived at are not known cannot be accepted for the reason that the RSP was determined based on the price lists submitted by the importer during the course of investigation.

xiii. The product "Cony Takara" is basically a foot care sheet since when placed in contact with the skin and held in place for a few hours, it promotes improved blood circulation and detoxification thereby meriting classification under CTH 3304.

10. The contentions of Shri. Jaikumar, Advocate for setting aside the impugned Order of the AAA and rejecting the Appeals, precisely stated, are that: -

i. A few stray correspondences cannot be a factor to conclude that Conybio Malaysia had controlling interest in the business of Conybio India as they were the offshoots of a failed investment proposal by Conybio Malaysia in the business of the Respondent;

ii. Supplies were made only by Bryncoch Malaysia as payments made would vouch the same;

iii. As Conybio Malaysia initially evinced interest in investing in the business of the Respondent, proforma invoices were raised by Conybio Malaysia but the deal did not come to fruition for various reasons;

iv. For the goods imported from Bryncoch Malaysia alleged as under-valued to the extent of 50% by virtue of the alleged parallel invoices raised by Conybio Malaysia, either payment should have been made or transfer of shares should have taken place but there is no evidence to show that either any amount was paid for this purpose or transfer of shares took place;

v. Reka Network which was a partnership firm became a private limited company named Rekamacro Resources from 15.01.2001 and Mr. Logendran & Mrs. Ratnam, brother and mother respectively of Mr. Kanagendran, President of the Respondent firm, who were partners in the partnership firm became directors in the private limited company;

vi. Thus, as there was change only in constitution but not in ownership and since the business relationship continued as earlier with the Respondent choosing to source the goods from Rekamacro Resources, signing of an agreement with Rekamacro Resources prior to the date of incorporation cannot have the effect of unsettling or dislodging the agreement or rendering the transactions arising out of it as void;

vii. The related person concept under Clause (viii) of Rule 2(2) of the Customs Valuation Rules would not get attracted to the facts of this case since as per this Clause, the persons under consideration should be family members whereas in this case, the Respondent firm and the Malaysian entities are artificial persons and not natural persons;

viii. Even conceding that the parties are related, in terms of Rule 4(3)(a) of the Customs Valuation Rules, the buyer and the seller can be termed as related if and only the examination of the circumstances indicates that the relationship influences price whereas in this case, it is not understood as to how salaries / dividends paid to Shri. N. Kanagendran in the course of employment / directorship as a legitimate remuneration as well as dividend paid to a an unrelated third party be linked to this case for establishing price influence;

ix. Further, the above allegations under the caption "propriety of investment and its effect on valuation" elaborately discussed in the SCN issued by the Air-customs find only a passing reference in the other 2 SCNs issued later by the Sea-customs;

x. The findings of the adjudicating authority in the impugned Order on this allegation are nothing but reproduction of the allegations in the SCN dated 27.01.2005 issued by the Air-customs;

xi. All payments made to Rekamacro Resources as per the Agreement for the services received are legitimate and the Customs department has no authority to question such payments and the violations, if any, are of concern to other government agencies like RBI;

xii. As stated in the SCNs, the whole issue originated due to information gathered by the department that Conybio India was remitting foreign exchange far more than the value declared in the B/Es but there is absolutely no evidence to prove that the Respondent remitted anything more than what was declared except citing some unproven, unconnected and irrelevant transactions;

xiii. The prices shown in the proforma invoices raised by Conybio Malaysia alleged as the price offered for sale for the imports made from Byrncoch covered by 4 B/Es have been applied even for imports made from the other 2 exporters i.e Reka Network and Rekamacro Resources covering 235 B/Es without any other evidence;

xiv. The mark-up in price to the extent of 3 lakh US dollars, even if accepted, is quite insignificant compared to Rs. 31,88,77,699/- alleged as under-valued with reference to 2 SCNs dated 25.06.2004 and 19.12.2006 alone;

xv. In para 166 of the SCN dated 27.01.2005, when it is admitted that the prices of items sold were revised considerably and at times on a par with the value shown in the alleged incriminating documents once Rekamacro Resources came into existence, it is not understood as to how it is alleged that the Respondent mis-declared / under-valued the imported goods;

xvi. Details of invoices based on which RSP was revised have not been furnished to them and further at the relevant time there was no provision or mechanism for reassessing or redetermining of RSP, post import;

classification of the product "Conytakara" under CTH 3004 is correct due to its stated use;

xvii. As the charge of under-valuation has no basis, confiscation of the imported goods does not arise more so when the goods are not available.

11. We have heard both sides and carefully considered their written as well as oral submissions. The following issues arise for determination in this case: -

i. Whether Conybio Malaysia had administrative and financial control over Conybio India

ii. Whether for the subject goods imported from Bryncoch Malaysia, Conybio Malaysia was the actual supplier and whether any payment in excess of the declared value was remitted?

iii. Whether Reka Network and Rekamacro Resources, Malaysia attract the mischief of Rule 2(2)(viii) of the Valuation Rules as related units and, if so, whether the relationship influenced the price?

iv. Whether there had been remittances in foreign exchange over and above the value declared in the B/Es?

v. Whether the decision of the adjudicating authority in adopting / revising the RSP is justified?

vi. Whether re-classification of the product “Conytakara” as a skin-care product is correct?

