CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70604 of 2019

(Arising out of Order-In-Appeal No. NOI-CUSTM-000-APP-29 to 57-19-20, dated 25.04.2019 passed by Commissioner (Appeals), CGST, Noida)

Commissioner, Customs, Noida **.....Appellant**
(Greater Noida, District G. B. Nagar, Uttar Pradesh)

VERSUS

Siddhi Vinayak Importers, **....Respondent**
(Booth No. 91 & 92, Huda Complex
Rohtak, Haryana 124001)

WITH

i. **Customs Appeal No.71120 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers);**
ii. **Customs Appeal No.71121 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
iii. **Customs Appeal No.71122 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
iv. **Customs Appeal No.71123 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
v. **Customs Appeal No.71124 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
vi. **Customs Appeal No.71125 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
vii. **Customs Appeal No.71126 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
viii. **Customs Appeal No.71127 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
ix. **Customs Appeal No.71128 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
x. **Customs Appeal No.71129 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
xi. **Customs Appeal No.71130 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
xii. **Customs Appeal No.71131 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
xiii. **Customs Appeal No.71132 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
xiv. **Customs Appeal No.71133 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
xv. **Customs Appeal No.71134 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**
xvi. **Customs Appeal No.71135 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)**

xvii. Customs Appeal No.71136 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xviii. Customs Appeal No.71137 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xix. Customs Appeal No.71138 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xx. Customs Appeal No.71139 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxi. Customs Appeal No.71140 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxii. Customs Appeal No.71141 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxiii. Customs Appeal No.71142 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxiv. Customs Appeal No.71143 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxv. Customs Appeal No.71144 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxvi. Customs Appeal No.71145 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxvii. Customs Appeal No.71146 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)
xxviii. Customs Appeal No.71147 of 2024 (C. C. Noida V/s M/s Siddhi Vinayak Importers)

(Arising out of Order-In-Appeal No. NOI-CUSTM-000-APP-29 to 57-19-20, dated 25.04.2019 passed by Commissioner (Appeals), CGST, Noida)

APPEARANCE:

Shri N. K. Mohan, Authorised Representative for the Appellant
A letter on record for the Respondent alongwith written submissions filed by Shri Sagar Rohatgi, Advocate

CORAM: HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.70442-70470/2026

DATE OF HEARING : 10.07.2026
DATE OF DECISION : 14.10.2026

P.K. CHOUDHARY:

All the above appeals are taken up together as the issue involved is primarily as to whether the Appeals filed by the Appellant before the First Appellate Authority were correctly allowed by the learned Commissioner (Appeals) holding that the

rejection of the declared value and enhancement of the value for the assessment of duty is legally not sustainable. The assessment orders passed in respect of all the Bills of Entry and the impugned orders are therefore set aside and accordingly the appeals filed by the Appellant-Importer was allowed by the learned Commissioner (Appeals).

2. The Department against the order of the learned Commissioner (Appeals) is in appeal before the Tribunal on the following grounds:-

> "(1) The Commissioner (Appeals) has set aside the Order-in-Original (Speaking Order) No. 205/AG-3/ICD-DD/17 dated 14.03.2018 after observing that the Adjudicating Authority has not given any reasons to doubt the truth / accuracy of the declared value and without establishing that the declared value was not genuine as well as nothing to draw inference of receipt of any additional remittance.
>
> It appears that the Commissioner (Appeals) has failed to appreciate the spirit of the following statutory provisions:-
>
> (a) Rule 12 of Customs Valuation (Determination of value of imported Goods) Rules, 2007 (hereinafter called as 'Valuation Rules')-
>
> > "(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such

imported goods. cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)."

(b) Sub-section (5) of Section 17 of the Customs Act, 1962 (in short 'the Act')-

"Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be."

From the statutory provisions above, it is apparent that sub-rule (1) of Rule 12 of the Valuation Rules says "he may ask the importer, which means in case of reason to doubt the truth or accuracy of the declared value of imported goods it is not mandatory upon the proper officer to ask the importer to furnish further information. The reason to doubt the truth/accuracy of the declared value required to be informed 'only at the request of the importer in terms of Rule 12(2) of the Rules, ibid. In the present case, the Commissioner (Appeals) has nowhere discussed in his Order-in-Appeal that the importer had ever given any such request to the proper

officer. Further, the Order-in-Appeal is silent about the importer's denial/protest on the re-assessment of the bills of entry in terms of Section 17(5) of the Customs Act, 1962. Therefore, it appears that re-assessment of the impugned Bills of Entry cannot be challenged before appellate authority until unless the importer submits the proof regarding request made by them under Rule 12(2) of the Valuation Rules, and denial / protest on the re-assessment of bill of entry in terms of the provisions of Section 17(5) of the Act. Thus, the Commissioner (Appeals) has set aside the re-assessment orders of individual bills of entry by ignoring the aforesaid statutory provisions of law.

