Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 10823 of 2024

[Arising out of Order in Original No. MUN-CUSTM-000-COM-08-24-25 dated 06.05.2024 passed by the Principal Commissioner of Customs, Mundra)

MUKESH STEEL TRADING **.....Appellant**
(Now Known as Mittal Enterprises), C-18/2,
Wazirpur Industrial Area, Delhi-110052.

VERSUS

Principal Commissioner of Customs-Mundra **.....Respondent**
Office of the Pr. Commissioner of Customs, Custom House,
Mundra, Kutch, Mundra Port and Special Economic Zone, Mundra,
Kachchh-gujarat-370421

WITH

- **Customs Appeal No. 10824 of 2024 (GULSHAN EXIM PVT LTD)**
- **Customs Appeal No. 10825 of 2024 (MUKESH STEEL)**
- **Customs Appeal No. 10826 of 2024 (DHARAM IMPEX)**
- **Customs Appeal No. 10827 of 2024 (AMIT KUMAR MITTAL)**
- **Customs Appeal No. 10828 of 2024 (GULSHAN KUMAR)**
- **Customs Appeal No. 10829 of 2024 (ASHOK KUMAR)**
- **Customs Appeal No. 10830 of 2024 (RAVINDER KUMAR)**

[Arising out of Order in Original No. MUN-CUSTM-000-COM-08- 24-25 dated 06.05.2024 passed by the Principal Commissioner of Customs, Mundra)

APPEARANCE:
Shri. Prem Ranjan Kumar, Advocate for the Appellant
Shri. Aakash Singh, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

Final Order No. 10763-10770/2026

DATE OF HEARING:28.07.2026
DATE OF DECISION: 09.10.2026

SOMESH ARORA

The appellants namely Mukesh Steel Trading, Mukesh Steel, M/s. Gulshan Exim Pvt Ltd and M/s Dharam Impex, are engaged in import of Cold Rolled Stainless Steel Coils and Circles falling under Tariff Item 7220/7219 of the Customs Tariff Act, 1975, mainly from China and Malaysia. The

Appellants entered into written contracts with M/s MCH Steel Trading Company Ltd. through Mr. Vick Jiang who used to supply goods either from M/s MCH Steel Trading Company Ltd or sourced from Guizhou Zhongruxianghe Supply (59 consignments) and two suppliers form Malaysia namely M/s Jentayu Industries, Malaysia and GEPL (M) Sdn. Bhd., Malaysia (4 consignments). Since the goods were stock grade, supplies were on as is where is basis. During the period from 12.07.2018 to 27.08.2020, M/s Mukesh Steel Trading imported said goods vide 23 Bills of Entry filed at Mundra Port and 1 Bill of Entry at ICD Loni, M/s Mukesh Steel imported 11 consignments at Mundra Port and 3 consignments at ICD Loni, M/s Gulshan Exim Pvt. Ltd imported 17 consignments at Mundra, 3 at ICD Loni and 3 at ICD Sabarmati, and M/s Dharam Impex imported 2 consignments at Mundra port.

1.1 The appellant(s) submitted all the requisite documents including the certificate of origin at the time of examination and the assessing officer assessed Bills of Entry to duty only after proper examination and verification of the declaration made in respect of each of the consignment. In respect of several Bills of Entry, declared value was enhanced based on study carried out by the Customs regarding international price which Appellant(s) accepted and no appeal was filed. On 11.02.2020, DRI officers of Delhi Zonal Unit searched the office cum godown of M/s Mukesh Steel whose imports were also being looked after by Mr. Amit Mittal. Certain documents and electronic devices were resumed. The physical stock taking of stainless steel coils/circles/sheets available in the godown of Mukesh Steel for both imported as well as domestically procured steel was conducted and the same were seized on 13.10.2020 read with corrigendum dated 26.10.2020. Cloning/data retrieval from the electronic devices (mobile and hard disc) was conducted under Panchnama dated 26.06.2020 and 29.06.2020 and relevant

prints were taken for the purpose of investigation. Statement of persons concerned with the respective firms were recorded and as per appellant, they were forced to admit mis-declaration.

1.2 During investigation, DRI forwarded the country of origin (COO) certificate pertaining to two Malaysian Suppliers namely M/s Jentayu Industries, Malaysia and GEPL (M) Sdn. Bhd., Malaysia to the Ministry of International Trade and Industry (MITI) Malaysia for verification who vide email dated 14.04.2021, informed DRI that based on their assessment, 87 out of 143 copies of the COO are not authentic and they were not issued by the MITI. After concluding investigation, DRI issued a Show Cause Notice dated 08.05.2023 to M/s Mukesh Steel Trading, Mukesh Steel, Gulshan Exim Pvt. Ltd. and M/s. Dharam Impex.

(a) imports made by Mukesh Steel Trading:

Proposing rejection of declared value under Rule 12 of CVR, 2007 and re-determining it under Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of CVR, 2007, with consequential duty liability, confiscation of goods under Section 111(m) of the Customs Act, 1962 and imposition of Penalty under Sections 112 and/or 114A and 114AA of the said Act.

(b) imports made by Mukesh Steel:-

Proposing rejection of declared value under Rule 12 of CVR, 2007 and re-determining it under Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of CVR, 2007, with consequential duty liability, denial of the benefit of Notification No. 46/2011-Cus, dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia; proposing confiscation of goods under Section 111(m) of the Customs

Act, 1962 and imposition of Penalty under Sections 112 and/or 114A and 114AA of the Customs, Act, 1962.

(c) imports made by Gulshan Exim Pvt. Ltd.:-

Proposing rejection of declared value under Rule 12 of CVR, 2007 and re-determining under Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of CVR, 2007, with consequential duty liability, denial of the benefit of Notification No. 46/2011-Cus. dated 01.06.2011, as amended, on the goods of Chinese origin imported from Malaysia; proposing confiscation of goods under Section 111(m) of the Customs Act, 1962 and Penalty under Sections 112 and/or 114A and 114AA of the Customs, Act, 1962. Penalty also proposed on Shri Ashok Kumar, Shri Ravinder Kumar and Shri Gulshan Kumar, Directors of M/s Gulshan Exim Pvt. Ltd and on Shri Amit Mittal under Sections 112 and 114 AA of the Customs Act, 1962.

(d) imports made by Dharam Impex:-

Proposing rejection of declared value under Rule 12 of CVR, 2007 and re-determining value under Section 14 of the Customs Act, 1962 read with Rule 3 & 9 of CVR, 2007, with consequential duty liability, confiscation of goods under Section 111(m) of the Customs Act, 1962 and imposition of Penalty under Sections 112 and/or 114A and 114AA of the Customs, Act, 1962. Penalty was also proposed on Shri Amit Mittal under Sections 112 and 114AA of the Customs Act, 1962.

1.3 The appellants filed detailed reply duly supported by the documents denying allegations of mis-declaration of value and also of the country of origin. Ld. Adjudicating Authority confirmed the proposal made in the show cause notice except dropping a part of the demand in respect of 18 Bills of Entry against Gulshan Exim Pvt. Ltd as separate show cause notices were already issued and demands were confirmed denying benefit of Notification

No.50/2018-Customs dated 30.06.2018. The demand of differential duty in respect of 3 Bills of Entry denying the benefit of Notification and duty demand on account of mis-declaration of value in respect of all the Bills of Entry (including above 18 Bills of Entry for which benefit of Notification was already denied vide earlier adjudication order dated 11.12.2023), was confirmed.

2. Aggrieved by the order, all the appellants filed appeal before the Tribunal raising the following grounds.

2.1 The impugned order although determined duty and interest on 06.05.2024 but it was not served on Mukesh Steel Trading and M/s Dharam Impex within one year from the date of issue of Show cause Notice. Therefore, show cause notice is to be considered as abated in terms of Section 28(9) of the Customs Act, 1962. The impugned Order was served on M/s Dharam Impex on 14.05.2024 whereas it has not been served on Mukesh Steel Trading by any mode till date. Both these importers therefore, filed Writ Petition (Special Civil Application) No. 10658 of 2024 and 10319 of 2024 respectively before Hon'ble High Court of Gujarat which was disposed of vide Order dated 24.07.2024 with liberty to raise all the contentions raised in the writ petition, before the Appellate Authority.

3. Submissions by Mukesh Steel Trading on limitation under Section 28(9) of the Customs Act, 1962.

3.1 The order passed by the Adjudicating Authority in Show Cause Notice dated 08.05.2023, has not been served upon the Appellant till date. Mere determination of duty or interest has no consequence unless the same is communicated to the Appellant in terms of Section 28(9)(b) of the Customs Act, 1962. Having not been communicated or having been communicated the order after lapse of one year from the show cause notice date would

have consequences on the vested right in favour of such person. Hon'ble Supreme Court in the case of Bachhittar Singh vs State of Punjab reported in 1963 AIR 395 where a similar issue arose, held as under:-

> *"....thus it is of the essence that the Order has to be communicated to the person who would be affected by the Order before the State and that person can be bound by that Order. For until the Order is communicated to the person affected by it, would be opened to the counsel of Minister to consider the matter over and over again and, therefore, till its communication the Order cannot regarded is anything more that provisional in character....."*

3.2 Even if it is presumed that the Order was signed on 06.05.2024 and other co-noticees have been served by Email/speed post (after the lapse of one year period), then also it cannot take the form of an Order determining the duty or interest so far as Mukesh Steel Trading is concerned. The impugned Order has not been served upon the Appellant till date, hence, it is clearly barred by limitation. Section 28(9)(b) of the Customs Act, 1962 provides that in case the proper officer is unable to determine the amount of duty and interest for the reason as mentioned in (a) to (d), heshall inform the person concerned the reason for non-determination of the amount of duty and interest and in such case, the time specified in sub-Section (9) shall apply not from the date of notice but from the date when such reason ceases to exist.

3.3 In an income tax matter where order of assessment was passed on 28.02.2006 (well before the expiry of time limit) but it was served upon the assessee only on 18.06.2006, Hon'ble High Court of Karnataka, referring to the judgment of Hon'ble High Court of Kerala in the case of Government Wood Works vs. State of Kerala (1988 STC Volume 69, Page 62), held as under:-

> *"5. Learned counsel for the revenue is unable to point out from the records whether the assessment Order was dispatched from the office before 31.03.2006. Therefore, it is clear when the same was received by the assessee on 18.04.2006, it might have been dispatched few days prior to that and subsequent to 31.03.2006. In that view of the matter, the law laid down as aforesaid squarely applies to the facts of this case and therefore, any just conclusion that could be reached is that the Order passed is barred by law of limitation. In that view of the matter, the additional substantial question of law framed today is answered in favour of the assessee and against the revenue. Accordingly, the appeal is allowed. The impugned Orders are set-aside.*

3.4 Following the judgment of Maharaja Shopping Complex versus Dy CIT, Hon'ble High Court of Karnataka again reiterated the same view. The mandatory requirement of determination of duty under Section 28(9) is also discernible from the pre-amended and post amended provisions of Section 28 (9) w.e.f. 09.03.2018. Prior to amendment, it was not a mandatory requirement to determine duty or interest within one year from the date of Show Cause Notice as the provisions used the phrase "*where it is possible to do so*". This phrase was omitted by the Finance Act of 2018 w.e.f. 29.03.2018. Therefore, all the show cause notices issued after 29.03.2018 have to be adjudicated within one year from the date of issuance. Similar decision was given by Hon'ble High Court of Delhi in the case of Gautam Spinners vs Commissioner of Customs, New Delhi & Anr. in W.P.(C) 122/2023.

4. Submissions by Dharam Impex on limitation under section 28(9) of the Customs Act, 1962.

4.1 Although the Adjudicating Authority has determined duty under the impugned Show Cause Notice dated 08.05.2023 on 06.05.2024, but as per postal tracking report, the impugned order was put to post on 09.05.2024 and was served on the appellant on 14.05.2024. The adjudication order having been served upon the Appellant after one year period is therefore, barred by limitation. The show cause notice is deemed to be abated as per

Section 28(9)(b) as proceedings have not been completed within one year from the date of Notice.