12.0 The adjudicating authority has sustained the charge that Conybio Malaysia had an active participation in the financial and business affairs of the Respondent by relying on a few letters/e-mails, dealt with in para 195.5 of the impugned Order, sent by Mr. Richard K. Lau, Executive Director, Conybio Malaysia and Mr. A.K. Lee, International Department, Conybio Malaysia to Shri. K. Kanagendran. In the letter 17.12.1999, Mr. Lee requests Shri. Kanagendran to send documents such as stock inventory, share allotment, monthly bank statement and the Respondent’s present financial statement for placing them before the Board of Directors of Conybio Malaysia. In another letter sent in January 2000, Mr. Lau asks for latest bank statements, balance sheets, authorized paid-up capital and shareholding of each share-holder pertaining to the Respondent. In the letter dated 10.03.2000, Mr. Lee, referring to the last Board meeting at Kaulalumpur, informs Mr. Kanagendran that, despite promised by the latter, they were yet to receive from him audited accounts of the Respondent as also share certificates for their chairman Mr. Lau and other directors. In another communication dated 07.04.2000, Mr. Lee informs Shri. Kanagendran that they were going to have a Board meeting of the Respondent at Kaulalumpur at 4 p.m with a request to fax bank statements for the past 3 months.

12.1 The Respondent, while not denying the afore-said communications, said that as is evidenced from record, initially there was a proposal for Conybio Malaysia for investing in the business of the Respondent to the extent of MYR 3,50,000/- (approximately USD 92,105/-) and for various reasons, the proposal did not take off and all these correspondences are the off-shoot of the aborted investment proposal. In this connection, Mr. Jaikumar, learned Advocate made a pointed mention of the fact that these letters/emails merely convey a request from the other side for forwarding of share certificates and there is no evidence on record to show that the shares were even allotted.

12.3 We find from the letter dated 10.03.2000 of Mr. A.K. Lee that in spite of sending 2 reminders, Mr. Kanagendran did not take any action for forwarding the audited accounts and share certificates and hence the latter was asked to act without any further delay. But there is nothing on record to show that the request was acted upon at a later point of time. Mr. Jaikumar, Advocate was categorical that since the investment proposal itself was dropped, allotment of shares of the Respondent to Mr. K. Lau or to their other directors of Conybio Malaysia did not arise. Inviting attention to the findings in para 195.5 of the impugned Order that “Without allocation of shares they would not have requested to send the share certificates, because of the reason that the question of share certificate would arise only on allotment of shares.”, the learned Advocate said that the findings recorded by the adjudicating authority regarding allotment of shares were merely assumptions sans evidence. We find force in the submission made. As no evidence could be placed on record that any Malaysia Cony Bio personnel were the shareholders of Cony Bio, India. Being a limited company registered under Indian Companies Act, it would not be difficult to ascertain whether any director of Cony Bio, Malaysia was also a director or shareholder in Cony Bio India for the investigation. Merely saying that the request for share certificate would arise only upon allotment of shares would not lend any legitimacy to the allegation. In the absence of evidence on record that either the shares were allotted or the request for forwarding the share certificates was complied with by Mr. Kanagendran, we have no option but to accept the contention of the Respondent that no shares were allotted to either Mr. K. Lau or to other directors of Conybio Malaysia. Therefore, the finding that Conybio Malaysia had administrative and financial control over the affairs of the Respondent has no basis.

12.4 The Ld. Advocate Mr. Jaikumar brought to our notice the contradictions in the allegations as contained in the relevant portion of the SCNs issued as regards the allotment of shares.

> *"Para 8.1.2 (e) / page 42 of SCN dated 25.06.2004: "…..Thus, it appears that the "credit" entries in the "Statement of Account" represent the amounts paid or payable for the Invoices/Payments mentioned in the "Debit" Column of the said "Statement of Accounts". Thus, the value of RM350000 mentioned as "Credit" appears to be nothing but the amount invested in M/s Conybio Healthcare India ….. by M/s Conybio (M) …. for which shares were expected by them from M/s Conybio Healthcare India…"*
>
> *Para 68 in the SCN dated 27.01.2005 and Para 45 in the SCNs dated 03.08.2005 & 19.12.2006: "….The last entry in the credit column for an amount of RM350000 was credited in the account of Conybio, Malaysia and shown as Transfer to Investment. How can amount of RM350000 be shown in the heading of Transfer to Investment when no formal approval has been taken from Malaysian Government and Indian Government about the investment…"*

The Ld. Advocate highlighted as to how the Notices issued on the same set of evidences can adopt contradicting positions as the SCN dated 25.06.2004 says that the last entry in the credit column represents the amount invested by Conybio Malaysia for which allotment of shares is expected whereas other 3 SCNs question the very legal sustainability of such an investment. The Advocate pointed out that no finding has been recorded by the AAA on this crucial allegation and added that the fact remains that no allotment of shares took place as already submitted. As we have already held that there is no evidence to show allotment of shares, we do not intend going into this aspect any further.

13.0 Regarding the issue of who is the actual supplier and whether any payment in excess of the declared value was remitted, it is noticed that the imports made from Bryncoch Malaysia are covered by 2 SCNs – SCN dated 25.06.2004 for 3 B/Es (of Bryncoch alone) and SCN dated 27.01.2005 for 1 B/E. The adjudicating authority held that in view of the overwhelming evidence on record like various correspondences emanating from Conybio Malaysia have been faxed from the office of Bryncoch, parallel invoices raised by Conybio Malaysia and the hand-written remarks on them by Mr.Kanagendran acknowledging acceptance, parallel invoices finding mention in the "Statement of Accounts as on 31.03.2000" and freight & insurance charges for imports made from Bryncoch Malaysia having been debited in the said "Statement of Accounts as on 31.03.2000", the actual supplier of the goods is Conybio Malaysia and the prices are the ones reflected in the parallel invoices.