(2) The Commissioner (Appeals) has also failed to appreciate that the Adjudicating Authority had passed three speaking orders in terms of Section 17(5) of the Customs Act, 1962 on the re-assessment of said 24 bills of entry after issuance of show cause notices and following the principles of natural justice. The specific data of contemporaneous import of similar / identical goods was given at para-4 of the relevant show cause notice for comparing the assessable value with the value declared by the importer. In para-5 of discussion & findings of the speaking order, the Adjudicating Authority clearly observed that significantly higher value at which similar goods imported at the same time in comparable quantity in a comparable commercial transaction were assessed, therefore there was reason to doubt the truth / accuracy of the declared value. From the facts above, it is incorrect to say that the Adjudicating Authority has not given any reasons to doubt the truth / accuracy of the declared value and without establishing that the declared value was not genuine.

(3) The Commissioner (Appeals) has grossly ignored the fact that the importer had deliberately filed the individual appeals against re-assessment of each bill of entry without waiting

for speaking order in terms of Section 17(5) of the Customs Act, 1962. In the present case, the Order-in-Original (Speaking Order) No. 205/AG-3/ICD-DD/17 dated 14.03.2018 was passed by the Adjudicating Authority on re-assessment of the 17 bills of entry. Since, the re-assessment of said 17 bills of entry was made by passing the speaking order dated 14.03.2018 in terms of the statutory provisions of Section 17(5) therefore, individual appeals against each bill of entry filed by the importer was mere duplication of the appeal filed against the speaking order. The Commissioner (Appeals) has not only accepted the said individual appeals but also decided the same along with the appeal filed against the speaking order, under the same Order-in-Appeal dated 25.04.2019. Thus, it appears that the decided 17 appeals pertaining to the bills of entry as covered under the speaking order were infructuous and not maintainable.

(4) Further, while setting aside these speaking orders for enhancement of value for the purpose of assessment of duty, it has been held that such an enhanced price cannot be treated as transaction value of similar goods sought to be compared, as the declared goods was "Mixed Lot of 100% Polyester Knitted Fabrics (Rolls of Assorted Colors and Weight) whereas the description of goods taken for contemporaneous import was "100% Polyester Knitted Fabric / Mixed lot of Polyester Knitted Fabric"

In the present case, the compared contemporaneous goods were "Mix Lot" of similar / identical goods i.e. Polyester Knitted Fabric and Mix Lot of fabric always consist of assorted colours and weights. Thus, it appears that the Commissioner (Appeals) has incautiously considered the submission of the importer that the assorted goods of different colours and different weights cannot be compared with other goods without ascertaining that the goods referred for the comparison were identical/similar goods.

3. The learned Authorized Representative appearing for the Appellant-Department reiterated the grounds of appeal and submitted that the learned Commissioner (Appeals) in the impugned Orders-In-Appeal has not discussed the Departmental view on merits at all but held to be wrong on the ground of the parties appeals. He further submitted that the impugned Orders-In-Appeal does not appear to be sustainable and is liable to be set aside.

4. We find that the Respondent importer is a regular Importer of different kinds of fabrics and have imported 29 consignments of fabrics from China. It has further been contended that the Respondent had self-assessed the duty correctly as per the respective Invoices. However, no 'Out of Charge Orders' were passed. The Respondent made written requests to the Proper Officer to clear the consignments provisionally paying duty on the enhanced value under protest in Order to avoid delay in clearance of consignments. According to the Respondent, no cognizance was taken by the Proper Officer despite several written requests made for clearance of consignment on enhanced value under protest. Finally, the Respondent was coerced to submit letters of consent agreeing to assessment/valuation by the Customs Authorities. The Respondent further contended that the Customs Authorities without observing the mandate of Section 14 of the Customs Act, 1962, discarded the declared transaction value and enhanced the value on the basis of the consent letter.

5. We find that since the acceptance letters were not voluntary, the Respondent wrote several letters requesting the Ld. Assessing Officer to issue Speaking Order. However, no speaking Order was passed. Hence, the Respondent filed respective Appeals before the Commissioner (Appeals) against the assessment made in the respective Bills of Entry. The Appellate Authority sought comments from the Department on the Appeals filed by the Respondent wherein the Department contended that the re-assessment has been done under Section 17(4) of the Customs Act, 1962 on the basis of written consent, therefore, no speaking

Order was passed. All the Appeals were rejected merely on the ground that since the Respondent has accepted the enhancement of value in writing there was no requirement of issuance of speaking Order under Section 17(5) of the Customs Act, 1962 and therefore the assessable value determined by the Adjudicating Authority on reassessment of imported goods in the Bills of Entry and accepted by the Respondent in writing was legal and binding on the Respondent.

