
(2024) 10 CESTAT CK 1202

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Customs Appeal No.51686, 51687, 51934, 51942, 51943, 51944, 51955, 52155 of 2022, 51584, 51617, 51650, 51683, 51585, 51618, 51651, 51684, 51586, 51619, 51652, 51685, 51587, 51620, 51653, 51686, 51588, 51621, 51654, 51687, 51589, 51622, 51655, 51688, 51590

Commissioner of Customs (Preventive) @APPELLANT @Hash CMR Nikkei India Pvt. Ltd. & ors. @RESPONDENT

Date of Decision : 21-10-2024

Acts Referred:

Customs Act, 1962 — Section 14, 14(1), 14(1A), 17, 17(2), 17(3), 17(4), 17(5), 18, 18(2), 46, 50, 85

Customs Valuation (Determinations of Value of Imported Goods) Rules, 2007 — Rule 3(1), 4, 5, 7, 8, 9, 10, 10(2), 12, 12(1)

Citation : (2024) 10 CESTAT CK 1202

Hon'ble Judges : Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench : Division Bench

Advocate : S.K. Rahman, K. Krishnamohan Menon, Parul Sachdeva

Final Decision : Dismissed

Judgement

Dilip Gupta, J

1. These 362 appeals have been filed by the department to assail the orders passed by the Commissioner (Appeals), Central Excise and GST, Jaipur, the Commissioner (Appeals) by which the speaking orders passed by the Deputy Commissioner of Customs, Inland Container Depot, Concor, Kanakpura, Jaipur, the Deputy Commissioner on the Bills of Entry filed by (i) M/s CMR Nikkei India Pvt. Ltd.; (ii) Sanjivani Non-Ferrous Trading Pvt. Ltd.; (iii) CMR Green Technologies Ltd.; and (iv) Century Metal Recycling Pvt. Ltd., the respondents have been set aside. The Deputy Commissioner had rejected the self-assessed value of imported aluminium scrap declared in the Bills of Entry under rule 12 of the Customs Valuation (Determinations of Value of Imported Goods) Rules, 2007, the Valuation Rules read with section 14 of the Customs Act, 1962, the Customs Act and re-determined the value under rule 9 of the Valuation Rules with a

direction to the respondents to pay the differential duty on the enhanced value with interest.

2. Shri S.K. Rahman, learned authorized representative appearing for the department and Shri K. Krishnamohan Menon, learned counsel for the respondents assisted by Ms. Parul Sachdeva have stated that not only the factual position in all the appeals is similar, but even the orders passed by the Deputy Commissioner and the Commissioner (Appeals) are similar. Both, the learned authorized representative appearing for the department and the learned counsel appearing for the respondents have placed facts of Customs Appeal No. 51686 of 2022 to support their contentions and as such, the facts of this appeal will be referred to.

3. It transpires from the records that M/s CMR Nikkei India Pvt. Ltd., CMR Nikkei; (ii) Sanjivani Non-Ferrous Trading Pvt. Ltd. Sanjivani; (iii) CMR Green Technologies Ltd., CMR Green; and (iv) Century Metal Recycling Pvt. Ltd., Century Metal imported aluminium scrap of various grades and filed 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 the respondents in the Bills of Entry.

4. At the request of CMR Nikkei, the Bills of Entry were provisionally assessed and necessary bonds with bank guarantees were submitted. To finalize the provisional assessment, the department issued a show cause notice dated 28.12.2020 to CMR Nikkie.

5. The show cause notice mentions that the said importer had filed various Bills of Entry as detailed in Annexure 'A' to the show cause notice for seeking clearance of goods declared as "aluminium scrap" namely "Zorba", "Twitch", "Tense", "Troma", "Taint Tabor" "Tense/Taint Tabor". The show cause notice then proceeds to define the aforesaid categories of aluminium scrap and gives three reasons as to why the price of aluminium scrap, mentioned in the Bills of Entry appeared to be on the lower side. The three reasons are:

"4(A)***** On examination of the value declared by the importer (shown in column "K" of Annexure "A" enclosed to this notice) and the reference value calculated on the basis of above DGoV Alert dated 15.11.2018 (shown in column "Q" of the Annexure "A" enclosed to this notice), it is observed that the value declared in relation to imported goods is on quite lower side. It appears that declared prices involves an abnormal discount or abnormal reduction from the ordinary competitive prices, thus, there is reason to doubt the truth and accuracy of the declared value.