13.1 It is the contention of the Respondent that the parallel invoices are actually proforma invoices raised by Conybio Malaysia on the Respondent at the inception of the business towards their proposal for investment of RM350000 which however did not materialize. It was submitted that since no transfer of shares took place, the debit entries for proforma invoices made in the Statement of Accounts had no financial or other significance as the last entry made for

Transfer to Investment was not acted upon thereby confirming the payment only to the amounts shown in the invoices raised by Bryncoch Malaysia. The learned Advocate said that in as much as the business activities were at incipient stage while procuring goods from Bryncoch and since there was a proposal for investment by Conybio Malaysia on the Respondent, certain transactions took place not keeping the identities of Conybio Malaysia and Bryncoch distinctly separate thereby raising a suspicion that Conybio Malaysia was the supplier of goods. The Ld. Advocate was categorical that the business activities of Bryncoch and Conybio were carried on from two different premises and for the purchases made, payments were made to the bank accounts of Bryncoch only for the value mentioned in the invoices issued by Bryncoch which remain unrebutted till this date.

13.2 The Ld. Advocate Shri. Jaikumar also made a pointed mention to the allegation contained in para 8.1.2 (b) (ii) / page 30 & para 60 respectively of SCN dated 25.06.2004 and 27.01.2005 which reads

> *" …Further as discussed in the earlier paras, remittances appear to have been made by M/s Conybio Healthcare India … as per the values mentioned in the invoices raised by M/s Conybio (M)… but the invoices raised by M/s Bryncoch … appears to have been used to route such remittances through the bank account of M/s Bryncoch …..".*

He contended that this allegation has no basis whatsoever and there is not an iota of evidence to show that anything was paid over and above the invoice price of Bryncoch Malaysia leave alone the prices mentioned in the proforma invoices of Conybio Malaysia. He also pointed out that when there is an allegation in the SCN that the price under-valued to the extent of 50% is sought to be adjusted through transfer of shares, the question of payment of the same does not arise.

13.3 The charge which has been sustained in the impugned Order is that for the imports made from Bryncoch Malaysia covered by 4 B/Es, the value adopted for assessment was 50% of the price shown in the impugned invoices raised by Conybio Malaysia on the Respondent and for the suppressed value, foreign exchange remittances had taken place. We find that except a mere allegation that payments were made for the suppressed value, no evidence of any remittances having been made in excess of the value shown in the invoices of Bryncoch Malaysia is there on record. As rightly argued by the learned Advocate, the allegation discussed in para 8.3.3 above is not supported by evidence of any sort. Besides, it passes our comprehension as to how payments could be made by the Respondent for the value mentioned in the impugned invoices of Conybio

Malaysia by using the invoices raised by Bryncoch Malaysia when the invoices raised by Bryncoch Malaysia allegedly reflected only about 50% of the value shown in the invoices of Conybio Malaysia. Moreover, it needs to be noted that when such under-valuation is sought to be adjusted by allotment of shares which, however, did not fructify, the question of payment for the under-valued amount does not arise. Since the business was at an early stage, there might have been certain mix-ups which cannot be a ground to question the legitimacy of the transactions as a whole without any evidence. What is offered as evidence for payments and Allotment of shares is the Statement of Accounts which is not an audited financial account, and the latter alone can lend authenticity to a transaction. For all these reasons, we are inclined to accept the contention of the respondent that the goods covered by the 4 B/Es had been exported by Bryncoch Malaysia and the Respondent made payments to Bryncoch Malaysia only to the extent of the price mentioned in the respective import invoices filed at the time of import and not for the price mentioned in the impugned invoices issued by Conybio Malaysia.

13.4 Further, the respondents also contended that in this regard that the proceedings were initiated by relying on few proforma invoices which is not tenable. The respondents relying on the decision of this Tribunal in the case of Oswal Metal Works reported in 2024 (10) TMI 408 had put forth that proforma invoices can never be the basis for alleging undervaluation and any rejection/addition to the transaction value should be supported with evidence of flowback and there is no such supporting evidence relied upon in this case. We agree that the charge of undervaluation has been made based on proforma invoices without any supporting evidence of flow back of consideration and following the above decision, we hold that the confirmation of demand in this regard is not sustainable.

14.0 Coming to imports made from Reka Network and Rekamacro Resources, we find that the adjudicating authority held the relationship as established in terms of Rule 2(2)(viii) of the Valuation Rules for the reason that the directors of Rekamacro Resources are the brother and mother of Mr. Kanagendran and concluded that it is a family business among family members quite oblivious of the fact that the concept of "members of the same family" under Clause (viiii) of Rule 2(2) would apply only in the case of natural persons and not artificial persons. In this regard, we rely upon the decision of Tribunal Delhi in the case of *Cooper Pharma Vs. Commissioner of Central Excise, New Delhi*

[2004 (174) ELT 143 (Tri.-Del.)]. The Tribunal has held as: -

> *"2. We have perused the records and considered the submissions made by both sides. In the present case the purchaser of the goods is a limited company. There is no evidence brought on record that an artificial legal arrangement had been created in order to evade duty. The only reason for treating the appellant and the limited company as 'related persons' is that they are having interest in the business of each other since share-holders/Directors of the limited company were blood relations of the manufacturing partnership. It is well settled that a limited company is a juridical person separate from its share-holders and Directors. Such a juridical person cannot be treated as a related person. There is also no allegation or finding that the limited company was a device to evade Central Excise duty. In these circumstances, we are of the view that the appellant's case is covered by the decision of this Tribunal in the case of CCE, Belgaum v. Akay Cosmetics (P) Ltd. and the Apex Court's decision in the case of Alembic Glass Industries Ltd. Consequentially, we hold that the duty demand which has been confirmed by treating the manufacturer and the buyer as related persons is not sustainable. It is set aside……"*

Therefore, this provision does not come to the aid of the department.

