CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 86722 of 2022
And
Customs Cross Objection No. 86070 of 2022

[Arising out of the Order-in-Appeal No. MUM-CUSTM-PREV-APP-1890/2021-22 dated 02.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.]

RKPS Impex Private Limited **.... Appellant**
86A, Humayunpur Village
Safdarjung Enclave
New Delhi – 110 029.

Versus

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

APPEARANCE:

Shri K.V.P. Singh, Consultant for the Appellant

Shri L.B. D'Coasta, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85949/2026

Date of Hearing: 02.04.2026
Date of Decision: 31.07.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s RKPS Impex Private Limited (herein after, referred to as "the appellant", for short) assailing the Order-in-Appeal No. MUM-CUSTM-PREV-APP-1890/2021-22 dated 02.03.2022 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai Customs Zone-III, Mumbai.

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

2.2. The appellant herein had imported 8140 dozens of 'Readymade Garments (Polyester Knitted) - Ladies Leggings' from overseas supplier M/s Yiwu Lingna Clothing Company Limited, YIWU City, Zhejiang Province, China and had filed the Bill of Entry (B/E) No. 7458279 dated 16.04.2020 by classifying the goods under Customs Tariff Item (CTI) 6115 1000 and declared the value of goods as USD 20,350/- CIF (Unit price of 2.50 per dozen).

2.3 Based on the intelligence gathered by Nhava Sheva Preventive Unit (NSPU) of the Customs Preventive Commissionerate and on a reasonable belief that the said goods were under-valued and mis-declared to evade customs duty, the imported goods were subjected to 100% examination. During such examination conducted by the NSPU Customs Officers under Panchanama proceedings dated 04.05.2020, it was found that the quantity of imported goods was in excess i.e., it was of 10979.08 dozen (1,31,749 nos.), instead of declared quantity of 8140 dozen (97,680 nos.). Therefore, the department had seized the said imported goods vide Seizure Memo dated 19.05.2020. Further proceedings were taken by the department in issuance of Show Cause Notice (SCN) dated 21.05.2020 proposing for re-determination of assessable value of goods at Rs.30,17,710/- i.e., on account of revised/ enhanced unit price of goods at USD3.60/-per dozen for the declared quantity at Rs.22,37,360/- and for the undeclared excess quantity of 2839.08 dozen at Rs. 7,80,350/-, requiring payment of total duty of Rs.8,47,970/- (including differential duty of Rs.2,19,278/-) along with consequential penalties under Section 28(6)(i) read with 28(5), 112(a)(ii) of the Customs Act, 1962. On the basis of the appellant's letter dated 01.06.2020 indicating payment of an amount of Rs.2,62,170/- (differential duty Rs.2,19,278/- + Penalties of Rs.32,982/- and Rs.10,000/-), the original authority had adjudicated the case by issue of Order-in-Original No. JCP/RS/ADJN/01/2020-21/NSPU/R&I dated 05.06.2020. In the said order, the original authority had confirmed the differential duty of Rs.2,19,278/- arising on account of enhancement of value and also imposed penalties of Rs. 32,982/- under Section 28(6)(i) read with 28(5) of the Act of 1962 and Rs.10,000/- under 112(a)(ii) *ibid* and appropriated all these amounts towards duty and penalty. However, he did not impose redemption fine on the ground that the proceedings are being concluded in terms of the provisions of Section 28(6)(i) of the Customs Act, 1962.

2.4 On the basis of Review Order dated 29.09.2020 assailing the order of the original authority dated 05.06.2020, the department had preferred an appeal before the Commissioner of Customs (Appeals). In disposing of the appeal, vide Order-in-Appeal dated 02.03.2022 passed by the learned the Commissioner of Customs (Appeals), he had modified the order of the original authority to the extent of dropping penalty of Rs. 32,982/-, but upheld the order in imposing penalty of Rs.10,000/- under 112(a)(ii) *ibid*; further, he had also ordered for payment of interest on the differential duty under Section 28AA *ibid* and imposed redemption fine of Rs.3,00,000/- under Section 125 *ibid*. Feeling aggrieved with the said order passed by the Commissioner of Customs (Appeals), which is impugned herein, the appellant have filed this appeal before the Tribunal. Revenue has filed cross objection on the ground that the appellant had mis-declared the goods and thus the learned Commissioner (Appeals) had judiciously imposed redemption fine on the appellant, which the original authority had failed to do so.