(B) The Aluminum metal is being traded at a price fixed by London Metal Exchange (LME) is the largest on day to day basis and once the price is settled through market forces, the LME records and publishes such settled prices to vendors around the world, who in turn disseminate the data to industry users across the value chain. LME prices are most relied upon prices of any metal

including 'Prime Aluminum' world over. The average monthly increase/decrease in the LME prices covering the entire period of this show cause notice as well as the data for whole of a Year are summarized as under:-

In most of the cases the difference is too high when compared to the average increase/decrease in the LME price Internationally, as mentioned above. Hence, it appears that importer had highly undervalued the goods and the value declared by the importer is not true and accurate; and

(C) Further, the value shown in the NIDB data of contemporaneous imports at or about the same time also indicates that the value declared by the importer is significantly lower than the value at which the imported Aluminum scraps of a particular code/grade (as prescribed by the ISRI) are declared/ assessed in respect of another importers at other ports also. The vital difference between the declared value vis-à-vis reference value & value of contemporaneous imports appears to clearly indicates that the value declared by the importer is not true and accurate."

(emphasis supplied)

6. The show cause notice then mentions that in terms of rule 12(1) of the Valuation Rules, a letter dated 01.10.2020 was issued to the importer asking him to submit any further information, including documents or any other evidence, to justify the value declared.

7. The show cause notice then reproduces the reply dated 06.10.2020 furnished by the importer in paragraph (5) and the same is:

"5(1). We deny that any other contemporaneous imports of Aluminium scrap at higher transaction value have taken place on the basis of which you are proposing to enhance our transaction value. We carefully scrutinized on ICE gate portal and no such instance of any contemporaneous import at higher transaction value could be find therein as such your contention that you are proposing to enhance the transaction value in our case on the basis of same or similar goods from the same country of origin is factually incorrect and the same is therefore denied by us.

2. So far as the DGOV alert dated 15.11.2018 is concerned, it is pertinent to say that no minimum assessable price for Aluminium scrap has been fixed in any DGOV alert. The reason seems to be obvious that Aluminium scrap by its very nature is not of any standard quality or specification and the price depends on Market Prices prevailing form time to time. Hence assessment of duty can be made only on the basis of transaction value of aluminium scrap in any given case. Therefore, Rule 4, 5 or 9 of Customs valuation rules cannot be relevant for fixation of the assessable value of scrap.....

3. It follows therefore, that even if there are cases of other contemporaneous

imports of Aluminium Scrap at higher transaction value the same cannot be a ground for enhancement of transaction value in all case.

4. Therefore, you are requested to accept the transaction value for assessment of the duty without making any enhancement thereof as there is neither any factual nor any legal basis for such enhancement. We hope that you will kindly accept the transaction value and assess duty accordingly. You are requested to kindly pass a reasoned order for any enhancement of the transaction value."

(emphasis supplied)

8. Paragraphs 6, 7 and 8 of the show cause notice state why the transaction value of the imported goods cannot be determined under rule 3(1) of the Valuation Rules and was required to be determined under rule 9. The said paragraphs are reproduced below:

"6. From the reply given by the importer, it appears that they have not submitted any documentary evidence and plausible explanation regarding the gap observed between the value declared by them and the reference value determined in accordance with the DGoV Alert dated 15.11.2018 as well as value of contemporaneous imports of the Aluminum Scrap of particular code/grade (as per ISRI) at or about the same time. Thus, it appears that the importer has failed to establish the truthfulness and accuracy about the value declared by them and the doubts raised by the proper officer about truth or accuracy of the value so declared are still remained unsatisfied, hence, in view of the provisions of rule 12(1) *ibid* the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3 *ibid*. The value declared by the importer through self assessment of the Bill of Entry also appears to be significantly lower than the value at which such and alike goods imported at or about the same time in comparable commercial transaction were assessed at different ports of the country. As evident from Annexure – 'A' enclosed to this notice, the declared prices are in steeply lowered even to reference prices computed to the extent of 'Gap from the prime metal price from LME price for various code/grade of Aluminium Scrap' observed and mentioned in the Alert issued under F.No. Val/Tech/10/2018/(Al Scrap) dated 15.11.2018. Therefore, under the provisions of Rule 12 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 read with Section 14, *ibid*, it appears that declared prices involves an abnormal decrease/reduction from the ordinary competitive prices, thus, there is reason to doubt the truth and accuracy of the declared value and the same is liable to be rejected.

7. In view of the above, it appears that the transaction value declared by the importer is not true and fair and hence, cannot be determined under the provisions of sub-rule (1) of rule (3) of the said Rules, being the transaction value liable to be rejected under Rule 12 of Customs Valuation Rules- 2007. Further, it appears that the value of the impugned goods is required to be re-determined proceeding sequentially through Rules 4 to 9 of the said Valuation

rules. The importer has earlier highlighted the fact and also it is a fact that the Aluminum scrap by its very nature is not of any standard quality or specification i.e. in another words all the consignments may not be identical or similar in terms of Rule 4 or Rule 5 of Customs (Valuation of Imported Goods) Rules-2007 as the consignments may have difference in composition and also for having different countries of origin. Therefore it appears that value may not be determined under Rule 4 and Rule 5 supra. It further appears that the value may also not be determined by deductive method explained in Rule 7 or also by application of Rule 8 of Customs (Valuation of Imported Goods) Rules-2007 through computed value method since the imported goods i.e. Aluminium Scrap is a residual product/Bye product.