14.1 This apart, in terms of Rule 4(3)(a) of the Customs Valuation Rules, the buyer and the seller can be termed as related if and only the examination of the circumstances indicates that the relationship influenced the price. In para 196.12 of the impugned Order, the adjudicating authority records a finding that there is clear evidence that the payment to the foreign supplier was made over and above the declared value and by virtue of parallel invoices, negotiation between the importer and the suppliers and remittance of extra consideration other than the declared value, in terms of Rule 8 of the Customs Valuation Rules, 1988, the price at the country of exportation should be taken as the assessable value. Parallel invoices and negotiation between the importer and the suppliers are connected to imports made from Bryncoch and we have dealt with the same in the preceding portions of this Order.

14.2 We also noticed that the impugned Order merely states the shareholding pattern as well as the Directors of the Respondent and the Malaysian companies and thereby concludes that the parties are related without explaining as to under which clause of Rule 2 (2) of the Customs Valuation Rules, they have become related parties.

14.3 Whereas the respondent contends that as per Rule 2 (2) of the CVR, the parties can be related only in the following scenarios: -

Officer or Director: As per this clause, if the parties under consideration are officers or directors in each other's business, then the said parties would be related. In the present case, the Respondent i.e., Conybio India does not hold any officer or director position in Malaysian companies and vice-versa.

Partners: As per this clause, if the parties under consideration are partners in each other's business, then the said parties would be related. In the present case, the Respondent Conybio India and the Malaysian companies do not have any partnership business.

Employer and Employee: As per this clause, if the parties under consideration are having employer-employee relationship, then the said parties would be related. In the present case, the Respondent i.e. Conybio India is neither the employer nor employee of Malaysian companies.

Shareholding: As per this clause, if one person holds at least 5% equity shares/ voting rights in another company, then the said parties would be related. In the present case, the Respondent i.e. Conybio India does not hold any equity share or voting rights in the Malaysian companies and vice-versa.

Control: As per this clause, if one person controls another company, then the said parties would be related. In the present case, the Respondent i.e., Conybio India does not control the Malaysian companies and vice-versa. Each company is a separate legal entity and is operated by the Board of Directors [BOD] and not through any individual

Director. Further, there is no third-company which controls the Respondent and the Malaysian companies so as to treat Respondent and the Malaysian companies as related. Also, the Respondent and the Malaysian companies together do not control any third company so as to treat Respondent and the Malaysian companies as related.

Members of same family: As per this clause, if the persons under consideration are family members, then the said persons would be related. In the present case, the Respondent i.e., Conybio India and Malaysian companies are artificial persons and not natural persons. Hence, this condition is not attracted.

Sole agent: There is nothing on record which presupposes that the Respondent is the sole agent/ distributor of the Malaysian companies and hence, this condition is also not met.

However, there is no counter by the department on the above contention which shows that the findings of the adjudicating authority are not legally sustainable.

14.4 The respondent also pointed out that the impugned Order in para 195.3 specifically records that Lau

Kin Yen, Yeeh Hong Leong, Kili Anadaraj and Meenambal directors of Conybio India had resigned from 08.01.1999 and hence, at the time of import of goods i.e. April 1999 onwards, the above persons were not at all directors in the Respondent-company and thus neither the Respondent is a director nor had any shareholding in Conybio Malaysia and vice-versa.

14.5 We also notice that the adjudicating authority has erred to hold that since Lau Kin Yen is a common Director in Conybio India and Conybio Malaysia, the parties are related. Rule 2 (2) of CVR nowhere prescribes such a condition. We would like to rely upon the decision of Hon'ble Supreme Court in the case of *Alembic Glass Industries Ltd. vs. Collector of Central Excise & Customs [2002 (143) ELT 244 SC* wherein it was held that common directorship is no ground to treat companies as related. Further, Bryncoch Malaysia and Conybio India also had no directorship, shareholding or control qua each other so as to be treated as related persons. Also, neither there is an allegation nor it is the case of the Department that Bryncoch Malaysia and Conybio India are related.

14.6 In view of the above, the decision of adjudicating authority that the relationship between M/s. Conybio India and M/s. Conybio Malaysia has been established under Rule 2 (2) of the CVR is legally not sustainable.

15.0 The other factor held as influencing the price for imports made from Reka Network and Rekamacro Resources is payment to the foreign supplier over and above the declared value / remittance of extra consideration other than the declared value. Payments made to Rekamacro Resources towards Consultancy Charges and earnings on investment made by Mr. Kanagendran are cited as proof of such remittances.

