CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Miscellaneous Application No. 85721 of 2026
(on behalf of appellant)
AND

Customs Appeal No. 85997 of 2025

[Arising out of Order-in-Appeal No. 157(Gr.V)/2025(JNCH)/Appeals dated 06.02.2025 passed by the Commissioner of Customs (Appeals), Mumbai-II, Mumbai.]

Embelle Trading …. **Appellant**
10, 2nd Floor, Plot No.45, Beg Mohammed Building
Kolsa Street, Off. Nakhoda Street
Pydhonie, Mumbai – 400 009.

Versus

Commissioner of Customs (NS-V), Nhava Sheva …. **Respondent**
Jawaharlal Nehru Custom House, Nhava Sheva,
Taluka Uran, District Raigad , Maharashtra – 400 707.

Appearance:

Shri Aditya Talpade, Advocate for the Appellant
Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86102/2026

Date of Hearing: 05.06.2026
Date of Decision: 11.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Embelle Trading, Mumbai, (herein after, referred to as 'the appellant'), assailing the Order-in-Appeal No. 157 (Gr. V)/2025(JNCH)/Appeals dated 06.02.2025 (herein after, referred to as 'the impugned order', for short) passed by the Commissioner of Customs (Appeals), Mumbai-II, Mumbai.

2.1 Brief facts of the case, leading to these appeals, are summarized herein below:

2.2 M/s Embelle Trading, Mumbai, *inter alia* is engaged in import of various types of assorted goods viz., textile garments, plastic boxes, electrical items and for such purpose have filed a Bill of Entry (B/E) No. 8542068 dated

30.10.2023 through their authorised Customs Broker M/s Sadguru Logistics Private Limited. The imported goods declared in the B/E are (i) assorted designs of plastic tail boxes for motor cycle; (ii) Sling bangs for kids; (iii) girls and children panties; (iv) amplifiers 300 + 300 W unbranded (including spares). On the basis of specific intelligence developed by Special Intelligence & Investigation Unit (SIIB) wing of Jawaharlal Nehru Custom House (JNCH) the imported goods were put on hold and were subjected 100% physical examination vide Panchnama proceedings dated 15.11.2023. Upon physical examination, it was identified that as against declared goods 46200 nos. of 'girls and children panties' , the actual goods were of 1,22,400 nos. of 'Men's under wear' of various sizes; in respect of 'amplifiers' there was no specific marking of 'input power supply' as required under BIS specifications and excess quantity of spares were found. Besides this, all other goods were present as declared, by the importer. Further, upon testing of the textile materials by the Textile Committee, for presence of 'Azo dyes', it was found that there was no such adverse material present in the imported goods.

2.3 On the above basis, the department had interpreted that the invoice presented by the importer do not show the true transaction value of impugned goods. The department, therefore rejected the transaction value declared by the importer and as the value of comparable quantity of similar goods was not available, market survey was conducted for re-determination of assessable value under Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ["CVR' for short] for a total amount of Rs.54,49,201/- as against the declared value of Rs. 17,33,173/-. Further, since the imported amplifiers on physical examination was found to be of 4000 watts/hour specification, upon examination by customs empanelled Chartered Engineer, these do not comply with compulsory BIS requirements; plastic tail bodes and other goods listed under the table as 'releasable goods' did not contain the mandatory labelling requirements such as MRP etc., under Legal Metrology (Packaged Commodities) Rules, 2011; and therefore the department proposed for confiscation of imported goods.