8. Further, as the value cannot be re-determined under Rules 4, 5, 7 & 8 of said Valuation Rules due to absence of information about identical and similar goods, and other factors referred to above, hence, the value is to be re-determined in accordance with the provisions of Rule 9 of the Customs Valuation (Determination of value of imported goods) Rules, 2007. Further, it also appears that difference in composition or origin may not have any material bearing on the value of the subject imported goods i.e. Aluminum Scrap, however despite such differences, the Aluminium scrap falling under a particular ISRI code / category remains 'Goods of the same class or kind' as defined in Rule 2(c) of the Customs (Determination of Value of imported goods) Rules 2007. Therefore, It appears that the value of the impugned goods is required to be re-determined on the basis of data pertaining to contemporaneous import of 'Goods of the same class or kind' in terms of Rule 9 of the said Valuation Rules read with Section 14, ibid regarding imports at other ports.....

It further appears that interpretative notes specified in the schedule to the Customs (Valuation of Imported Goods) Rules-2007 rules applicable for the interpretation of rule 9 of Customs (Valuation of Imported Goods) Rules-2007 are as under: *****"

(emphasis supplied)

9. Paragraphs 9 and 10 of the show cause notice provide the manner of redetermination of the value under rule 9 of the Valuation Rules. They are also reproduced below:

"9. Accordingly, it appears that value may be re-determined on the basis of accepted transaction value of Aluminium scrap of a category defined by ISRI e.g. "Zorba", "Twitch", "Tense", "Troma", "Taint Tabor" "Tense/Taint Tabor" etc. and are widely recognized by the International trade, may be applied for re-determination of Aluminum Scrap of that ISRI category exported to India on the basis of Bill of Entries on contemporaneous imports at or about the same time as the goods being valued, irrespective of their country of origin, in accordance with the provisions of Rule 9 of the Valuation Rules ibid. The data pertaining to

contemporaneous imports has been compiled in Column 'T' to Column 'ZA' of the Annexure- "A" enclosed to this notice. Veracity of said data may be checked at URL: <https://enquiry.icegate.gov.in/enquiryatices/b eTrackices>.

10. Therefore, it appears that the above referred Bills of Entries need to be re-assessed under the provisions of Section 17(4) of the Customs Act-1962 by enhancing the declared price mentioned in Column "K" (in USD per Kg.) of the Annexure "A" to the extent of price of contemporaneous imports at or about the same time as the goods being valued, irrespective of country of origin, as mentioned against each Bill of Entry in Column "T" (in USD per Kg.) of the Annexure-"A", under Rule 9 of the said valuation Rules read with Section 14 of the Customs Act-1962.

(emphasis supplied)

10. The show cause notice, therefore, calls upon CMR Nikkie to show cause why:

"(i) The self assessed value of imported goods, in respect of subject Bills of Entries, mentioned in Column "K" (in US\$) & column "I" (in Indian Rupee) of Annexure-"A" should not be rejected under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) The value of the imported goods should not be re-determined on the basis of the price of the contemporaneous import of 'Goods of the same class or kind' imported at or about the same time at all the ports of India as mentioned in column-"T" (in US\$) & column "U" (in Indian Rupee) of Annexure-"A", 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."

11. Annexure 'A' to the show cause notice is a detailed chart showing the value declared and self-assessed by CMR Nikkei in the Bills of Entry filed for import of aluminium scrap during the period from April 2019 to February 2020. It broadly categorizes particulars of the Bills of Entry filed by the importer, computation of reference price in terms of DGOV Circular dated 15.11.18 and particulars of contemporaneous import as per NIDB data. The entry at serial no. 1 relates to a Bill of Entry dated 27.04.2019 in connection with alnminium scrap 'Zorba'. The country of origin is stated to be 'Italy' and the self-assessed unit rate in US\$ per kg. (K) is stated to be 1.120. It also mentions that the unit rate proposed to be re-determined in US\$ per kg. (T) is 1.430. In respect of the country of origin, 'United States' is mentioned. Similar entries are there for all the remaining 132 Bills of Entry.

12. CMR Nikkie submitted a reply dated 20.01.2021 to the aforesaid show cause notice. It has been reproduced in the impugned order, and it is as follows:

"With reference to your Show Cause Notice C.No. VIII(20)253/ICD-KKU/CMR-Assessment/ 2020-21 dated 28.12.2021, we have noted that the personal hearing in matter was fixed on 18.01.2021 at 12:30 Hrs. through video

conferencing. In this regard we wish to inform you that we could not attend the PH since we received the letter after the date and time scheduled for PH. Our representative Mr. B.B. Biswal will attend the meeting on our behalf and will provide the necessary particulars as required for the meeting.

We wish to put on record that there is no instance of any other contemporaneous import of similar goods in comparable quantity from the same country of origin at higher transaction value. In spite of our request, you have not confronted us with any such evidence. Your reference to NIDB data is not relevant since NIDB data talks about assessed value and does not contain any particulars about actual transaction value of any other contemporaneous import of the same or similar good in comparable quantity at or about the same time of import from the same country of Origin. Hence, the comparison of contemporaneous import price of other goods is irrelevant as no such particulars have been confronted by you to us.”