15.1 Consultancy charges have been paid to Rekamacro Resources for the years 2000-2001, 2001-2002 and 2002-2003 @ 1 lakh USD per year in terms of an Agreement dated 01.04.2000 entered between the Respondent and Rekamacro Resources. Besides considering the amounts paid as extra consideration for the imports made, the adjudicating authority held that the Agreement itself is void and unenforceable for the reasons that Rekamacro Resources was registered as a private limited company only from 15.01.2001 and that having resigned from the Board of the Respondent firm on 31.03.2000, Mr. Kanagendran rejoined as Director only on 12.04.2001. Thus, on the date of Agreement, Rekamacro Resources was not in existence and Mr. Kanagendran could not have signed the same being not a Director of the Respondent on that date.

15.2 However, it is contended by the Respondent that it was not that Rekamacro Resources was not in existence earlier as Reka Network which was a partnership firm earlier became a private limited company from 15.01.2001 and the change was only in constitution and not in ownership, the partners becoming Directors and the business operations continued as earlier. It was also said that it was nothing but a pre-incorporation Agreement. Elaborating further, it was argued that: any agreement which is void is not per se illegal; at the most, terms of the agreement cannot be enforced in a void agreement; it does not mean that transactions already occurred became void or not occurred; it is a curable defect as the same can be ratified; and the parties are also at liberty to enter into a fresh agreement. We reiterate that the issue coming up for decision in this case is as to whether payments over and above the declared value had taken place in any manner and whether any evidence was placed on record and we are not called upon to pronounce our decision on the legality or justiciability of the Agreement. It is the contention of the Ld. Advocate that payments were made to Rekamacro Resources aggregating to 3 lakh USD in terms of the Agreement for provision of marketing techniques such as product identification, quality control, marketing network, product analysis for relative benefits, marketing plan and research analysis information and that the adjudicating authority had not denied the provision of service by the overseas entity.

15.3 The Adjudicating Authority while dealing with this issue in the impugned Order, harps on the legality of the Agreement by recording that it was illegal on the part of Mr. Kanagendran to sign an Agreement with a non-existent company that too when he was not the Director of the Respondent firm thereby flouting RBI guidelines, FEMA Rules and FEMA, 1999 and concludes that the consultancy agreement was signed with a malafide intention to remit foreign exchange in a clandestine way. As already observed by us, it is not within our domain to comment upon and pronounce a decision as to the legality of the Agreement and on violation of RBI guidelines and FEMA provisions. We find that In para 157 of the SCN dated 27.01.2005 issued by Air-customs, it is said

> *"……………In fact, Shri. Kanagendran is a resourceful person in the field of multi-level marketing and he had done extensive research and study on this subject, he is a master and showed to none (sic). There is no assistance required for him to design the marketing plan....".*

When there is a specific allegation in the SCN that Shri. Kanagendran did not require any marketing assistance by virtue of his expertise in the field thereby questioning the credibility of the provision of service as per the Agreement, it was incumbent on the adjudicating authority to have rendered a specific finding on this crucial allegation. Having not done, in the absence of any evidence to show that the service was either not rendered or the Agreement was camouflaged to remit under-valued amounts, we have no hesitation to hold that the payments were for services rendered by Rekamacro Services.

15.4 As regards the earnings on investment made by Mr. Kanagendran as dealt with in para 196.11 of the impugned Order, the adjudicating authority records that: by not intimating acquisition of shares in an Indian company, Respondent contravened Section 29 of FERA, 1973 and the Rules made thereunder by RBI; investment made by Mr. Kanagendran without any advertisement from the Respondent for receipt of deposit (as revealed by the balance sheet for the year 2000-2001 returning Rs. 45.24 lakhs to Mr. Kanagendran towards refund of share application money) resulted in contravention of Section 58A of the Companies Act and Rules 3(ii) and (11) of Company (Acceptance of Deposits) Rules, 1975; an amount of Rs. 44.05 lakhs was invested by Mr. Kanagendran for purchase of office equipments without approval from RBI and in violation of Companies Act; dividend amount of Rs. 1.47 crores paid &

parked in a company in which loyalists of Mr. Kanagendran were directors represented income acquired from import of grossly under-valued goods and this amount is entitled to be appropriated towards eventual liability of the Respondent; comparison of the amount repatriated and the quantum of salary earned shows surplus amount of Rs. 49,00,000 which is nothing but under-declared value remitted illegally; and the dividend of Rs. 1.53 crores earned by Mr. Kanagendran towards dividend was utilized to pay the portion of the undisclosed value.

15.5 The Ld. Advocate Shri Jaikumar has contended that the earnings from dividend and the surplus amount worked out would not in any way influence the price or can be deemed as representing the undervalued portion of the imported goods. He has pointed out that the findings as contained in para 196.11 of the impugned Order are verbatim reproduction of the allegations as contained in paras 132 to 138 of the SCN dated 27.01.2015 and thus the adjudicating authority having not rendered any independent finding on the allegations levelled to substantiate the charge of under-valuation / payment in excess of the declared value, the findings thereof become inconsequential and could not be legally sustained. The Ld. Advocate has submitted that paras 80 & 81/79 & 80 as contained in the 2 SCNs issued later by the Sea-port Commissionerates were replica / reproduction of paras 132 and 140 of SCN dated 27.01.2015 issued by the Air-Customs and that the other portions of the allegations have been omitted obviously for the reason that the authorities who issued the SCNs were convinced that they bear no connection to the charge of under-valuation. We are at a loss to understand as to how the earnings elaborately discussed in para 196.11 of the impugned Order are connected to the issue under discussion. We reiterate that adjudication of disputes involving violation of provisions of other laws and guidelines of RBI are not within our purview. As rightly highlighted by the learned Advocate, the adjudicating authority has merely reproduced the allegations in the SCN without expressing his independent opinion on the points raised. We therefore hold that earnings on investment made by Mr. Kanagendran and dealt with in para 196.11 of the impugned Order does not come to the aid of the department either for sustaining the charge of under-valuation or as proof of payment over and above the declared value.

