CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 51976 OF 2019
AND
CUSTOMS CROSS OBJECTION NO. 50146 OF 2021

(Arising out of Order-in-Appeal No. 59-115-SM-CUS-JPR-2019 dated 05.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

Commissioner of Customs (Preventive) **……Appellant**
Customs Commissionerate, Jodhpur
Hqrs. At N C R Building, Statue Circle, C-Scheme
Jaipur - 302005 (Rajasthan)

VERSUS

Century Metal Recycling Pvt. Ltd. **……Respondent**
Tatarpur Bhagola Road, Village Tatarpur, Post Asawati
Palwal – 121102 (Haryana)

WITH

C/51977/2019	**C/51978/2019**	**C/51979/2019**	**C/51980/2019**
C/51981/2019	**C/51982/2019**	**C/51983/2019**	**C/51984/2019**
C/51985/2019	**C/51986/2019**	**C/51987/2019**	**C/51988/2019**
C/51989/2019	**C/51990/2019**	**C/51991/2019**	**C/51992/2019**
C/51993/2019	**C/51994/2019**	**C/51995/2019**	**C/51996/2019**
C/51997/2019	**C/51998/2019**	**C/51999/2019**	**C/52000/2019**
C/52001/2019	**C/52002/2019**	**C/52003/2019**	

AND

CUSTOMS APPEAL NO. 52004 OF 2019
AND
CUSTOMS CROSS OBJECTION NO. 50147 OF 2021

(Arising out of Order-in-Appeal No. 59-115-SM-CUS-JPR-2019 dated 05.04.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

Commissioner of Customs (Preventive) **…..Appellant**
Customs Commissionerate, Jodhpur
Hqrs. At N C R Building, Statue Circle, C-Scheme
Jaipur - 302005 (Rajasthan)

VERSUS

CMR Nikkei India Pvt. Ltd. **…..Respondent**
Plot No. 65, Section 15, Phase-II
Industrial Growth Centre, Bawal
Rewari - (Haryana)

WITH

C/52005/2019	**C/52006/2019**	**C/52007/2019**	**C/52008/2019**
C/52009/2019	**C/52010/2019**	**C/52011/2019**	**C/52012/2019**
C/52013/2019	**C/52014/2019**	**C/52015/2019**	**C/52016/2019**

C/52017/2019 C/52018/2019 C/52019/2019 C/52020/2019
C/52021/2019 C/52022/2019 C/52023/2019 C/52024/2019
C/52025/2019 C/52026/2019 C/52027/2019 C/52028/2019
C/52029/2019 C/52030/2019 C/52031/2019 C/52032/2019

APPEARANCE:

Shri S.K. Rahman, Authorized Representative of the Department

Shri K. Krishnamohan Menon, Ms. Parul Sachdeva & Ms. Priya, Advocates for the Respondents

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 02.07.2024
DATE OF DECISION : 19.08.2024

FINAL ORDER NO's. 58014-58070/2024

JUSTICE DILIP GUPTA:

M/s Century Metal Recycling Pvt. Ltd.[1] imported aluminum scrap of various grades and filed 28 Bills of Entry for clearing the consignment on the basis of self-assessment of duty on the transaction value. The Assessing Officer doubted the correctness of the value declared by Century Metal in the Bills of Entry and when confronted with contemporaneous data by the Assessing Officer, Century Metal not only submitted letters stating that the value declared in the Bills of Entry should be rejected, but also accepted the value proposed by the Assessing Officer. The value was, accordingly, enhanced by the Assessing Officer and Century Metal paid the differential duty of customs. The goods were also cleared after the out of charge order was issued by the Assessing Officer. Thereafter, Century Metal filed 28 appeals before the Commissioner (Appeals), Central Excise and CGST, Jaipur[2], to challenge the enhancement of the value by the Assessing

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1. **Century Metal**
2. **the Commissioner (Appeals)**

Officer. These appeals have been allowed by a common order dated 05.04.2019. The enhancement of the value has been set aside by the Commissioner (Appeals) and the value declared by Century Metal in the Bills of Entry has been accepted. This order has been assailed by the department in the first set of appeals from Customs Appeal No. 51976 of 2019 to Customs Appeal No. 52003 of 2019. Customs Cross Objection No. 50146 of 2021 have also been filed by Century Metal.

2. **M/s CMR Nikkei Pvt. Ltd.**[3] also imported aluminum scrap of various grades and filed 29 Bills of Entry for clearing the consignment on the basis of self-assessment of duty on the transaction value. The Assessing Officer doubted the correctness of the value declared by CMR Nikkei in the Bills of Entry and when confronted with contemporaneous data by the Assessing Officer, CMR Nikkei not only submitted letters that the value declared in the Bills of Entry should be rejected, but also accepted the value proposed by the Assessing Officer. The value was, accordingly, enhanced by the Assessing Officer and CMR Nikkei, paid the differential duty of customs. The goods were cleared after the out of charge order was issued by the Assessing Officer. Thereafter, CMR Nikkei filed 29 appeals before the Commissioner (Appeals) to challenge the enhancement of the value. These appeals have been allowed by a common order dated 05.04.2019. The enhancement of the value has been set aside by the Commissioner (Appeals) and the value declared by CMR Nikkei in the Bills of Entry has been accepted. This order has been assailed by the department in the second set of appeals from Customs Appeal No. 52004 of 2019 to Customs Appeal No. 52032 of 2019.

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3. CMR Nikkei

Customs Cross Objection No. 50147 of 2021 have been filed by CMR Nikkei.

3. The records indicate that Century Metal submitted 28 Bills of Entry. The value of the goods declared in these Bills appeared to be on the lower side to the Assessing Officer when compared to the price of contemporaneous imports data of similar goods imported at the port by other importers. As the Assessing Officer had reasons to doubt the accuracy of the value declared in the Bills of Entry, he informed Century Metal of the grounds as to why the value declared, which appeared to be on the lower side, should not be rejected under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[4] and re-determined. On being confronted with such data, Century Metal submitted the following letter to the Assessing Officer in respect of one such Bill of Entry No. 8175381 dated 24.09.2018:

> "**CENTURY METAL RECYCLING LIMITED**
>
> To,
>
> The Assistant Commissioner of Customs,
> ICD Kanakpura Jaipur (Rajasthan)
>
> **Subject: Enhancement of value of goods covered under Bill of Entry No. 8175381 dated 24/09/18**
>
> **Proposing re determination of value and consequential reassessment of duty, in this regard it is submitted that we have been informed about grounds or rejection of our declared value** under the provisions of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) rules, 2017 read with Section 14 of Customs Act, 1962.
>
> **We have also gone through and understood the details of contemporaneous imports of similar/identical goods, as informed by the Customs Department and we accept that the**

4. the 2007 Valuation Rules

value declared by us is lower than the value at which identical/similar goods have been imported at or about the same time in comparable quantities and in comparable commercial transaction were assessed at other ports of the country.

We fully agree that the value of goods declared by us in respect of BE. No. 8175381 dated 24/09/18 is liable to be rejected by the Customs Authorities under the provision of Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 read with Section 14 the Customs Act, 1962. **Thereafter, the value of the goods imported by on the basis of data of contemporaneous import of similar/identical goods in terms of Rule 9 of** the Customs Valuation (Determination of value of imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and the duty payable **is liable to be enhanced from US$ 940.00 to US$ 1628.00 under Section 17(5) of the Customs Act , 1962.**

Accordingly, as we are in agreement and not aggrieved with the proposed enhancement of value/duty, in view of our acceptance we do not want any personal hearing or speaking order in the matter. You are requested to kindly re-determine the value and re-assess the duty in accordance with the value/duty as proposed.

Yours sincerely,

FOR CENTURY METAL RECYCLING LTD.

Sd/-

Authorized Signatory"

(emphasis supplied)

4. Identical letters were submitted by Century Metal to the Assistant Commissioner of Customs in respect of the remaining 27 Bills of Entry.

5. CMR Nikkei also submitted identical letters, as were submitted by Century Metal, to the Assistant Commissioner of Customs for each of the 29 Bills of Entry.