3.1 Learned Counsel appearing for the appellant stated that they are engaged in importing readymade garments and trading of the same in the domestic market. They had declared the quantity and value of goods viz., readymade garments (polyester knitted) - Ladies Leggings, based on the invoice and packing list provided by their supplier M/s Yiwu Lingna Clothing Company Limited, China. They had no intention to evade the customs duty and thus upon identification of mis-match/excess quantity of the goods and on the decision of customs officers assessing the goods in enhancing the assessable value of the goods, they had paid the differential duty of Rs.2,19,278/- as well as the penalties of Rs.32,982/- and Rs.10,000/- vide Demand drafts No. 023845, 023846 &, 023844 all dated 27.05.2020, respectively, by paying it to the government exchequer vide Challan Nos. HC 81, HCM 939 & HCM 940 all dated 29.05.2020 of the Nhava Sheva Customs House.

3.2 He further submitted that since the appellant had given a letter dated 11.05.2020 to the department accepting to pay the differential duty on account of enhancement of value by the customs assessing officers and had also paid the differential duty along with penalty of 15% of differential duty, before clearance of the goods, as per Section 28(5) of the Customs Act, 1962, the original authority had rightly held that the proceedings were completed under Section 28(6) *ibid*. He stated that since the declaration in the bill of entry was made by the appellant as per documents issued by the foreign supplier, they had no intention to evade duty and since the imported goods were very much available with the department, its seizure for mis-declaration and imposition of redemption fine without proper determination of market price and margin of profit, is not justifiable. In this regard, he had relied upon the orders of the Tribunal in the following cases:

(i) *Commissioner of Customs, Cochin Vs. Arihant Enterprises* – 2013 (291) E.L.T. 220 (Tri.-Bang.)

(ii) *ASR Multi metals Private Limited* Vs. *Commissioner of Customs, Kandla* – 2015 (317) E.L.T. 595 (Tri.-Ahmd.)

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and the grounds stated in the cross objection filed by the department.

5. I have heard both the learned Counsel appearing for the appellant and the learned Authorized Representative of the Department and perused the case records.

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

(i) whether upholding of duty demands confirmed by the original authority under Section 28 of the Customs Act, 1962 by re-determination/enhancement of the assessable value of imported goods for initiating penal action on the imported goods and imposing penalty on the appellant importer is sustainable;

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

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

8.1 In the order dated 05.06.2020 passed by the original authority, he had confirmed the differential duty and imposed penalties, on the following grounds:

"7. I have carefully gone through the facts of the case, records available in file and I proceed to decide the case as below.

(1) I find that the goods covered under Bill of Entry No.7458279 dated 16.04.2020 has mis-declared in terms of quantity to evade legitimate Customs duty, the said goods are liable for confiscation under Section 111(1) and 111(m) of the Customs Act, 1962 and for such act of omission and commission, the importer has rendered himself liable for penalty under Section 112(a) of the Customs Act, 1962.

(ii) 1 find that the re-determine assessable value of the impugned goods as Rs. 30,17,710/- (Rupees Thirty Lakh Seventeen Thousand Seven Hundred and Ten Only) and the differentiate duty as Rs. 2,19,278/- (Rupees Two Lakh Nineteen Thousand Two Hundred Seventy Eight Only).

(iii) I find that the goods have been seized on 19.05.2020, under Sec. 110 of the Customs Act, 1962, as the goods appeared to be liable for confiscation under Sec 111(1) and 111(m) of the Customs Act, 1962. However, since the importer is ready to pay the differential duty, interest and Penalty, I find that the proceedings need to be concluded under See 28(6)(1) of the Customs Act, 1962. Accordingly, the importer is not liable for redemption fine under Section 125 (1) of the Customs Act, 1962, as per its proviso, mentioned there under. Since the impugned goods are not out of charged, no interest is liable under Section 28(6) of the Customs Act, 1962.

(iv) Further I find that the goods are improperly imported as per the provisions of Section 111 (1) & Section 111 (m) of the Customs Act, 1962 and thus penalty under Sec 112 (a)(ii) are also liable to be imposed.