13. The importer also submitted written submissions and additional written submissions basically making reference to the two decisions of the Supreme Court in CCE & ST, Noida vs. Sanjivani Non-ferrous Trading Pvt. Ltd., 2019 (365) E.L.T. 3 (S.C.) and M/s Century Metal Recycling Pvt. Ltd. vs. Union of India, 2019 (367) E.L.T. 3 (S.C.).

14. The Deputy Commissioner passed a detailed speaking order dated 26.03.2021. The Deputy Commissioner noticed that CMR Nikkie had placed reliance upon two decisions of the Supreme Court in Sanjivani Non-ferrous Trading and Century Metal Recycling but found them to be not applicable to the facts of the present case. The Deputy Commissioner pointed out that the DGoV Alert dated 15.11.2018 had been used only as a reference to test the truthfulness and accuracy of the value declared by the importer. The Deputy Commissioner thereafter found that the three reasons mentioned in the show cause notice were sufficient reasons to doubt the truthfulness and accuracy of the value declared by the importer in the Bills of Entry. This conclusion was arrived at on the basis of section 14(1) of the Customs Act and rule 12(1) of the Valuation Rules. The findings recorded by the Deputy Commissioner are as follows:

“.....In this case the above mentioned decisions given by the Hon'ble Supreme Court have been followed and the declared value has been proposed to be rejected in accordance with the provisions of Section 14 of the Customs Act, 1962 read with Rule 3 to 12 of Customs Valuation Rules, 2007 on the basis of reasonable grounds for raising doubt about the fairness and truthfulness of the declared value, as mentioned above and also proposed rejection is based upon accepted value of the contemporary imports. Thus, the reply submitted by the importer that the declared value has only been not accepted only due to the DGoV Alert dated 15.11.2018 is not correct. The DGoV Alert dated 15.11.2018 has been used as reference to test the truthfulness and accuracy of the value declared by the importer.

(D) Further, the importer has pleaded that the NIDB data which are sometimes referred to by the assessing officer for enhancing transaction value doesn't deal with any other case of actual transaction value of any contemporaneous import of aluminum scrap at about the same time of import from the same country of origin, as such the reference made to NIDB data is completely irrelevant, the plea taken by the importer in this regard is not acceptable as the NIDB Data are prepared by the EDI System on the basis of national data base of the Customs clearances all over the India. The NISB Data are used by the department to ascertain the truthfulness and accuracy of the value of imported goods self assessed by the importer as per contemporaneous import made at or about the same time.

22. Thus, it is found that the importer has failed to establish the truthfulness and accuracy about the value declared by them and the doubts raised by the proper officer about truth or accuracy of the value so declared are still remained unsatisfied, hence, in view of the provisions of Rule 12(1) of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007.....Therefore, it is held that that the declared prices involves an abnormal decrease/reduction from the ordinary competitive prices, thus, there has been reason to doubt the truth and accuracy of the declared value and the same is liable to be rejected under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962."

(emphasis supplied)

15. After having rejected the transaction value shown in the Bills of Entry under rule 12(1) of the Valuation Rules, the Deputy Commissioner re-determined the value under rule 9 of the Valuation Rules after holding that rules 4 to 8 of the valuation would not be applicable. The observations made in this regard are contained in paragraphs 23, 24 and 25 of the order and the same are reproduced below :

"23. In view of the above, I hold that the transaction value declared by the importer is not true and fair and hence, cannot be determined under the provisions of sub-rule (1) of rule (3) of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007, being the transaction value liable to be rejected under Rule 12 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007. Further, it is held that the value of the impugned goods is required to be re-determined proceeding sequentially through Rules 4 to 9 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007. The importer has highlighted the fact that the Aluminium

scrap by its very nature is not of any standard quality or specification i.e. in another words all the consignments may not be identical or similar in terms of Rule 4 or Rule 5 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 as the consignments may have difference in composition and also for having different countries of origin. Therefore it appeared that value may not be determined under Rule 4 and Rule 5 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007. It further appears that the value may also not be determined by deductive method explained in Rule 7 or also by application of Rule 8 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 through computed value method since the imported goods i.e. Aluminium Scrap is a residual product/Bye product.

24.hence, the value has to be re-determined in accordance with the provisions of Rule 9 of the Customs Valuation (Determination of value of imported goods) Rules, 2007.....