5. SUBMISSIONS ON MERITS:-

5.1 (i) The Show Cause Notice did not give co-relation chart in reference to those Bills of Entry where there is no so-called direct evidence by way of alleged invoices and ledger account found in the mobile phone of Mr. Amit Mittal and therefore, it is incomprehensible as to from where and on what evidences the differential duty demand has been calculated. Their request for co-relation chart, was not acceded to.

(ii) Mukesh Steel Trading had paid partial duty as shown below through Licences-

Sr. No	Bill of Entry and Date	Duty paid by Licence
1.	5778170 dated 21.11.2019	Rs. 1,97,681/-
2.	5694750 dated 15.11.2019	Rs. 67,906.20/-
3.	5608261 dated 08.11.2019	Rs. 1,31,629.90/-
4.	5705672 dated 16.11.2019	Rs.1,31,267.30/-

But neither the show cause notices nor the Learned Commissioner has considered above amounts already paid through Licences.

5.2 Entire allegation of under valuation and mis-declaration of country of origin are based on the statements recorded during investigation and the purported statement of account/worksheets and certain invoices said to have been sent by Mr. Vick Jiang to Amit Mittal which as per show cause notice, contained invoice number, name of importing firms, actual value, quantity and the differential value sent through Hawala. The said worksheet does not have any evidentiary value as the same is not supported by recovery of parallel invoices. The said worksheet was being maintained by Sh. Amit Mittal to gain some extra profit from the imports and trading by showing the worksheet to their buyers to justify selling price in India.

5.3 Shri. Amit Mittal was forced to make co-relation to substantiate allegation of mis-declaration of value by adding the alleged amount in the ledger to the invoices submitted to customs. The alleged invoices have no evidentiary value which as per Show Cause Notice, were recovered from the mobile of Shri. Amit Mittal and are in Excel Format without any signature. Any document in excel format can be amended by anybody. No evidence is brought on record to prove that the said invoices have been received by Shri. Amit Mittal from their overseas supplier.

5.4 The Appellants had entered into Sales Contract with their supplier (recovered during search and seizure) which clearly mention that although value is being indicated at the time of signing Sales Contract but price would be subject to revision depending upon the market price at the time of shipment. Hence, these alleged actual invoices are not reliable evidence. Shri. Amit Mittal was drafting such invoices and also creating ledgers to justify sale price to his domestic buyers and therefore, these cannot be relied upon and taken as actual invoices for the following reasons;-.

(i) Invoice No.MCHA-190809 mentions total Invoice value as USD 65355.56 whereas in figures, it is shown as ONE HUNDRED AND FIVE THOUSAND FOUR HUNDRED AND NINETY NINE AND EIGHTY FIVE CENT.

(ii) Invoice No. MCHA 191106 mentions consignment weight as 81.940 MT whereas invoice actually received through banking channel and submitted to Customs mentions 82.64 MT weight found to be correctly declared.

(iii) Excel format invoice showing value as USD 40832.25, has not been taken as actual invoice in the Show Cause Notice.

(iv) Invoice No. MCHA-191125-4 showing value as USD 39971.84 mentioning Gulshan Exim as importer, has not been accepted and the same has been enhanced to USD 62,278 for duty demand. Two more Invoices

bearing No. MCHA 191125-3 and MCHA 191126-2 found in excel format from Mr. Amit Mittal's mobile, having the same value, were also not accepted by DRI and substituted with some other value mentioned in the messages sent on 16.01.2020 to Sanya. This shows that DRI itself has not believed the invoices found in excel format in Amit Mittal's mobile as sacrosanct.

(v) One TT Copy for USD 75,000 alongwith other one for USD 95,000, has been alleged to be hawala transfer. As per Para 11(xxiii) of SCN it was made by Bansal Overseas on behalf of Mukesh Steel as the same were found in the mobile of Mr. Amit Mittal. Mr. Amit Mittal explained in his statment that these are merely confirmation of payments sent to him, by Bansal Overseas for their own imports from MCH and it has nothing to do with imports made by Mukesh Steel. Still, he was forced to admit the same as Hawala transfer.

6. The ledger (RUD-15) found in the mobile of wife of Mr. Amit Mittal contains two entries at Page No.10 where MST HIGH SEAS-MCHA190222-2-33547 and MS HIGH SEAS MCHA 181210-33936 is mentioned. Here, *MST means Mukesh Steel Trading*. The consignment imported against invoice MCHA 190222-2 has been sold on HIGH SEA Sale and the figure of 33547 mentioned therein represented actual invoice value as per DRI. This ledger cannot be taken as representing true details as Mukesh Steel Trading had imported the consignment against this particular Invoice having value as USD 42,873.60 (as against the figure of 33547 mentioned in the ledger) and sold the same to JP Stainless on High Seas basis who filed B/E No. 2636471 dated 30.03.2019. In respect of second entry, *MS means Mukesh Steel*. The consignment imported against this invoice MCHA181210 has been sold on HIGH SEA Sale. As per DRI, figure mentioned as 33936 represents the actual Invoice value. In fact, Mukesh Steel had contracted this consignment against this particular Invoice showing value as USD 46333.50 (as against

figure of 33936 mentioned in the ledger) and sold to Ashish Foils Pvt. Ltd on High Sea who filed B/E No. 2851091 dated 15.4.2019.

6.1 In case of entry mentioned as MEGPIE MCHA 190304 72103, *Megpie means Magppie International Limited* who had imported a consignment against invoice MCHA 190304. As per DRI, figure 72103 reflected actual invoice value but this very invoice actually shows the amount as USD 88,517.36 (against the figure 72103 mentioned in the ledger).

6.2 From above, it is clear that neither the ledger nor the invoices have any evidentiary value.

6.3. Imports from their suppliers were on LC basis and the import documents were received through banking channels which fact has also been found by DRI on checking their mails. As such, alleged scope of manipulation has to be ruled out.

6.4 The value of Stainless Steel Cold Rolled Coils is dependent upon international market price which are susceptible to high fluctuations. Therefore, they entered into Sales Contract from time to time which mentioned the invoice number, date of Contract, quantity, price and terms of import. As per serial 4 of the contract, "*Price will be decided at the time of shipment*." All their imports were against these written contracts. A bare look at the invoices sent by the suppliers through Banking Channel and imports mostly done against LC mentioned the Sales Contract number. Hence, to say that these Sales Contract and invoices received through Banking Channels are manipulated ones based on the alleged ledger and invoices found in mobiles in excel format which can be edited, are to be believed, is erroneous

6.5 The price of Stainless Steel Cold rolled coils depends upon constituent element like Nickle, copper and chrome. The Customs authorities have been

deciding assessable value based on these constituent elements from time to time and used to revise the price accordingly. The DGOV has been revising valuation of Stainless Steel Coils from time to time based on international price of constituent elements. If value of goods imported by these Appellants were what the department is now alleging, similar goods would have been imported at same price by other importers during the relevant period. The DGOV ought to have issued valuation circulars reflecting such value for assessment after making investigation with regard to the constituent element of stainless steel but no such circular has been issued indicating such value at which the imports made by these Appellants are being alleged in the Show Cause Notice.

6.6 The B/Es No. 5437723 and 5427727 both dated 24.10.2019 filed by M/s. Mukesh Steel, (which are part of the demand in the present Show Cause Notice), had earlier been subjected to detailed scrutiny regarding the declared value. They submitted Sales Contract No. MCHA 190910-2 for B/E No.5427723 and MCHA-190809 for B/E No. 5427727. After analyzing DGOV Guidelines and MTC of the imported consignment with prevailing contemporaneous price of the imported consignment, a chart was prepared indicating value of various constituent elements and on that basis, department arrived at the value @ 705.20/PMT which was close to the declared value. The authorities therefore accepted the declared value and cleared goods.

7. The show cause notice proposed to enhance value of goods in respect of B/E No. 5427723 dated 24.10.2019 from USD 700/PMT to USD 1209.12/-PMT without any evidence even in the form of ledger entry as annexed in RUD-9 in the form of invoice. The said alleged invoice gives two different amounts for the said consignment as in figure, it is USD 65355.56 whereas in words, it is One Hundred and Five Thousand Four Hundred and Ninety

Nine and Eighty Five Cent. This supports their submission that these alleged invoices which are in excel format, are not true invoices and so, are not reliable. The very same value pertaining to B/E no. 5427727 was investigated by the Customs Authorities at the time of import who after detailed investigation accepted the declared value as correct value. During recording of statement on 10.11.2021 Shri Amit Mittal was confronted with the invoice found in his mobile which he admitted as representing the correct value and that, the differential value shown in the invoice submitted to customs in respect of the B/E No. 5427727 were sent to the supplier through Hawala. This admission of Amit Mittal was factually incorrect. Therefore, invoice mentioned as RUD 9 and ledger as RUD 15 cannot be taken as representing the correct value.

7.1 None of the above submissions have been rejected by the Ld. Adjudicating Authority as being not correct and therefore, the same has to be taken as correct. The alleged TT Copy cannot be held to be proof of Hawala Transfer as the documents shown to have been downloaded from the mobile of Shri. Amit Mittal, are merely screen shots which may be related to the person who had sent to Shri. Amit Mittal for any other purposes. The show cause notice admits that the said invoices and ledger are forwarded message from one mobile to another belonging to Mr. Amit Mittal and not as message received from Mr. Vick Jiang. Mr. Amit Mittal and other co-noticees were coerced to admit as representing true value to give credence to the alleged invoices and ledger which were otherwise not having any evidentiary value. In the impugned order, these submissions have not been dealt with properly.

7.2 The calculation error in respect of differential duty demand for imports made by Mukesh Steel Trading in respect of 4 B/Es bearing No. 5778170 dated 21.11.2019, 5694750 dated 15.11.2019, 5608261 dated 08.11.2019

and 5705672 dated 16.11.2019 where duty was partially paid through Licences, was pleaded before Ld. Adjudicating Authority but he did not consider the same. Para 17 to 19 of the show cause and para 14.3.1 to 14.3.2 of the impugned order are almost verbatim showing absence of any independent finding. On the issue of evidences which have been applied for demand of differential duty, Ld. Adjudicating Authority at para 23 to 23.3 has merely reiterated the allegations from para 14(xv) to (xx) of the show cause notice and failed to address their detailed submissions as mentioned above. There were glaring discrepancies in the said invoices as pointed out in the submissions which rendered these evidences as un-trustworthy against the written sales contract and hundreds of B/E forming part of contemporaneous imports.

8. The Ld. Adjudicating Authority has held that the alleged commercial invoices found in the mobile of Sh. Amit Mittal were sent by Mr. Vick Jiang. which is without any evidence as the said alleged invoices were from one mobile phone to another mobile phone of Amit Mittal as evident from the documents referred to as RUD-8. These have been retrieved from the said mobile which mentions the sender mobile as "Xmax" to the Apple iphone of Mr. Amit Mittal. Mr. Vick Jiang never sent any invoice to Amit Mittal through other than the banking channel which fact was explained by Amit Mittal in his statement dated 15.09.2020 referred to as RUD -7. He stated that these invoices were sent from Xmax by him to his own mobile phone in PDF and excel format. So far as pdf invoices referred to in RUD -7 are concerned, they are the same which appellant had submitted at the time of clearance of goods. The invoices found in excel format are fictitious invoices created by Amit Mittal in order to befool associate importers to earn extra money by showing higher value.

8.1 On rejection of transaction value of the imported goods, a the present case fulfils all the conditions for acceptance of the declared value. Hon'ble Supreme Court in the case of Union of India vs Mahindra and Mahindra Ltd, reported in 1995 (76) ELT 481 (SC) considered the question relating to valuation of certain components of machinery and held that the question is whether the Revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the true sale prices and so, Section 14(1)(b) of the Act was properly invoked.

8.2 Hon'ble Supreme Court has further held in the case of Eicher Tractors Ltd. reported in 2000 (122) ELT 321 (SC) that unless the price actually paid for the particular transaction falls within the exceptions in Rule 4(2), the Customs authorities are bound to assess the duty on the transaction value. Both Section 14(1) and Rule 4 provide that the price paid by an importer to the vendor in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14(1) and particularized in Rule 4(2). Rule 4(1) speaks of the transaction value. Utilization of the definite article indicates that what should be accepted as the value for the purpose of assessment of customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of Rule 4(1) must, therefore, be read as referring to the 'particular transaction'. It is only when the transaction value under rule 4 is rejected, then under Rule 3 (ii), the value shall be determined by going sequentially through Rules 5 to 8 of the Rules. Conversely, if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent rules.

