CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT NO. I

(E-Hearing)

Customs Appeal No.70704 of 2021

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-619-to-621-20-21 dated 14.09.2020 passed by Commissioner (Appeals) CGST, Noida)

M/s. S. S. Overseas, **.....Appellant**
First Floor, C-6, Suraj Park,
Sameypur Badli, New Delhi 110042

VERSUS

Commissioner of Customs, Noida **....Respondent**
Concor Complex, P.O. Container Depot,
Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311

WITH

Customs Appeal No.70705 of 2021

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-619-to-621-20-21 dated 14.09.2020 passed by Commissioner (Appeals) CGST, Noida)

M/s S. S. Overseas, **.....Appellant**
(First Floor, C-6, Suraj Park,
Sameypur Badli, New Delhi 110042)

VERSUS

Commissioner of Customs, Noida **....Respondent**
(Concor Complex, P.O. Container Depot,
Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311)

AND

Customs Appeal No.70706 of 2021

(Arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-619-to-621-20-21 dated 14.09.2020 passed by Commissioner (Appeals) CGST, Noida)

M/s S. S. Overseas, **.....Appellant**
First Floor, C-6, Suraj Park,
Sameypur Badli, New Delhi 110042

VERSUS

Commissioner of Customs, Noida **....Respondent**
Concor Complex, P.O. Container Depot,
Greater Noida, Gautam Budh Nagar, Uttar Pradesh-201311)

APPEARANCE:

Shri Utkarsh Malviya, Advocate for the Appellant
Shri Abhishek Mukherjee, Authorized Representative for the Respondent

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

FINAL ORDER NOs.70550-70552/2026

DATE OF HEARING :13.10.2026
DATE OF DECISION: 28.10.2026

P. K. CHOUDHARY:

The present 03(three) appeals have been filed by the Appellant arising out of Order-in-Appeal No.NOI-CUSTM-000-APP-619-to-621-20-21 dated -14.09.2020 passed by Commissioner (Appeals) Central Goods & Service Tax, Noida

2. The facts of the case in brief are that M/s. S. S. Overseas (the Appellant herein) are engaged in the business of import and trading in various types of goods including 'Polyester Knitted Fabrics' of different weight (Mixed Lot) and has been importing the same from China.

3. The Appellant in his usual course of business entered into an agreement with the manufacturer for purchase of the aforesaid goods and therefore imported the impugned goods under the following Bills of Entry at the mentioned price:-

S. No.	BOE No.	BOE Date	Duty	Declared Unit Price per KG (USD)	Enhanced Unit Price per KG (USD)
1.	4000480	10.07.2019	Rs.2,77,396/-	0.95	1.77
2.	4001104	10.07.2019	Rs.2,79,891/-		
3.	4121177	18.07.2019	Rs.2,52,563/-		

4. On arrival of the goods, the Appellant filed the Bills of Entry for clearance of above said goods and submitted all the desired documents. On examination, the goods were found as per declarations, however, on comparison with the contemporaneous import data, the Department raised a query, and the Appellants was asked to provide complete description of the consignment like composition of fabric, dimension, etc. The Appellants replied to the query and informed the description of goods to the assessing officer, thereafter, it was alleged that the declared value by the Appellants was liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5. The issue involved is primarily as to whether the Appeals filed by the Appellants were correctly rejected by the Commissioner (Appeals) holding that the Appellants accepted the enhancement of value in writing at the time of clearance of the consignments in question?

6. The learned Counsel for the Appellants submitted that the Appellate Authority has erred in not appreciating the fact that the acceptance of enhanced value proposed by the Department by an importer does not preclude him from challenging the enhancement by way of appeal. Even assuming that there is an acceptance, it does not preclude him from challenging by way of appeal as there cannot be an estoppel in taxation matters as held by the Hon'ble Supreme Court in the case of **Dunlop India Limited Vs. UOI reported as 1983 (13) ELT 1566 (SC).**

7. It is further submitted that because the manner of assessment is arbitrary and illegal as the practice of not making the assessment on the declared value in terms of the mandate of Section 14 of the Customs Act, 1962, read with Rule 3 the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, is against the provisions of law.