15.6 The Ld. Advocate, inviting our attention to the allegations in the relevant portions of the SCN, submitted that the crux of the allegations in the SCNs was that there was under-valuation of goods imported and remittances of foreign exchange took place for the alleged under-declared value i.e there had been payments to exporters in excess of the value declared in the B/Es. He said that the department having not let in any evidence to sustain the charge of remittance of foreign exchange in excess of the value declared, the proceedings are liable to be dropped.

15.7 We have perused the SCNs and the allegations are as follows: -

> *Para 1 of SCN dated 27.01.2015 alleges "…..importers have been resorting to mis-declaration of the transaction value and remitting foreign exchange far more than the value declared in the bills of entry,……."*
>
> *Para 2 of SCNs dated 03.08.2005 & 19.12.2006 allege "….remitted foreign exchange more than the amount declared in the bills of entry…."*

The allegation is therefore specific that prices of goods imported were under-valued in the B/Es and for such under-valued goods, amounts were remitted in foreign exchange. As rightly submitted by the Respondent, except the payment of 3 lakh USD in terms of the Consultancy Agreement with Rekamacro Resources and earnings on investments by Mr. Kanagendran, which we held has nothing to do with the issue under discussion, there is no evidence of any remittance of foreign exchange for the alleged under-declaration. Further, the afore-said payment of consultancy charges to Rekamacro Resources cited as evidence to establish the charge of foreign remittance over and above the invoice price forms a miniscule percentage of the quantum of evasion alleged and confirmed.

15.8 We also record the fact that in the case of imports made from Bryncoch Malaysia, the department cited as evidence the alleged parallel invoices raised by Conybio Malaysia to support the charge of under-valuation but for imports made from Reka Network and Rekamacro Resources, not even a shred of evidence has been made available for this purpose and as rightly submitted by the Respondent, the same parallel invoices formed the basis for valuation despite the transactions with these overseas entities forming a major portion of the demand and covered by around 150 B/Es. As a result, we have to accept and hold that the value adopted for payment of duty by Reka Network and Rekamacro Resources in the respective B/Es represents the transaction value as the Department has not been able to prove its case beyond mere allegations.

16.0 Allegation of misdeclaration of RSP: Coming to mis-declaration of RSP, there was a specific plea by the Respondent in reply to the SCNs that details of relevant invoices based on which RSP was arrived at were not made known to them. The adjudicating authority, in the impugned Order, records a finding, vide para 196.14 (ii), that RSP was determined based on the price list submitted by the importer during the course of investigation. As rightly argued by the Respondent, it is clear from the SCNs issued that the under-declaration was alleged as noticed after verifying the invoices and there was no mention of any price list submitted by the Respondent in any of the SCNs. As documentary evidence i.e details of invoices based on which RSP was arrived at was not made known to the Respondent and which is vital for putting forth effective defence, we are inclined to accept the plea of the Respondent that non-furnishing of details of invoices has caused them serious prejudice and amounts to negation of the principles of natural justice.

16.1 The Respondent also took a legal plea that during the relevant point of time, there was no provision or mechanism for reassessing or redetermination of RSP, post import, and in support of their plea placed reliance on a Co-ordinate Bench of CESTAT in the case of *M/s Reach Infocom Tech Pvt. Ltd., Ms Kinjal - 2025 (11) TMI 210 - CESTAT KOLKATA* which, *inter alia*, followed the decision of CESTAT, Chennai in the case of *M/s. Acer India (Pvt.) Ltd - 2024 (5) TMI 478 – CESTAT CHENNAI*. The relevant portions of the decision in the case of M/s Acer India supra are extracted below: -

> *"19. The Ld. Counsel appearing for appellant has vehemently argued that such redetermination of MRP is not sustainable as*

there is no machinery in Section 3 (2) of Customs Tariff Act, 1975 to redetermine the MRP of imported article. Let us proceed to examine this contention. Section 3 of Customs Tariff Act ,is reproduced as under :

> *SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. — (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article :*
>
> *… … …*
>
> *Provided that in case of an article imported into India,—*

(a) in relation to which it is required, under the provisions of the [Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

(b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is—

(i) the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944 (1 of 1944), the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article under sub-section (2) of section 4A of that Act; or

(ii) the goods specified by notification in the Official Gazette under section 3 read with clause (1) of Explanation III of the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retail sale price as the Central Government may, be notification in the Official Gazette, allow in respect of such like article under clause (2) of the said Explanation.

Explanation. — Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall *be deemed to be the retail sale price for the purposes of this section."*

20. The above provision states that for payment of CVD on imported goods notified under subsection (1) of Section 4A, the value of the imported article shall be deemed to be the RSP declared on the imported article less such amount of abatement. The proviso to Section (3) itself stipulates how the value has to be determined for imported goods to which Legal Metrology Act, 2009 and Rules thereunder apply. There is no provision envisaged herein for redetermination of the MRP. The proviso to subsection (2) of Section 3 merely refers to subsection (1) of Section 4A to indicate the class or description of goods notified. Subsection (2) of Section 4A is referred for allowing abatement on the declared MRP to determine the value for payment of CVD. This proviso to subsection (2) of Section 3 does not use the words that 'the entire provision of Section 4A would be applicable'.