8.3 It is clear that mandate has been cast on the authorities to accept the price actually paid in respect of goods under assessment as the transaction

value if it does not fall under the exceptions provide under Rule 3(2). There is no allegation or finding that any of the clauses of proviso to Rule 3(2) are applicable to the facts of this case. There is no evidence that the sale or price is subject to any condition or restriction for which a value cannot be determined in respect of the goods being valued. There is no evidence that any part of the proceeds of any subsequent re-sale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller. There is no evidence nor is there any finding that buyer and seller are related to each other.

8.4 The Show Cause Notice proposed to substitute declared value with a value that allegedly found in the worksheet/alleged actual invoice in the mobile phone of Mr. Amit Mittal, taking the same as transaction value under Rule 3 of CVR, 2007 and wherever such value was not available, Rule 9 of CVR, 2007 has been applied. For this, the department is required to produce respective invoices with which they wish to replace invoice submitted by the Appellants at the time of clearance of goods. There is no actual invoice available on record and therefore, merely having some invoices in the mobile phone and certain details in the worksheet, that do not make them actual invoice for the purpose of acceptance substituting the transaction value. There is no verification made by the department from the overseas supplier by way of export declaration negating the truthfulness of the invoices submitted at the time of clearance.

8.5 It is not the case of the department that the invoices which they submitted at the time of clearance with the customs, are not the invoices which had accompanied the goods. The invoices issued by the supplier of the goods cannot be rejected later on alleging that some other invoices representing the true value, are to be considered for assessment of duty.

9. Ld. Adjudicating Authority at para 23 of the impugned order held that the factors such as transaction value of identical or similar goods in a sale at the same commercial level about the same time, the actual price at which the goods were sold in the highest aggregate quantity, the details of cost structure, etc. which are required for determination of the actual transaction value in terms of Rule 4 to 8 of the CVR, are not available and therefore, actual transaction value of the coils and circles (covered under missing BEs) is to be determined by resorting to Rule 9 of CVR. This finding is factually incorrect as they had submitted data of hundreds of Bills of Entry not only for imports from China at about same time and at same commercial quantity but also from the same supplier, which has not been considered by Ld. Adjudicating Authority. Hence, resorting to Rule 9 of CVR, 2007 without first analyzing NIDB Data to find out contemporaneous value is erroneous as held by Hon'ble Supreme Court in Century Metal Recycling Pvt. Ltd. case reported as 2019 (367) ELT 3 (SC).

9.1 They also challenged invocation of extended period as all the consignments were cleared after due examination and verification in all respect including COO. In several B/Es, assessable value was re-determined based on price of such products in international market and DGOV circulars issued from time to time. Section 47 of the Customs Act provides that the proper officer of Customs is to allow clearance of the goods only after satisfying him that the goods are not restricted and prohibited which is made by the proper officer by examination of the documents, enquiry regarding the value, description or otherwise, reference to the provisions of the Customs Act and the policy, etc. and by the examination reports of the goods. If necessary, samples may be drawn tested by appropriate Laboratory. After satisfaction, proper officer gives order for clearance of goods on payment of duty as assessed by him. This function has the

attributes of quasi-judicial power. Hon'ble Supreme Court in the case of Mohan Meakin Ltd. Vs.C.C.E.2000 (115)ELT 3 (SC) has held that there was an obligation on adjudicating authority to find out the market value of the goods imported and to collect all duty and other charges payable on the goods before releasing the goods on payment of redemption fine. Having released the goods, it is not open to the Collector to initiate another proceeding to recover the so called difference in valuation. If the collector failed to make a proper enquiry as to the market value of the goods and released the same after half hearted adjudication which was not approved by the Apex Court.

10. The assessment Orders passed under Section 47 of the Customs Act have become final and binding as these have not been challenged by the Department. It is not in dispute that description of goods, documents like COO and value declared have already been examined by the proper officer and then only, he allowed clearance of the goods. By questioning value of the goods and the COO at a later stage, the Department in fact is questioning Section 47 Orders of the proper officer without challenging the same under Section 129-D(2) of the Act. They rely on the decision in case of Priya Blue Industries [2004 (172) ELT 145 (SC)] and ITC Ltd. [2019(368) ELT 216(S.C.)].

10.1 The allegations regarding authenticity of certain COO certificates pertaining to imports from Malaysia, are based on conjectures and mere assumption based on a mail dated 14.04.2021 received from the Principal Assistant Director, Trade and Industry Cooperation Section, Trade and Industry Support Division, MITI. Para 16 of the show cause notice says that "based on their assessment, 87 out of 143 copies of COO are not authentic and they were not issued by MITI". The language of the mail itself shows that confirmation with regard to the COO not being genuine, is not

forthright. The Show Cause Notice does not allege that the goods in question are not manufactured in Malaysia and therefore, their origin is doubtful. The Appellants have no role in obtaining the COO as it is the responsibility of the supplier to approach their issuing office. The Show Cause Notice at Para 16 mentions such verification report as RUD 24 but no such RUD is there. Therefore, no cognizance can be taken of the alleged verification report. There is virtually no evidence that the goods imported from Malaysia are of Chinese origin. Also, if goods are available in Malaysia itself, then importing the same first from China to Malaysia and thereafter, shipping to India cannot be cost effective. Further, verification of country of Origin certificates is not as per the procedure prescribed under the Customs Administration of Rules of Origin under Trade Agreement Rules 2020. (CAROTAR) and therefore, it is liable to be discarded.

10.2 Ld. Adjudicating Authority has confirmed demand of duty on imports from Malaysia holding that COO's submitted by them were fake and therefore, Anti Dumping Duty is liable to be imposed. Merely because COO's submitted are not confirmed by MITI as having been obtained though proper channel, does not make the origin of goods from China. At worst, benefit of SAFTA is denied which means that the appellant would not get the benefit of NIL duty and have to pay usual basic custom duty @ 7.5%. There are several importers who had imported consignments from Malaysia whose COOs on verification from MITI, were not found genuine and in these cases, basic customs duty has been charged by denying benefit of NIL duty and without imposing any anti dumping duty.

11. So far as the allegation of transfer of differential value through the representative of Mr. Vick Jiang is concerned, the same is based on the alleged worksheet and to support that Shri. Amit Mittal was fed with a fictitious tune of one person said to be the representative of Mr. Vick Jiang to

whom Sh. Amit Mittal accepted to have paid the differential value of the imported goods in cash in India. This alleged acceptance by Shri Amit Mittal is clearly a motivated statement recorded under threat and duress. Even if his statements are accepted to be true then, why did DRI not record the statement of the said person. The reference to alleged differential amount are too high and the same went on for a considerable long period and therefore, contact details of the said person cannot be said to be not available. This shows that the said person was fictitious and no such amount of alleged differential value was ever paid to anybody by the Appellants.

12. DRI during investigation resumed certain mobile Phones of Shri Amit Mittal which contained certain WhatsApp messages forwarded from some other mobile phone which according to DRI and also accepted by Shri Amit Mittal belong to him. The said messages allegedly contain certain details of telegraphic transfers which were admitted by Sh. Amit Mittal as having transferred on his direction to the suppliers of the imported goods. These very figures were taken and added with the amounts transferred by the respective Appellants to their suppliers through banking channels and thereafter, transaction value has been arrived at. This exercise was made in futility merely to show that there was under valuation of goods in the Bills of Entry. These messages or the figures retrieved from the mobile phones cannot be said to be a credible piece of evidence for rejecting transaction value and substituting the same with the mixed and match figures calculated by DRI.

13. DRI merely believed the account statement/documents found in the mobile phone of Shri Amit Mittal representing true transaction value without any supporting documents. They forced Shri Amit Mittal to accept the same as true and correct value and thereafter, statements of other co-noticees were recorded showing them the statements of Shri Amit Mittal. It was Shri

Amit Mittal who himself created account statement to befool co-noticees who were importing goods through him, in order to extract more value. The DRI ought to have gathered supporting evidence by way of export declaration or otherwise to substantiate the value shown in the account statement/document.

14 The contemporaneous data of similar goods imported into India from China and Malaysia would confirm that value declared by Appellants in their respective Bills of entry are more or less similar. Those very imports have not been questioned by the DRI till date. Had there been mis-declaration to the extent it has been alleged based on un-reliable ledger and the invoices referred to as RUD -9 and RUD-15, there would have been at least one import at the proposed value. This very product has been under alert at various ports and that is why DGOV circulars were being issued and revised after meticulous analysis and examination of all the relevant data. In none of these circulars, such huge difference in price has ever been pointed out. The contemporaneous import would show that thousands of consignments have been imported during the same period from the very same supplier i.e. MCH Industry Company Limited, Comet International Ltd. & Sandong Menguim Huarun Import and Export Company showing value of USD 700-750 Per MT for the very same grade of stainless steel. All such Bills of entry have been cleared without any objection and therefore, contemporaneous import data is required to be taken into consideration as true value representing the goods imported by the Appellants.

15 Since there was no mis-declaration either of value or of the country of origin in the respective Bills of entry, there is no question of imposition of penalty. Ld. Adjudicating Authority has heavily relied on the statements of the Appellant recorded during investigation and upheld charges of under valuation and mis-declaration. The statements were coerced and were

recorded under threat of arrest. Hon'ble Supreme Court in the case of Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Limited & Others, reported as 2000(120)ELT 280(SC) has held that inculpatory statement made by a person under Section 108 of the Customs Act has no tinge of inadmissibility if the person while making it, is not in police custody, but nonetheless the caution in law is that such a statement should be scrutinized by the Courts in the same manner as confession made by an accused person to any non-police personnel. Such a statement has to pass the tests prescribed in Section 24 of the Evidence Act. In this case, procedure under Section 138 B of the Customs Act, 1962 has not been followed by the Adjudicating authority. Reliance is placed on following judgements:

(1) J&K Cigarettes Ltd. vs. Collector of Central Excise-2009(242)ELT 189 (Del.).

(ii) Ambika International Vs. UOI-2018(ELT)90(P&H)

(iii) Hitech Abrasives Vs. Commissioner of Central Excise-2018(362) ELT 961(Chhatisgarh).

(iv) Ajay Rastogi Vs. UOI-2023(386)ELT 333(Cal.).

(v) Surya Wires Pvt. Ltd. Vs. Principal Commissioner, CGST, Raipur-(2026) 39 Centax 104(Tri-Del.).

(vi) Hitin Sachdeva Vs. Commissioner of Customs-Final Order No.40396-40400/2026 dated 19.03.2026.

16. Learned Advocate made the following additional submissions vide letter dated 03.08.2026 as per liberty granted by the Bench during hearing:-

16.1 The entire allegation of under valuation and mis-declaration of country of origin are based on the statements recorded during investigation and the purported statement of account/worksheets and certain invoices said to have been sent by Mr. Vick Jiang to Shri Amit Mittal. The alleged statement of account/worksheet contained the invoice number, name of importing firms, actual value, quantity and the differential value sent through Hawala. They

had pleaded before Learned Adjudicating Authority that the said worksheet was being maintained by Sh. Amit Mittal in order to gain some extra profit from the firms like Mukesh Steel, Dharam Impex and Gulshan Exim and some other firms for whom Sh. Mittal used to negotiate with foreign supplier. During investigation, DRI forced Shri. Amit Mittal to make co-relation anyhow so as to substantiate the allegation of mis-declaration of value by adding the alleged amount in the ledger to the invoices submitted to customs. The Adjudicating Authority ought to have examined the persons whose statements he intended to rely in view of decision of this Tribunal in the case of Kiran Taxfab Pvt. Ltd. reported at (2024) 17 Centax 205 (Tri-Ahmd)

16.2 The Show Cause Notice itself admits that the invoices recovered from the mobile of Shri. Amit Mittal are in Excel Format and without any signature which fact is not in dispute. There is no evidence brought on record to prove that the said invoices have been received by Shri. Amit Mittal from the overseas supplier. It is also admitted fact that the mobile phone from which alleged invoices were recovered and print out taken, is not the same mobile phone in which alleged invoices were received by Shri. Amit Mittal from Mr Vick Jiang. Thus, the mobile from which alleged invoices were said to have been forwarded, does not exist. Hence, there is no compliance of Section 138C (2) of the Customs Act, 1962. Reliance is placed on the following judgments:-

a) Junaid Kudia vs. Commr of Customs, Mumbai Centax 503 (Tri. Bom), (2024) 16 {also upheld by Hon'ble Apex Court as reported at Centax 504 (SC), (2024) 16}
b) S.N. Agrotech vs Commr of Customs, New Delhi 2018 (361) ELT 761 (Tri. Del.)