It further appeared that interpretative notes specified in the Schedule to the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 rules applicable for the interpretation of Rule 9 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 are as under:

25. Accordingly, the value is re-determined on the basis of accepted transaction value of Aluminium scrap of a category defined by ISRI e.g. "Zorba", "Twitch", "Tense", "Troma", "Taint Tabor" "Tense/Taint Tabor" etc. on the basis of Bills of Entry of contemporaneous imports at or about the same time and the goods are being, irrespective of their country of origin, in accordance with the provisions of Rule 9 the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007. The data pertaining to contemporaneous imports have been compiled in Column 'T' to Column 'ZA' of the Annexure- "A" and the importer has already been informed that the veracity of the said data may be checked at URL: <https://enquiry.icegate.gov.in/enquiryatices/beTrackices>. Therefore, the above referred Bills of Entries are being accordingly re-assessed under the provisions of Section 17(4) of the Customs Act, 1962 and the provisional assessment is being finalized in accordance with the provisions of Section 18(2) of the Customs Act, 1962 by enhancing the declared price mentioned in Column "K" (in USD per Kg.) of the Annexure "A" to the extent of price of contemporaneous imports at or about the same time as the goods being valued, irrespective of country of origin, as mentioned against each Bill of Entry in Column 'T' (in USD per Kg.) of the Annexure-"A", under the provisions of Rule 9 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962."

(emphasis supplied)

16. Similar orders have been passed by the Deputy Commissioner in the

remaining matters of Sanjivani, CMR Green and Century Metal.

17. The order passed by the Deputy Commissioner was assailed by the department before the Commissioner (Appeals). After referring to the provisions of section 14 of the Customs Act and rule 12 of the Valuation Rules, the decisions of the Supreme Court in Sanjivani Non-ferrous Trading and Century Metal Recycling and the decisions of the Tribunal in Commissioner of Customs, Delhi vs. Maruti Fabric Impex, 2016 (343) E.L.T. 963 (Tri. - Del.) and Marvel Agencies vs. Commissioner of Customs, New Delhi, 2017 (348) ELT 534 (Tri.-Del), the Commissioner (Appeals) observed:

"6.5 The Rules mandate that the declared value can be rejected only on the basis of reasonable and cogent evidence and the respondent Deptt has failed to discharge the burden. There is nothing on record that the invoice value did not represent the transaction value in the international market. Moreover, I do not find any allegation of additional consideration or any of the exceptions of Rule 4(2) of the Valuation Rules in the case. It creates a situation where transaction value cannot be rejected. I find that the Honble Supreme Court in the case of CCE, Noida Vs Sanjivani Non-Ferrous Trading Pvt. Ltd. has held that "the transaction value has to be arrived at on the basis of price that is actually paid as provided by Section 14 of Customs Act and the declared price can be rejected only by giving cogent reasons, but no such exercise was undertaken by the Assessing Authority to reject the value declared in the Bills of Entry.

7.8 I find that in the order adjudicating authority has observed that the values declared by the appellant are very much low in comparison to contemporaneous imports of goods of the same class or kind and thus, the Appellant had mis-declared the value. However, the adjudicating authority has not discussed the parameters or dimensions related with the nature of the products, which were required to be looked into while applying the value of products in contemporaneous imports. The approach of the adjudicating authority is not only contrary to mandate of Section 14 of Customs Act and postulates of Valuation Rules but also contrary to law propounded by Hon'ble Supreme Court in the case of Motor Industries Company Ltd. Vs. Commissioner of Customs [2009 (244) ELT 4 (S.C.)].*****

7.9 I find that the enhancement of value on the basis of values prescribed in DGoV letter F. No. Val/Tech/100/2018 (AI Scrap) dated 15.11.2018 which itself was issued on the basis of LME prices is also contrary to the dictate of Section 14 of the Customs Act and Customs Valuation Rules as has been held by the Hon'ble Supreme Court in the case of Century Metal Recycling Pvt. Ltd. [2019 (367) E.L.T. 3 (S.C.)]*****"

7.10 Further, LME prices of metals also cannot be the basis for determination of value of scrap thereof not only for being contrary to the provisions of Valuation Rules but also contrary to law propounded in various judgments. *****

7.11 I observe that the adjudicating authority has held that the value of the impugned goods is required to be re-determined on the basis of data pertaining to contemporaneous import of goods of the same class or kind in terms of Rule 9 of the Valuation Rules, observing that the difference in composition or origin may not have any material bearing on the value of the impugned Aluminium Scrap. I find that in the case of Century Metal Recycling Pvt. Ltd. (Supra), the Hon'ble Supreme Court has also decided the issue of enhancement of value on the basis of contemporaneous imports*****

7.12 From the above, it is also coming out that aluminium scrap is not a homogeneous commodity and it is very difficult to find any identical/similar goods imported in India having same chemical and physical composition. I further find that in the case of B.B.M. Impex Pvt. Ltd. Vs. Commr of Customs (Prev), New Delhi [2021 (376) E.L.T. 743 (Tri.-Del.)], the Hon'ble Tribunal has held that NIDB data cannot be relied upon as same relating to different quantity and quality of goods.

7.13 In view of the above, I observe that there is no finding much less any evidence that appellant had paid any amount over and above the invoice value and the invoice value was vitiated by the non-commercial consideration and there was any mis-declaration in the consignments/documents, to warrant rejection of transaction value. I therefore hold that the rejection of transaction value in the case is unsustainable in law as has been done without establishing the declared value as not genuine."