2.4 On the above basis of waiver for issue of Show Cause Notice (SCN) and personal hearing given by the appellant-importer vide his letter dated 23.08.2024, Additional Commissioner of Customs adjudicated the case by issue of Order-in-Original dated 04.10.2024, in rejecting the declared values under Rule 12 of CVR, 2007 and redetermined the assessable values for the B/E as indicated in the impugned order, under Rule 7, Rule 9 of the Rules of

2007 and confirmed the total duty payable Rs.41,57,657/- along with interest; confiscated amplifiers, plastic tail boxes etc., valued at Rs.47,52,672/- for non-compliance with BIS specification requirements with redemption fine of Rs.2,00.000/- subject to its re-export, and imposed redemption fine of Rs.3,50,000/- for other goods which could be releasable for domestic consumption. Further, he imposed penalty Rs. 5,00,000/- under Section 112(a)(i) ibid on the appellant. Being aggrieved with the said order of the original authority, the appellant importer filed an appeal before the Commissioner of Customs (Appeals). In disposing the appeal, learned Commissioner of Customs (Appeals) confirmed the adjudged demands as determined in the order of the original authority and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order of the learned Commissioner of Customs (Appeals), the appellant importer has filed this appeal before the Tribunal.

3. Heard both sides and perused the case records. We have also considered additional written submissions given in the form of paper books, and the arguments advanced during the hearing of this case by both sides.

4. The short issue for decision before the Tribunal is to determine the following:

> (i) whether the impugned order passed by the learned Commissioner of Customs (Appeals), in upholding confirmation of the adjudged demands, in enhancing the value of import goods, is legally sustainable or not, in terms of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007?
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> (ii) whether the upholding of confiscation of imported goods and imposition of redemption fine thereof, penalty imposed on the appellant, in the impugned order is sustainable or not?.

The period of dispute involved in the present case is October, 2023 as it covers imported goods under a single B/E No. 8542068 dated 30.10.2023.

5. On perusal of the impugned order, more specifically at paragraphs 32, 33.1 to 33.5 & 34 of the impugned order, learned Commissioner of Customs (Appeals) had recorded his findings that the impugned goods imported by the appellant importer involved (i) mis-declaration in terms of quantity; (ii) mis-classification of men's under wear; (iii) under valuation of goods and (iv) non-compliance with requirements of BIS specifications and Legal Metrology (Packaged Commodities) Rules, 2011. Therefore, he had upheld the adjudged demands in the impugned order.

6. On perusal of the appeal case records, it transpires that the appellant had placed order with the overseas supplier M/s Anzong Company Limited, Hong Kong for supply of girls and children panties/kids under garments, whereas the said supplier had mistakenly loaded men's under wear which were meant for supply to M/s Noor Al Shawal General Trading LLC, Dubai vide their letter dated 15.11.2023 and sought to take it back from the appellant importer. Therefore, we are of the view that there was certain mix-up of goods in the imported container, which was beyond the control of the appellant, and the resultant change in classification cannot be treated as mis-classification. However, since such goods have already been imported and that they have also been tested free of Azo dyes test, there is no impediment for its clearance on payment of appropriate duty on such goods which had been received in excess quantities than the quantity of purported kids' garments ordered by the appellant importer. Further, the goods in the B/E had been declared as it was mentioned in the supplier's invoice and other import documents. There is no other evidence produced by the department to claim that the appellant importer had mis-declared, since the overseas supplier had accepted the mistake in mix-up of the goods stuffed in the import container. Therefore, there is neither any ground to claim any mis-declaration on the part of the appellant, nor is there any document or any material evidence available to state that the importer have mis-declared the goods, in order to attract the specific ingredients of fraud, suppression of facts, willful mis-statement or any other violation of customs statute with an intention to evade import duty for confiscation of the imported goods.