(v) The importer, M/s. RKPS Impex Private Limited has paid the differential duty as well as Penalty vide Manual Challan No. 81, 939 & 940 all dated 29.05.2020 communicated to them vide letter dated 21 05.2020.

(vi) Further the importer has requested for waiver off Show Cause Notice and Person hearing & in turn requested for release of the goods at the earliest with a commitment to pay the fine/penalty imposed.

8. In view of the above discussion & findings, 1, pass the following order:

ORDER

(i) I accept the valuation of the goods assessed in the Bill of Entry No.7458279 dated 16.04.2020 and re-determine the same at assessable value of Rs. 30,17,710/- (Rupees Thirty Lakh Seventeen Thousand Seven Hundred and Ten Only) (vide method of calculation and valuation from Table II as mentioned above.)

(ii) I order the importer to pay the re-determined duty of impugned goods as Rs.8,47,976/-(Rupees Eight Lakh Forty Seven Thousand Nine Hundred Seventy Six Only) against Rs.6,28,698/- (Rupees Six Lakh Twenty Eight Thousand Six Hundred Ninety Eight Only) assessed in B/E resulting into differential duty of Rs. 2,19.278/- (Rupees Two Lakh Nineteen Thousand Two Hundred Seventy Eight Only) However, since the Importer has already paid the said amount, the same is being appropriated against the demand of duty mentioned herein.

(iii) I order confiscation of the impugned goods of re-determined value of Rs. 30,17,710/-(Rupees Thirty Lakh Seventeen Thousand Seven Hundred and Ten Only) under Section 111(1) & Section 111(m) of the Customs Act, 1962 however I order to redeem the goods without payment of Redemption Fine as the proceedings have been concluding under Section 28 (6)(i) of the Customs Act, 1962.

(iv) I impose Penalty of Rs. 32,892/- (Rupees Thirty Two Thousand Eight Hundred Ninety Two Only) on the importer, M/s. RKPS Impex Private Limited under Section 28 (6)(i) read with Section 28 (5) of the Customs Act, 1962. However, since the Importer has already paid the said amount, the same is being appropriated against the demand of duty mentioned herein.

(v) I impose Penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on the importer. M/s. RKPS Impex Private Limited improper importation of goods under Section 112 (a) (ii) of the Customs Act, 1962. However, since the Importer has already paid the said amount, the same is being appropriated against the demand of duty mentioned herein."

8.2 In the appeal filed against the order of the original authority, the learned Commissioner (Appeals) has held as under:

"6……..Thus, I find that for applicability of Section 28(5), demand notice under Section 28(4) has to be served by the proper officer. As already discussed in para 6.1 above, Section 28 is not applicable in the present case being live consignment. Thus, I find that penalty of Rs.32,892/- under Section 28(6)(i) read with Section 28(5) of the Customs Act, 1962 as imposed by the Adjudicating Authority, is not applicable in this case keeping in view that Section 28(6) is concluding section and there is no duty demand under Section 28(4) ibid. Hence, I am inclined to drop the same.

7. Further, the Adjudicating Authority has held the goods liable for confiscation under section 111(1) & 111(m) of the Customs Act, 1962 however it was ordered to be redeemed without payment of redemption fine as the proceedings have been concluded under section 28(6)(i) of the Customs Act, 1962. In this regard section 125 of the Customs Act, 1962 is reproduced below:-

SECTION 125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Upon reading of the Section 125 of the Customs Act, 1962, it is clear that once goods were held liable for confiscation, the importer or as the case may be, shall be given an option to redeem the goods and such person *has to pay redemption fine in lieu of confiscation. Hence, I find that the Adjudicating Authority has erred in releasing of goods without levy of redemption fine and appropriate redemption fine has to be imposed in this case. However, I also find that since the goods were already released in this case without levy of redemption fine, I have to take lenient view while imposing redemption fine at this stage as the Respondent have no choice either to opt to redeem the goods or not take possession of the goods. In my view ends of justice will be met if the redemption fine imposed is nominal after taking into account of this fact.*

8. In view of the above discussion and findings, I pass the following order:-

a) I order the Respondent to pay the applicable interest under Section 28AA of the Customs Act, 1962 on differential duty;
b) I order to impose redemption fine of Rs.3,00,000/- under Section 125 of the Customs Act, 1962;
c) I order to drop the penalty of Rs.32,892/- imposed under Section 28(6)(i) read with section 28(5) of the Customs Act, 1962.
d) I uphold the penalty imposed on the Respondent under section 112(a)(ii) of the Customs Act, 1962.