21. Though Section 4A was introduced w.e.f. 14.5.1977, there was no provision for ascertaining (or redetermining) the price (RSP) in situation of violation of the provisions. Subsection (4) to Section 4A for ascertaining or redetermining the RSP came to be introduced only w.e.f. 14.5.2003. Subsection (4) then merely said that the RSP of the goods shall be ascertained in prescribed manner. The Rules 2008 putting forth the prescribed manner or the method of ascertaining was introduced by Notification 13/2008 (NT) dt. 1.3.2008 only. The adjudicating authority has resorted to Rule 6 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008. These Rules are as under :

RULE 1. (1) These rules may be called the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008.

RULE 3. The retail sale price of any excisable goods under sub-section (4) of section 4A of the Act, shall be determined in accordance with these rules.

As per Rule 3 as above states that the Rules would apply in case of redetermination of sale price (RSP) of excisable goods under subsection (4) of Section 4A of the Central Excise Act. There is no mention that it would be applicable to Section 3 of Customs Tariff Act. Pertinently, Section 3 of Customs Tariff Act, though refers to Section 4A does not adopt it to determine the assessable value.

22. It would also be beneficial to reproduce Section 4A of Central Excise Act, 1944 as under :

> *SECTION 4A. Valuation of excisable goods with reference to retail sale price. — (1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made*

thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(4) Where any goods specified under sub-section (1) are excisable goods and the manufacturer -

(a) removes such goods from the place of manufacture, without declaring the retail sale price of such goods on the packages or declares a retail sale price which is not the retail sale price as required to be declared under the provisions of the Act, rules or other law as referred to in sub-section (1); or

(b) tampers with, obliterates or alters the retail sale price declared on the package of such goods after their removal from the place of manufacture,

then, such goods shall be liable to confiscation and the retail sale price of such goods shall be ascertained in the prescribed manner and such price shall be deemed to be the retail sale price for the purposes of this section.

(b) where the retail sale price, declared on the package of any

23. It can be seen that even though a methodology to ascertain the RSP is laid down, the same will apply only in situations of (a) and (b) of subsection (4) of Section 4A. On examining the facts, the appellant has adopted a new RSP for the combined goods of laptop computer + carry bag + booklet + Instruction guide. The department has redetermined the RSP of the imported laptop computer alleging misdeclaration of MRP. As there is no methodology or machinery for redetermining the MRP of goods imported for the purpose of payment of CVD, we hold that such re-determination of MRP is against the provisions of law.

24. The Tribunal in the case of ABB Ltd. Vs Commissioner of Customs, Bangalore – 2011 (272) ELT 706 (Tri.-Bang.) considered this issue for the period prior to 1.3.2008 (disputed period 3.1.2003 to 31.3.2007) and held that there is no machinery / provisions for ascertaining RSP, when the RSP is not declared by importer on imported articles. The differential CV Duty demand, interest and penalties were set aside…..".

16.2 In view of the legal position enunciated above with which we have no reason to disagree coupled with the fact that the documentary evidence relied to adopt/revise the RSP was not furnished to the Respondent despite specific request and the demand for Additional Duty of Customs being prior to 01.03.2008, we hold that the demand based on RSP is unsustainable.

17.0 Now, we turn to Classification of the product "ConyTakara". While the Respondent had classified it under CTH 3004, the adjudicating authority has re-classified the same under CTH 3304 recording the following findings: -

> *"Takara draws upon the practical concepts and ideas from acupressure, reflexology, negative non-radiation, essential oils, research on Pyroligneous acid, crystal healing and the use of poultices. Takara sheet will absorb the toxin and make the painful parts of a person's body and nurtures energy to become more comfortable. Takara utilise Pyroligeneous acid that is made from a renewable source of wood. There are different grades of Pyroligeneous acid, extracted from different types of woods. Some are good for fertilizing the land, while others enough are good for human use. Crude Pyroligeneous acids are refined by fractional distillation to separate a food-grade version that is suitable for use in health products. The wood vinegear is processed (devised) from the distillation process; Takara contains mixture of powered ingredients. When the patch is placed in contact with the skin, and held in place over a few hours, it will promote improved blood circulation and detoxification. Basically, it is a foot-care sheet and from the above, I find that the product cannot be classified under CTH 3004.*
>
> *I find that CTH 3304 covers, beauty or make-up preparation for the care of the skin (other than medicaments) including sunscreen or suntan preparations and manicure or pedicure preparation. In view of the specific exclusion under CTH 3004 and permitted inclusion under CTH 3304, on merit Conytakara has to be re-classified under CTH 3304 as against the classification declared by the importer……. This product contains 87% of the wood vinegear and packed in a powder form intended to be used on the skin, which would ease out pain and activate blood circulation and, therefore, rightly classifiable under CTH 33049909 and CETH 3304 and CVD has to be charged on RSP. "*

17.1 Even as per the findings of the adjudicating authority, "Conytakara" possesses characteristics, namely, toxin absorption (detoxification), makes painful parts of a person’s body painless (the word ‘painless’ which is very relevant is missing in the narration)/ease out pain, nurtures energy, affords comfortability and activates blood circulation. Even after being satisfied that the product possesses the above attributes which are therapeutic in nature, the AAA, without assigning any reason, comes to an abrupt conclusion that ‘Conytakara’ is a foot-wear sheet and does not deserve classification under CTH 3004 as Medicament. Further, even as per his own version, only beauty or make-up preparations for the care of skin deserve classification under CTH 3304 whereas this product is placed in the foot and if kept for a few hours provides relief as above and thus it has nothing to do with skin-care. Neither it enhances a person’s appearance in any manner. We note that the adjudicating authority has not explained as to how the product comes within the scope of “beauty or make-up preparations for the care of skin” despite possessing such therapeutic qualities and neither the adjudicating authority has recorded a finding as to how the product stands excluded from the scope of CTH 3004. Merely saying that there is specific exclusion under CTH 3004 and permitted inclusion under CTH 3304 does not advance the case of the department in any manner. AAA should spell out reasons for coming to such conclusions.