8. It is also submitted that the Appellant is a regular Importer of different kind of Fabrics and have imported 03 consignments of fabrics from China on 10.07.2019 and 18.07.2019 at ICD, Dadri against a negotiated price. It has further been contended that the Appellant had self-assessed the duty correctly as per the respective Invoices. However,

no 'Out of Charge' (OOC) Orders were passed. The Appellant made written requests to the Proper Officer to clear the consignments provisionally paying duty on the enhanced value under protest in Order to avoid delay in clearance of consignments. According to the Appellant, no cognizance was taken by the Proper Officer despite several written requests made for clearance of consignment on enhanced value for which duty was paid under protest. Finally, the Appellant was coerced to submit letters of consent agreeing to assessment/ valuation by the Customs Authorities. The Appellant further contended that the Customs Authorities without observing the mandate of Section 14 of the Customs Act, 1962, discarded the declared transaction value and enhanced the value on the basis of the consent letter.

9. The learned Advocate submitted that since the acceptance letters were not voluntary, the Appellant wrote several letters requesting the learned Assessing Officer to issue Speaking Order. However, no speaking Order was passed. Hence, the Appellant filed respective Appeals before the Commissioner (Appeals) against the assessment made in the respective Bills of Entry. The Appellate Authority sought comments from the Department on the Appeals filed by the Appellant wherein the Department contended that the re-assessment has been done under Section 17(4) of the Customs Act, 1962 on the basis of written consent, therefore, no speaking Order was passed. All the Appeals were rejected merely on the ground that since the Appellant has accepted the enhancement of value in writing there was no requirement of issuance of speaking Order under Section 17(5) of the Customs Act, 1962, and therefore, the assessable value determined by the Adjudicating Authority on reassessment of imported goods in the Bills of Entry and accepted by the Appellant in writing was legal and binding on the Appellant.

10. It is submitted that the said letter of acceptance does not provide any evidence of contemporaneous import price of the goods and merely mentions that the declared value is liable to be rejected and re-determined on the basis of the data of contemporaneous import. The Learned Advocate further submitted that merely mentioning that the

declared value is liable to be rejected and the same is liable to be assessed at a particular price does not meet the requirements of Customs Valuations Rules, 2007[1], as even for applying Rule 5 of CVR, 2007 several parameters like quantity in comparable commercial transactions, GSM, quality of goods, time of placement of Order for import etc. has to be fulfilled.

11. The learned Advocate referring to the judgement of the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. vs. UOI reported in 2019 (367) E.L.T. 3 (SC) submitted that the mandate of sub-Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said ground to the importer is mandatory. The Hon'ble Supreme Court has deprecated the practice of bypassing and circumventing the statutory mandate as un-acceptable. The Hon'ble Supreme Court has held that the formation of belief and recording of reasons as to a reasonable doubt about the truth or accuracy of the declaration is required to be substantiated by "facts and figures" on existence of positive belief. The communication of the reasons is the only way and manner in which the Proper Officer in terms of Rule 12 can proceed to make assessment under Rule 4 to 9 after rejecting the transaction value as declared. The above requirement has been made mandatory by the Hon'ble Supreme Court by invoking the doctrine of prospective application.

12. The learned Advocate also submitted that similar letters of acceptance were submitted by the importers in the case of Hanuman Prasad & Ors. and in the Appeals filed by them, the learned Commissioner (Appeal) set aside the enhancement of value merely on the basis of letter of acceptance. The Department filed Appeals against the Orders of the learned Commissioner (Appeal) wherein the Tribunal allowed the Appeals holding that once letter of acceptance has been submitted, the importers cannot question the assessment later on. The said importer filed Appeals before the Hon'ble High Court of Delhi titled as Niraj Silk Mills vs.

[1] CVR, 2007

Commissioner of Customs & Ors. - CUSAA 26/2022. The Hon'ble High Court of Delhi after analyzing the provisions of law and judgments allowed the Appeals. The present Appeal is squarely covered by the judgment of the Hon'ble High Court.

13. The learned Advocate further submitted that the mandate of Rule 12(2) of CVR, 2007 to intimate the importer in writing the grounds for doubting the truth of accuracy of the declared value cannot be undermined. The Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd.(supra) has held that the said mandate of sub-Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said ground to the importer is mandatory. The Supreme Court has deprecated the act of bypassing and circumventing the statutory mandate as un-acceptable and therefore, the proper officer was duty bound to communicate the reasons for rejection of the transaction value in writing as mandated by the Hon'ble Supreme Court.