16.3 All the consignments were cleared after due examination and verification in all respects including verification of COO. Assessable value

was also re-determined in several B/Es in the light of price of such products in International market and DGOV circulars issued from time to time. The proper officer issued order under Section 47 allowing clearance of goods after satisfying himself that the goods are not restricted and prohibited with respect to the provisions of Customs Act and policy etc. It has been held in a number of cases that this function is not a pure administrative function, but has the attributes of quasi-judicial power. The decision of Hon'ble Supreme Court in Mohan Meakin Ltd case (cited supra) supports this view.

16.4 Ld. Adjudicating Authority has straightaway relied on the statements recorded during investigation taking them as gospel truth without following the procedure under Section 138 B of the Customs Act, 1962. This issue is no more res integra. Relying on various judgments of Hon'ble High Courts and Hon'ble Supreme Court, CESTAT Delhi in the case of Surya Wires Pvt. Ltd. (2026) 39 Centax 104 (Tri-Del.) has held that the statements recorded during investigation cannot be relied upon if the procedure mandated under Section 138 B has not been followed.

17 **Revenue's Arguments:**

17.1. The DRI officers of Delhi zonal unit received an information that M/s Mukesh Steel (MS) Delhi and M/s. Mukesh Steel Trading (MST) Delhi were indulging in evasion of Customs duty by undervaluation of Cold Rolled Stainless Steel Coils and Circles falling under CTH 7220 or 7219, imported from China. The information also indicated that MS was wrongly availing benefit of preferential rate of duty on above goods by declaring to be of Malaysian origin under Notification No. 46/2011-Cus, dated 01.06.2011 (Indo-ASEAN FTA), which were, in fact, of Chinese origin and were routed through Malaysia to wrongly avail the above benefit.

17.2 The investigation revealed that Shri Amit Mittal (Proprietor of M/s.MST) had also procured stainless steel products of Chinese origin from his suppliers for other importers, namely, M/s.Gulshan Exim Pvt. Ltd., Delhi (IEC 0516002061) and M/s Dharam Impex, Delhi (IEC 0514049693). Therefore, investigation was extended to these importers also. The office-cum-godown of M/s. Mukesh Steel located at C-45, Wazirpur Industrial Area, Delhi was searched on 11.02.2020, thereby resuming certain documents and electronic devices considered relevant to the investigation, under Panchanama dated 11.02.2020. The physical stock of the stainless-steel coils/circles/sheets available as on 11.02.2020 in the said premises was detained by he officers and handed over to Shri Mukesh Mittal for safe custody. The officers again visited the said premises on 23.07.2020 and conducted physical stock verification in the presence of Shri Mukesh Mittal under punchnama which indicated that stock contained both domestically procured goods as well as imported goods. Further evidences indicating undervaluation of imported goods detained on 11.02.2020, were found and therefore, said detained goods valued at Rs. 1,91,91,322/- were seized vide seizure memo dated 13.10.2020 read with corrigendum dated 26.10.2020. The Show Cause Notice issued on 08.05.2023 was decided by the Commissioner vide impugned order dated 06.05.2024.

17.3 During investigation, Shri Amit Mittal and Shri Ashok Kumar accepted to have availed undue benefit of Indo-ASEAN FTA by routing the Chinese goods from Malaysia to India. They also accepted to have undervalued imported goods by making wrong declaration before Customs Authorities. Reference is invited to Para 2.7. (iii), 2.8. (viii), (ix) & (xi) Para 2.9 (v) & (vi), Para 2.10 (ii), (iii), (iv) & (v) and as reproduced below:-

> *2.7 Voluntary Statements of Shri Mukesh Mittal, Proprietor of Mukesh Steel, were recorded on 19.08.2020 and 11.09.2020 under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that:*

(iii) He stated that till 2018, he was importing goods from China only and thereafter, he started importing from other countries like Malaysia and Indonesia.

2.8. Voluntary Statement of Shri Amit Mittal, Proprietor of M/s.MST, was recorded on 15.09.2020 under Section 108 of the Customs Act, 1962 under. wherein he inter alia, stated that:

(viii) On being asked, he stated that he came in contact with Vick in July-August 2019. Vick knew that he (Amit) was importing Stainless Steel Coils from China. Vick offered to send Stainless Steel Coils to him from China and issue invoices at lesser than actual value, so that he (Amit) could pay less Customs duty.

(ix) On being asked, he stated that they were getting Letter of Credit (LC) from their Bank and Vick was sending the documents, viz. commercial invoices, packing list, Certificate of Origin etc. to their bank for payment. On being asked, he stated that "they mean M/s MST and M/s. MS. On being asked, he stated that Vick used to send the Commercial Invoice with actual value of the Stainless Steel Coils to him on WhatsApp, so that he could know about the differential amount (actual value minus invoiced value) to be paid to Vick/MCH Steel. On being asked, he stated that the differential amount was paid through TT to MCH Steel.

(xi) On being asked, he stated that the details of the goods viz. description, size, quantity, etc mentioned in the actual commercial invoice with actual rates were identical to the commercial invoice submitted to the Customs, with the only difference in the rates of goods.

2.9. Shri. Amit Mittal, Proprietor of M/s MST in his voluntary statement recorded on 18.09.2020 under Section 108 of the Customs Act, 1962, inter alia stated that

(v) on being asked about the message sent by him on 16.01.2020 (at 10.01.51 hrs.) available in page No. 19 of the printouts of the WhatsApp messages, he stated that he had sent the said message to the mobile phone of his daughter Sanya and the said message contained the actual values of the Stainless Steel Coils purchased from MCH Steel. He also stated that the invoice No,s mentioned in the said message were not complete e.g. "1125 – 2 mentioned in the message donoted invoice No MCHA191125-2 and "61 68 1 " mentioned in from of o 125-2" weas the actual value (in USD) of the goods purchased under the said invoice. He stated that rest five entries of the message were in similar manner.

(vi) On being asked, he stated that the page No. A82 was the registration certificate of MCH Steel and he had sent the same to Virender Rai and the page No 83 was the slip of the USD 75000 remitted by Bansal Oversseas Ltd of Virender Rai to MCH Steel. On being asked, he stated that the said payment of USD 75000 was made to MCH Steel towards the differential value of the actual value of the goods imported by MST, MS & GEPL and the value mentioned in the invoices of MCH Steel submitted to the Customs.

2.10. Shri Mukesh Mittal Proprietor of M/s.MS, in his statement recorded on 21.09.2020, under Section 108 of the Customs Act, 1962, inter alia, voluntarily stated that:

(ii), He was also shown the printouts of the WhatsApp messages (01 to 22 pages) and the WhatsApp attachments (Al to A90) taken from the mobile phone of Anit Mittal. He was also shown the "1125-3-65701" mentioned in the message dated 16.01.2020 sent by Amit Mittal to his daughter Sanya and the page No. A72 of the WhatsApp attachment printouts. He stated that the page

No. 72 was the Commercial Invoice issued by MCH Steel to MS and he had submitted the said commercial invoice to the Customs with BE. He stated that in the said invoice, the value of the goods was mentioned as USD 40832.25 whereas the actual value of the goods which he paid to MCH Steel through bank and to Vick's person in India was USD 65701 (mentioned in the said message). On being asked, he stated that usually different persons of MCH Steel used to come to him to collect the payments and he did not know about the said persons.

(iii). He admitted that to save Customs duty, he had submitted commercial invoices with less than actual value to the Customs and he would deposit the differential duty liability.

(iv) On being asked, he stated that he was aware of the stock of stainless-steel products detained by the DRI at his premises. He was shown the panchnama dated 11.02.2020 at his business premises located at C45, Wazirpur Industrial Area, Delhi. On being asked, he stated that he had imported the Stainless Steel Circles weighing 27, 588 Kg and Stainless Steel Coils weighing 42,266 Kg, lying at his premises. The Stainless Steel Coils weighing 42266. Kg were purchased from MCH Steel and he had filed BE No. 6498934 dated 16.01.2020 and BE No. 6316465 dated 01.01.2020 for import of the said coils. He also stated that the value declared by him in the BE No. 6498934 was not the actual value of the coils as instead of the correct value of USD 65701, he declared value of USD 40832 in the said BE. He also stated that the rate of coils imported by him under BE No. 6498934 was around USD 1200/MT.

(v) On being asked, he stated that in the BE No. BE No. 6316465 dated 01.01.2020 also, he had declared less than actual value of the coils. He stated that the actual rate of the said coils was around USD 1100/MT but he had declared rate of USD 750/MT to the Customs. He stated that he had done wrong by declaring less than actual value in the BE and he was ready to deposit the duty liability which may arise on the said issue. On being asked he stated that he started undervaluation of the imported goods from July/August, 2019.

2.13. Statement of Shri Amit Mittal Proprietor of M/s MST, was recorded on Amit Mittal, inter alia, stated that:

(vi) On being asked, he stated that the page Nos. 9, 10 and 11 were printouts of the excel file namely "Statement 20190831 (1)". On being asked, he stated that the said pages were account statement containing invoice nos., value of the goods, name of the importer and the details of the payments made to Vick Jiang for the Stainless Steel Cold Rolled Coils supplied by him from China. On being asked, he stated that "MS mentioned in the account statement denoted Mukesh Steel, M/S. MST denoted Mukesh Steel Trading, GEPL denoted Gulshan Exim Pvt. Ltd, and AFPL denoted Ashish Foil Pvt. Ltd.

(xii) On being asked about the 10th entry of the right-side portion of the said worksheet (reproduced below for better appreciation):

2	***GEPL***	***MCHA190306-3***	***80637***			***MLY***	***1310***

He stated that the said entry pertained to the goods imported by GEPL under invoice No. MCHA190306-3 and the actual value of the imported goods was USD 80637. On being asked about MLY mentioned in the next column, he stated that "MLY referred to Malaysia. After going through the details of the

BEs filed by GEPL, he stated that the consignment of STAINLESS STEEL COLD ROLLED COLS GRADE J3(200) MIX SIZE weighing 55.356 MT was imported by GEPL from Malaysia which were purchased from Setica Industries (M) Sdn Bhd, Malaysia and in the BE 3323552 dated 21.05.2019 filed for the import of said coils, GEPL had declared the value of the said coils as USD 68088. On being asked, he stated that the said Stainless Steel Coils weighing 55.356 MT were supplied by Vick Jiang from China. He admitted that the said Stainless Steel Cold Rolled Coils were fully manufactured in China and from China, the said coils were first shipped to Malaysia and then from Malaysia, same Coils were shipped to India. He admitted that no work/process on the Coils was undertaken in Malaysia and from China, the completely finished Stainless Steel Cold Rolled Coils were routed through Malaysia to India to save Customs duty and CVD.

(xiii) On being asked, he stated that Vick Jiang had told him that he would arrange the Certificate of Origin of Malaysia for the SS Cold Rolled Coils/Strips supplied by him from China and it would save Customs duty. On being asked, he stated that the actual value of the Stainless Steel Cold Roll Coils weighing 55.356 MT supplied by Vick Jiang from China through Malaysia to India was USD 80637 and invoice of less value i.e., USD 68088 was issued. He also stated that GEPL declared the less than actual value in the BE.

(xvii)On being asked about "ML" mentioned in the two entries of "MS" (extract of the worksheet is reproduced below). he stated that the said entries pertained to Mukesh Steel, the MCHA190425 and MCHA190306-5 were the invoice numbers of the supplier, the '43881' and '75053.08' mentioned in the next columns were the actual values of the goods covered under the said invoices. He stated that "ML" mentioned in the said entries meant that the goods covered under the said two invoices were supplied by Vick Jiang from China routed through Malaysia to India.