6. It, therefore, clearly transpires that both Century Metal and CMR Nikkei, in respect of all the 57 Bills of Entry, after clearly stating that they had been informed about the grounds for rejection of the declared value in the Bills of Entry and after they had gone through and understood the details of contemporaneous imports of similar/identical goods informed by the customs department, accepted that the value declared by them was lower than the value at which identical/similar goods were imported at or about the same time in comparable quantities and in comparable commercial transaction at other ports in the country. They also very specifically stated that the value of the goods declared by them in the Bills of Entry is liable to be rejected under rule 12 of the 2007 Valuation Rules read with section 14 of the Customs Act, 1962[5]. In the letter submitted by Century Metal in respect of Bill of Entry No. 8175381 dated 24.09.2018, it was specifically stated that the value of the goods imported should be enhanced on the basis of the contemporaneous data of similar/identical goods from US$ 940 to US$ 1628 under rule 9 of the 2007 Valuation Rules read with section 14 of the Customs Act in terms of the provisions of the section 17 (5) of the Customs Act. In the remaining 56 letters that were submitted by Century Metal and CMR Nikkei before the Assistant Commissioner of Customs, similar statements were also made. It also needs to be noted that both Century Metal and CMR Nikkei also stated that they were **"**in agreement and not aggrieved with the proposed enhancement of value**"**. They also stated that in view of their acceptance of the said value, personal hearing may not be provided to them nor a speaking order should be passed in the matter. They also requested the Assessing

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5. the Customs Act

Officer to re-determine the value and re-assess the Bills of Entry in accordance with the value proposed by them.

7. The Assessing Officer, in view of the categorical statements made by Century Metal and CMR Nikkei, re-assessed the 57 Bills of Entry in terms of the consent letters given by them and both Century Metal and CMR Nikkei deposited the differential customs duty. Out of charge order was given on 04.12.2018/04.01.2019 in respect of the goods imported through the 57 Bills of Entry and the goods were then cleared.

8. Thereafter, both Century Metal and CMR Nikkei challenged the order passed by the Assessing Officer by filing 57 appeals before the Commissioner (Appeals). The Commissioner (Appeals), by a common order dated 05.04.2019, allowed the appeals and accepted the value declared in the Bills of Entry, basis the decision of the Tribunal in **Sanjivani Non-Ferrous Trading Pvt. Ltd.** vs. **C.C.E. & S.T., Noida**[6], against which the appeal filed by the department was dismissed by the Supreme Court. This decision of the Supreme Court is reported in **C.C.E. & S.T., Noida** vs. **Sanjivani Non-Ferrous Trading Pvt. Ltd.**[7] The relevant portion of the order dated 05.04.2019 passed by the Commissioner (Appeals), is reproduced below:

> "**6. I observe that the instant matter is identical to the appeals decided by undersigned in the same matter of appellants vide ORDERS-IN-APPEAL NO 12 to 161(SM)CUS/JPR/2018 dated 25.5.2018.** Now the Deputy Commissioner, I.C.D. CONCOR, Jaipur in the remand proceedings vide Order-in-Original No. 61/2018/DC dated 08.03.2019 relying upon the order dated 10.12.2018 of the Hon'ble Supreme Court of India in the case of Sanjivani Non Ferrous Trading Pvt Ltd has ordered for assessment of the imported goods at declared value.

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6. 2017(7) G.S.T.L. 82 (Tri.-All.)
7. 2019 (365) ELT (3) (SC)

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8. I also find that the department preferred an appeal before the Hon'ble Supreme Court against the Hon'ble CESTAT order supra. The Hon'ble Supreme Court of India in the appeal of the department (reported in 2019 (365) E.L.T. 3 (S.C.)] has dismissed the appeal of the department.

9. In the instant matter also, the value of the imported goods have been enhanced on the basis of the DGOV circular. I observe that the DGOV Circular cannot override the provisions of Valuation Rules and accordingly following the above decision of the Hon'ble CESTAT and the Hon'ble Supreme Court of India, I set aside the enhancement of value in the assessment orders made by the adjudicating authority. The value declared by the appellants is accepted and all the 57 appeals filed by them are allowed with consequential relief."

(emphasis supplied)

9. Shri, S.K. Rahman, learned authorized representative appearing for the department made the following submissions:

(i) The Assessing Officer had reason to doubt the accuracy of the value declared in the Bills of Entry submitted by the importers as they were grossly undervalued as compared to the contemporaneous import data and since the importers had submitted letters clearly stating that they accepted that the value declared by them in the Bills of Entry was on the lower side and, therefore, liable to be rejected under rule 12 of the 2007 Valuation Rules, and they also accepted the value of goods indicated by the Assessing Officer on the basis of data of contemporaneous import of similar/identical

goods, and also stated that they did not want any personal hearing to be provided or a speaking order to be passed in the matter, and that the Assessing Officer should re-determine the value and re-assess the duty in accordance with the value proposed, the Assessing Officer committed no illegality in re-determining the value in terms of the value accepted by the importers. Subsequently, the goods were also cleared by the importers on payment of duty on the enhanced value after the out of charge order was passed;

(ii) The out of charge was given only after the importers had deposited the differential customs duty on the enhanced value and all the appeals were filed by the importers before the Commissioner (Appeals) after the out of charge order was given. It was, therefore, not open to Century Metal or CMR Nikkei to challenge the assessed value of goods determined on the basis of the consent given by them by filing appeals before the Commissioner (Appeals);

(iii) What is admitted need not be proved. In support of this contention, reliance has been placed on the judgment of the Supreme Court in **Commissioner of C. Ex., Madras** vs. **Systems & Components Pvt. Ltd.**[8];

(iv) Principles of natural justice have not been violated as the importers themselves stated that they accepted the value proposed by the department and this statement in the letters addressed to the Assistant Commissioner has not been retracted. In support of this contention, reliance has been placed on the decision of the Tribunal in **DJP International** vs. **Commissioner of Customs (ICD), New**

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8. 2004 (165) ELT 136 (SC)

Delhi[9]. Learned authorised representative also pointed out that the appeal filed by the department against the aforesaid decision of the Tribunal was dismissed by the Supreme Court on 08.07.2016 in **DJP International** vs. **Commissioner of Customs (ICD**), **New Delhi**[10];

(v) The basis for re-determination of the value was shown and explained to the importers and the method of re-determination of value was also shown to the importers;

(vi) Once the out of charge had been given, it is not open to the importers to contest the value for the reason that it is not possible for the department to inspect the goods. In this connection, reliance has been placed on the decision of the Tribunal in **Advanced Scan Support Technologies** vs. **Commissioner of Customs, Jodhpur**[11]; and

(vii) The Commissioner (Appeals) committed an error in observing that the value of the imported goods had been enhanced on the basis of a Circular issued by the Director General of Valuation.

10. Shri Krishna Mohan K. Menon, learned counsel assisted by Ms. Parul Sachdeva and Ms. Priya, however, supported the impugned order and submitted that it does not call for any interference in this appeal. Learned counsel made the following submissions:

(i) The so-called 'consent/acceptance letters' which have been relied upon heavily by the Assessing Officer to adopt the enhanced value in terms of the 2007 Valuation Rules cannot be considered as consent letters as the same have been

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9. 2017 (350) E.L.T. 294 (Tri.- Del)
10. 2017 (350) E.L.T. A65 (S.C.)
11. 2015 (326) E.L.T. 185 (Tri.-Del.)

obtained under pressure to clear the goods to avoid any further delay;

(ii) The value that has been enhanced by the Assessing Officer is exactly the value arrived at on the basis of **London Metal Exchange**[12] price minus the discount given in the Director General of Valuation Circular. This clearly shows that the enhancement of value is not on the basis of contemporaneous import data, but is based on Director General of Valuation Circular, irrespective of the mention made in the consent letter by the importers that they have gone through the contemporaneous import data;

(iii) Due to urgency of the matter and to mitigate losses, including demurrage charges, the importers had accepted the enhanced value. The importers, being regular importers, were left with no choice but to issue coerced letters;

(iv) The importers were not furnished with NIDB/LME data documents relied upon for enhancement of the value. This violates the principles of natural justice;

(v) The transaction value or the invoice value cannot be rejected arbitrarily without giving any valid reasons. The allegations of undervaluation should be buttressed by valid evidence, like the price of contemporaneous imports of comparable goods;

(vi) Even assuming without admitting that the letters were not coerced, the Assessing Authority still should have followed the principles of valuation as laid down under the Customs Act and the 2007 Valuation Rules;

(vii) The issue stands decided in favour of the importers by decisions of the Tribunal and the Supreme Court in the own

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12 LME

case of the respondent wherein it has been held that enhancement of value solely on the basis of coerced consent letters, Director General of Valuation Circular and in the absence of contemporaneous import data or any investigation is illegal. In this connection, reliance has been placed on the following decisions:

(a) **Sanjivani Non-Ferrous Trading Pvt. Ltd.**;
(b) **Century Metal Recycling Pvt. Ltd.** vs. **UOI**[13];
(c) **Guru Rajendra Metalloys India Pvt. Ltd.** vs. **Commissioner of Customs, Ahmedabad**[14]; and
(d) **Supreme Industries Ltd.** vs. **CBIC**[15];

(viii) Department has a duty to act in accordance with the provisions of law; and

(ix) The monetary limit for filing appeals before the Tribunal was Rs. 50 lakhs by Circular dated 02.11.2023 and its predecessor Circular /Notification. In terms of paragraph 3 of the Circular, the pending matters would have to be withdrawn. The valuation of each of the appeals would reveal that none of the appeals involve tax instance of Rs. 50 lakhs or above. The appeals filed by the department would, therefore, have to be dismissed for this reason.

11. The submissions advanced by the learned authorized representative for the department and the learned counsel for the respondents have been considered.

12. What transpires from the records is that both Century Metal and CMR Nikkei had declared a certain value of the goods in the 57 Bills of Entry.

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13. 2019 (367) E.L.T 3 (SC)
14. 2020 (374) ELT 617 (Tri-Ahmd)
15. 2021 (377) ELT 698 (Bom)

13. Section 14 of the Customs Act deals with 'valuation of goods' and is reproduced below:

> "**Section 14. Valuation of goods. -** (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:
>
> Provided *****"

14. It would be seen that section 14 of the Customs Act provides that the transaction value of goods shall be the price actually paid or payable for the goods when sold for export to India where the buyer and the seller of the goods are not related and the price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf.

15. Section 17 of the Customs Act deals with assessment of duty. It is reproduced below:

> "**Section 17. Assessment of duty**.- (1) **An importer entering any imported goods under section 46**, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, **self-assess the duty, if any, leviable on such goods.**
>
> (2) **The proper officer may verify the entries made under section 46** or section 50 **and the self-assessment of goods referred to in sub-section (1)** and for this purpose, examine or test any

imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) **For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information,** whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) **Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may,** without prejudice to any other action which may be taken under this Act, **re-assess the duty leviable on such goods.**

(5) **Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.**"

(emphasis supplied)

16. It would be seen that in a case where re-assessment has to be done under sub-section (4) of section 17 of the Customs Act, the proper officer is required to pass a speaking order on the re-assessment, but under sub-section (5) if the importer or exporter confirms his acceptance of the re-assessment, a speaking order is not required to be passed.

17. The 2007 Valuation Rules have been framed in exercise of the powers conferred by section 14 of the Customs Act. Rule 3 deals with the determination of the method of valuation and it is reproduced below:

> "**Rule 3. Determination of the method of valuation**.- (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
>
> (2) Value of imported goods under sub-rule (1) shall be accepted:
>
> Provided that –
>
> (a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –
>
> (i) are imposed or required by law or by the public authorities in India; or
>
> (ii) limit the geographical area in which the goods may be resold; or
>
> (iii) do not substantially affect the value of the goods;
>
> (b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
>
> (c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
>
> (d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below:
>
> (3) *****
>
> (4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9."

18. Rule 12 deals with rejection of the declared value and it is reproduced below:

> "**Rule 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 misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

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

(f) the fraudulent or manipulated documents."

19. Sub-rule (1) of rule 3 provides that subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with rule 10. Sub-rule (4) of rule 3 provides that if the value cannot be determined under sun-rule (1), the value shall be determined sequentially through rules 4 to 9.

20. Rule 12 provides that 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 rule 3(1). Explanation (iii) to rule 12 provides that 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 any of the six reasons contained therein, one of which is that there is a 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.

21. The proper officer doubted the value of the goods declared by Century Metal and CMR Nikkei since the contemporaneous data in respect of the goods imported at or about the same time was higher. After reasons were made known, both Century Metal and CMR Nikkei submitted letters specifically mentioning that they had gone through and understood the details of contemporaneous imports of similar/identical goods as informed by the department and that they accept that the value declared by them in the Bills of Entry is lower than the value at which identical/similar goods had been imported at or about the same time in comparable quantities and in comparable commercial transaction at other ports of the country. They also agreed that the value of goods declared in the aforesaid Bills of Entry is liable to be rejected under rule 12 of the 2007 Valuation Rules and that they were not aggrieved with the proposed enhancement of value by the department under rule 9 of the 2007 Valuation Rules. They also stated that in view of their acceptance of the enhanced value, they did not want any personal hearing to be provided or a speaking order to be passed in the matter. A prayer was, therefore, made to the Assessing Officer to re-determine the value and re-assess the duty in accordance with the value proposed by the department.

22. The Commissioner (Appeals) has allowed the appeals for the reason that the value of the imported goods had been enhanced by the Assessing Officer on the basis of a Circular dated 04.08.2016 issued by the Director General of Valuation, which Circular could not override the provisions of the 2007 Valuation Rules. The Commissioner (Appeals), therefore, in view of the decision of the Tribunal and the Supreme Court in **Sanjivani Non-Ferrous Trading**, set aside the enhancement made

in the assessment order and accepted the value declared by Century Metal and CMR Nikkei in the 57 Bills of Entry filed by them.

23. It would, therefore, be appropriate to reproduce the judgment of the Supreme Court in **Sanjivani Non-Ferrous Trading**, as it is this decision on which reliance has been placed by the Commissioner (Appeals). The relevant portions of the judgment of the Supreme Court are reproduced below:

> "**The issue raised in these appeals pertains to the transaction value/assessable value in respect of imported Aluminum Scrap, which was imported by the respondent** herein. The respondent had imported various varieties of the said Aluminum scrap during the period 27th August, 2013 to 29th December, 2014 and filed 843 Bills of Entry along with invoices and purchase orders in respect therein declaring the transaction value of the imported goods for the purpose of paying Customs duty. **The declared value was not accepted by the Assessing Officer who found the same to be low. Accordingly, the said declared value was rejected and reassessment was done by increasing the assessable value.**
>
> *****
>
> 3. The assessment order dated 25th March, 2015 passed by the Assessing Officer was challenged by filing appeals before the Commissioner (Appeals), Central Excise and Customs, Noida. All these appeals were dismissed. **Challenging the order of the Commissioner (Appeals), the respondent approached the Customs, Excise and Service Tax Appellate Tribunal** (hereinafter referred to as the "Tribunal"). **By the impugned common judgment dated 17th January, 2017** [2017 (7) G.S.T.L. 82 (Tri.-All.)], **the appeals of the respondent were allowed thereby rejecting the enhancement of assessable value** by the Revenue. It is the said order of the Tribunal, which is the subject matter of these appeals.
>
> *****

10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. **Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods.** This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. **That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer** arrives at his own assessable value.

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13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. **The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could**

hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.

14. **In Commissioner of Customs v. Prabhu Dayal Prem Chand, (2010) 13 SCC 535 = 2010 (253) E.L.T. 353 (S.C.), this Court was confronted with almost same kind of fact situation.** On the basis of the information received subsequently from the London Metal Exchange (for short, 'LME') to the effect that the price of the two metals, viz., brass scrap and copper scrap, in LME as on the date of import was more than the price declared by the respondent, demanded additional duty amounting to Rs. 90,248/- and Rs. 1,94,035 respectively, from the assessee on the said two Bills of Entry. This order was set aside by the Tribunal and appeals there against by the Customs were dismissed by this Court. **The Court noted, while accepting the plea of the assessee, that they were not confronted with any contemporaneous material relied upon by the Revenue for enhancing the price declared by them in the Bills of Entry. It also noted the following remarks of the Tribunal:**

> "In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy Commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. **Therefore, assessment in this case has to be taken as having been made purely on the basis of LME bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allow the appeal.**"
>
> Dismissing the appeals, this Court observed as follows :
>
> "....It is manifest from the aforeextracted order of the Tribunal that no details of any contemporaneous imports or any other material indicating the price notified by LME had either been referred to by the adjudicating officer in the

> adjudication order or such material was placed before the Tribunal at the time of hearing of the appeal. The Learned Counsel for the Revenue has not been able to controvert the said observations by the Tribunal. In that view of the matter no fault can be found with the order passed by the Tribunal setting aside the additional demand created against the assessee."
>
> 15. We, thus, do not find any merit in these appeals and dismiss the same."
>
> **(emphasis supplied)**

24. It transpires from a perusal of the aforesaid judgment of the Supreme Court in **Sanjivani Non-Ferrous Trading** that the importers had not submitted any letters to the Assessing Authority to the effect that the value stated in the Bills of Entry was on the lower side and, therefore, should be rejected and re-determined at the value made known to them by the Assessing Officer on the basis of contemporaneous imports of the goods at about the same time. The Supreme Court noted that the transaction value mentioned in the Bills of Entry can be discarded in a case where it is found that there are imports of identical goods or similar goods at around the same time at a higher price. In order to invoke such a provision the Supreme Court held that it would be incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected, and to give reasons supported by material on the basis of which the Assessing Officer arrives at the assessable value.

25. In the present case, as noticed above, the importers had made a categorical statement that they were accepting that the value declared by them in the Bills of Entry was lower than the value at which identical/similar goods had been imported at or about the same time in comparable quantities and in comparable commercial transactions and

so the value declared by them in the Bills of Entry should be rejected under rule 12 of the 2007 Valuation Rules and re-determined under rule 9 on the price made known to them by the Assessing Officer, which price they were accepting. The importers also specifically stated that because of the acceptance of the enhanced value, they did not want any personal hearing to be provided or a speaking order to be passed and that the value should be re-determined in accordance with the value as proposed by the Assessing Officer, and accepted by them. The Assessing Officer was, therefore, not required to give reasons for rejection of the transaction value and determination of the assessable value.

26. The judgment of the Supreme Court in **Sanjivani Non-Ferrous Trading** is, therefore, clearly distinguishable and would not be applicable to the facts of the present case.

27. The judgment of the Supreme Court in **Commissioner of Customs** vs. **Prabhu Dayal Prem Chand**[16] has been referred to in the aforesaid decision of the Supreme Court **Sanjivani Non-Ferrous Trading**. This judgment of the Supreme Court would also not be applicable to the facts of the present case. In this case, reliance was placed on the information received from the LME and it is on this basis that the value was enhanced. The Supreme Court observed that no details of any contemporaneous imports or any other material indicating the price notified by LME had been referred to by the adjudicating authority nor such material was placed before the Tribunal at the time of hearing of the appeal. The Supreme Court was not examining a case where the importer had given in writing that the value declared in the

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16. 2010 (253) E.L.T. 353 (S.C.)

Bills of Entry should be rejected and re-determined in accordance with the value proposed by the department and accepted by the importer. Thus, the decision of the Supreme Court in **Prabhu Dayal** would also not be applicable.

28. It is seen from a perusal of section 17(4) of the Customs Act that the proper officer can re-assess the duty leviable, if it is found on verification, examination or testing of the goods or otherwise that the self-assessment was not done correctly. Sub-section (5) of section 17 provides that where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer, the proper officer shall pass a speaking order on the re-assessment, except in a case where the importer confirms his acceptance of the said re-assessment in writing.

29. In the present case, as noticed above, the proper officer doubted the truth or accuracy of the value declared by the importers for the reason that contemporaneous data had a significantly higher value. It was open to the importers to require the proper officer to intimate the grounds in writing for doubting the truth or accuracy of the value declared by them in the Bills of Entry and seek a reasonable opportunity of being heard, but they did not do so. On the other hand, the importers submitted in writing that though they had declared the value of the imported goods in the Bills of Entry, but on being shown contemporaneous data they agreed that the value of the goods should be rejected and re-determined on the basis of the value proposed by the Assessing Officer. The importers also specifically stated that they did not want a personal hearing to be provided to them or a speaking order to be passed. It needs to be noted that section 17(5) of the Customs

Act requires a speaking order to be passed on the Bills of Entry, except in a case where the importers confirm acceptance of the value in writing.

30. It is no doubt true that the value of the imported goods shall be the transaction value of such goods when the buyer and the seller of goods are not related and the price is the sole consideration, but this is subject to such conditions as may be specified in the rules to be made in this behalf. The 2007 Valuation Rules have been framed. A perusal of rule 12(1) indicates that when the proper officer has reason to doubt the truth or accuracy of the value of the imported goods, he may ask the importer to furnish further information. Rule 12(2) stipulates that it is only if an importer makes a request that the proper officer shall, before taking a final decision, intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared and provide a reasonable opportunity of being heard. To remove all doubts, Explanation 1(iii)(a) provides that the proper officer can have doubts regarding the truth or accuracy of the declared value if the goods of a comparable nature were assessed at a significantly higher value at about the same time.

31. Explanation (1)(i) to rule 12 of the 2007 Valuation Rules, however, provides that the rule only provides a mechanism and procedure for rejection of the declared value, and does not provide a method for determination of the value. Further, if the declared value is rejected, the value has to be determined by proceeding sequentially in accordance with rules 4 to 9 of the 2007 Valuation Rules.

32. In **Century Metal Recycling,** the Supreme Court summarized the provisions of rule 12 of the 2007 Valuation Rules and the observations are as follows:

> "15. The requirements of Rule 12, therefore, can be summarised as under:
>
> (a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.
>
> (b) Proper officer must ask the importer of such goods further information which may include documents or evidence.
>
> (c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.
>
> (d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.
>
> (e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.
>
> (f) The proper officer can raise doubts as to the truth or accuracy of the declared value on certain reasons which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.
>
> (g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.
>
> (h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.
>
> 16. **Proper officer can therefore reject the declared transactional value based on certain reasons to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules.** What is meant by the expression

> grounds for doubting the truth or accuracy of the value declared has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the reason to doubt exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared."
>
> **(emphasis supplied)**

33. The Commissioner (Appeals) completely failed to consider the consequences and impact of the letters that were submitted by Century Metal and CMR Nikkei to the Assistant Commissioner. Despite specific acceptance to the proposed enhancement of the value, it was sought to be contended by the importers in the appeals before the Commissioner (Appeals) that the transaction value of the imported goods alone should be treated to be the value of the goods and it could not be enhanced without following the procedure contemplated under the 2007 Valuation Rules.

34. As noticed above, both Century Metal and CMR Nikkei had specifically stated that the value of the goods declared by them in the Bills of Entry should be rejected under rule 12 of the 2007 Valuation Rules and thereafter re-determined on the basis of the value indicated to them by the Assessing Officer which was on the basis of the value at which identical/similar goods were imported at or about the same time in comparable quantities and in comparable commercial transaction at other ports in the country, which value the importers accepted.

35. Once the importers had accepted the enhanced value, it was not necessary for the Assessing Authority to undertake the exercise of determining the value of the declared goods under the provisions of

rules 4 to 9 of the 2007 Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under rule 3(1) for the reason that the declared value has been rejected under sub rule (2), that the value of the imported goods is required to be determined by proceeding sequentially through rules 4 to 9 of the 2007 Valuation Rules. The importers had accepted that the value declared in the Bills of Entry should be rejected and the value proposed by the Assessing Officer was acceptable to them. There was, therefore, no necessity for the Assessing Officer to determine the value sequentially in the manner provided for in rules 4 to 9 of the 2007 Valuation Rules.

36. In this connection, it would be useful to refer to a decision of this Tribunal in **Advanced Scan Support**, wherein the Tribunal, after making reference to the decisions of the Tribunal in **Vikas Spinners** vs. **Commissioner of Customs, Lucknow**[17] and **Guardian Plasticote Ltd.** vs. **Commissioner of Customs (Port), Kolkata**[18], held that as the appellant therein had expressly given consent to the value proposed by the department and stated that it did not want any show cause notice to be issued or personal hearing to be provided, it was not necessary for the department to establish the valuation any further as the 'consented value' became the 'declared transaction value' requiring no further investigation or justification. Paragraph 5 of the decision is reproduced below:

> "**5**. **We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by Revenue and expressly stated that it did not want any Show Cause Notice or personal hearing. Even the duty was paid without**

17. 2001 (128) ELT 143 (Tri.-Del)
18. 2008 (223) ELT 605 (Tri.-Kol)

protest. By consenting to enhancement of value and thereby voluntarily foregoing the need for a Show Cause Notice, the appellant made it unnecessary for Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put Revenue in an impossible situation as the goods are no longer available for inspection and Revenue rightly did not proceed to further collect and compile all the evidences/basis into a Show Cause Notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no Show Cause Notice, could/would have invited allegation of harassment and delay in clearance of goods. When Show Cause Notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail as with the goods not being available and valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so re-assessment of value in the absence of goods will not be possible. The case of Eicher Tractors v. Union of India (supra) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value."

(emphasis supplied)

37. In **Vikas Spinners,** the Tribunal dealt with a similar situation. The Tribunal noticed that the enhanced value was accepted by the importers who signed an affirmation accepting the enhanced value on the back side of the Bills of Entry. The Tribunal, therefore, held that once the importer had accepted the enhanced value without any protest

or objection, they cannot turn around and deny the correctness of the same. The observations of the Tribunal are as follows:

> "**7. In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants**. Admittedly, the price of the imported goods declared by them was US $ 0.40 per Kg. but the same was not accepted and loaded to US $ 0.50 per Kg. **This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 7-5-1999**. After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008/- on 19-5-1990. **Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally estopped from taking somersault and to deny the correctness of the same**. There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in Sounds N. Images, (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/Special Attorney and paid the duty thereon accordingly."
>
> **(emphasis supplied)**

38. In **Guardian Plasticote Ltd.,** the Tribunal after placing reliance on the decision of the Tribunal in **Vikas Spinners**, also observed as follows:

> "**4. The learned Advocate also cites the decision of the Tribunal in the case of M/s. Vikas Spinners v. C.C., Lucknow - 2001 (128) E.L.T. 143 (Tri.-Del.) in support of his arguments.** We find that the said decision clearly holds that enhanced value once settled and duty having been paid accordingly without protest, importer is estopped from challenging the same subsequently. **It also holds that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden of the department to establish declared value to be incorrect**. In view of the fact that the Appellants in this case have not established that they had lodged any protest and on the contrary their letter dated 21-4-1999 clearly points to acceptance of the enhanced value by them, the cited decision advances the cause of the department rather than that of the Appellants contrary to the claim by the learned Counsel."
>
> **(emphasis supplied)**

39. In **BNK Intrade (P) Ltd.** vs. **Commissioner of Customs, Chennai**[19], the Tribunal observed as follows:

> "2…….. It is also to be noted that the importer had also agreed for enhancement of the price based on contemporaneous prices available with the Department. We, therefore, find no merit in the contention raised in the appeal challenging the valuation and seeking the refund of the differential duty paid by the appellants on enhancement."

40. In **Commissioner of Customs, Delhi** vs. **Hanuman Prasad & Sons**[20], the Tribunal after referring to the aforesaid decisions observed that when an importer consents to the enhancement of value, it becomes unnecessary for the department to establish the value as the consented value, in effect, becomes the declared transaction value requiring no further investigation. The Tribunal also observed that when

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19. 2002 (140) ELT 158 (Tri.-Del)
20. Customs Appeal No. 51601 of 2019 decided on 20.10.2020

an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness. The Tribunal also noted that the burden on the department to establish that the declared value is not correct is discharged if the proposed enhanced value is voluntarily accepted by the importer.

41. This decision of the Tribunal in **Hanuman Prasad** was followed by the Tribunal in **M/s. Sukhdev Exports Overseas** vs. **Commissioner of Customs (Preventive), New Delhi**[21] and **Commissioner of Customs, New Delhi (Import & General)** vs. **Namo Alloys Pvt. Ltd.**[22].

42. It would also be pertinent to refer to the decision of the Allahabad High Court in **S.S. Overseas** vs. **Union of India**[23]. The facts before the Allahabad High Court were almost similar. The importer had confirmed in writing his acceptance of the re-assessment and, therefore, a speaking order was not passed. The relevant portions of the judgment of the Allahabad High Court are reproduced below:

> "6. Section 17 of the Customs Act, 1962 (hereinafter referred to as the 'Act, 1962') provides for assessment of duty. Under sub-section (1) of Section 17, an importer entering any imported goods under Section 46 of the Act, 1962 or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods. Sub-section (2) of Section 17 provides for verification of entries and self-assessment of goods referred to in sub-section (1) by the proper officer. Sub-section (4) of Section 17 provides for re-assessment of duty by the proper officer where the self-assessment is not done correctly. Sub-section (5) provides that the proper officer shall pass a speaking order on the reassessment in matters other than those

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21. 2023 (2) TMI 1038 – CESTAT New Delhi
22. Customs Appeal No. 60202 of 2020 decided on 29.11.2023
23. 2022 (382) E.L.T. 26 (All.)

where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing.

7. **From the facts as stated in afore quoted Paragraph 2 and its sub-paragraphs of the counter affidavit, and the own documents of the petitioner filed as Annexure-1 to the counter affidavit, leave no manner of doubt that the petitioner himself has confirmed in writing his acceptance of reassessment. Therefore, there exists no occasion to pass a speaking order on the reassessment.**"

(emphasis supplied)

43. Learned counsel for the respondents, however, submitted that the consent/acceptance letters relied upon by the Assessing Officer to adopt the enhanced valuation cannot be considered as consent letters as the same had been obtained under pressure to clear the goods to avoid any further delay and hence **"**are nothing but coerced**"** letters.

44. Before adverting to examine this contention of the learned counsel for the respondents that the letters were obtained from the importers under coercion, we need to remind ourselves of the observations made by the Supreme Court that bald assertions, no matter couched in strong language, relating to coercion are not sufficient. The party which alleges coercion must prima facie establish coercion by placing material.

45. In this connection, it would be apt to refer to the decision of the Supreme Court in **New India Assurance Company Limited** vs. **Genus Power Infrastructure Limited**[24]. In connection with allegations relating to fraud and coercion, Genus Power contended that the insurance company by exercising coercion compelled Genus Power

24. (2015) 2 SCC 424

to sign certain documents, including pre-prepared discharge vouchers, in which it accepted the claim amount from the insurance company in full and final settlement. Genus Power also contended that it was forced to do so as it was facing extreme financial difficulty and because of coercion it was denied just claim by the insurance company. It was also contended that the insurance company threatened Genus Power to accept the amount in full and final settlement failing which the insurance company will not pay any amount. These were the circumstances pointed out by Genus Power to the Supreme Court regarding the compelling circumstances under which it was forced to sign the acceptance letter.

46. These contentions were not accepted by the Supreme Court. It was held that the plea raised was bereft of any details and particulars and cannot be anything but a bald assertion. The Supreme Court pointed that since there was no protest or demur raised around the time or soon after the letter was signed, the documents cannot be said to have been submitted because of any coercion or undue influence. The Supreme Court pointed out in clear terms that a bald plea of coercion is not enough and the party which sets up such a plea must prima facie establish the same by placing material. The relevant portions of the judgment of the Supreme Court are reproduced below:

> "**3. On 11-3-2011 the respondent signed a detailed letter of subrogation** which was on a stamp paper, accepting Rs. 5,96,08,179 **in full and final settlement of its claim under the policy and** the relevant portion of the said letter dated 11-3-2011 was to the following effect:
>
> To,
>
> New India Assurance Co. Ltd.
> Regional Office
> Nehru Place, Tonk Road,

Jaipur

Dear Sir,

That in consideration of claim amount of Rs. 5,96,08,179 (Rupees five crores ninety-six lakhs eight thousand one hundred seventy-nine only) (hereinafter referred as "claim amount") **as full and final settlement amount of our Claim** No. 330203/11/10/01/00100001 arising under Policy No. 330203/11/09/11/00000018 (hereinafter referred as "policy") covering fire loss of my/our factory situated on Plot No. SPL 3, Sitapur, Industrial Area, Jaipur (hereinafter referred as "factory premises") due to fire that took place in IOC Terminal on 29-10-2009, we hereby subrogate our rights on behalf of M/s. Genus Power Infrastructures Limited, Jaipur (hereinafter referred as "insured") in favour of New India Assurance Co. Ltd. (hereinafter referred as "insurer") *****

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4. After nearly three weeks i.e. on 31-3-2011 the respondent issued a notice to the appellant stating that the discharge voucher was signed under extreme duress, coercion and undue influence exercised by the appellant who took undue advantage of the extreme financial difficulties of the respondent. *****

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7. The question that arises is whether the discharge in the present case upon acceptance of compensation and signing of subrogation letter was not voluntary and whether the claimant was subjected to compulsion or coercion and as such could validly invoke the jurisdiction under Section 11 of the Act. *****

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9. It is therefore clear that a bald plea of fraud, coercion, duress or undue influence is not enough and the party who sets up a plea, must prime facie establish the same by placing material before the Chief Justice/his designate. Viewed thus, the relevant averments in the petition filed by the Respondent need to be considered, which were to the following effect:

> "(g) That the said surveyor, in connivance with the Respondent Company, in order to make the Respondent Company escape its full liability of compensating the Petitioner of such huge loss, acted in a biased manner, adopted coercion undue influence and duress methods of assessing the loss and forced the Petitioner to sign certain documents including the Claim Form. The Respondent Company also denied the just claim of the Petitioner by their acts of omission and commission and by exercising coercion and undue influence and made the Petitioner Company sign certain documents, including a pre-prepared discharge voucher for the said amount in advance, which the Petitioner Company were forced to do so in the period of extreme financial difficulty which prevailed during the said period. As stated aforesaid, the Petitioner Company was forced to sign several documents including a letter accepting the loss amounting to Rs. 6,09,55,406 and settle the claim of Rs. 5,96,08,179 as against the actual loss amount of Rs. 28,79,08,116 against the interest of the Petitioner company. The said letter and the aforesaid pre-prepared discharge voucher stated that the Petitioner had accepted the claim amount in full and final settlement and thus, forced the Petitioner company to unilateral acceptance the same. The Petitioner company was forced to sign the said document under duress and coercion by the Respondent Company. The Respondent Company further threatened the Petitioner Company to accept the said amount in full and final or the Respondent Company will not pay any amount toward the fire policy. It was under such compelling circumstances that the Petitioner company was forced and under duress was made to sign the acceptance letter."

10. In our considered view, the plea raised by the Respondent is bereft of any details and particulars, and cannot be anything but a bald assertion. Given the fact that there was no protest or demur raised around the time or soon after the letter of subrogation was signed, that the notice dated 31.03.2011 itself was nearly after three weeks and that the financial condition of the Respondent was not so precarious that it was left with no alternative but to accept the terms as suggested, we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of

> **exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence.** In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim. Since our answer to the question, whether there was really accord and satisfaction, is in the affirmative, in our view no arbitrable dispute existed so as to exercise power Under Section 11 of the Act. The High Court was not therefore justified in exercising power Under Section 11 of the Act."
>
> **(emphasis supplied)**

47. In **ONGC Mangalore Petrochemicals Ltd.** vs. **ANS Constructions Ltd. and Anr.**[25], the Supreme Court again examined a case where 'No Dues Certificate' had been issued but later on it was alleged that it was given under duress and coercion. The Supreme Court held that there was nothing on the record to prove that the said Certificate was given under duress or coercion and as the Certificate itself provided a clearance of no dues, the contractee could not later on turn around and say that some more payment was still due on account of the loss incurred during the execution of the contract. The Supreme Court observed that the story about duress and coercion was an afterthought and prima facie it could not be established that coercion had been exercised. The Supreme Court also pointed out that mere allegation of coercion is not sufficient in the absence of something more. The relevant portions of the judgment of the Supreme Court are reproduced below:

> "**2.** Respondent 1, the contractee company was awarded a contract for "Site Grading, Construction of Roads, Water Drains and Compound Wall for Aromatic Complex at Mangalore" in Mangalore SEZ by the appellant contractor on 17-3-2008. *****

25. (2018) 3 SCC 373

3. On 21-9-2012, the contractee company submitted a no-dues/no-claim certificate certifying the payment of all the bills and in total settlement of all the claims whatsoever against the contract. Thereafter, on 10-10-2012, the appellant herein the contractor company made a payment of the final bill of Rs. 20.34 crores to the contractee company.

4. Subsequently, on 24-10-2012, the contractee company withdrew letter dated 21-9-2012 for "no-dues/no-claim certificate" stating that it was a prerequisite condition for release of their long due legitimate payment against the work executed under the contract and the same was furnished by the contractee company under duress and coercion of the appellant contractor.

*****

24. **From the materials on record, we find that the contractee-Company had issued the "No Dues/No Claim Certificate" on 21.09.2012, it had received the full amount of the final bill being Rs. 20.34 crores on 10.10.2012 and after 12 days thereafter, i.e., only on 24.10.2012, the contractee-Company withdrew letter dated 21.09.2012 issuing "No Dues/No Claim Certificate**". Apart from it, we also find that the Final Bill has been mutually signed by both the parties to the Contract accepting the quantum of work done, conducting final measurements as per the Contract, arriving at final value of work, the payments made and the final payment that was required to be made. **The contractee-Company accepted the final payment in full and final satisfaction of all its claims.** We are of the considered opinion that in the presents facts and circumstances, the raising of the Final Bill and mutual agreement of the parties in that regard, all claims, rights and obligation of the parties merge with the Final Bill and nothing further remains to be done. Further, the appellant-Contractor issued the Completion Certificate dated 19.06.2013 pursuant to which the appellant-Contractor has been discharged of all the liabilities. **With regard to the issue that the "No-**

> **Dues Certificate" had been given under duress and coercion, we are of the opinion that there is nothing on record to prove that the said Certificate had been given under duress or coercion and as the Certificate itself provided a clearance of no dues, the contractee could not now turn around and say that any further payment was still due on account of the losses incurred during the execution of the Contract. The story about duress was an afterthought in the background that the losses incurred during the execution of the Contract were not visualised earlier by the contractee. As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute.** The conduct of the contractee clearly shows that "no-claim certificate" was given by it voluntarily; the contractee accepted the amount voluntarily and the contract was discharged voluntarily.
>
> Conclusion:
>
> 25. ***** **In our considered view, the plea raised by the contractee-Company is bereft of any details and particulars, and cannot be anything but a bald assertion.** *****."
>
> **(emphasis supplied)**

48. In **Bishundeo Narain and Ors.** vs. **Seogeni Rai and Jagernath**[26], the Supreme Court also observed that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and general allegations are insufficient however strong the language in which they are couched. The relevant portion of the judgment of the Supreme Court is as follows:

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26. 1951 SCR 548

> "**We turn next to the questions of undue influence and coercion.** Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.
>
> **It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion.**"
>
> **(emphasis supplied)**

49. The contention of the learned counsel for the respondents that the importers had been coerced to submit letters has to be examined in the light of the principles enunciated by the Supreme Court in the aforesaid decisions.

50. In the present case, there is nothing on the record which may even remotely suggest that the importers had been coerced into submitting the letters. The importers had not made any grievance before any higher authority of the department that they had been coerced to give the consent/acceptance letters. It is only after the clearance of the goods that the importers filed appeals before the Commissioner (Appeals) challenging the enhancement of the value alleging that they had been coerced into giving consent letters. Statements made by the importers are mere bald statements without any material to substantiate the same.

51. All that has been stated by the importers is that due to urgency of the matter and to mitigate losses, including demurrage charges, they had accepted the enhanced value in the letters. These are mere statements without any specific details. They do not even give the names of the officers of the department who coerced them to submit letters. Even if the importers had been coerced, they should not have subsequently paid customs duty and should have protested. The fact that they paid the customs duty and after the out of charge order was issued, also cleared the goods without any protest is enough to discredit the bald allegation made by the importers.

52. This apart, in the present system of self-assessment post 2011, any query if there is a reasonable doubt by the proper officer with respect to the valuation of goods is put on the Electronic Data Interchange System online. It can be responded by the importers by submitting a proper reply. The importers can either provide evidence to substantiate the proposed value mentioned in the Bills of Entry or deposit the customs duty on the enhanced value proposed by the Assessing Officer either under protest or without protest, if they desire to clear the goods at the earliest and ask for issuance a show cause notice whereafter the proper officer would determine the value in accordance with section 14 of the Customs Act and the 2007 Valuation Rules, in which case the importers would get adequate opportunity to bring on record the correct facts. However, submission of the letters by the importers, precluded the proper officer from proceeding to determine the value under section 14 of the Customs Act and the 2007 Valuation Rules and when the goods have been cleared after payment of differential customs duty and out of charge order, the proper officer,

due to non-availability of the imported goods cannot determine the value. This, therefore, appears to be a well thought of method by the importers to get the valuation determined on the amount indicated in the Bills of Entry without any adjudication and without having to substantiate the transaction value indicated by them in the Bills of Entry.

53. It does transpire from the modus operandi adopted by the importers that they had worked out a well thought of plan to clear the goods at the transaction value indicated by them in the Bills of Entry. When the Assessing Officer doubted the value mentioned in the Bills of Entry, they readily agreed to give consent letters not only stating that the value indicated by them in the Bills of Entry should be rejected and determined in accordance with the enhanced value proposed by the Assessing Officer, but also stated that they would not require a show cause notice to be issued or a speaking order to be passed and subsequently, when the Assessing Officer enhanced the value based on the consent letters given by the importers and the goods were cleared after the differential customs duty was paid and the out of charge order was issued, they filed appeals before the Commissioner (Appeals) raising a grievance that neither the Assessing Officer followed the procedure prescribed under the 2007 Valuation Rules nor was a speaking order passed, in which case the Commissioner (Appeals) would allow the appeal and after setting aside the order of the Assessing Officer enhancing the value, restore the transaction value indicated by the importers in the Bills of Entry. In this way the importers succeed in restoring the value mentioned in the Bill of Entry without any determination by the Assessing Officer of the assessable value. The

allegation regarding coercion, therefore, appears to be a well thought of plan to preclude the Assessing Officer from determining the correct value of the imported goods in accordance with the procedure contemplated under the 2007 Valuation Rules.

54. Learned counsel for the respondents, however, placed emphasis on the judgment of the Supreme Court in **Century Metal Recycling** to contend that letters were submitted by the importers under coercion. The grievance raised by the appellant in the matter before the Supreme Court was that the officers of the customs department almost uniformly do not clear the consignments as per the declared transaction value in the Bill of Entry, but insist that the importers should write a letter agreeing to pay customs duty as per the valuation proposed by the customs authorities and compel them to forego the right to provisional assessment. It is seen from the judgment of the Supreme Court that the letter dated 06.03.2017 that was submitted by the importers stated that the importers were in urgent requirement and wanted clearance of the goods. The judgment also refers to several earlier letters, including letters dated 22.12.2016 and 04.03.2017, that were submitted by the importers to the customs officer requesting clearance of the imported consignment of aluminium scrap on the declared transaction value. The Supreme Court also noticed that the letters also stated that on account of delay in the clearance of the imported consignment, the importers and the sister concerns had been compelled to pay excess duty. It is in such circumstance when these was a considerable delay that the Supreme Court observed that it has to be accepted that the customs authorities had compelled and forced the appellant to furnish the letter dated 06.03.2017. The Supreme Court further observed that since

reasons have to be communicated in terms of rule 12 of the 2007 Valuation Rules before the proper officer can proceed to make assessment under rules 4 to 9 after rejecting the transaction value, the adjudication order was flawed as it did not give good and cogent reasons in terms of section 14(1) of the Customs Act and rule 12 of the 2007 Valuation Rules for rejecting the transaction value as declared in the Bills of Entry. The Supreme Court also observed that that Valuation Alerts are issued by the Director General of Valuation based on the monitoring of valuation trends of sensitive commodities with a view to take corrective measures, but they should not be construed as interfering with the discretion of the assessing authority who has to pass the order in the given factual matrix. The Supreme Court further observed that such matters have to be examined on case to case basis on the basis of the evidence before the authorities and the material placed on record and the enquires conducted by the assessing authority.

55. This judgment of the Supreme Court in **Century Metal Recycling** would not be applicable to the facts of the present case. In the first instance, the letters submitted by the importers in the present case do not state that the importers were in urgent requirement and wanted clearance of the goods, nor any letters had been sent prior to the letters in issue. The finding recorded by the Supreme Court in **Century Metal Recycling** was based on the facts of that particular case, as has also been noted by the Supreme Court, namely that there was a delay by the customs officers after the submission of the Bills of Entry.

56. In the present case, the importers had very categorically stated that the value indicated in the Bills of Entry should be rejected under

rule 12 of the 2007 Valuation Rules and the value indicated by them should be taken as the value determined under rule 9 of the 2007 Valuation Rules. The importers also specifically mentioned that for this reason, a show cause notice may not be issued to them nor a speaking order should be passed.

57. The following chart will also indicate that there is a gap of hardly ten days from the date of filing of the Bills of Entry and the date of out of charge order. Between the two dates, the importers had also to pay the customs duty.

Sr. No.	Appeal No	Bill of Entry Date	Out of Charge Date
1	C/51976/2019	24.09.2018	04.10.2018
2	C/51977/2019	24.09.2018	04.10.2018
3	C/51978/2019	05.10.2018	12.10.2018
4	C/51979/2019	05.10.2018	11.10.2018
5	C/51980/2019	05.10.2018	11.10.2018
6	C/51981/2019	05.10.2018	15.10.2018
7	C/51982/2019	10.10.2018	23.10.2018
8	C/51983/2019	10.10.2018	23.10.2018
9	C/51984/2019	12.10.2018	20.10.2018
10	C/51985/2019	13.10.2018	20.10.2018
11	C/51986/2019	13.10.2018	20.10.2018
12	C/51987/2019	27.10.2018	05.11.2018
13	C/51988/2019	05.10.2018	12.10.2018
14	C/51989/2019	05.10.2018	11.10.2018
15	C/51990/2019	27.10.2018	31.10.2018
16	C/51991/2019	15.10.2018	31.10.2018
17	C/51992/2019	26.10.2018	31.10.2018
18	C/51993/2019	24.10.2018	31.10.2018
19	C/51994/2019	05.11.2018	13.11.2018
20	C/51995/2019	05.11.2018	13.11.2018
21	C/51996/2019	27.10.2018	05.11.2018
22	C/51997/2019	29.09.2018	04.10.2018
23	C/51998/2019	26.09.2018	04.10.2018
24	C/51999/2019	29.09.2018	04.10.2018