Under the circumstances, the appeal is disposed off accordingly by way of modifying impugned order as detailed supra, in terms of section 128A(3)(a) ibid as per doctrine of modification."

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

(i) the appellant importer had imported 'Readymade Garments (Polyester Knitted) - Ladies Leggings' from overseas supplier M/s Yiwu Lingna Clothing Company Limited, China and there is no mis-declaration with respect to the nature and description of the goods;

(ii) the foreign supplier had also mentioned the quantity of the imported goods in the invoice No.RKT-141 dated 21.01.2020 as 8140 dozen and in the Packing List No. RKT-141 dated 21.01.2020 as 97680 numbers, and there is no discrepancy in these documents;

(iii) on examination of the imported goods by customs officers, it was found they contain 1,31,749 nos. of readymade garments-ladies leggings instead of declared quantity of 97,680 nos., and thus there was excess quantity of goods;

(iv) the customs appraising officer of Group-3 of Jawaharlal Nehru Custom House (JNCH), Nhava Sheva, had enhanced the assessable value from USD 2.50 per dozen to USD 3.60 on the basis of National Import Data Base (NIDB) and it was accepted by the importer vide his letter dated 17.04.2020; however, the original authority in the order dated 05.06.2020 had stated that the contemporaneous value adopted on the basis of assessable value as per B/E No.6528256 dated 18.01.2020 is only USD3.38 per dozen, but he determined the differential duty based on the higher value adopted by the assessing officers at USD 3.60 per dozen.

(v) the appellants, before adjudication of the case by the original authority and prior to the clearance of imported goods, have paid the differential duty along with fine and penalty, for clearance of the imported goods.

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

Customs Act, 1962

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

Section 14. Valuation of goods for purposes of assessment. *-*
(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where—

(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other,
and the price is the sole consideration for the sale or offer for sale :

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

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

xxx xxx xxx xxx"

<u>Customs Valuation (Determination of Value of Imported Goods) Rules, 2007</u>

Rule 2. Definitions

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

xxx xxx xxx xxx

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

(c) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
(ii) produced in the country in which the goods being valued were produced; and
(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

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

(e) "similar goods" means imported goods -

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

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

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

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

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

Rule 3. Determination of the method of valuation -

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

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

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

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

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

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

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

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

9.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the duties of customs payable on imported goods by properly classifying it under appropriate classification as per the First Schedule to the Customs Tariff and determining the assessable value under Section 14 *ibid* read with the CVR of 2007. In the present case, the proper officer of customs at the port of import had assessed the duty payable on the imported goods on the basis of examination of goods, in which it was found that there was excess quantity of 34,069 nos. of readymade garments-ladies leggings. Further, in comparison to the NIDB data of contemporaneous value of goods at USD 3.60 per dozen adopted by the department, the declared value of USD 2.50 per dozen was found to be low. Accordingly, the proper officer revised/enhanced the value of such goods by rejecting the declared transaction value and based on the contemporaneous price of identical/ similar goods, had demanded the differential duty of customs in terms of CVR of 2007.

9.4 On perusal of the records of the case, it transpires that the invoice and packing list of the supplier indicate the quantity of readymade garments-ladies leggings as 97,680 nos./8140 dozen. Though there is no sales contract or purchase order placed on record, as per the documents of the overseas supplier, it is clearly established that the imported goods are excess in numbers. Thus, there is no doubt that the appellant importer is liable to pay the duties of customs for the actual quantity of the goods imported. The gross weight of the imported goods in container No. TLLU 4554898 as indicated in the Bill of Lading/Sea Way Bill is 23140 Kgs., whereas the actual weighment shown at the time of physical verification by customs, it was shown as 27140 Kgs. Thus, there was also variation in the actual weight of the imported goods, as there was excess cargo the extent of 97,680 nos. readymade garments-ladies leggings. However, there is no evidence of any record or document to show that the appellant importer has ordered for 1,31,749 nos./10979.08 dozen readymade garments and they tried to suppress the excess quantity by declaring only 8140 dozen /97,680 nos. of readymade garments. Furthermore, there is apparent contradiction in assessing the value of impugned goods, as the comparable price as per B/E No.6528256 dated 18.01.2020 is stated as USD 3.38 per dozen, whereas the value of USD 3.60/- per dozen was adopted on the basis of assessment practice at JNCH and there was no specific comparable contemporaneous import value as per NIDB data base. Therefore, part of the imported consignment being as per declaration and rest of the same being in excess quantity as well as the varying contemporaneous values on the basis of NIDB data, which is alleged to be mis-declaration by the department for the reason it being in excess and undervalued alone, in my considered view, does not enable the imported goods as mis-declared for the purpose of Section 111(l) & 111(m) *ibid* and for imposition of redemption fine on the goods and penalty on the appellant importer.