1	***MS MCHA190425***	***43381***	***ML***			***1255***
2	***MS MCHA190306-5***	***75053.08***	***ML***			***1255***

(xviii) After going through the details of BEs of MS, he stated that invoice No. MCHA190306-5 was issued by Jentayu Industry, Malaysia, for sale of the STAINLESS STEEL COLD ROLLED COILS GRADE J3(200) MX SIZE to MS and the invoice No. MCHA190425 was issued by the same supplier for sale of the STAINLESS STEEL COLD ROLLED CIRCLES GRADE J3 to MS. on being asked, he stated that the said Ss Circles and Coils imported by Ms from Malaysia were of China origin. He also stated that fully finished Circles and Coils were first shipped from China to Malaysia and then from Malaysia the same were shipped to India, on the invoices & other documents of Jentayu Industry.

18. **Further submissions of Appellant**

18.1 Vide impugned Order, the adjudicating authority has disallowed benefit of Notification No. 46/2011-Cus dated 01.06.2011 on following goods:-

Sr. No	Importer (M/s)	B/E No. & date	Imported from
1.	Mukesh Steel	3665170 dated 15.06.2019 3725322 dated 19.06.2019	Jentayu Industries Malaysia.
2.	Gulshan Exim Pvt Ltd	2614151 dated 28.03.2019 3323552 dated 21.05.2021	Setica Industries (M) SDN BHD Malaysia.

He upheld the allegation that the certificate of origin submitted by the appellants at the time of import pertaining to above suppliers were not

genuine as per verification report of MITI vide email dated 14.04.2021. It is also mentioned that MITI had never received any COO applications from the respective companies via their system. The adjudicating authority held that these consignments were not of Malaysian origin and were of Chinese origin.

18.2 All the consignments were cleared after due examination and verification in all respects including the COO. There is no evidence except e-mail from MITI which denied issuance of any such certificate. Merely because certificates were not found to be authentic, does not make the goods of Chinese origin. The benefit of exemption Notification No. 46/2011-Cus. dated 01.06.2011 may not be available to the appellant due to unauthentic COO certificate but since goods are of Malaysian origin, they only have to pay usual basic customs duty @7.5% which in the case. of Gulshan Exim Pvt. Ltd. would be of Rs. 7,87,443/- and Rs. 6,25,000/- in case of M/s Mukesh Steel if COO certificate is not accepted as correctly issued.

18.3 The certificate was provided by their supplier along with other import documents which were presented to the appraising authority at the time of clearance of goods and no question was raised at that time. They had no knowledge with regard to the authenticity of the COO certificate provided by their supplier and therefore, appellant cannot be penalized for mistakes committed by their supplier in not obtaining COO certificate through proper procedure.

Findings:

19. We have gone through the adversarial submissions and find that the appellants have conceded duty liability of Rs. 7,87,443/- in respect of import by Gulshan Exim Pvt Ltd and duty of Rs. 6,25,000/- in respect of import by Mukesh Steel, where COO certificates are held to be not correctly issued. As pleaded by the appellant, they had no knowledge about these certificates not being authentic as the same were as provided by the supplier. The fault if any,

was with the supplier without their being involvement. Therefore, they are not liable to any penalty on this count.

19.1 We also find that the appellants had disputed maintainability of show cause notice, as not having been issued under Section 28(9) of the Customs Act, 1962 before Hon'ble High court of Gujarat which vide order dated 24.07.2024 gave them liberty to raise all the contentions of the writ petition before the appellate authority. It has also been contended by M/s Mukesh Steel Trading that adjudication order has not been served upon them till date. Therefore, till the communication was done for determination of duty, condition of Section 28(9)(b) of the Customs Act, 1962 has not been complied with. In respect of Dharam Impex, grievance is on limitation under Section 28(9) of the Customs Act, 1962 as adjudication order was put to post on 09.05.2024 and serviced upon them only on 14.5.2024. Therefore, proceedings under Clause (b) of Sub Section (9) of Section 28 have not been completed within one year of initiating of proceedings for duty or interest.

19.2 On merits, their submission is that the whole case of the department is based on excel sheet which is not even in PDF format and also, ledger found in the mobile of wife of Shri. Amit Mittal has been relied extensively by the department to hold against invoices as were originally presented to costoms during clearance of goods. The excel format did not contain any signature and therefore as per the appellants, was liable to be amended/tampered with. There is also no evidence on record to indicate that the said invoices have been received by Shri. Amit Mittal from their overseas supplier. It has also been pointed out by the appellant that there were at least three invoices originally submitted to customs for clearance of goods which had the same value in the excel format in Shri Amit Mittal's mobile. Even these invoices have been substituted with some other values mentioned in the mobile messages sent on 16.01.2020 to Sanya, to suit the revenue. It was,

therefore, the point of submission that the invoices found in excel format in Shri Amit Mittal's mobile have not been consistently held as sacrosanct even by the DRI. Further, a TT copy of 75,000 USD along with other TT for USD 95,000 have been mentioned in the show cause notice as having been made by one M/s. Basal Overseas, on behalf of M/s. Mukesh Steel (appellants). These were found in the mobile of Shri. Amit Mittal. When asked during investigation by the DRI, Shri Mittal told that these were merely confirmation of payments sent to him, by M/s. Bansal Overseas for their own imports from MCH and since he is also one of the importers of MCH, it was sent to him to confirm MCH that M/s Bansal Overseas have transferred the amount for their imports. It had nothing to do with imports by Mukesh Steel.

19.3 The appellants have also pointed out various discrepancies in ledger to plead that the same cannot be depicting true picture of the state of affairs. All the supplies were in the ledger and all the import documents received from banking channels were also indicated the same. On checking, the e-mail of the appellants and the documents received through the banking channels, these were found in synch with each other. They also pleaded that the order was cryptic, mere reproduction of the show cause notice and did not deal with most of their submissions. The calculation error pointed out by them in various bills of entry was not considered. This shows non-application of mind on their submissions. The allegation that they had received invoices from Mr Vick Jiang is also incorrect as the mobile phone clearly shows that the same were made from mobile phone of Shri Amit Mittal to his other phone, as were shown in RUD-8 that the same were never sent by Mr Vick Jiang who never sent any invoice other than through the banking channels. This position is also stated by Shri Amit Mittal in his statement dated 15.09.2020 referred to as RUD-7 which contains the same invoices as were

received from the supplier and been submitted to customs for clearance of goods.

19.4 Regarding invoices found in excel format, it was also pointed out by Shri Amit Mittal in his statements that he created these as fudged invoices, in order to show higher quotes to the associate importers to earn extra money. It is also pointed out that applicable rules of the Customs Valuation Rules, 2007 have not been followed sequentially. Various rulings of the Supreme Court have also been relied upon by the appellant to support their case, to indicate that Rule 9 of CVR 2007 has been incorrectly applied and there was no basis to reject the transaction value. There is also verification by the department from the overseas supplier seeking to indicate truthfulness of the invoices submitted by the Indian Customs. The appellant also submits that they enclosed data of hundreds of Bills of Entry, not only for imports from China at about the same time and at same commercial quantity but also of the same supplier, but Learned adjudicating authority has not dealt with the same at any place in impugned order. Hence, resorting to Rule 9 of the CVR, 2007 without first analyzing NIDB Data to find out the contemporaneous evidence was erroneous. In any case, it was against the ruling of Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. (cited supra) which also referred to the earlier decision of Hon'ble Supreme Court in M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd reported in 2019 (365) ELT 3 (SC) and Commissioner Vs. South India Television (P) Ltd. as reported in 2007 (214) ELT 3 (SC). Also in respect of several Bills of Entry, assessable value was re-determined based on investigation regarding price of such products in international market and DGOV circulars issued from time to time, which was the flawed approach of the department as held in various cases. Also, once assessment has been finalized, the department could not have re-opened the same. They also rely

on decision of Hon'ble Supreme Court in Priya Blue Industries case and ITC Ltd case (cited supra)

19.5 Appellant further challenged department's claim in Para 16 of the show cause notice which states that "*based on their assessment, 87 out of 143 copies of COO were not found authentic and they were not issued by MITI"*. That MITI was not supposed to base their conclusion on the basis of their assessment. The revenue should show the basis of the same so that it could be challenged and defended by them efficiently. Further, verification carried out in the certificate (s) of origin is not as per the mandate under Customs Administration of Rules of Origin under Trade Agreement Rules, 2020 (CAROTAR), and therefore, the same is liable to be discarded. Regarding allegation of cash payment being made through the representative of Mr. Vick Jiang, neither Vick Jiang nor his representative has been subjected to any scrutiny. Further, no cash has been found at their end and even during search etc. Further, procedure under Section 138C of the Customs Act, 1962 was not followed while retrieving the WhatsApp messages and placing reliance on them.

20 As per the department, investigations showed that the appellants were wrongly availing benefit of preferential rate of duty under Notification No. 46/2011-Cus. dated 01.06.2011 on Cold Rolled Stainless Steel Coils & Circles imported from Malaysia declaring same to be of Malaysian origin. This was also established from the voluntary statement of Shri Amit Mittal and Shri. Ashok Kumar where *they accepted to have availed undue benefit of Indo-ASEAN FTA by routing Chinese goods from Malaysia to India and they also accepted undervaluing the said goods in specified instances*. Learned Commissioner held that admission statement along with verification done as also other evidences, establish department's case against the appellants. We find that in the matter of Commissioner of Customs Vs.

Kishan Manjibhai Bhadesariya, reported at (2023) 2 CENTAX 63, Hon'ble High Court of Gujarat has held that computer prints are to be considered as an evidence if veracity of such documents is admitted by the accused in his statements even if certificate as required under Section 138 (c) (2) of the Customs Act has not been issued. We also take note of the decision of Hon'ble Apex Court in the case of Commissioner of Customs, Nhava Sheva-III Vs. Jeen Bhavani International as reported at 2023 (385) ELT 338 (SC), wherein it has been held that allegations are not sustainable in absence of any corroborating evidence as the prescribed procedure under Section 138 (C) of the Customs Act, 1962 not followed in retrieving email, parallel invoices and also the statements were retracted within two months of the receipt it's contents supplied for the first time along with show cause notice.

21. We also find that CESTAT Mumbai in the matter of Junaid Kudia Vs. Commissioner of Customs, Mumbai reported at (2024) 16 Centax 503 (Tri. Bom.) has in Para 9 and 10 held as follow. This decision has also been upheld by Hon'ble Apex Court in appeal filed by Revenue as reported at (2024) 16 Centax 504.

> "9. We also find that the Hon'ble Supreme Court in the case of Anvar P.V. (supra), while dealing with Section 65B of the Evidence Act, 1872 (Parimateria to Section 138C of the Customs Act, 1962), observed as under :
>
> > *"13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original……..*
> >
> > *14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:*
> >
> > *(a) There must be a certificate which identifies the electronic record containing the statement;*

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.

…….

…….

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia speciali bus non derogant, special law will always prevail over the general law. It appears, the Court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

10. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceedings. We note that the Section 138C of the Customs Act is parimateria to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted in the present proceedings, only subject to the satisfaction of the sub section (2) of Section 138C ibid. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices, have not been accompanied by a certificate as required by Section 138C(2) ibid as above. In the absence of such certificate, in view of the

unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices in respect of which the requirement of Section 138C(2) ibid has not been satisfied. On this ground, the impugned order suffers from uncurable error and hence, is liable to be set aside."

21.1 We also note that Hon'ble Apex Court recently in the matter of Additional Director General (Adjudication) DRI vs. Suresh Kumar and Company Impex Pvt. Ltd reported as (2026) 43 Centax 258 (SC) has held that computer print outs taken from laptops and other electronic devices seized from residential premises of the assessee are admissible in evidence if various documents on record are in the form of record of proceedings and statements recorded under Section 108 admitted the same and the process is said to be sufficient compliance of Section 138 (C)(4) of the Customs Act, 1962.