(emphasis supplied)

18. It is this order of the Commissioner (Appeals) that has been assailed by CMR Nikkei. Similar orders were passed by Commissioner (Appeals) in other matters and they have also been assailed.

19. Learned authorized representative appearing for the department made the following submissions:

(i) The Deputy Commissioner had given good and cogent reasons for rejecting the transaction value under rule 12 of the Valuation Rules and had also correctly applied rule 9 of the Valuation Rules to re-determine the value, but the Commissioner (Appeals), without giving any good and cogent reasons, has set aside the speaking order passed by the Deputy Commissioner;

(ii) The finding recorded by the Commissioner (Appeals) that the Deputy Commissioner did not carry out the required exercise to reject the value in the Bills of Entry is not correct. There was no requirement to allege additional consideration and, therefore, no finding was required to be given on this aspect;

(iii) The finding recorded by the Commissioner (Appeals) that the Deputy Commissioner did not discuss "the parameters or dimensions related with the nature of the products, which were required to be looked into" for contemporaneous imports is not correct;

(iv) The finding of the Commissioner (Appeals) that the Deputy Commissioner enhanced the value on the basis of DGoV Alert dated 15.11.2018 and LME prices of metal is also not correct; and

(v) The reason assigned by the Commissioner (Appeals) for rejecting the transaction value is that there was no finding, much less any evidence, that the importer paid any amount over and above the invoice value and the invoice value was vitiated by non-commercial considerations. This finding is not justified. The entire approach of the Commissioner (Appeals) in holding that the rejection of the transaction value is not justified nor the re-determination of the assessable value is justified is contrary to the well settled principles contained in section 14 of the Customs Act and the Valuation Rules.

20. Learned counsel for the respondents, however, supported the impugned order passed by the Commissioner (Appeals) and made the following submissions:

(i) The transaction value declared by the respondents in the Bills of Entry was required to be accepted in terms of section 14 of the Customs Act since the department failed to bring on record any evidence that there was additional flow of consideration to the foreign supplier from the importers so as to raise any dispute with regard to the price at which the goods were imported. Even the show cause notice did not allege that the importer had mis-declared the price or description of the goods;

(ii) The rejection of the transaction value by the Deputy Commissioner under rule 12 of the Valuation Rules is not justified. The import transactions on which reliance has been placed by the department were from the countries other than the countries from where the respondents had made the imports. Thus, the goods were neither identical nor similar;

(iii) The deviation in the price per kg as per the DGOV Circular and the price per kg of the goods imported declared by importer is within the range of 15% to 20%, which is not significant;

(iv) The department had not produced the data of contemporaneous imports from the same supplier as well as from the same country from where the respondents imported the goods;

(v) The department has not placed on record on what parameters it had tested the truthfulness and accuracy of the value declared by the respondents;

(vi) The department has without testing the chemical composition of the goods imported compared the price declared by the respondents. In this connection, reliance has been placed on the decision of the Supreme Court in Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai, 2000 (122) E.L.T. 321 (S.C.); and

(vii) The department has wrongly applied rule 9 of the Valuation Rules.

21. To appreciate the contentions that have been advanced by the learned

authorized representative appearing for the department and the learned counsel appearing for the respondents, it would be appropriate to first refer to the various provisions of the Customs Act and the Valuation Rules.

22. Section 14 of the Customs Act deals with "valuation of goods" and it 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 *****"

23. 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)

24. It is seen that under section 17(2) of the Customs Act, the proper officer may verify the self-assessment of goods and for this purpose the proper officer may require the importer to produce any document or information to ascertain the duty leviable on the imported goods and the importer shall produce the document or furnish such information. Under sub-section (4) of section 17 where it is found that the self-assessment is not done correctly, the proper officer may re-assess the duty leviable on such goods. Under sub-section (5) of section 17 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 within 15 days from the date of re-assessment of the Bills of Entry.

25. The Valuation Rules have been framed in exercise of the powers conferred by section 14 of the Customs Act.

26. Rule 3 deals with the determination of the method of valuation and it is reproduced below:

“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."

27. Rule 4 deals with transaction value of identical goods and it is reproduced below:

"4. Transaction value of identical goods.- (1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods."

28. Rule 5 deals with transaction value of similar goods and it is reproduced below:

"5. Transaction value of similar goods.- (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-

rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.”

29. Rule 6 deals with determination of value where value cannot be determined under rules 3, 4 and 5 of the Valuation Rules and it is reproduced below:

“6. Determination of value where value can not be determined under rules 3, 4 and 5.- If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8:

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.”

30. Rule 7 deals with deductive value and it is as follows:

“7. Deductive value.- (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).”

31. Rule 8 deals with computed value and it is as follows:

“8. Computed value.- Subject to the provisions of rule 3, the value of imported

goods shall be based on a computed value, which shall consist of the sum of:-

- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) the cost or value of all other expenses under sub-rule (2) of rule 10.”