25	C/52000/2019	29.09.2018	05.10.2018
26	C/52001/2019	29.09.2018	04.10.2018
27	C/52002/2019	29.09.2018	04.10.2018
28	C/52003/2019	03.10.2018	05.10.2018
29	C/52004/2019	20.09.2018	01.10.2018
30	C/52005/2019	20.09.2018	25.09.2018
31	C/52006/2019	22.09.2018	01.10.2018
32	C/52007/2019	22.09.2018	04.10.2018
33	C/52008/2019	24.09.2018	29.09.2018
34	C/52009/2019	29.09.2018	04.10.2018
35	C/52010/2019	29.09.2018	04.10.2018
36	C/52011/2019	29.09.2018	04.10.2018
37	C/52012/2019	04.10.2018	10.10.2018
38	C/52013/2019	04.10.2018	11.10.2018
39	C/52014/2019	04.10.2018	09.10.2018
40	C/52015/2019	17.10.2018	31.10.2018
41	C/52016/2019	15.10.2018	20.10.2018
42	C/52017/2019	13.10.2018	20.10.2018
43	C/52018/2019	10.10.2018	23.10.2018
44	C/52019/2019	09.10.2018	20.10.2018
45	C/52020/2019	05.10.2018	12.10.2018
46	C/52021/2019	05.10.2018	11.10.2018
47	C/52022/2019	05.10.2018	11.10.2018
48	C/52023/2019	04.10.2018	09.10.2018
49	C/52024/2019	05.11.2018	13.11.2018
50	C/52025/2019	05.11.2018	13.11.2018
51	C/52026/2019	05.11.2018	13.11.2018
52	C/52027/2019	06.11.2018	13.11.2018
53	C/52028/2019	06.11.2018	13.11.2018
54	C/52029/2019	06.11.2018	13.11.2018
55	C/52030/2019	02.11.2018	13.11.2018
56	C/52031/2019	05.11.2018	13.11.2018
57	C/52032/2019	05.11.2018	13.11.2018

58. It is, therefore, not possible to accept the submission made by the learned counsel for the respondent that the importers were coerced into giving their consent/acceptance.

59. Learned counsel for the respondents also contended that the value that has been arrived at is on the basis of LME price of prime metal minus the discount given in the Director General Valuation Circular and, therefore, it can said that the enhancement value is not on the basis of contemporaneous import data but on the basis of LME price.

60. This contention of learned counsel for the respondents cannot also be accepted. In the letters written by the importers, they clearly stated that the contemporaneous data was shown to them and they readily accepted the value proposed by the department. Once having accepted the value proposed by the Assessing Officer, it is not open to the importers to now contend that the value should be determined by a method contemplated under the 2007 Valuation Rules. Reliance placed by the learned counsel for the respondents on the decision of the Tribunal in **Guru Rajendra Metalloys** is, therefore, mis-placed. The Tribunal was not dealing with a case where the importers had submitted consent/acceptance letters.

61. The contention of the learned counsel for the respondents that since the importers were not furnished with data relating to enhancement of the value, principles of natural justice had been violated has to be rejected for the reason that in the letters submitted by the importers it has been stated that they had **"**gone through and understood the details of contemporaneous imports of similar/identical goods, as informed by the customs department and we accept that the value declared by us is lower than the value at which identical/similar goods have been imported at or about the same time in comparable quantities and in comparable commercial transaction were assessed at other ports of the country**"**.

62. Learned counsel appearing for the respondents also placed reliance upon certain decisions passed by the Tribunal to contend that the transaction value has to be first rejected and thereafter the assessing officer can re-assess with reasons and in accordance with the provisions of the 2007 Valuation Rules.

63. The decisions of the Tribunal in **Agarwal Foundries (P) Ltd.** vs. **Commissioner of Customs**[27], **Topsia Estates Pvt. Ltd.** vs. **Commr. of Cus. (Import-Seaport), Chennai**[28] and **Commissioner of Customs, New Delhi** vs. **Nath International**[29] on which reliance has been placed by the learned counsel for the respondents merely hold that the department cannot reject the declared value and assess the goods as per the NIDB data.

64. Learned counsel for the respondents also submitted that merely because the enhancement value was arrived at on the basis of letters submitted by the importers would not mean that the statutory right of appeal available to the importers under section 128 of the Customs Act can be denied.

65. It is true that the right of appeal cannot be curtailed and the importers can certainly file appeals, but the issue that arises for consideration is whether after having themselves rejected the value mentioned in the Bills of Entry and after having also mentioned that the re-determined value under rule 9 of the 2007 Valuation Rules was acceptable to them, can the importers raise this issue in the appeals. It is difficult to accept the contention of learned counsel for respondent that despite having accepted the enhanced value in very categorical

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27. 2020 (371) E.L.T. 859 (Tri.-Hyd.)
28. 2015 (330) E.L.T. 799 (Tri.-Chennai)
29. 2013 (289) E.L.T. 305 (Tri.-Del.)

terms in the letters, the importers can still challenge the enhancement of the value and contend that it has not been properly determined under the 2007 Valuation Rules.

66. It is well settled that what is admitted is not required to be proved by the department. This issue has been settled by the Supreme Court in **Systems & Components** and the relevant portion of the judgment of the Supreme Court is reproduced below:

> "5. **The Appeal filed by the Department has been disposed of by the Tribunal by holding that the Department has not proved that these parts were specifically designed for manufacture of Water Chilling Plant in question.** The Tribunal has noted the Technical details supplied by the Respondents and the letter of the Respondents dated 30th November, 1993 giving details of how these parts are used in the Chilling Plant. The Tribunal has still strangely held that this by itself is not sufficient to show that they are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning. **Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved.**"
>
> **(emphasis supplied)**

67. This apart, in view of the judgments of the Supreme Court in **ONGC Mangalore Petrochemicals**, **New India Assurance** and **Bishundeo Narain**, the importers cannot be permitted to challenge the enhancement of the value by the Assessing Officer.

68. Learned counsel for the respondents contended that all the 57 appeals should be dismissed for the reason that the amount involved in each of the appeals is below the threshold limit for filing appeals in

terms of the Central Board of Indirect Taxes and Customs Instructions dated 17.08.2011, as amended on 30.12.2016.

69. This issue was considered at length by the Tribunal and by an order dated 21.03.2024 it was rejected and it was ordered that the appeals would be heard on merits.

70. Learned counsel for the respondents has placed the order dated 01.07.2024 passed by the Delhi High Court in CUSAA 57/2024 (M/s. CMR Nikkei India Pvt. Ltd. vs. Commissioner of Central Excise and Customs, Central Goods & Service Tax, Jaipur-I) and CUSAA 58/2024 (M/s. Century Metal Recycling Ltd. vs. Commissioner of Central Excise and Customs, Central Goods & Service Tax, Jaipur-I). In the two appeals before the Delhi High Court, the order dated 21.03.2024 passed by the Tribunal was assailed. The order dated 01.07.2024 passed by the Delhi High Court in the two appeals is reproduced below:

> "1. These two appeals impugn orders passed by the Customs, Excise and Service Tax Appellate Tribunal ['Tribunal'] negativing a challenge raised to the maintainability of the appeals instituted by the Department on the ground of low tax effect. We note that apart from the above the Tribunal is also examining the right of the appellants to have instituted appeals against the orders of assessment which came to be framed pursuant to Section 17(5) of the Customs Act, 1962 ['Act'].
>
> 2. While we are aware of identical questions forming part of CUSAA 27/2022, in our considered opinion since the orders impugned herein presently deals only with the maintainability question, there would be no justification to entertain them at this stage, since all rights of the petitioner would stand reserved to assail any order adverse to them if drawn by the Tribunal including on the ground of maintainability.

> 3. Accordingly, and while reserving the right of the appellants to assail any final orders that may be passed by the Tribunal, we dispose of these appeals at this stage."

71. This contention raised by the respondent, having already been decided, is not required to be decided again. It would be open to the respondents to raise this issue, if any order adverse to them is passed.

72. Thus, for the reasons stated above, the order dated 05.04.2019 passed by the Commissioner (Appeals) allowing the 57 appeals deserves to be set aside and is set aside. All the 57 appeals filed by the department are, accordingly, allowed and the enhancement in the value of the imported goods by the Assessing Officer is maintained. Cross Objection No. 50146 of 2021 filed by Century Metal and Cross Objection No. 50147 of 2021 filed by CMR Nikkei are rejected.

(Order pronounced on **19.08.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Shreya