21.2 From a Combined reading of the aforesaid decisions, it can be considered that absence of certification under Section 138 (C) (4) should generally be on record. However, various documents in the form of records of proceeding and statements recorded under Section 108 of the Customs Act 1962 could be used to corroborate and fulfil the requirements of Section 138C (4) of the said Act. The proposition, therefore, is subject to unretracted statements and other evidences being available on record to corroborate digital evidence including of mobile. Hon'ble Supreme Court in the case of Jeen Bhavani International Pvt Ltd (cited supra) approved that retraction within two months from the date when the statements were supplied with show cause notice, can be considered as valid retraction. In this case, statements of Shri. Mukesh Mittal were recorded on 09.08.2020 and 11.09.2020 and of Shri. Amit Mittal (from whose mobile, digital evidences were recovered) was recorded on 15.09.2020. Further, statements were

recorded on 18.09.2020 by taking a signature on the statement dated 15.09.2020 in which he stated that he had sent WhatsApp messages to his daughter Sanya and the said messages contained actual value of stainless steel Coils purchased from MCH though the invoice number mentioned in the messages were not complete. Regarding remittance, he stated that the amounts were remitted by M/s Bansal Overseas Ltd to MCH Steel and it was for differential in value. Shri. Mukesh Mittal and other persons based their statements on the statement of Shri. Amit Mittal. Again, the statement of Shri. Amit Mittal was recorded on 30.09.2020 which primarily explained his stock position. Vide his statements dated 16.08.2021, he primarily explained how cloning was done by the DRI on its own computer from phone Vivo 1880 and other such phone devices. We find that there is no mention of IMEI in the statement. It was also stated by him that Mr Vick Jiang had told him that he would arrange the certificate of origin of Malaysia for SS coils from China to save the Customs duty. Various other details were also recorded in the statement. In statement dated 10.11.2021, in which Shri. Amit Mittal not only endorsed his earlier statements, but also stated that certain invoices recovered by DRI from this premises related to new sales contract, after initiating price with Mr Vick Jiang with the correct rate of goods. The same were shared by him through WhatsApp and accordingly, Mr Vick Jiang used to prefer other sales contract of reduced value and this was kept by him in his records. In short, it was the excel file in WhatsApp that used to contain the correct rate. The aforesaid statements were therefore appellant's prepared statements. The appellant has following objections against the stated evidence by the department to indicate that it is not corroborated:-

I. *These Invoices are in EXCEL Format and not in the PDF Format. It is common knowledge that any document which is in Excel Format or word format can be edited/manipulated.*

II. *Invoice No.MCHA-190809 mentions the total Invoice value as USD 65355.56 whereas the total value shown in figures in the very same Invoice is ONE HUNDRED AND FIVE THOUSAND FOUR HUNDRED AND NINETY NINE AND EIGHTY FIVE CENT.*

III. *Invoice No. MCHA191106 mentions weight of the consignment as 81.940 MT whereas the Invoice which was actually received by the Noticee through Banking Channel and submitted to Customs mentioned the weight as 82.64 MT and it was found to be correctly declared.*

IV. *Page No. 72 of RUD-9 is an Invoice in Excel Format showing total value as USD 40832.25 but, the Show Cause Notice did not take this Invoice as actual Invoice.*

V. *Page 76 of RUD-9 is Invoice No.MCHA-191125-4 mentioning the importer as Gulshan Exim where total Invoice value mentioned is USD 39971.84. DRI did not accept this value shown in the said Invoice as correct and import made with the said Invoice number has been enhanced and shown as USD 62,278 in the duty calculation chart. Further, two more Invoices were found in excel format in Mr. Amit Mittal's mobileviz. Invoice No. MCHA 11125-3 and MCHA 191126-2 and these two invoices having the same value were also filed with the Customs in respective bills of entry. However, in respect to three invoices where the invoices found in excel format in the Amit Mittals' Mobile as well as the invoices filed with the Customs having same value mentioned therein, the DRI did not accept as representing the true value and the same substituted with some other value mentioned in the messages sent on 16.01.2020 to Sanya being the Page No. 19 of RUD-16. Thus, DRI itself not did not believe the invoices found in excel format in Amit Mittal's mobile as sacrosanct.*

VI. *Page No. 83 of RUD-9 is one TT Copy for USD 75,000, which has been alleged to be Hawala transfer along with other TT for USD 95,000 and mentioned in the Show Cause Notice at Para 11(xxiii). According to DRI this TT was made by one Bansal Overseas on behalf on Mukesh Steel as the same were found in the mobile of Mr. Amit Mittal. Mr. Amit Mittal explained the DRI during recording of statement that these are merely confirmation of payments sent to him by Bansal Overseas for their own imports from MCH and since Amit Mittal is also one of the importers from MCH, it was sent to him to confirm the MCH that Bansal Overseas has transferred the amount for their imports. It had nothing to do with imports by Mukesh Steel. However, he was forced to admit the same as their Hawala transfer. The Noticee is filing proof that Banal Overseas was regular importer from MCH as Bansal.*

Thus, it is clear that the DRI itself did not accept these alleged Invoices as representing true value. The law is well settled in this regard that either all the documents so found are to be accepted or rejected in totality. There cannot be pick and choose.

10. In the ledger found in the mobile of wife of Mr. Amit Mittal (RUD-15), there are two entries at Page No. 10 where MST HIGH SEAS-MCHA190222-2-33547 and MS HIGH SEAS MCHA 181210 33936 is mentioned. Here MST means Mukesh Steel Trading and the consignment imported against this Invoice MCHA190222-2 have been sold on HIGH SEA Sale. The figure mentioned as 33547 represents the actual Invoice value if the DRI is to be believed. In the Show Cause Notice, this two page ledger has been read like this only. The Noticee submits that this ledger cannot be taken as representing true details as Mukesh Steel Trading had in fact contracted this consignment against this particular Invoice where the total Invoice value was USD 42,873 as against the figure of 33547 mentioned in the ledger. Mukesh Steel Trading sold this

consignment to JP Stainless on High Sea who filed the Bill of Entry No. 2636471 dated 30.03.2019.

11. For the second entry at this Page No.10 of the ledger i.e. MS HIGH SEAS MCHA181210-33936, MS means Mukesh Steel and the consignment imported against this Invoice No. MCHA181210 has been sold on HIGH SEA Sale. The figure mentioned as 33936 represents the actual Invoice value if the DRI is to be believed. The Noticee submits that this ledger cannot be taken as representing true details as Noticee Mukesh Steel had infect contracted this consignment against this particular Invoice where the total Invoice value was USD 4633.50 as against the figure of 33936 mentioned in the ledger. Mukesh Steel sold this consignment to Ashish Foils Pvt. Ltd on High Sea who filed the Bill of Entry No. 2851091 dated 15.4.2019.

12. Similar is the case with Magppie mentioned at Page -10 of the ledger as part of RUD-9 where it is mentioned as MEGPIE MCHA190304 72103. Here MEGPIE is in fact Magppie International Limited who had imported consignment against this Invoice MCHA190304 and if DRI is to be believed then figure 72103 shows actual Invoice value as the ledger has been understood by the DRI in this manner only. However, RUD-15 at page-5 contains this very Invoice showing amount as USD 88,517.36 against the figure 72103 mentioned in the ledger. ANNEXURE Z

13. From above, it is clear that neither the ledger nor the Invoices as RUD-9 and 15 can be relied upon.

14. Import documents from their suppliers were always received through banking channels and as such the alleged scope of manipulation has to be ruled out. The DRI checked mails of Noticee and it was confirmed that the import documents received on mail were the same as received through banking channel and submitted with the customs. Copies of documents received in banks and proof of payments made through banking channel against which these imports have been made by the noticees.

15. The DRI in their zeal to justify under-valuation by the Noticees, has referred to certain TT copies which were found in the mobile of Amit Mittal and one such TT copy is for USD 75000 mentioned at para 11(xxvi) as A83 showing transfer by Bansal Overseas and Amit Mittal stated that the said payment was on his behalf to MCH Steel. This is factually wrong admission. In fact, this amount of USD 75000 was made by Bansal Overseas, Myanmar for their own imports from MCH Steel. They sent it to Amit Mittal only as confirmation to Vick Jiang that Bansal Overseas has transferred for their own import.

16. The goods are Stainless Steel Cold Rolled Coils whose cost is dependent upon international market price. Due to high fluctuations, Noticees had, prior to imports, entered into Sales Contract from time to time which mentioned the Invoice number, date of Contract, quantity, price and terms of import. One such terms mentioned in all such Sales Contract is at serial 4 as "Price will be decided at the time of shipment according to metal price in market (nickel, copper, chrome) today we decide basic and price is flexible according metal price". All imports by the Noticees were against these written contracts and a bare look at the invoices sent by the suppliers through Banking Channel and mostly imported against Letter of Credit, mentioned the Sales Contract number. Hence, to say that these Sales Contract and invoices received through Banking Channels are manipulated ones based on the alleged ledger

and invoices found in mobiles which are in excel format which can be edited are to be believed, is erroneous.

17. The Noticees submit that their assertion that the price of Stainless Steel Cold rolled coils depended upon constituent element like Nickle, copper and chrome is also substantiated from the fact that the Customs authorities have been deciding the value for the purpose of assessment based on these constituent element in the international market time to time and used to revise the price accordingly. The DGOV has been revising the valuation of Stainless Steel Coil time to time based on international price of constituent elements. It is pertinent to mention herein that the price of stainless steel is governed by LME and if the value of the goods imported by these noticees were what the department is now alleging then certainly any import must have been made by any importer for similar goods during the relevant period. Furthermore, the DGOV ought to have issued valuation circular reflecting such value for assessment after making such investigating with regard to the constituent element of stainless steel. However, no such DGOV Valuation Circular has indicated such value at which the imports made by these noticees are being alleged in the Show Cause Notice.

18. It is pertinent to mention here that the Bills of Entry No.5427723 and 5427727 both dated 24.10.2019 which is part of the demand in the present Show Cause Notice had earlier been subjected to detailed scrutiny regarding the declared value at the time of import. The Noticee Mukesh Steel Trading had declared the value @USD 700/PMT in respect of both the Bills of Entry as per their Sales Contract and invoices. The Customs authority disputed the said declared value and proceeded to carry out investigation regarding the value. The Noticee submitted the Sales Contract No. MCHA190910-2 for Bill of Entry No.5427723 and MCHA-190809 for Bill of Entry No.5427727 The customs authorities proceeded to examine the veracity of the declared value in reference to the DGOV Circulars. After analyzing the DGOV Guidelines and MTC of the imported consignment with prevailing contemporaneous price of the imported consignment, a chart was prepared indicating the value of various constituent elements and thereafter the department arrived at the value @705.20/PMT which was found to be close to the declared value and therefore the declared value was accepted and goods were cleared.

19. The Show Cause Notice now proposes to enhance the value from USD 700/PMT to 1147.6/PMT in respect of the Bill of Entry No. 5427723 for which there is no evidence even in the form of ledger entry as annexed in RUD-9 or RUD-15 in the form of invoice. In respect of Bill of Entry No. 5427727 the declared value has been proposed to be enhanced from USD 700/PMT to USD 1209.12/PMT based on alleged Invoice annexed in RUD-9. However, it is intriguing to note that the said alleged invoice gives two different amounts for the said consignment differently in figures and words. The invoice mentions the total value in the said invoice as USD 65355.56 whereas the total value shown in figures in the very same Invoice as One Hundred and Five Thousand Four Hundred and Ninety Nine and Eighty Five Cent. Copy of Invoice annexed in RUD-9. This clearly support the submission of the Noticees that these alleged invoices which are in excel format are not true invoices nor the figures mentioned in the ledgers are reliable. The noticee submits that against this very invoice Mukesh Steel Trading imported goods vide bill of entry No. 5427727 dated 24.10.2019 and the actual invoice submitted with Customs and the invoice found in the mobile of Amit Mittal is mentioned in the Show Cause Notice as RUD 9. A bare comparison of these two documents reveal that

the alleged invoice found in mobile are not reliable as the value shown in figure and words are different as mentioned above. Moreover the very same value pertaining to the bill of entry no. 5427727 was under investigation by the Customs Authorities at the time of import and after detail investigation as, the same was accepted as correct value. Against these facts during the recording of statement on 10.11.2021 was confronted with the invoice found in his mobile and he allegedly admitted to representing the correct value and that the differential value shown in the invoice submitted with the customs in respect of the Bill of Entry No. 5427727 were send through Hawala to the supplier. This admission of Amit Mittal was factually incorrect. Therefore, it is evident that the invoice mentioned as RUD 9 and ledger as RUD 15 cannot be taken as representing the correct value.