17.2 HSN Explanatory Notes under 3004 reads as under: -

"This heading covers medicaments consisting of mixed or unmixed products, provided they are: -

(a) Put up in measured doses or in forms such as tablets, ampoules (for example, re-distilled water, in ampoules of 1.25 to 10 cm3, for use either for the direct treatment of certain diseases, e.g., alcoholism, diabetic coma or as a solvent for the preparation of injectible medicinal solutions), capsules, cachets, drops or pastilles, medicaments in the form of transdermal administration systems, or small quantities of powder, ready for taking as single doses for therapeutic or prophylactic use.

The heading also includes measured doses in the form of transdermal administration systems which are generally put up in the form of self-adhesive patches (usually rectangular or round) and which are applied directly to the skin of patients. The active substance is contained in a reservoir which is closed by a porous membrane on the side entering into contact with the skin. The active substance released from the reservoir is absorbed by passive molecular diffusion through the skin and passes directly into the bloodstream. These systems should not be confused with medical adhesive plasters of heading 30.05.

The heading applies to such single doses whether in bulk, in packings for retail sale, etc.; or"

17.3 Thus as per the HSN Explanatory Notes, goods which are put up in measured doses including in transdermal administrative form [patches/ band-aid form] for direct application to the skin as in this case would merit classification only under CTH 3004. We also note the fact that this product is not for general skin care but for use when a person is in pain. We are therefore of the firm view that the product Conytakara acts as a medicament for 'cure' and is not a skin-care product.

17.4 The following observations in the judgment of the Hon'ble Supreme Court in the case of *Commissioner of C. Ex., Mumbai vs. Ciens Labs, Mumbai* reported in *2013 (295) E.L.T. 3 (S.C.),* relied by the Respondent, drawing a difference between CTH 3004 and CTH 3304 fortifies our conclusion.

> *"19. Thus, the following guiding principles emerge from the above discussion. Firstly, when a product contains pharmaceutical ingredients that have therapeutic or prophylactic or curative properties, the proportion of such ingredients is not invariably decisive. What is of importance is the curative attributes of such ingredients that render the product a medicament and not a cosmetic. Secondly, though a product is sold without a prescription of a medical practitioner, it does not lead to the immediate conclusion that all products that are sold over/across the counter are cosmetics. There are several products that are sold over-the-counter and are yet, medicaments. Thirdly, prior to adjudicating upon whether a product is a medicament or not, Courts have to see what the people who actually use the product understand the product to be. If a product's primary function is "care" and not "cure", it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty, whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament."*

We, therefore, uphold the classification of the product "ConyTakara" under CTH 3004 as a Medicament rejecting the classification under CTH 3304 as a skin-care product.

18. In view of the above discussion and our findings thereon, we hold that

i. there was no conclusive evidence for the allegation that Cony Bio, Malaysia was related to Cony Bio India and

Cony Bio Malaysia had exercised any administrative or financial control over the Respondent

ii. for the goods imported from M/s. Bryncoch, Cony Bio Malaysia could not be treated as actual supplier and there was no evidence produced for any excess payment other than the declared values for imports effected.

iii. Reka Network and Rekamacro Resources, Malaysia are not related in terms of Rule 2(2)(viii) of the Customs Valuation Rules, and it is held that relationship has not influenced the prices in the absence of any evidence.

iv. The decision of the AAA in adopting / revising the RSP is not legally sustainable.

v. the re-classification of the product “Conytakara” as a skin-care product is not correct and it merits classification as Medicament only.

19.0 Further, in the appeal preferred by the revenue, they are challenging non imposition of redemption fine for the reason that the imported goods are not available, despite holding that the imported goods are liable for confiscation, in view of the decision of Madras High Court in the case of *Visteon Automotive Systems Vs. The Customs CMA No. 2857 of 2011 & MP No. 1 of 2011 dated 11.08.2017*. Since we have already held all the above issues raised in favour of the

Respondent, the impugned order holding that the goods are liable for confiscation itself not sustainable on merits.

19.1 Notwithstanding the same, this Tribunal in the following decisions passed recently have already considered the said issue and held that the redemption fine is not imposable when the goods are not available in compliance to a catena of decisions by higher judicial forums.

a. *Tukaram Rao Devraja Prop – 2026 91) TMI 1296*
b. *Pratik International – 2026 (1) TMI 408*
c. *Mr. A Mariappan, BSM Logistics – 2026 (5) TMI 1039*
d. *Xiaomi Technology India Pvt ltd – 2025 (11) TMI 1120*

20. For the second ground of non-inclusion of interest in penalty imposed under Section 114A of the Customs Act, 1962, it is not needed to discuss as the allegations of relationship and undervaluation have not been proved and so, no penalty was imposable.

21. In view of the above, we allow the cross-objections filed by the Respondent, set aside the impugned Order of the AAA and reject the Appeals filed by the department with consequential relief, if any, to the Respondent.

(Order pronounced in open court on 28.07.2026)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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