32. Rule 9 deals with residual method and it is reproduced below:

“9. Residual method.- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India:

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of :-

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;
- (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
- (v) the price of the goods for the export to a country other than India;
- (vi) minimum customs values; or
- (vii) arbitrary or fictitious values.”

33. Rule 10 deals with costs and services.

34. 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.”

35. The Schedule to the Valuation Rules contains Interpretative Notes. Note to rule 9 is reproduced below:

“Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such

methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

(a) Identical goods.- The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

(b) Similar goods- The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) Deductive method.- The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly."

36. It is seen from the aforesaid, that 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 sub-rule (1), the value shall be determined sequentially through rules 4 to 9. 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. The Notes contained in the Schedule to rule 9 of the Valuation Rules provide that the methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9. Some examples of reasonable flexibility regarding identical/goods similar goods have also been provided.

37. There are two aspects in this appeal. The first is about the "rejection of value" declared by the importers in the Bills of Entry and the second is with

regard to “re-determination of the value”. These two will be examined separately.

REJECTION OF VALUE

38. The records indicate that aluminium scrap of various grades were imported for which Bills of Entry were filed by CMR Nikkie for clearing the consignment on the basis of self-assessment of duty on the transaction value. 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. The assessing officer doubted the correctness of the value declared by CMR Nikkie in the Bills of Entry for the following three reasons:

- (i) The value declared, when compared to the DGoV Alert dated 15.11.2018, was on the lower side;
- (ii) The difference between the value declared in the Bills of Entry and the LME price was quite high; and
- (iii) The NIDB data of contemporaneous import at about the same time indicated that the value declared was significantly lower.

39. Accordingly, in terms of section 17(3) of the Customs Act and rule 12(1) of the Valuation Rules, a letter dated 01.10.2020 was issued to CMR Nikkie to submit any further information, including documents or any other evidence to justify the value declared in the Bills of Entry. A reply dated 06.10.2020 was furnished by CMR Nikkie denying that any other contemporaneous import of aluminium scrap at higher transaction value had taken place. It was also stated that no minimum assessable price for aluminium scrap has been fixed in the DGoV Alert dated 15.11.2018 and in any case such assessment of duty can be made only on the basis of transaction value of aluminium scrap. Therefore, rules 4,5 or 9 of the Valuation Rules would not be relevant.

40. The proper officer still had a reasonable doubt about the truth and accuracy of the value declared and, therefore, under rule 12(1) of the Valuation Rules, it would be deemed that the transaction value of such imported goods cannot be determined under the provisions of rule 3(1) of the Valuation Rules. Accordingly, a show cause notice dated 28.12.2020 was issued to CMR Nikkie specifically mentioning that the transaction value declared by the importer is not true and fair and hence cannot be determined under rule 3(1) of the Valuation Rules and, therefore, was liable to be rejected under rule 12. The show cause notice refers to the reply dated 06.10.2020 submitted by the importer to the letter dated 01.10.2020 and notes that the importer had not submitted any documentary evidence or plausible explanation regarding the gap observed between the value declared by the importer and the reference value determined in accordance with the DGoV Alert dated 15.11.2018 as well as the value of contemporaneous

imports of aluminium scrap at about the same time.

41. A reply dated 20.01.2021 was filed by CMR Nikkie to the aforesaid show cause notice pointing out that there is no instance of any contemporaneous import of similar goods in comparable quantity from the same country of origin at higher transaction value and in spite of the request made, the department had not produced any evidence. Reference to NIDB data is not relevant since NIDB data talks about assessed value and does not contain any particulars about actual transaction value of any other contemporaneous import of the same or similar good in comparable quantity at or about the same time of import from the same country of origin. The comparison of contemporaneous import price of other goods would be irrelevant as particulars had not been provided by the department.

42. A detailed speaking order as contemplated under section 17(5) of the Customs Act was passed by the Deputy Commissioner on 26.03.2021 for rejection of the value declared in the Bills of Entry. This finding has been set aside by the Commissioner (Appeals) in the order impugned.

43. It would, therefore, be necessary to examine the order passed by the Deputy Commissioner in detail so far as it rejects the transaction value.

44. In paragraph 3 of the order, the Deputy Commissioner extensively refers to the definition of various categories of aluminium scrap by the Institute of Scrap Recycling Industries Inc Washington DC USA issued vide 'Scrap Specification Circular'. The various categories of aluminium scrap involved in these appeals are "Zorba", "Twitch", "Tense", "Troma", "Taint Tabor" "Tense/Taint Tabor". The Deputy Commissioner then noticed that London Metal Exchange is the largest and the most reputed metal exchange of the world and that official metal prices are established daily from the bid and offer prices discovered during the course of trading. The Deputy Commissioner also noticed that LME official settlement prices are widely used as bench mark in physical metal contracts all over the world and are also relevant for determining the price of aluminium after allowing gap/discount according to the particular code/grade of the aluminium scrap as specified by the Institute of Scrap Re-cycling Industries.