14. The learned Advocate also relied on the following judgements:-

I. M/s Century Metal Recycling Ltd. vs. Commissioner of Customs, Faridabad. Customs Appeal No.61303 of 2019 decided vide Final Order No.60266-60349/2025 dated 27.02.2025 by CESTAT Bench at Chandigarh.

II. Commissioner of Customs, Patparganj vs. M/s Artex Textile Private Limited-Customs Appeal Nos.51414,52809 and 52810 to 52864 of 2019 decided vide Final Order No.50769-50825/2020 dated 14.09.2020 by CESTAT Bench at New Delhi.

15. The learned Departmental Authorized Representative (AR) reiterated the findings of the Commissioner (Appeals) and has drawn our attention to the acceptance letter submitted by the Appellant agreeing to enhancement of the declared value made in writing. The learned Departmental Authorized Representative submitted that the Appellant had accepted the enhancement of value in writing stating that they have

gone through the details narrated by the concerned Officer including the grounds of rejection of declared value and understood the details of contemporaneous import of similar/ identical goods and that they fully agree with the enhancement of value and that they do not want show cause notice[2] or speaking Order. Based on the said letter of acceptance, the Appellate Authority came to the conclusion that the reassessment of the Appellants import consignments were done by the Assessing Officers only after disclosing all the ingredients of reassessment to the Appellant and after acceptance in writing and hence no speaking Order was required to be passed under Section 17(5) of the Customs Act, 1962. The learned Departmental Authorized Representative relied on the judgment of the Hon'ble High Court of Allahabad in the case of M/s. S. S. Overseas & Ors. being Writ Tax No.881/2022 and submitted that the Hon'ble High Court has held that once acceptance of enhancement of value by the importer is made in writing there is no requirement of issuance of Speaking Order under Section 17(5) of the Customs Act, 1962. The Ld. Departmental Authorized Representative further submitted that this judgment of the Hon'ble High Court has also been upheld by the Hon'ble Supreme Court being SLP (Civil) No.38571/2023 titled as M/s. S. S. Overseas vs. Union of India & Anr. Hence, according to the Departmental Authorized Representative, there is no infirmity in the Order passed by the Ld. Commissioner (Appeals).

16. The learned Advocate for the Appellant, in rejoinder**,** submitted that the issues in M/s. S. S. Overseas & Ors. were entirely different in as much as it was the case of provisional assessment and non-issuance of Speaking Orders, while finalizing the Bills of Entry. In any case, the Order of the Hon'ble Supreme Court was merely dismissal of the SLP which does not operate as merger with the Order of the High Court. In this regard, the learned Advocate relied upon the judgment of Hon'ble Supreme Court in the case of Kunhayammed & Ors. vs. State of Kerala & Anr.-[(2000) 6 Supreme Court Cases 359].

[2] SCN

17. Heard the learned Counsel for the Appellant and the learned Departmental Representative for the Respondent and perused the appeal records.

18. We find that the Order of the Commissioner (Appeals) merely proceeded on the ground that the Appellant had accepted the enhancement of value under Section 17(5) of the Customs Act, 1962 and therefore, there was no requirement of issuance of Speaking Order. The Commissioner (Appeals) referred to the judgment of **Century Metal Recycling (supra)** for rejecting the Appeal, more specifically relying on Para 26 to hold that there was no general or omnibus direction passed by the Hon'ble Supreme Court to the effect that the transaction value declared in the bills of entry should invariably be accepted in all cases. However, it is seen that the Commissioner (Appeals) has failed to take into account the ratio of the judgment in entirety. The issue as to whether assessable value can be rejected without following the mandate of Section 14 of the Customs Act, 1962 read with Rule 12 of CVR, 2007 and the declared transactional value be re-determined following sequentially from Rule 4 to 5 of CVR, 2007, is no more *res-integra* as the Hon'ble Supreme Court in the case of **Century Metal Recycling Pvt. Ltd. vs. UOI reported in 2019 (367) E.L.T. 3 (SC)** has held that the mandate of Rule 12(2) of CVR, 2007 to intimate the importer in writing the ground of doubting the truth of accuracy of the declared value cannot be ignored or waived. The Hon'ble Supreme Court has held as under:-

> *"20. ……..*
>
> *As per sub-rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and*

manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.

21. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, albeit it has been read by us by implication in Rule 12. Being conscious that this mandate if applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case to case basis, depending upon the factual matrix and considerations like whether the importer has asked for 'certain reasons', whether the reasons were not communicated, whether 'certain reasons' can be deciphered from the assessment/ valuation Order, whether mis-description or false declaration was apparent, etc."

19. We find that in the Century Metal Recycling Pvt. Ltd. (supra) facts were similar to the present case in as much as in that case too repeated requests for provisional assessment by the importer were ignored and the importer was forced to submit letter of acceptance. We further find that although the letter of acceptance states that the ground for rejection of the declared value has been narrated to the Appellant and that details of contemporaneous import of similar and identical goods have been shown to them and on the basis of which, the Appellant accepted that their value were significantly lower than the value at which identical/ similar goods imported at or about the same time in comparable commercial transactions were assessed at other ports of the country, however, no such details of alleged contemporaneous import data have been mentioned, therein. Given the language as noted in some of the letters as written by the appellant and placed above, there is a wide gap which has not been bridged by the Revenue, in the matter. The contents of this communication cannot therefore be taken on its face value.

20. We further find that the issue (1) as to whether the Department can enhance the value relying on NIDB and on the basis of the acceptance letter and (2) once there is acceptance letters, the importer cannot

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

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

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

> *"83. That then takes us to the concession which the importer could tender and which would require us to identify the subject in respect of which that concession may be made. When we examine this aspect on the anvil of Section 17(5), it becomes apparent that the statute speaks of the concession being with reference to the reassessment made under Section 17(4). It thus proceeds to provide that in a case where the importer confirms his acceptance of the reassessment in writing, the proper officer would stand relieved of the obligation of passing a speaking Order in respect of such reassessment. In all other cases and where the reassessment is not acceded to, the proper officer is obliged to pass a speaking Order. Thus, the waiver or concession is at best confined to the speaking Order which the proper officer is obliged to frame in affirmation of the provisional opinion that it may have formed under Section 17(4).*
>
> *84. We find ourselves unable to construe Rule 12(2) as contemplating any concession or waiver at least in explicit terms. All that Rule 12(2) stipulates is that the proper officer would*

intimate to the importer the grounds for doubting the declared value at its request. It is in the aforesaid context that we would thus have to adjudge whether the CESTAT was correct in holding that the exchange of communications amounted to a waiver or abandonment not just of the right to question and assail the reassessment but to impugn it in further proceedings in accordance with the procedure prescribed under the Act.

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

21. The learned Advocate has further drawn our attention to the finding of the Hon'ble High Court on the issue as to whether the declared value can be rejected merely on the basis of NIDB data. The Hon'ble High Court has held as under:-

"*104. It becomes apparent from a reading of these decisions collectively that the Tribunal has consistently found that a valuation addition based solely on NIDB data would wholly unwarranted and that any such reassessment would have to be shored by independent and cogent evidence. The legal position so articulated would ensure fairness and transparency in the determination of import values. The body of precedent noticed above have in unison held that mere reliance on external data without corroborative evidence or clear justification would fail to meet the tests and principles underlying the provisions enshrined in the 1988 Rules and 2007 Rules. They correctly lay emphasis on the imperatives of a reasoned approach to customs valuation and a deviation from declared values being founded on tangible and justiciable material.*

A reassessment or rejection of declared value would thus have to necessarily be established as being compliant with the aforenoted requirements of pre-eminence. Relieving the respondents of this obligation would clearly lead to pernicious consequences.

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

22. Having considered the rival contentions and after analyzing the relied upon judgments, we find that the issue involved in the present Appeals is squarely covered by the judgement of Hon'ble High Court of Delhi in the case of **Niraj Silk Mills** (supra) and therefore, the impugned Order-in-Appeal dated 14.09.2020 is not sustainable in law. Accordingly, we set aside the same and allow the Appeals, with consequential relief, if any, as per law.

(Order pronounced in open court on 28.10.2026)

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

Sd/-
(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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