22. Above objections of the appellants are tangible and cannot simply be brushed aside. We also find substance in appellant's submissions that department itself has not relied upon the data as was contained in the excel sheet to the extent that it was not picked up the valuation indicated which did not suit them and rather brought in the valuation which they deemed fit to make the revenue oriented case. The appellant had stated that there were valuation given which were same as that appearing in the excel sheet in some of the cases. The appellants has produced contemporaneous prices at which similar kind of goods were being cleared and some of them even at the lower price than the one declared by the appellant's. The evidence, therefore, needed proper examination and valuation by Learned Commissioner which is missing in this case. Rebuttal of any contents can be given and the statement supplied for the first time along with all the relevant details during or after the show cause notice stage. Examination in chief , therefore, for all the purposes was essential especially when others had also given statements based on the statement of Shri Amit Mittal. Again, it was necessary to bring on record while recording statement as to whether Shri Amit Mittal had the ability to prepare excel sheets which is normally learnt as a skill or some other person was preparing the excel sheet on some other computer which was brought in through any other computer device in the mobile device. Again, when some messages are passed on between two

persons on mobile or some data was shared, then as per the requirement of Section 138C(3)(d) which places the requirement as to what should happen if more than one computer or communication of computer are used. In the context of mobile phone, it can easily be taken to be both mobiles of the one who passes a message or to one who receives the message. The same is woefully lacking even in the statement of record or in the process adopted. The decision of Hon'ble Supreme Court in the matter of Suresh Kumar & Co. (Impex) Pvt Ltd (cited supra) does not absolve the department from some other requirements as are laid down in Section 138C(3) and only allows to ignore requirements of Section 138C(4) of the Customs Act, 1962, when the statement is on record. In this case, even statement has been denied though after receiving the show cause notice. It is also a fact that in the face of such denial as also non reliance by the department in the face of selective use of the data as mentioned above, the evidence has to stand through scrutiny of Section 138C.

23. The examination in chief was very much required to be done by the learned adjudicating authority before relying on the statement. So even when the requirement of section 138C are evaluated by us without insisting on the certificate as envisaged in Section 138C (4), we still find that various other requirements of section 138C have not been fulfilled and adopted properly in relation to mobile phone vis-à-vis the computers to which the section specifically applies. There is a difference between how standalone computer operates and how the mobile phone operates. While in case of computers using a server, requirement of Rule 2 will apply to all the computers connected with the server, same in case of mobile will apply to all the mobiles used including the persons who is a part of WhatsApp chat, particularly so when it is a known fact that even end to end encrypted messages can be intercepted, checked and manipulated. The usages of

evidence obtained from mobile phone by the department, therefore warrants forensic evidence, by mobile experts or digital forensic experts which is missing in this case and even the evidences from both ends, has not been adduced. Therefore, in case of mobile not only certificate under Section 138 (C) (4) is warranted or not warranted in case of admissible statement is not record, but also the evidence to be evaluated by Forensic Digital Expert for requirement of Section 138 (C) and (3) or not only the same lacking but also evaluation of same has not been done by the Learned adjudicating authority. We are placing reliance on the decision of this Tribunal in the matter of NPT Paper Ltd Vs. CM as reported in (2023) 2 Centax 44 (Tri. Ahmd.) in which in para 6.8, this Tribunal has held that once retraction is filed even in response to the show cause notice with the adjudicating authority, it is incumbent upon the authority to call the person for examination and record statement before him. The adjudicating authority was required to examine the person making statement after conducting his examination in-chief to decide if the statement was voluntary or not and could be admitted in evidence. This was not done and therefore, the statement could not be relied. The huge amount of liabilities cannot be fastened on any person without examining truthfulness of the statement. On valuation aspect, it is also seen that the appellant had produced various contemporaneous documents showing either the lower price or equivalent price of other importers, during the relevant period which Learned Adjudicating Authority was required to consider. We rely on the decision of this Tribunal in Kiran Tex Fab (P) Ltd case reported as (2024) 17 Centax 205 (Tri-Ahm).

> "Para 9.11……*On the contrary, the appellants have provided contemporaneous imports data of other importers and also supplied details from the same supplier to other Importers in India during the period of importation. The department has not rebutted aforesaid contemporaneous data Hence, the demand confirmed without considering contemporaneous data is bad in law and requires to be quashed and set aside. For the purpose, reliance is placed on following judgments:*

(1) CC Calcutta v. South India Television Pvt. Ltd reported at {2007 (214) ELT (SC)}

(ii) CCE & ST Noida Vs. Sanjivani Non-ferrous Trading Pvt. Ltd. reported at {2019 (26) ELT 3 (SC)}

(1) Sarto Electro Equipments Pvt. Ltd. Vs. Commr, reported at 2018 (360) ELT. A192 (Mumbai) affirmed by Hon'ble Supreme Court reported at 2020 (371) E.LT. A24 (S.C.)

(iv) H.S. Chadha v. CC (Prev), New Delhi -{2021 (378) E.LT. 193 (Tri. Del) } affirmed by Hon'ble Supreme Court- {2023 (384) E.LT. 129 (SC)}

(v) Saraswati Knitwears Pvt. Ltd. v. CC, Amritsar reported at 2018 (363) ELT. 539 (Tri. -Chan.)

(vi) National Fruits Agency v. CC (Exports), Chennai reported at 2016 (337) ELT. 232 (Tri.-Chennai)

In all these judgments, it has consistently been held that quotations/parallel invoices/proforma invoices cannot be relied for enhancement of value and the department has to provide data pertaining to contemporaneous import for enhancement of value."

23.1 In the matter of Principal Commissioner of Customs Vs. Sachdev Overseas Fitness Pvt. Ltd. (2024) 14 Centax 123 (Tri-Hydr.), wherein in somewhat similar circumstances, charge of undervaluation was raised against the importers. In relation to valuation aspect, in Para 14 to 25, the Tribunal held that:-

"14. *Thus, the default position is that the valuation has to be done on the basis of transaction value and not based on any fixed value. If there are a hundred transactions between the importer and the overseas seller at different prices, for each transaction, the value under section 14 shall be that transaction value. Simply because the price is higher in any particular transaction, such price cannot be applied to other transactions to determine duty. Conversely, the importer cannot claim to pay duty on a lower value than the transaction value in any consignment even if other consignments were sold to the same importer by the same overseas supplier at lower prices. Valuation has to be done for each import as per that transaction value. There is also no provision to take the average price to determine the duty if the transaction values are available.*

15. *The first proviso to sub-section 1 of section 14 provides for some additions to the transaction value which are not relevant for the present case. The second proviso to this sub-section provides for Rules to be made in this behalf to provide for:*

(a) the circumstances in which the buyer and the seller shall be deemed to be related;

(b) the manner of determination of value in respect of goods when there is no sale,

(c) the manner of determination of value in respect of goods if the buyer and the seller are related,

(d) the manner of determination of value in respect of goods where price is not the sole consideration for the sale;

(e) the manner of determination of value in respect of goods in any other case; and

(f) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

16. *The Valuation Rules were framed as per the second proviso to sub-section 1 of section 14. It has 13 Rules in all of which Rules 1 and 2 are Preliminary rules. Rule 3 states that subject to Rule 12, the value shall be the transaction value adjusted according to Rule 10. Rule 10 provides for certain costs to be included in the transaction value. Rule 12 provides for the proper officer to reject the transaction value if he has reason to doubt its truth and accuracy. Thus, unless the proper officer rejects the transaction value under Rule 12, valuation has to be based on transaction value as per Rule 3 with some additions, if necessary, as per Rule 10.*

17. *Rule 3 further provides that if the valuation cannot be done under that Rule, i.e., as per the transaction value with additions as per Rule 10, then it must be done sequentially under Rules 4 to 9. In other words, if the transaction value is rejected under Rule 12 and valuation cannot be done as per the transaction value under Rule 3 and it must be done sequentially under Rules 4 to 9.*

18. *We now proceed to examine Rules 4 to 9. Rule 4 provides for the valuation to be done on the basis of identical goods. Rule 5 provides for the valuation to be done on the basis of the value of similar goods. Rule 6 states if Rules 4 and 5 cannot determine the value, then, they must be done as per Rule 7 and thereafter Rule 8 but this sequence can be reversed at the option of the importer. In other words, if the importer so chooses, Rule 8 can be applied directly instead of Rule 7. Rule 7 provides for a deductive method of valuation on the basis of prices of similar or identical goods sold in India and after making some deductions from such prices. Rule 8 provides for a computed value, i.e., based on the cost of raw material, cost of manufacture, reasonable profit, etc. In view of Rule 6, the importer may choose the computed value without examining the feasibility of determining value through deductive methods. Rule 9 is a residual method which provides for determining the value where it cannot be determined under Rules 3 to 8. Rule 10, as already discussed, provides for some costs to be added to the transaction value if the valuation is done as per Rule 3. Rule 11 requires the importer to make a declaration. Rule 12 lays down the provision for rejection of transaction value. Rule 13 provides for interpretative notes for the Rules.*

19. *To sum up, valuation has to be done sequentially as follows:*

(a) If a tariff value is fixed by the Board, it is the value.

(b) If no tariff value is fixed by the Board, valuation as per the transaction value, if necessary, with some additions (as per the first proviso to sub-section 1 of section 14 and as per Rule 10);

(c) If the transaction value is rejected as per Rule 12 by the proper officer, valuation has to be done as per the value of identical goods (Rule 4);

(d) If transaction value is rejected and there is no value of identical goods, then it must be as per the value of similar goods (Rule 5);

(e) If transaction value is rejected and there is no value of identical

goods or similar goods, value must be determined through Deductive method (Rule 7)

(f) If transaction value is rejected and there is no value of identical goods or similar goods and it is not possible to determine value following deductive method, then value must be determined through computation (Rule 8)

(g) If the importer so chooses, computational method may be adopted without examining the deductive method first (Rule 6).

(h) If the transaction value is rejected and there is no value of identical goods or similar goods and if it is also not possible to determine the value through deductive method or computational method, then value may be determined through the residual method by the officer following the above principles (Rule 9).

20. *The next question which arises is when can the proper officer reject the transaction value. Rule 12 reads as follows:*

12. Rejection of declared value. -

(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 goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the mis-declaration of goods in parameters such as

description, quality, quantity, country of origin, year of manufacture or production;

(e) then on declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

21. *Thus, if the officer has reason to doubt the truth and accuracy of the transaction value, he can call for information including documents and evidence. If the information and evidence is presented and after examining it or if no information or evidence as called for is presented, if the proper office has reasonable belief then it shall be deemed that the value cannot be determined as per Rule 3 (i.e., based on transaction value with additions, if necessary). While the officer can, in the first place call for information and evidence if he has reason to doubt, at the second stage, he should have not just some reason to doubt but a reasonable doubt. If he has such reasonable doubt, then the transaction value can be rejected. The grounds on which the proper officer may raise doubts about the truth and accuracy of the transaction value have been illustrated in explanation 1 (iii) to Rule*

12. The list is inclusive and not exhaustive. In this case, DRI officers found that the invoice which was presented along with the Bill of Entry was a trader's invoice for a value which was substantially lower than the price at which the trader himself had purchased the goods. Both the manufacturer's invoice on the trader and the trader's invoice on the importer were for exactly the same consignment with the same details as they were back to back orders. In other words, the respondent placed an order for X quantity of goods on the trader in Taiwan and the trader placed an order for the same goods on the manufacturer in China. The goods were shipped directly by the manufacturer from China to the respondent. According to the Revenue, the trader's invoices are fraudulent and manipulated invoices. Insofar as the first part of the demand indicated in paragraph 10 (a) above is concerned, the EXCEL sheets in the pen drive as well as the invoices recovered during the searches form the basis for the doubt. As far as the second and third parts of the demand indicated in paragraphs 10 (b) and 10 (c) are concerned, the doubt is based on projections.

22. *The grounds for proposal to reject the transaction value under Rule 12 in the SCN are as follows:*

"14. Whereas in view of the documentary evidences discussed above and in the light of aforesaid legal provisions, it appears that the value declared by M/s SOFPL to the Customs in respect of all the imports made from Taiwan Suppliers does not represent the true 'transaction value' and is liable to be rejected in terms of Rule 12 of the Customs Valuation Rules on the following grounds:-

(i) Manufacturer's invoices of the Chinese manufacturer, in respect of the goods imported by M/s SOFPL, recovered during the search of their office premises, pertaining to the period ranging from 2011 to 2016, show much higher value of the imported goods as compared to the corresponding invoices of the Taiwan suppliers.

(ii) The statement of accounts contained in the pen drive and retrieved on forensic analysis covering the period from 21-10-2011 to 25.12.2104 show debit entries of a higher value than the one declared to Indian Customs. It also shows entries reflecting payments in addition to the payments through banking channels.

(iii) Shri Prem Kumar Sachdev has admitted to the under-valuation of goods imported by M/s SOFPL from Taiwan suppliers in his statements read with Panchnama dated 9-3-2016. He has expressly admitted that the value declared to the Indian Customs, for the goods imported by M/s SOFPL from Taiwan suppliers represents merely 35% to 45% of the actual value.

(iv) All consignments imported by M/s SOFPL are relating to fitness equipments, shipped directly from China and invoices raised by same 'Taiwan suppliers'. The invoices of the Chinese manufacturers recovered during investigation range over a wide period starting from 09-11-2011 to 2-2-2016. From the values available over this long period it appears that there is a consistent suppression of value to the extent of 30% to 40% on the values contained in the Chinese manufacturers invoice. Moreover, the values contained in the statement of accounts obtained from the pen drive also matches with the manufacturer's invoices and support the fact that the import of fitness equipment by M/s SOFPL are under-valued. Hence, it appears that there has been suppression of values by M/s SOFPL for all the imports of fitness equipment made by them and that all the imports made by M/s SOFPL from Taiwan supplier do not represent the true transaction value and the declared value is liable for rejection."

23. *The grounds for proposal to re-determine the value as per Rule 9 in the SCN are as follows:*

"15. In view of the above all the imports made by SOFPL from Taiwan suppliers do not represent the true transaction value and the correct value cannot be determined under Rule 3 of the Valuation Rules. The value of the goods cannot be determined even under Rule 4 and 5 as there are no identical or similar contemporaneous imports declaring the true transaction value. Further, the value cannot be determined even under Rule 7 and 8 for the reason that the exercise determined in respective rule is not possible for the subject goods. Hence the provisions of Rule 9 of the Valuation Rules are applicable. The evidence on record indicates that the goods imported by M/s SOFPL from Taiwan supplier have been consistently under-valued in the range of 55% to 35% of the true transaction value and only 45%to 65%of the true transaction value is disclosed to Indian Customs. The average value declared to Indian Customs is 57.49% of the true transaction value. Hence, for the purpose of determination of value of imported goods for the Bills of Entry for which original Chinese manufacturer invoices are not available, the actual value is arrived by calculating the percentage of under-valuation mentioned above in terms of Rule 9 of the Valuation Rules, 2007, which is 42.51%.

15.1 In respect of the consignments figuring in the statement of accounts contained in the pen drive recovered from the residence of Shri Prem Kumar Sachdev, the debit entries made against each invoice appears to be the amount actually paid or payable by M/s SOFPL to Taiwan suppliers and consequently represents the true transaction value.

15.2 The details of total imports made by M/s SOFPL for the period from 21-10-2011 to 26-2-2016 was compiled and reconciled with the customs database and is provided in Worksheet-I appended to this show cause notice. Worksheet-Ishows the total imports made by M/s SOFPL for the period from 21-10-2011 to 26-2-2016. The total declared value to Customs is USD 2,35,96,022/- (Rs.1,44,06,42,474/-). The total duty paid is Rs. 41,79,72,002/-.

15.3 Worksheet-II has been compiled based on the evidences contained in pen drive in excel file titled '2012-2013 PS' and covers invoices starting from date 12-9-2011 to 25-12-2013. This is the statement of accounts for

the transactions between the Taiwan suppliers and M/s SOFPL. The values mentioned against each invoice appear to be the true transaction value in as much as this is the amount paid/payable by M/s SOFPL to the Taiwan suppliers. Based on the values contained in the excel file invoice wise, the true transaction value appears to be USD 1,86,75,220. The value not declared to Customs i.e., differential value is USD 79,38,180 and the differential duty payable comes to Rs. 13,00,13,327/-.

15.4 The details of the values available in the invoices of the Chinese manufacturer recovered from the office premises of M/s SOFPL and from the hard disk drives (recovered from the office premises of M/s SOFPL) are provided in Worksheet-IIIA/B. However, the values available in the manufacturers invoices raised on the Taiwan suppliers, is further enhanced by the Taiwan suppliers when the very same goods are sold to M/s SOFPL. The enhanced values can be seen in the 'statement of accounts' available in the pen drive recovered from the residential premises of Sri Prem Kumar Sachdev. The proportionate increase in value by the Taiwan suppliers is adopted to arrive at the true transaction value in terms of Rule 9 of valuation rules and the same is detailed in Worksheet-IIIA/B. The Chinese manufacturer's invoices are annexed to this show cause notice.

15.5 Worksheet-IIIA shows the values shown in the Chinese manufacturer's invoices which are also covered in the statement of accounts contained in the pen drive. Thus, undervaluation in respect of said invoices already stands quantified in Worksheet-II as mentioned above.

15.6 Worksheet-IIIB shows the values shown in the Chinese manufacturer's invoices which are not covered in the statement of accounts contained in the pen drive. As the business pattern remains same and the supplies are from the same Taiwan suppliers represented by Shri Rajan Khera, the undervaluation in respect of said invoices has been quantified based on the averaged margins, as worked out in Worksheet-II as mentioned above. Thus in worksheet-IIIB the value is arrived as per Rule 9 of Valuation Rules taking into consideration the values contained in the Chinese manufacturers invoice and the values contained in the statement of accounts. The average value declared to Customs is arrived at 57.49% of the true transaction value. Adopting the same percentage, the true transaction value is arrived as per Rule 9 of Valuation Rules. The true transaction value arrived at in Worksheet-IIIB is USD 30,39,339 and differential duty liable to be paid by M/s SOFPL works out to Rs. 2,44,92,805/-.

15.7 The invoices of the Chinese manufacturers are ranging over a wide period from 9-11-2011 to 2-2-2016. The invoices submitted to Indian Customs declare about only 60% to 70% of the value shown in the Chinese manufacturer's invoices over the past 5 years. From the values available over this long period, it appears that there is a consistent suppression of value to the extent of 30%to 40% on the values contained in the Chinese manufacturer's invoices. Hence inference can be drawn that there has been suppression of values by M/s SOFPL for all the imports of fitness equipment made by them, even where the Chinese manufacturer's invoices are not available and which are not covered by the said statement of accounts. The values contained in the statement of accounts obtained from the pen drive also support the fact that the import of fitness equipment by M/s SOFPL is consistently under-valued. Thus the values based on these evidences can be adopted for the imports of fitness equipment made by M/s SOFPL for which no direct documentary evidence is forthcoming.

15.8 Accordingly, Worksheet-IV has been compiled arriving at the true transaction value under Rule 9 of the Customs Valuation Rules for all the imports where the Chinese manufacturer's invoices are not available and

which are not covered by the said statement of accounts during the last five years. The true transaction value arrived at under Rule 9 is USD 1,93,27,997 and the differential duty liable to paid by M/s SOFPL works out to Rs. 15,45,74,102/-.

15.9 Consolidating the differential duties payable as worked out in Worksheet II, IIIB and IV, the total duties of customs payable by M/s SOFPL for the imports made from Taiwan suppliers works out to Rs. 72,70,52,235/- and the differential duty payable works out to Rs. 30,90,80,233/- as detailed in the Worksheet-V annexed to this show cause notice."

24. *As may be seen, the proposal to reject the transaction value in respect of those imports listed in WORKSHEET II to the SCN [indicated in paragraph 10 (a) above] is based on the EXCEL sheet recovered from the Pen drive recovered from the residence of Shri Sachdev of the respondent and the copies of invoices recovered from the office of the respondent. As for the imports listed in WORKSHEET IIIA to the SCN [indicated in paragraph 10(b) above] and WORKSHEET IV to the SCN [indicated in paragraph 10(c) above], they are based on projections and extrapolations. Since the officers found some reason to reject the transaction value in imports covered by WORKSHEET II, it is also proposed to be rejected in the imports covered by the other two worksheets. We do not find any legal provision by which the transaction value can be rejected by extrapolation. As we explained above, each import is an assessment by itself and is appealable and if there are a hundred imports at different transaction values, duty on each import must be determined based on the transaction value of that import. If the transaction value is higher in any one case, that, by itself cannot form the basis for assessment of other imports. Conversely, if the transaction value in any one case is lower, the importer cannot ask for that to be the basis for assessment of all other imports. A single value has to be reckoned for assessment of all imports only if it is a tariff value fixed by the Board under section 4 (2).*

25. *Undervaluation of goods is a serious charge which entails not only re-determination of duty and recovery of duty but also penalties. If one is found to have undervalued goods in one case, inference cannot be drawn that he has undervalued in all other imports as well. Penalties and pecuniary liabilities based on extrapolation is, in our considered view, impermissible and is inconsistent with the legal principles known to us. For example, if a suspect is caught stealing a wallet on a day, he can be prosecuted for that crime but it cannot be presumed, without any evidence, that given the character of the suspect, he must have been stealing a wallet everyday and prosecute him for several thefts. If an unscrupulous government employee is caught accepting a bribe of Rs. 5,000/- to process a file, he can be prosecuted for corruption to that extent. However, he cannot be prosecuted by extrapolating that since he handled 200 similar files and must have accepted Rs. 5,000/- as bribe in each case and therefore must have taken bribes totaling Rs. 10,00,000/-. If income tax department discovers that an assessee had under-reported his income by 30% in one financial year, it cannot presume, that given his nature, he must have similarly underreported 30 % of his income for the past five years. If Central Excise officers find that a truck of goods has been clandestinely removed by the manufacturer on a day, it cannot be presumed that the manufacturer has been clandestinely removing one truck of goods every day for the past five years. Each case must be examined only based on the evidence in it. Since each assessment is a quasi-judicial order based on the transaction value in it, transaction values cannot be rejected under Rule 12 by extrapolations. They can be rejected if the officer has reasonable belief based on the evidence in that case, that the transaction value is not true and accurate. We, therefore, find that the rejection of the transaction value in the imports*

covered in Worksheets IIIA and IV of the SCN by extrapolation and re-determination of the value have no legal basis and need to be set aside. Consequently, the demands in these cases by re-determination of the values cannot also sustain".

24. We find that similar discrepancy exists even in this case and that, the undervaluation cannot be sustained on the basis of disputed evidence which lacks complete credence even as per department's approach. We therefore find that on the aspect of valuation, department's case has no legs to stand. We however, are of the view that duty demand is sustainable in respect of goods covered by those certificates of origin which have not been verified as correct by the MITI. Learned Advocate has agreed to customs duty demand of Rs. 7,87,443/- in respect of M/s Gulshan Exim Pvt Ltd and of Rs. 6,25,000/- in respect of M/s Mukesh Steel in case of COO concession cannot be claimed. However, since it has not been categorically proved as to who had faulted and whether there was any collusion, penalty against both the above importers cannot be sustained for wrong COO's. We may remark, while obtaining such reports from foreign agencies, department should be more transparent and should provide all underlying documents to the defendants. It will also be advisable, if the legislature creates a sui-generis provision for mobiles like Section 138C existing for computers, so that conclusions by the Courts are based on direct statutory provisions on mobile technology rather than required to derive authority from analogues provision relating to computers

25. With above observation, we are of the view that the case of the department cannot sustain except to the extent of duty involved in respect of above two importers namely M/s Mukesh Steel and M/s Gulshan Exim Pvt Ltd where country of origin certificates have not been found to be authentic. We also hold that interest shall be payable on above duty amounts. At the same time, we hold that no penalty will be imposable on above two

importers as revenue has not be able to bring any concrete evidence of their involvement in obtaining non-authentic COO certificates.

26. Appeals are partly allowed to the extent indicated in respect of M/s Mukesh Steels (Appeal No. C/10825/2020) and M/s Gulshan Exim Pvt Ltd (Appeal No. C/10824/2020) parties and allowed in total in respect of others.

(Pronounced in the open court on 09.10.2026)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Prachi