6. We find that the letter of acceptance does not provide any evidence of contemporaneous import of and merely mentions that the declared value is liable to be rejected and re-determined on the basis of the data of contemporaneous import. We further find that merely mentioning that the declared value is liable to be rejected and the same is liable to be assessed at a particular price does not meet the requirement of Customs Valuations Rules, 2007[1] as even for applying Rule 5 of CVR, 2007 several parameters like quantity in comparable commercial transactions, GSM, quality, time of placement of Order for import etc. has to be fulfilled.

7. We find that the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. vs. UOI reported in 2019 (367) E.L.T. 3 (SC) held that the mandate of sub Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said ground to the importer is mandatory. The Hon'ble Supreme Court has deprecated the practice of by passing and circumventing the statutory mandate as un-acceptable. The Hon'ble Supreme Court has held that the formation of belief and recording of reasons as to reasonable doubt as communication of the reasons when required is the only way and manner in which the Proper Officer in terms of Rule 12 can proceed to make assessment under Rule 4 to 9 after rejecting the transaction value as declared. The above requirement has

[1] CVR, 2007

been made mandatory by the Hon'ble Supreme Court by invoking the doctrine of prospective application.

8. We find that similar letters of acceptance were submitted by the importers in the case of Hanuman Prasad & ors. and in the Appeals filed by them, the LD. Commissioner (Appeal) set aside the enhancement of value merely on the basis of letter of acceptance. The Department filed Appeals against the Orders of the Ld. Commissioner (Appeal) wherein the Tribunal allowed the Appeals holding that once letter of acceptance has been submitted, the importers cannot question the assessment later on. The said importer filed Appeals before the Hon'ble High Court of Delhi titled as Niraj Silk Mills vs. Commissioner of Customs & Ors. - CUSAA 26/2022. The Hon'ble High Court of Delhi after analyzing the provisions of law and judgments allowed the Appeals. The present Appeals are squarely covered by the judgment of the Hon'ble High Court.

9. We find that in the Century Metal Recycling Pvt. Ltd. (supra) facts were also similar to the present case in as much as in that case also requests for provisional assessment by the importer was ignored and the importer was forced to submit letter of acceptance. We further find that although the letter of acceptance states that the ground for rejection of the declared value has been narrated to the Respondent and that details of contemporaneous import of similar and identical goods have been shown to them and on the basis of which, the Respondent accepted that their value were significantly lower than the value at which identical/similar goods imported at or about the same time in comparable commercial transactions were assessed at other ports of the country, however, no such details of alleged contemporaneous import data have been mentioned.

10. We further find that the issue as to whether the Department can enhance the value relying on NIDB and on the basis of the acceptance letter and once there is acceptance letters, the importer cannot contest the same also came up for consideration

before the Hon'ble High Court of Delhi in the case of Niraj Silk Mills vs. Commissioner of Customs (ICD) Patparganj passed in CUSAA 26/2022 and the Hon'ble High Court vide its judgment dated 27.11.2024 has held that the right to question the correctness of the decision of the proper officer, be it with respect to the formation of opinion or even on merits, is one which is protected by statute. The Hon'ble High Court formulated the question of law as under:-

> *"Whether the Tribunal misdirected itself in holding that the appellants in the above-mentioned matter could not question the enhancement made concerning the valuation of the imported goods, once the appellants had given up their right to seek issuance of a show cause notice and/or speaking Order under Section 17 of the Customs Act, 1962?"*

The Hon'ble High Court vide its judgment held as under:-

> *"83. That then takes us to the concession which the importer could tender and which would require us to identify the subject in respect of which that concession may be made. When we examine this aspect on the anvil of Section 17(5), it becomes apparent that the statute speaks of the concession being with reference to the reassessment made under Section 17(4). It thus proceeds to provide that in a case where the importer confirms his acceptance of the reassessment in writing, the proper officer would stand relieved of the obligation of passing a speaking Order in respect of such reassessment. In all other cases and where the reassessment is not acceded to, the proper officer is obliged to pass a speaking Order. Thus, the waiver or concession is at best confined to the speaking Order which the proper officer is obliged to frame in affirmation of the provisional opinion that it may have formed under Section 17(4).*

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

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

11. We find that the Hon'ble High Court on the issue as to whether the declared value can be rejected merely on the basis of NIDB data. The Hon'ble High Court has held as under:-

"104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a valuation addition based solely on NIDB data would wholly unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. The legal position so articulated would ensure fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative

evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs valuation and a deviation from declared values being founded on tangible and justiciable material. A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the aforenoted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences."

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

12. In view of the above observations, the Order-In-Appeals passed by the learned Commissioner (Appeals) are upheld and the Appeals filed by the Appellant-Department are rejected.

(Pronounced in open court on 14.10.2026)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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