7. As regards, the mandatory compliance with the BIS and Legal Metrology (Packaged Commodities) Rules requirements, the Director General of Foreign Trade had issued Notification No.44 (RE-2000)/1997-2002 dated 24.11.2000, by amending paragraph 4 of Chapter 1A: General notes regarding import policy, of ITC(HS) Classifications of Export and Import Items, 1997-2002 by adding the following:

> *"4. All such packaged products, which are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 when produced/ packed/ sold in domestic market, shall be subject to compliance of all the provisions of the said rules, when imported into India. The compliance of these shall be ensured before the import consignment of such commodities is cleared by Customs for home consumption. All prepackaged commodities, imported into India, shall in particular carry the following declarations:……"*

On careful reading of the above requirements, it transpires that such mandatory requirements have to be fulfilled by an importer before the imported consignment of goods are cleared from customs control for

home consumption. Further, Public Notice No.33/2012 dated 30.04.2012 issued by JNCH Customs allow such mandatory compliance with respect to labelling requirements to be completed before examination of the goods for enabling its clearance out of customs control for home consumption. The extract of the said instructions is given below:

> *"2. Some members of the trade have represented that DC/AC of Docks may also be allowed to give permission to affix the labels before clearance. The issue has been examined and it is decided to allow DC/AC of Docks to give permission to affix the labels before clearance. Accordingly, the Public Notice No 116/2011 dated 8-9-2011 is modified as follows.*
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> ***3.** The following is inserted in Para 3 of the Notification (after the last line):*
> *'In case the Importer/CHA was not in a position to seek necessary permission as above from the DC/AC of the concerned Group, the same can also be obtained from DC/AC(Docks) before registration and examination of the goods'…."*

Therefore, we are of the view that such mandatory requirement in respect of affixation of mandatory details in terms of Legal Metrology (Packaged Commodity) Rules, 2011 / Standards of Weights and Measures (Packaged Commodities) Rules, 1977, could be completed after taking necessary permission from the authorities concerned. Since, in the present case the department themselves had physically examined the imported goods, before these were subjected to normal examination norms, the appellant could not have made such request before examination of goods. As regards, importation of amplifiers which are found on examination by Customs empaneled Chartered Engineer report 05.04.2024 as of 4000watts/per hour, which is more than 2000 watts/per hour for which IS 616:2017 standards apply, it transpires that such goods are required to be compulsorily registered by the foreign supplier with the Bureau of Indian Standards for compliance with safety and quality requirements. Since the imported amplifiers were not having such compulsory registration of BIS, these were treated by the department as non-releasable goods for which redemption fine of Rs.2,00,000/- was imposed subject to the condition of its re-export. As noted earlier, the appellant has also shown his willingness to comply with the same and have held correspondence with the department.

8.1 Further, the appellant importer had vide their letter dated 09.05.2025 had requested the customs authorities for permitting re-export of non-releasable goods upon paying the redemption fine ordered in the order of the original authority. Further, the said request was also accepted by the

competent authority of the customs department and the importer was asked to submit the Export General Manifest (EGM) copy after its export vide letter dated 06.06.2025 issued by the Assistant Commissioner of Customs, Gr. VA, NS-V, JNCH. Therefore, the miscellaneous application is disposed of.

8.2 In view of the above discussions, we find that the impugned order upholding confiscation of imported goods under Section 111(d), 111(l), 111(m) ibid and imposing redemption fine of Rs.3,50,000/- on the imported goods and penalty of Rs.5,00,000/- under Section 112(a) of the Customs Act, 1962 does not stand the legal scrutiny.

9.1 We find that our above views are also fortified by the observation of the Co-ordinate Bench of the Tribunal in the case of *Ocean Sky Impex Private Limited Vs. Commissioner of Customs. Chennai* - 2024 (387) E.L.T. 76 (Tri.-Mad.)/ (2023) 12 Centax 160 (Tri/-Mad.), wherein it was held that based on the bonafides of the wrong shipment by foreign supplier and their willingness to take it back, the imported goods could be released. The relevant paragraph in the said order is extracted and given below:

> *"3.5 It appears that the appellant pleaded before the authorities that it had only ordered for "Polyester Coated Fabric (Polymeric Compound)" and upon coming to know that a different product/goods had been exported by the supplier, they had immediately contacted the foreign supplier, in response to which their supplier appears to have accepted their mistake in wrong shipment and in turn, had requested the appellant to re-export the same back to them.*
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> *xxx xxx xxx xxx*
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> *9. In view of the foregoing, we do not find any justifiable case made out by the authorities for not permitting the bona fide request for re-export of the seized goods and hence, we set aside the impugned order. Further, we also direct the adjudicating authority to accede to the request for provisional release of the seized goods forthwith after taking suitable bond and Bank Guarantee."*

9.2 We also find that the Central Board of Excise & Customs vide Circular No.4/2015-Customs dated 20.01.2015 had examined the issue of re-export of goods imported under Bonafide mistake and have passed instructions for allowing its re-export on merits of the case. The extract of the said circular is given below:

> *"Circular No. 4/2015-Cus., dated 20-1-2015*
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> *F. No. 450/74/2014-Cus IV*
> *Government of India*
> *Ministry of Finance*
> *(Department of Revenue)*
> *Central Board of Excise & Customs, New Delhi*
>
> *Subject : Re-export of goods imported under bona fide mistake - Regarding.*

Attention is invited to Circular No. 100/2003-Cus., dated 28-11-2003 [2003 (158) E.L.T. T53] which prescribes that permission for re-export of goods that are shipped contrary to instruction of the importer has to be granted by Commissioner of Customs.

2. References have been received in the Board that the current procedure for allowing re-export of goods that are imported under a bona fide mistake is being followed at Customs stations is time consuming and causes avoidable hardship to importer/airlines/consol agents. This is especially happening at air cargo complexes because numerous requests in respect of wrong shipments are to be dealt with here on daily basis. These references contain a request for a simpler procedure.

3. The matter was deliberated upon in the Conference of Chief Commissioners of Customs/Customs and Central Excise held at Hyderabad in February, 2014. There was consensus to prescribe a simplified and uniform procedure which may obviate delays in cases warranting the grant of permission to re-export. A view emerged that a solution lies in delegating the powers to permit re-export to the Customs Officers in accordance with their powers of adjudication.

4. The matter has been examined by the Board. Requests for re-export of imported goods may be received when the said goods are destined for elsewhere but which are inadvertently imported at a particular Customs station. With a view to expedite decision-making in respect of re-export of such goods, the Board has decided that the permission for re-export may be granted on merit by the officer concerned as per the adjudication powers. In regard to the adjudication powers, a reference may be made to Section 122 of the Customs Act, 1962 and Circular No. 24/2011-Cus., dated 31-5-2011.

5. Circular No. 100/2003-Cus., dated 28-11-2003 stands modified to the above extent.

6. Chief Commissioners of Customs/Customs and Central Excise should ensure that above instructions are complied with scrupulously in their jurisdiction. Difficulty faced, if any, may be immediately brought to the notice of the Board."

In terms of aforesaid instructions, we find that in the peculiar circumstances of the appellant importer's case, where there was certain mix-up of goods occasioned due to supplier's mistake, bonafides of appellant-importer has been proved and thus even as per CBEC's circular such cases need to be considered on merits. Therefore, there is no ground for imposition of redemption fine on imported goods and for imposition of penalty in this regard on the appellant importer.

10. In view of the foregoing discussions and analysis, we are of the considered opinion that the impugned order to the extent it has upheld confirmation of adjudged demands in imposition of redemption fine of Rs.3,50,000/- on the imported goods (other than non-releasable goods), imposition of penalty of Rs.5,00,000/- on the appellant importer are not consistent with the legal provisions of the Customs statute in respect of imported goods. Accordingly, we find that the impugned order to the above extent does not stand the scrutiny of law and therefore the same is not legally sustainable.

11. In the result, by modifying the impugned order to the above extent, the appeal is partly allowed in favour of the appellant, with consequential relief, if any, as per law.

(Order pronounced in the Open court on 11.09.2026)

(M.M. Parthiban)
Member (Technical)

(Dr Suvendu Kumar Pati)
Member (Judicial)

Sinha