9.5 Further, both the original authority and the first appellate authority had not discussed the basis in terms of the specific rule of CVR, 2007 by which the declared value was enhanced and to provide the specific details of contemporaneous value of identical goods for determining the value of imported goods under Rule 5 of CVR, 2007. Furthermore, both the authorities below have also not discussed about the grounds on which they had categorized the action of the appellant as mis-declaration of imported goods; and failed to provide the market price of the goods and margin of profit for determination of redemption fine. Therefore, I find that the department had not made out a case for mis-declaration of the goods by the appellant importer in terms of Section 111(l) or 111(m) *ibid* for confiscation of the imported goods and for imposition of resultant penalty on the appellant.

9.6 It is not the case of the department that they have adopted the value of USD 3.38/dozen as per the B/E No.6528256 dated 18.01.2020 for determining the price of identical goods but adopted USD 3.60/dozen as per assessment group practice. However, the appellant importer had accepted in writing the enhancement of assessable value vide their letter dated 17.04.2020 and have also paid the differential duty on account of revised/enhanced value at USD 3.60/- per dozen on 29.05.2020 along with 15% of differential duty as penalty under Section 28(5) *ibid* and penalty under Section 112(a)(ii) *ibid* on 29.05.2020. Further, the appellant importer had appealed before the Tribunal only against the imposition of redemption fine by the learned Commissioner of Customs (Appeals). Therefore, I am not discussing these issues for determining the correctness of the decision in enhancement of value and for confirmation of the differential duty by the authorities below, in this appeal.

10. In respect of imposition of redemption fine on the imported goods and penalty on the appellant importer, I find that the Co-ordinate Bench of the Tribunal in the case of *ASR Multi metals Private Limited* (supra) dealing with identical facts of the present case, have held that there is no justification for imposition of redemption fine in the absence of determining margin of profit. The relevant paragraph of the said order is extracted and given below:

> *"**4.1** From the above provisions of Sec. 125 of the Customs Act, 1962 quantum of redemption fine cannot exceed the market price of the confiscated goods less the duty chargeable on the imported goods. In actual practice while imposing redemption fine, the margin of profit of the import is also taken into consideration by the Adjudicating Authority at the time of adjudication. For the purpose of determining the quantum of redemption fine, therefore it is essential to determine the market price of the confiscated goods adjudicated upon. It is possible that adjudicating authority may not have determined the Margin Of Profit*

(MOP) properly and actual MOP could be more. Under such circumstances theoretically redemption fine could be enhanced. However, to arrive at such an opinion of enhancing redemption fine concerned authorities need to determine the market price of the imported goods around the time of import and determine the Market Price and the MOP. In the instant case there is no evidence at all that after adjudication a higher MOP with respect to the imported goods, was determined by the Appropriate Authorities. In the absence of any such evidence on record, there is no justification for enhancing the redemption fine imposed by the Adjudicating Authority."

11. In view of the above analysis of the statutory provisions vis-à-vis the factual matrix of the case, and the observations and findings on such issues as discussed at paragraphs 9.1 to 9.6 & 10 above, I am of the considered view that the redemption fine imposed at Rs.3,00,000/- on the imported goods and penalty of Rs.10,000/- imposed upon the appellant importer are not sustainable. Accordingly, I find that the impugned order to the extent it had imposed redemption fine and penalty cannot stand the scrutiny of law.

12. In the result, the impugned order dated 02.03.2022, is partly set aside and the appeal is allowed in favour of the appellant.

13. Cross Objection filed by the Revenue stands disposed of.

(Order pronounced in open court on 31.07.2026)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha