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CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH, COURT NO. 4

CUSTOMS APPEAL NO. 3 OF 2011

[Arising out of Order-in-Original No. 47/2010 dated 08.10.2010 passed by the Commissioner of Customs ICD, Tughlakabad, New Delhi]

M/S JAVERIA IMPEX INDIA PVT. LTD., **Appellant**

D-21, DDA Colony
West Gorakh Park Extn.,
New Zafarabad, Shahdara,
Delhi

Vs.

COMMISSIONER OF CUSTOMS (ICD) NEW DELHI **Respondent**

Tughlakabad, New Delhi

AND

CUSTOMS APPEAL NO. 4 OF 2011

CUSTOMS MISCELLANEOUS APPLICATION NO. 50182 OF 2020

[Arising out of Order-in-Original No. 47/2010 dated 08.10.2010 passed by the Commissioner of Customs ICD, Tughlakabad, New Delhi]

MOHD. QASIM KHAN AUTHORIZED REPRESENTATIVE OF M/S JAVERIA IMPEX INDIA PVT LTD. **Appellant**

D-21, DDA Colony,
West Gorakh Park Extn.,
New Zafarabad, Shahdara,
Delhi

Vs.

COMMISSIONER OF CUSTOMS (ICD) NEW DELHI, TUGHLAKBAD, NEW DELHI **Respondent**

Appearance:

Present for the Appellant : Shri Vaibhav Singh, Advocate
Present for the Respondent Shri Rakesh Kumar, Authorised Representative

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 51525-51526 /2023

Date of Hearing : 25/07/2023
Date of Decision : 08/11/2023

P V SUBBA RAO:

These two appeals were originally remanded by this Tribunal by Final Order dated 21.6.2017 along with twenty more appeals to the original authority for a fresh decision in view of the judgment of the Delhi High Court in **Mangli Impex Ltd. vs UOI**[1] setting aside the retrospective applicability of section 28(11) of the Customs Act, 1962[2] which judgment was stayed by the Supreme Court[3]. The original authority was directed by the Final Order of this Tribunal to maintain status quo until the final decision of the Supreme Court in the case of **Mangli Impex** and then decide**.**

2. On Revenue's appeal, Delhi High Court, by its Order dated 27.8.2019, set aside the Final Order of the Tribunal dated 21.6.2017, and remanded this appeal to this Tribunal with direction to decide the matter on merits uninfluenced by the judgment in **Mangli Impex.** The question before Hon'ble High Court in **Mangli Impex** was if, by virtue of Section 28(11), the officers of DRI and others were retrospectively empowered to issue notices for demand of duty under section 28. Subsequently, there was another judgment by the Supreme Court in **Canon India** deciding the question of competence of officers of DRI to issue an SCN under section 28 and the Review Petition filed by the Revenue against the judgment is pending before the

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1 2016 (335) ELT 605 (Del)
2 Act
3 2016(339) ELT A.49 (SC)

Supreme Court. Further, in the Finance Act, 2022, some retrospective amendments were also made to empower officers of DRI and others to issue notices under section 28 of the Customs Act. The *vires* of these amendments are also said to be challenged before the Supreme Court.

3. However, in this case, both sides wanted to argue the matter only on merits and hence the question of jurisdiction of the officer two issued the Show Cause Notices[4] has not been argued nor are we examining it.

4. M/s. Javeria Impex India Pvt. Ltd.[5], the appellant in Customs appeal no. 3/2011, is aggrieved by the Order in Original[6] dated October 8, 2010 whereby differential duty was demanded on the goods imported by it under two Bills of Entry dated 09.02.2009 and 17.02.2009 (hereinafter called current Bills of Entry) and five past Bills of Entry; the goods imported under the current Bills of Entry were confiscated but were allowed to be redeemed on paying redemption fine; and penalties were imposed on it. Shri Mohd. Qasim Khan[7], authorised representative of the importer filed Customs Appeal No. 4/2011 assailing the personal penalty of Rs. 15,00,000/- imposed on him by the impugned order. The operative part of the impugned order is as follows:

<u>ORDER</u>

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4 SCN
5 Importer
6 Impugned order
7 Qasim

“(a) The declared transaction value amount to Rs.62,64,795/- of imported goods covered under Bills of Entry Nos. 7668815 dated 17.02.09, 766759 dated 09.02.09, 760587 dated 14.01.09, 746857 dated 17.11.08, 725687 dated 30.08.08, 708103 dated 04.07.08 and 698659 dated 28.05.08 is rejected under Section 14 of Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is re-determined at Rs.2,56,48,356/- (Two crore fifty six lacs forty eight thousand three hundred fifty six only) under Section 14 read with Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(b) The seized goods valued at Rs.48,36,860/- pertaining to Bill of Entry No.766759 dated 09.02.09 are confiscated under Section 111(m) of the Customs Act, 1962. Since the seized goods have already been provisionally released to the importer on furnishing of bond equal to the value of goods supported by 15% bank guarantee, I impose redemption fine of Rs. 10,00,000/- (Ten lacs only) in lieu of confiscation under Section 125 of Customs Act, 1962. The bank guarantee furnished by the importer stands appropriated towards payment of redemption fine.

(c) The seized goods valued at Rs.63,09,086/- pertaining to Bill of Entry No.768815 dated 17.02.09 are confiscated under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine of Rs.12,50,000/- (Rs. Twelve lacs fifty thousand only).

(d) Since the goods covered under Bill of Entry No.766759 dated 09.02.09 have already been provisionally released to the importer on payment of duty of Rs.11,55,761/- (Rs. Eleven lacs fifty five thousand seven hundred sixty one only) on enhanced value, I appropriate the said amount towards payment of duty on the re-determined value.

(e) The goods valued at Rs.1,45,02,410/- (One crore forty five lacs two thousand four hundred ten only) covered under Bills of Entry Nos. 760587 dated 14.01.09, 746857 dated 17.11.08, 725687 dated 30.08.08, 708103 dated 04.07.08 and 698659 dated 28.05.08 are also liable for confiscation under Section 111(m) of Customs Act, 1962. However, as these are not available, I impose redemption fine of Rs.30,00,000/- (Rs. Thirty lacs only) in lieu of confiscation under Section 125 of Customs Act, 1962.

(f) The differential duty amounting to Rs.51,73,595/- pertaining to seven Bill of Entry 7668815 dated 17.02.09, 766759 dated 09.02.09, 760587 dated 14.01.09, 746857 dated 17.11.08, 725687 dated 30.08.08, 708103 dated 04.07.08 and 698659 dated 28.05.08, is hereby confirmed. The importer is directed to discharge duty liability alongwith statutory interest under Section 28AB of Customs Act, 1962.

(g) I impose a penalty of Rs.59,76,148/- (Rs.Fifty nine lacs seventy six thousand one hundred forty eight only) representing equal amount of duty plus interest on M/s.Javeria Impex India Pvt. Ltd., D-21, DDA Colony, West Gorakh Park Extn., New Zafrabad, Shahdara, Delhi under Section 114A of Customs Act, 1962. In case the importer avails the option of payment of duty alongwith interest and penalty as determined under sub-section (2) of section 28 of the Customs Act, 1962 within thirty days from the date of the communication of the order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty or interest.

(h) I impose a penalty of Rs.15,00,000/- (Rs.Fifteen lacs only) on Sh. Mohd. Qasim Khan, authorized signatory of M/s.Javeria Impex India Pvt. Ltd under Section 112(a) of Customs Act, 1962."

5. The importer imported electric motors from China and filed two Bills of Entry dated February 9, 2009 and February 17, 2009 (current Bills of Entry). The Special Intelligence and Investigation[8] of the Custom House, Inland Container Depot, Tughlakabad received intelligence that the motors so imported were under-valued. Acting on this intelligence, they were examined in detail. As declared in the invoice and packing list, the 886 motors were found in the consignment of Bill of Entry dated 09.02.2009 and 408 motors were found in the consignment of Bill of Entry dated 17.02.2009 but their values appeared to be too low. The importer was asked for evidence to

8 SIIB

support their values but it could not produce anything other than the invoices.

6. The values of these goods were compared with the values of similar goods imported through several ports across the country as available in the National Import Database[9] and it was found that the declared values were quite low. Therefore, a Chartered Engineer Shri Pankaj Gupta was asked to inspect the goods and give his opinion on the value of the goods and he did so. The values determined by the Chartered Engineer were similar to the values found in the NIDB. Model wise details of the Unit value of the motors declared in the Bill of Entry, the value of similar goods available in the NIDB and the value determined by the Chartered Engineer were tabulated and were annexed as Annexure A1 and Annexure B1 to the SCN. For instance, in respect of motor Model Y2 802-4 (0.75KW), the unit value declared in the Bill of Entry dated 09.02.2009 was Rs. 590/- while the value of the similar goods as per NIDB was Rs. 2,470/- and the value determined by the Chartered Engineer is Rs. 2,225/-. Similarly, for Motor Model No. Y 2 225FS-4 (37KW) imported through Bill of Entry dated 17.02.2009 the declared value was Rs. 5,668/- while the value of similar goods in NIDB was Rs. 32,827/- and the value determined by the Chartered Engineer was Rs. 30,000/-. Similar large variations were found in the values of all the other motors.

7. Therefore, the goods imported under the two Bills of Entry were suspected to be undervalued and hence liable to

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9 NIDB

confiscation under the Act and were seized under section 110 of the Act but they were later released provisionally on execution of bonds and bank guarantees.

8. The officers of SIIB also scrutinized five of the past Bills of Entry of similar goods imported by the appellant between 28.5.2008 and 14.1.2009 which had already been cleared and they came to the conclusion that they were also similarly undervalued and accordingly, the values of the goods imported under the five Bills of Entry and the corresponding values of similar goods under the NIDB database were tabulated as Annexures C, D, E,F and G to the SCN.

9. Statements of Shri Qasim were recorded under section 108 of the Act on 24.2.2009,25.2.2009 and 24.3.2209. In his statements with respect to the Bill of Entry dated 9.2.2009, he said that the declared value was Rs. 11,85,733/- compared to the value of Rs. 48,36,860/- of contemporaneous imports as per the NIDB data. He made a similar statement with respect to the Bill of Entry dated 17.2.2009. He said that these variations were due to the fact that the motors which it imported were of inferior quality and also because there was recession in the market. He requested that the value may be got assessed by some expert and that he was ready to pay the differential duty and that he wanted to avoid demurrages and did not want any SCN or personal hearing and the matter may be decided at the earliest.

10. Accordingly, the imported goods in the two Bills of Entry were evaluated by Shri Pankaj Gupta, Chartered Engineer. The

NIDB data and the evaluation of the imported goods by the Chartered Engineer were explained to Shri Qasim and in his statements dated 25.2.2009 and 24.3.2009, he voluntarily agreed to pay the differential duty and also said that he did not want any SCN or personal hearing. Regarding the past clearances also, he said that he had imported five or six consignments in the past and was ready to pay the differential customs duty on them as well, if any.

11. As per Rule 5(3) of the Customs Valuation (Determination of Value of imported goods) Rules, 2007[10] of the values of the contemporaneous imports of similar goods available in the NIDB database, the lowest value for each good imported was considered and the differential duty worked out. Although the appellant waived the SCN and the personal hearing with respect to re-assessment of the imported goods, the SCN was issued proposing recovery of differential duty for the two current and five past Bills of Entry, confiscation of the seized goods of the two current Bills of Entry (which were provisionally released) and imposition of penalties.

12. After considering the replies to the SCN, holding personal hearings and allowing the Chartered Engineer to be cross-examined by the appellant, the impugned order was passed.

13. Aggrieved, the appellants filed these appeals. On behalf of the appellants, the following submissions were made:

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10 Rules

13.1 The impugned order is illegal, void and not sustainable either on facts or in law.

13.2 After the SCN was issued, the appellant obtained, under the Right to Information Act[11], copies of some Bills of Entry dated 13.5.2009, 29.7.2009, 14.6.2010 and 30.8.2009 under which the goods were cleared at by the department after loading 25% on the declared value. The values at which the goods were assessed by the department in these Bills of Entry were lower than what was proposed in the SCN in this case.

13.3 The Commissioner of Customs wrongly rejected the declared value under Rule 12 and no proof of contemporaneous import of similar goods at higher values was relied upon. The expert opinion is vague and is not based on any proof of similar import at higher values.

13.4 There was no admission of higher values by the appellant in the two statements made. No hawala payment or direct or indirect payment other than the declared value was noticed to substantiate the charge of mis-declaration of value by the department. Therefore, the allegation of mis-declaration is arbitrary and whimsical.

13.5 The adjudicating authority did not produce any evidence showing the alleged relied upon NIDB data. The department did not produce catalogues of the goods imported in the contemporaneous imports whose values were relied upon for re-

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11 RTI

assessment so that the appellant could compare the specifications.

13.6 In the absence of detailed information such as Bills of Entry, invoices, examination reports, etc. of all the cases whose values were relied upon, re-assessment based on such values is not correct.

13.7 NIDB data is not fool proof evidence as held in **Commissioner of Customs, vs Modern Overseas**[12]

13.8 The adjudicating authority did not give any finding on the decision of **Inquir Inc vs Commissioner of Customs, Chennai**[13] in which the Chartered Engineer's certificate was rejected as it was vague.

13.8 The Commissioner has wrongly confirmed the demand in respect of five past Bills of Entry based on NIDB data relying on the statement of the appellant dated 25.2.2009. In his statement, the appellant had not accepted any value in respect of the past Bills of Entry. He only stated that they had imported some goods in the past under five Bills of Entry but that he did not have the details at that time and that he was willing to pay duty liability, if any, for those goods. The department did not produce any evidence of mis-declaration/suppression of facts in respect of these past Bills of Entry. The SCN dated 21.8.2009 was therefore, wrongly issued invoking extended period of limitation in respect of these five past Bills of Entry. All these five Bills of Entry were assessed by the officers on the basis of

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12 2005(184) ELT 65 (Trib-Del)
13 2004(170) ELT (Tri-Bangalore)

declaration by the appellant in the Bills of Entry and the after examination of the goods. In one of the Bills of Entry numbered 760587 dated 14.1.2009, the goods were assessed by enhancing the value by 25%. It is evident that the department had all the NIDB data in its possession at that time. There is now, therefore, no basis to re-assess these Bills of Entry by loading 300% value at this time.

13.9 Since the value of the goods in the current imports should not have been rejected, there is also no case to confiscate them under section 111(m). Consequently, there is no case to impose penalty under sections 114A and 112(a).

13.10 The impugned order may be set aside and the appeal may be allowed with consequential relief to the appellant.

14. On behalf of the Revenue, the following submissions were made:

14.1 The issue pertains to undervaluation of the imported goods. The values declared in the two current Bills of Entry were compared with the NIDB data and with the reports of an expert report and were found to be quite low. Investigation was initiated and statements of Shri Qasim were recorded on 24.2.2009, 25.2.209 and 24.3.2009 under section 108 of the Customs Act. In these statements, which have not been retracted till date, the appellant accepted the re-determination of values.

14.2 The values of contemporaneous imports of goods were comparable to the values determined by the Chartered Engineer. The differential duty was calculated accordingly.

14.3 The values of the goods imported under the five past Bills of Entry were also determined accordingly.

14.4 Once the appellant accepted the enhanced value in writing, it was binding on both sides as per section 147. In fact, there was not even a need to issue any speaking order as per section 17(5) of the Act.

14.5 There was no forced acceptance of the valuation based on the NIDB data. If the appellant did not agree to the re-determination of value, it did not have to accept the proposed value or it could have paid duty under protest. If the appellant wanted to get the goods cleared while not accepting the values proposed by the department, it could have also got the goods provisionally assessed pending finalization of assessment. If it wanted to avoid demurrages, it could have got the goods shifted to a Customs bonded warehouse under section 49.

14.6 The appellant's contention that the rejection of the transaction value under Rule 12 was not correct holds no water. The values declared in the Bills of Entry were doubted because they were far lower than the values of the contemporaneous imports available in the NIDB. When these were shown, the appellant accepted valuation on the basis of the NIDB data. Therefore, rejection of the transaction value as per Rule 12 is absolutely correct.

14.7 The appellant's contention that valuation should have been done as per Rule 3 is not correct because, Rule 3 is subject to

Rule 12 under which the transaction value can be rejected as has been done in this case.

14.8 As held by the Hon'ble Supreme Court in **Central Excise Madras vs Systems and Components Pvt. Ltd.**[14]**,** once valuation has been accepted, it need not be proved.

14.9 The appellant cannot be allowed to play a cat & mouse game with the Revenue as held by the Tribunal in **Commissioner vs AR Fabrics**[15]**.**

14.10. In **Commissioner of Customs vs Hanuman Prasad and sons**[16]**,** it was held that once the values determined by the officers have been accepted, they cannot be questioned later.

14.11 In **Commissioner of Central Excise, Madras vs Systems & Components Pvt. Ltd.**[17]**,** Hon'ble Supreme Court held that *It is a basic and settled law that what is admitted need not be proved.*

15. Learned departmental representative prayed that the appeals may, therefore, be dismissed.

16. We have considered the submissions on both sides and perused the records. The following issues need to be decided:

a) Is the rejection of the transaction value of the two current Bills of Entry under Rule 12 and its re-determination by the Commissioner and confirmation of the demand of differential duty sustainable?

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14 2004(165(ELT 136 (SC)
15 Final Order No. 51856/2019 dated 19.7.2019
16 Manu/CE/0151/2020
17 2004(165)ELT 136(SC)

b) Is the rejection of transaction value and its re-determination and confirmation of demand in respect of the five past Bills of Entry sustainable?

c) Is the confiscation of the goods imported in the two Bills of Entry and their release on payment of redemption fine, sustainable?

d) Is the order holding the goods imported under the five past Bills of Entry liable to confiscation and imposition of redemption fine since they were not available, sustainable?

e) Is the imposition of penalty on the importer under section 114A sustainable?

f) Is the imposition of penalty on Shri Qasim under section 112(a) sustainable?

Rejection of transaction value and re-determination of value in respect of the two current Bills of Entry

17. The case of the appellant is that the goods should be valued as per transaction value as per Rule 3 as there is no evidence of any payment through Hawala or any other direct or indirect payment by the importer to the overseas seller and no evidence to this effect was put forth by the Revenue. It is also its case that the appellant accepted the values proposed by the Revenue to avoid demurrages and ensure quick clearance. It is further its assertion that it has not been provided with copies of the Bills of Entry, invoices, catalogues, etc. whose values were used to reject its transaction value and therefore, there is no

comparison of the value of the goods. It also asserts that the Chartered Engineer's certificate is vague and should have been rejected.

18. The case of the Revenue is that once the appellant accepted in writing the proposed transaction value based on the NIDB data, it cannot be permitted to play cat and mouse game and now (after goods have been cleared) dispute the very values which it had accepted in writing. It is also the case of the Revenue that what is accepted, need not be proved. In fact, as per Section 17(5), neither an SCN nor even a speaking order was required in this matter insofar as the re-assessment of the goods imported under the current Bills of Entry was concerned. The SCN and the impugned order was issued only because it was also proposed to re-assess the past Bills of Entry and recover differential duty under section 28 and also because goods confiscation of goods and imposition of penalties were considered.

19. We have considered these submissions. Before examining the facts of this case, we examine the relevant legal provisions, viz., Section 14 of the Act and the Rules. Duties of customs are levied on goods imported into and exported from India at the rates specified in the Schedules to the Customs Tariff Act, 1975. On some goods, the levy is based on quantity (specific duty) and other goods, it is based on value (ad valorem). If the duty is to be levied based on value, valuation for the purpose has to be done as per Section 14 which reads as follows:

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 that such transaction value in the case of imported goods shall **include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges** to the extent and in the manner specified in the rules made in this behalf:

Provided further that the **rules** made in this behalf **may provide for,-**

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

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or **price is not the sole consideration for the sale or in any other case**;

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

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation . - For the purposes of this section -

(a) rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b)"foreign currency" and ''Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999)

20. The non-obstante clause in sub-section 2 of section 14 gives the Board the power to fix tariff values for any class of goods and if fixed, the tariff value will be the value to determine the duty. This sub-section is not relevant to this case. In all other cases, the value to be reckoned for calculating the Customs duty shall be the transaction value subject to five conditions:

a) Buyer and seller are not related.
b) Price is for delivery at the time and place of importation, i.e., all costs up to the point of import are to be included. For instance, if the sale is on Free on Board basis, the costs of transportation to the place of import, transit insurance, etc. will have to be added.
c) Price is the sole consideration for sale.
d) Some amounts indicated in the first proviso to sub-section 1 of section 14 must be included.
e) Valuation will be as per any other conditions as may be specified in the Rules.

21. Thus, the default position is that the valuation has to be done on the basis of the transaction value and not based on any fixed value. The first proviso to sub-section 1 of section 14 provides for some additions to the transaction value which are not relevant for the present case. The second proviso to this sub-section provides for Rules to be made in this behalf to provide for:

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

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

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

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

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

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

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

23. Rule 3 further provides that if the valuation cannot be done under that Rule, i.e., as per the transaction value with additions as per Rule 10, then **it must be done sequentially under**

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

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

a) If a **tariff value** is fixed by the Board, it is the value (sub-section 2 of Section 14);

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

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

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

e) If transaction value is rejected and there is no value of identical goods or similar goods, value must be determined through **Deductive method** (Rule 7)

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

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

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

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

> **12. Rejection of declared value. -**
>
> (1) When the proper officer **has reason to doubt the truth or accuracy of the value declared** in relation to any imported goods, he **may ask the importer of such goods to furnish further information including documents or other evidence** and if**, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt** about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.
>
> (2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).
>
> **Explanation.**-(1) For the removal of doubts, it is hereby declared that:-
>
> > (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.
> >
> > (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.
> >
> > (iii) **The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -**
> >
> > > **(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;**
> > >
> > > (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
> > >
> > > (c) the sale involves special discounts limited to exclusive agents;
> > >
> > > (d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
> > >
> > > (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

25. Thus, if the officer has **reason to doubt** the truth and accuracy of the transaction value, he can call for information including documents and evidence. If the information and evidence is presented and after examining it or if no information or evidence as called for is presented, if the proper office has **reasonable belief** then it shall be deemed that the value cannot be determined as per Rule 3 (i.e., based on transaction value with additions, if necessary). While the officer can, **in the first place call** for information and evidence if he **has reason to doubt**, at the second stage, he should have not just some reason to doubt but a **reasonable doubt.** If he has such reasonable doubt, then the transaction value can be rejected. The grounds on which the proper officer may raise doubts about the truth and accuracy of the transaction value have been illustrated in explanation 1 (iii) to Rule 12. The list is inclusive and not exhaustive.

26. In this case, the officers received intelligence that the motors imported by the appellant were under-valued. Acting on this intelligence, the goods were examined in detail and they were found as declared in the two Bills of Entry but their values appeared to be too low. The importer was asked for evidence to support their values but it could not produce anything other than the invoices. The declared values were compared with the values of similar goods imported through several ports across the country as available in the NIDB and it was found that the declared values were, indeed, quite low. A Chartered Engineer

Shri Pankaj Gupta was asked to inspect the goods and give his opinion on the value of the goods and he did so. The values determined by the Chartered Engineer were similar to the values found in the NIDB.

27. In this factual matrix when the officers had, in the first place, a reason to doubt the truth or accuracy of the transaction value. They called for further information from the importer but it could only supply the invoices to support its claim of the invoice value. Therefore, the officers had correctly crossed the first stage of 'reason to doubt' provided in Rule 12.

28. Statements of Shri Qasim were recorded under section 108 of the Act on 24.2.2009, 25.2.2009 and 24.3.2209. With respect to the Bill of Entry dated 9.2.2009, he said that the declared value was Rs. 11,85,733/- compared to the value of Rs. 48,36,860/- of contemporaneous imports as per the NIDB data. He made a similar statement with respect to the Bill of Entry dated 17.2.2009. He said that these variations were due to the fact that the motors which it imported are of inferior quality and that there was recession in the market. He requested that the value may be got assessed by some expert and that he was ready to pay the differential duty and that he wanted to avoid demurrages and did not want any SCN or personal hearing and the matter may be decided at the earliest. The goods were got assessed by the Chartered Engineer who also assessed the value of the goods similar to the values found in the NIDB. Therefore, the officers successfully crossed the second stage of 'reasonable doubt' under Rule 12 to reject the transaction value. We also find

that in his statements, Shri Qasim specifically agreed to the valuation and agreed to pay the differential duty. In his statement dated 24.2.2009, he, interalia, stated:

> … I further state that assessable value worked on the basis of the NIDB data may be correct and my declared prices are already on higher side and **in order to arrive at the fair reasonable assessable value I request you that the valuation of my imported goods may also be got done from some expert in this regard as there is a great difference in the prices declared by me and the value compiled on the basis of the NIDB data. I further state that I am ready to pay duty whatever fair assessable value is worked out.** I further submit that due to heavy demurrages and other charges my case may be decided at the earliest and a lenient view may be taken and I also submit that **I do not want any show cause notice or personal hearing in this matter**.
>
> **(emphasis supplied)**

29. The appellant while agreeing to the valuation and waiving the SCN and personal hearing also sought that the goods may also be got examined by an expert. The goods had already been examined by a Chartered Engineer who submitted his report dated 23.2.2009. Another statement of Shri Qasim was recorded on 25.2.2009 in which he was shown the Chartered Engineer's certificate as well as the charts showing the values as per the NIDB data. In his statement, he, inter alia, stated as follows:

> .. I have been shown the chart prepared by the Customs officials on the basis of the Chartered Engineer report according to which the value of the imported goods is Rs. 44,01,050 and the Customs duty on this value comes to Rs. 10,51,625/- I have seen the Chartered Engineer certificate Ref no. PG/CRT/424/IMP/2008-09 dated 23.02.2009 and I have signed the same in token of its correctness. **I have also been shown the chart prepared by the Customs officers on the basis of NIDB data as per the chart the assessable value of my imported goods i.e., 886 pieces of assorted electrical**

motors of different KVA vide Bill of Entry No 766759 dated 9.2.09 has been worked out to Rs. 48,36,860/- and the customs duty has been worked out to Rs. 11,56,761/-. I have also signed the statement in token of its correctness.

I further state that the value as per the NIDB chart is correct and I am ready to pay Customs duty on this value as the margin of difference in the NIDB data and Chartered Engineer is very less and according to me the assesseable value of Rs. 48,36,860/- and the duty on this value Rs. 11, 56,761/- is fair assessable value and I will deposit the same within two-three days......

I further state that in the past I have imported the same goods by 2-3 Bills of Entry from China. At present I am not having the details, I am ready to pay Customs duty for the same if any.

(emphasis supplied)

30. Another statement was recorded on 24.3.2009 in which Shri Qasim, inter alia, stated as below:

.... I have been shown the chart prepared by the Customs officers accordin to the chart the assessable value has been worked out to Rs. 63,09,086/- on the basis of the NIDB data against my declared value of Rs. 15, 36,473/-. THE Customs officer explained me about the NIDB data according to which it is a data of prevalent prices of assessment of similar goods of similar country of origin of same period taken by the Customs at various ports of Customs in India. **Further, the method and basis of enchancement of declared value on the basis of the NIDB data has been explained to me and according to me it is a correct and fair method and I accept the enhanced declared value from Rs. 15,36,473/- to Rs 63,09,086/- for 408 pieces of electric motors of assorted KWs for the Bill of Entry dated 17.2.09, in token of my acceptance I have signed the chart prepared by the Customs officers today on 24.3.09 and I am ready to pay Customs duty. Further, I have been shown the certificate of Shri Pankaj Gupta, Chartered Engineer dated 21.3.09 and as per the valuation of the chartered engineer, the assessable value of the 408 pieces of electric motors works out toRs.61,21,950/- I have also signed the same in respect of B/E No. 768815 dated 17.02.09.**

(emphasis supplied)

31. Having rejected the declared assessable value under Rule 12, the department sought to re-determine it under Rule 5 based on the contemporaneous value of similar goods imported into the country. It needs to be noted that since the imported goods were miscellaneous motors of various specifications there cannot be identical goods to determine duty as per Rule 4 and hence determining duty on the basis of values of similar goods under Rule 5 is fair and proper. To determine the value of the contemporaneous imports, the relevant data was extracted from the NIDB. The department also referred the matter to a Chartered Engineer to determine the value of the imported goods. In his first statement dated 24.2.2009, Shri Qasim was shown the NIDB data and he requested that the matter may also be referred to an expert to arrive at a fair value. On 25.2.2009, Shri Qasim was shown both the NIDB values and the report of the Chartered Engineer and he made a categorical statement accepting the chart prepared by the Customs officers based on the NIDB data with respect to the Bill of Entry dated 9.2.2009 that he accepts the value proposed by the Customs officers and that he was ready to pay the Customs duty accordingly. Further, he had also indicated that he did not want either an SCN or a personal hearing in the matter. He made a similar statement on 24.3.2009 with respect to the Bill of Entry dated 17.2.2009. None of the three statements have been retracted till date.

32. The appellant is now disputing the NIDB data on the ground that the Bills of Entry of the data and the brochures

related to the goods imported under them were not provided to him. The appellant is also asserting that the Chartered Engineer's certificate is vague.

33. The appellant cannot be permitted to take this stand at this stage. It is a well-settled legal principle that what is admitted need not be proved. Every case, civil, criminal or otherwise, involves multitude of facts and evidence need not be produced by any side on all such facts. Only such facts which are asserted by one and disputed by the other need to be proved and the party asserting them has to produce evidence. For instance, if A says that he lent a sum of Rs. 1,000/- to B and that B did not returned it and B accepts that A had lent him the money but says that he returned it, the only fact which needs to be determined is if B returned the money or not. The fact that A had lent the money is not disputed and A need not prove it. Section 58 of the Indian Evidence Act,1872 clarifies this position. It reads as follows:

> **Indian Evidence Act**
> **Section 58. Facts admitted need not be proved**.
>
> No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:
>
> Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

34. In this case, since the fact that the goods were undervalued and the correct assessable value for the goods imported under the two Bills of Entry dated 9.2.2009 and

17.2.2009 are as per the charts prepared by the officers as per the NIDB data was not only not disputed but positively accepted, in writing, by the appellant, these facts were not in dispute and neither side needed to produce any evidence. Therefore, there is no force the submissions of the learned counsel for the appellants that the department failed to provide evidence in support. Revenue need not produce any evidence. In fact, it did not have to even issue the SCN or hold a personal hearing insofar as the re-assessment of these two Bills of Entry is concerned because the appellant had waived them in writing.

35. The appellant's contention that it had accepted the value to avoid demurrages also does not hold any water. There is nothing on record to show that its acceptance was not voluntary. On the contrary all three statements explicitly state that the statements were voluntary and none of them have been retracted. If the appellant wanted to avoid demurrages and was not willing to accept the valuation, the appellant could have transferred the goods to a Customs bonded warehouse under section 49 and it would not have had to pay any demurrages but only the rent to the warehouse keeper. The appellant could have, as an alternative, disagreed with the re-assessment but paid duty under protest and asked for a speaking order. The appellant could also have sought provisional assessment. All these alternative methods are routinely used in the Custom houses by the importers.

36. Learned counsel also submitted that the NIDB data is not unquestionable and that the Chartered Engineer's certificate is

vague and hence should be rejected. In this case, the NIDB data has not only NOT been questioned but has positively been accepted by the appellant. The Chartered Engineer's certificate was also provided to the appellant and he had not disputed it at all. After seeing both and the chart of valuation prepared by the Customs authorities, the appellant explicitly agreed to the valuation. What is accepted need not be proved. It has been held by the Supreme Court in **Systems & Components Pvt. Ltd.** as follows:

> 4. The Collector (Appeals) relied upon a Circular issued by the Board of Central Excise dated 25th September 1986 and held that Receivers, Surge Drums and Flash Vessels were classifiable under Tariff Item 73.11 and the Drain Pot under 73.10. It was held that the oil separator would be classifiable under 84.79 and Base Frame under 7308.90.
>
> 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 by 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 they have no independent use there is no need for the Department to prove. It is a basic and settled law that what is admitted need not be proved.**

37. The appellant also submitted that some Bills of Entry of other importers were obtained by it under the RTI Act from the Customs authorities which show that similar goods were cleared at lower values. We have examined this submission and find that the Bills of Entry which the appellant obtained were those which were filed after the disputed two Bills of Entry. It is a well settled legal principle that when goods are assessed based on values of

contemporaneous imports, they refer to only imports which have already taken place, i.e., past Bills of Entry and not based on Bills of Entry which may be filed in future. The reason for this is that the assessment can be done based on what is available at the time of filing of the Bill of Entry and not anticipating what may happen in future. Therefore, there is no force in this argument either.

38. The correctness of the values determined by the determined and accepted by the appellant cannot, therefore, be questioned as they were undisputed. In a similar situation, where the importer accepted the re-assessment by the officers and after clearing the goods, filed an appeal questioning the same values which the appellant had accepted, this Tribunal had in **Hanuman Prasad & Sons** held as follows:

> 35. The following position emerges from the aforesaid decisions of the Tribunal:
>
> (i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valueaion as the consented value, in effect, becomes the declared transaction value requiring no further investigation;
>
> (ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness;
>
> (iii) The burden of the department to establish the declared value to be incorrect is discharged if the enhanced value is voluntarily accepted.

39. The decision in **Hanuman Prasad & Sons** was followed in several other decisions. We, therefore, answer question (a) framed by us in paragraph 16 in favour of the Revenue and against the appellants.

Re-determination of value and confirmation of demand in respect of the five past Bills of Entry

40. Insofar as the past five Bills of Entry are concerned, the case of the appellant is that the goods were cleared by the officers after examination and in respect of one of the Bills of Entry, the declared assessable value was also enhanced by 25% by the officer re-assessing the Bill of Entry. Therefore, there is no case to allege undervaluation much later and demanding duty under section 28 invoking extended period of limitation alleging suppression.

41. The case of the Revenue is that the appellant had agreed to pay the differential duty in respect of these five Bills of Entry in its statement and it cannot be allowed to renege at this stage. Just like the demand for the two current Bills of Entry, the demand of differential duty for these five Bills of Entry also needs to be upheld.

42. We find strong force in the submissions of the appellant. Once the goods are cleared for home consumption after examination and assessment, unless there is an evidence to support, demand under section 28 invoking extended period of limitation cannot be raised unless there is evidence of collusion or willful mis-statement or suppression of facts are proven. There is no allegation or evidence in this case of collusion. The reason for invoking extended period of limitation given in the SCN is as follows:

> " 12. Whereas, the importer had mis-declared the value of imported goods in the past consignments also and the value appeared to be grossly undervalued. Therefore, it appears that the declared invoice value is not free from doubts and

> same is not in conformity with section 14 of the Customs Act, 1962. Hence, it gave sufficient reasons to doubt the truth or accuracy of the invoice value declared in relation to the goods imported vide above said 7 Bills of Entry No. 768815 dated 17.02.09, 766759 dated 09.02.2009, 760587 dated 14.01.09, 746857 dated 17.11.08, 725687 dated 30.08.08, 708103 dated 04.0.08 and 698659 dated 28.05.08. No further information/ documents or any other evidence was provided by the importer to substantiate their declared invoice value."

43. Evidently, the SCN alleges mis-declaration and does not even allege that it was willful, let alone producing any evidence to the effect.

44. Learned authorised representative submitted that the appellant had agreed to pay the differential duty in respect of the past cases also. We have seen the Statement of the appellant given on 25.2.2009 and the relevant portion of it is as follows:

> I further state that in the past I have imported the same goods by 2-3 Bills of Entry from China. At present I am not having the details, I am ready to pay Customs duty for the same if any.

45. A plain reading of the above shows that at the time of recording the statement, the appellant could not remember the exact number of Bills of Entry filed before and also did not have the details. All that is stated is that he is ready to pay Customs Duty for the same, if any. Neither were the details of the Bills of Entry nor the goods imported under them, their declared values, corresponding values of goods in the NIDB and why it became necessary to re-open the assessment which were already finalized shown to the appellant nor were they agreed to. This

statement does not support the case of the Revenue in any sense.

46. We, therefore, answer the question (b) in paragraph 16 above in favour of the appellant and against the Revenue.

Confiscation of the goods imported in the two Bills of Entry and their release on payment of redemption fine

47. The goods imported under the two Bills of Entry valued at Rs. 48,36,860/- were seized and they were provisionally released on bond and bank guarantee. In the impugned order, they were confiscated under section 111(m) and released on payment of redemption fine of Rs. 10,00,000 under section 125 and the Bank Guarantee given by the appellant was appropriated towards it. Section 111(m) and section 125 read as follows:

> 111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—
>
> xxxxxxxxxxxxxxxxxx
>
> (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54
>
> 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:
>
> Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:
>
> Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall

> not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

48. Section 111(m) provides for confiscation of imported goods which do not correspond in value or in any other particular to the entry made. The case of the appellant is that since the re-assessment itself is not sustainable, neither is the confiscation. The case of the Revenue is that the confiscation was done correctly. As we have already found that the goods were correctly re-assessed, section 111(m) squarely applies to the goods in question and therefore, their confiscation needs to be upheld.

49. Once the goods are confiscated, section 125 requires that, unless the goods are prohibited goods, the owner should be given an option to redeem the goods on payment of fine. If they are prohibited goods, the adjudicating authority has the discretion of allowing redemption or not. This section further restricts the quantum of penalty to the market value of the goods. It is not the case of either side that the motors imported by the appellant were prohibited goods. Therefore, they were released on redemption fine. The seized goods imported under Bill of Entry dated 9.2.2009 were valued at Rs. 48,36,860/- and the redemption fine imposed was Rs. 10,00,000/-. The seized goods imported under Bill of Entry dated 17.2.2009 were valued at Rs. 63,09,086/- and the redemption fine imposed was Rs. 12,50,000/. In the factual matrix of this case, the fines imposed are, in our opinion, fair.

50. We, therefore, answer question (c) of paragraph 16 in favour of the Revenue.

Order holding the goods imported under the five past Bills of Entry liable to confiscation and imposition of redemption fine since they were not available.

51. The adjudicating authority also held that the goods imported under the past five Bills of Entry valued at Rs. 1,45,02,410/- were liable to confiscation under section 111(m) and imposed redemption fine of Rs. 30,00,000/-. As we have found that the demand under section 28 re-assessing the duty in respect of these five Bills of Entry is not sustainable, the confiscation of the goods imported under them as well as redemption fine also need to be set aside. Even otherwise, the goods which are not available cannot be either seized or confiscated. This is because, on confiscation, the property vests in the Government and if the importer opts to redeem them, he can pay the redemption fine and get the goods released. If the goods are not available neither can the government take over the goods nor can it return them to the owner or payment of fine. The case of the goods imported under the above two Bills of Entry was different as they were seized and were provisionally released on execution of a bond and bank guarantee. The bond and bank guarantee are meant to cover the redemption fine, if any, imposed if the goods are confiscated and released. We, therefore, answer question (d) of paragraph 16 in favour of the Appellant.

Penalty on the importer under section 114A

52. In the impugned order, penalty of Rs. 59,76,148/- being the importer being the amount equal to the differential duty demanded under section 28 (in respect of the five Bills of Entry) and interest thereon under section 114A of the Act. This section reads as follows:

> 114A. Penalty for short-levy or non-levy of duty in certain cases.—
>
> Where the duty has not been been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:
>
> Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined: ******

53. As we have found that the demand of differential duty under section 28 in respect of the past Bills of Entry cannot be sustained, we set aside the penalty under section114A as well. As far as the duty on the two current Bills of Entry are concerned, they are a matter of re-assessment under section 17 and not a case of duty not levied or short levied under section 28. We, therefore, answer question (e) of paragraph 16 in favour of the appellant.

Penalty on Shri Qasim under section 112(a)

54. In the impugned order, penalty of Rs. 15,00,000/- was imposed on Shri Mohd. Qasim Khan under section 112(a) of the Act. This section reads as follows:

> **112. Penalty for improper importation of goods, etc**.— Any person,—
>
> **(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,** or
>
> (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—
>
> (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 5 [not exceeding the value of the goods or five thousand rupees], whichever is the greater
>
> **(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:**
>
> Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;
>
> (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
>
> (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
>
> (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

55. We have already found that the confiscation of the goods imported under the two current Bills of Entry and their release on payment of redemption fine need to be upheld and we have set

aside the confiscation and imposition of redemption fine in respect of the five past Bills of Entry. We have also upheld the re-assessment of duty in the two current Bills of Entry and set aside the demand of duty under section 28 in respect of the five past Bills of Entry. Shri Qasim is the person most directly connected with the filing of the two Bills of Entry and the values of the goods in these did not match the imported goods which rendered the goods liable to confiscation under section 111(m). Therefore, Shri Qasim squarely falls under Section 112(a) and is liable to penalty under it.

56. However, in the impugned order, penalty under section 112(a) has been imposed considering the differential duty confirmed in respect of the two current and five past Bills of Entry. We have already found that the demand in respect of the five past Bills of Entry cannot be sustained. We, therefore, find it proper to reduce the penalty on Shri Qasim also from Rs. 15,00,000/- to Rs. 3,00,000/-

57. In view of the above:

a) **Customs Appeal No. 3/2011** filed by M/s. Jhaveria Impex is partly allowed by upholding the re-assessment of duty in the impugned order in respect of the two current Bills of Entry filed on 9.2.2009 and 17.2.2009 and confiscation of the goods imported under these two Bills of Entry and the redemption fines imposed. The demand of duty on the five past Bills of Entry, confiscation of the goods imported under them and imposition of redemption fine in lieu of the confiscation and the fine under

section 114A are set aside. The appellant will be entitled to consequential relief, if any.

b) **Customs Appeal No. 4/2011** filed by Shri Mohd. Qasim Khan is partly allowed by reducing the penalty imposed on him under section 112(a) from Rs. 15,00,000/- to Rs. 3,00,000/-. The appellant will be entitled to consequential relief, if any.

[Order pronounced on **08/11/2023**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P V SUBBA RAO)
MEMBER (TECHNICAL)

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