45. The Deputy Commissioner then examined the proposed grounds for rejection of the declared value marked in the show cause notice as also the reply submitted by the importer; the decisions on which reliance was placed by the importer; and the provisions of the Customs Act as also the Valuation Rules and ultimately held that though it is correct that the value declared by the importer cannot be rejected only on the basis of alerts/circulars issued by DGoV and cannot also override the provisions of the Customs Act and the Valuation Rules, but found as a fact that in the present case the declared value was proposed to be rejected in accordance with the provisions of section 14 of the Customs Act read with rules 3 to 12 of the Valuation Rules on the basis of reasonable doubt about the truthfulness of the declared value in the Bills of Entry. The Deputy

Commissioner, therefore, rejected the contention of the importer that the declared value had been rejected only on account of DGoV Alert dated 15.11.2018 as it was only used as a reference to test the truthfulness and accuracy of the value declared by the importer. The Deputy Commissioner also found that NIDB data is used by the department to ascertain the truthfulness and accuracy of the value of the imported goods self-assessed by the importer by comparing it with the value of the contemporaneous imports made at or about the same time.

46. Ultimately, the Deputy Commissioner held that the transaction value declared by the importer was not true and fair, and hence could not be determined under rule 3(1). It was, therefore, rejected under rule 12 of the Valuation Rules.

47. The finding recorded by the Deputy Commissioner in the speaking order regarding rejection of the transaction value was set aside by the Commissioner (Appeals). The Commissioner (Appeals) observed that though the Valuation Rules mandated that the value declared by the importer can be rejected only on the basis of reasonable and cogent evidence, but the department failed to discharge this burden. The Commissioner (Appeals) noted that there was nothing on the record to show that the invoice value did not represent the transaction value, more particularly, when there was no allegation of any additional consideration received by the seller. The Commissioner (Appeals) also noticed that no exercise was undertaken by the Deputy Commissioner to reject the value declared in the Bills of Entry. To support the aforesaid conclusions, the Commissioner (Appeals) placed reliance upon the decisions of the Tribunal in Maruti Fabric Impex and Marvel Agencies. The Commissioner (Appeals) also found that the Deputy Commissioner did not discuss the parameters or dimensions related with the nature of the product which were required to be looked into while examining contemporaneous imports. The approach adopted by the Deputy Commissioner was, therefore, found to be not only contrary to the provisions of section 14 of the Customs and the Valuations Rules, but also contrary to the views expressed by the Supreme Court in Motor Industries Company Ltd. vs. Commissioner of Customs, 2009 (244) ELT 4 (S.C.). The Commissioner (Appeals), therefore, held that the order of the Deputy Commissioner rejecting the transaction value could not be sustained.

48. Learned authorized representative appearing for the department has challenged this finding recorded by the Commissioner (Appeals). The submission that has been advanced is that the Deputy Commissioner had meticulously examined and followed the provisions of the Customs Act and the Valuation Rules for finding out whether there were reasons to doubt the correctness of the value declared by the importers in the Bills of Entry. Learned authorized representative submitted that good and cogent reasons had been given by the Deputy Commissioner for rejecting the transaction value, but the Commissioner (Appeals) without specifically dealing with the findings recorded by the Deputy Commissioner has, in a cursory manner, set aside this finding recorded by the

Deputy Commissioner.

49. Learned counsel appearing for the respondents, however, supported this finding recorded by the Commissioner (Appeals).

50. The first finding recorded by the Commissioner (Appeals) is that the declared value can be rejected only on the basis of reasonable and cogent evidence, but the department failed to substantiate the allegations. According to the Commissioner (Appeals), there was nothing on the record to show that the invoice value did not represent the transaction value in the international market.

51. This finding recorded by the Commissioner (Appeals) is apparently erroneous. The Deputy Commissioner doubted the correctness of the value declared in the Bills of Entry for three reasons. The first being that the value declared was on the lower side when compared to the DGoV alert dated 15.11.2018; the second being that the difference between the value declared in the Bills of Entry and the LME price was quite high; and the third being that the NIDB data of contemporaneous import at about the same time indicated that the value declared was significantly lower. Adequate opportunity was given to the importer to submit any further information, including the documents or any other evidence to justify the value declared in the Bills of Entry by issuance of a letter dated 01.10.2020 to CMR Nikkie. No documents were submitted by CMR Nikkie in the reply dated 06.10.2020 and only a statement was made denying that any contemporaneous import of aluminium scrap at higher transaction value had taken place.

52. As the Deputy Commissioner still had a reasonable doubt about the truth and accuracy of the value declared, a show cause notice dated 20.12.2020 was issued to CMR Nikkie specifically mentioning that the transaction value declared by the importer is not true and fair, and hence cannot be determined under rule 3(1) of the Valuation Rules and was, therefore, liable to be rejected under rule 12 of the Valuation Rules. CMR Nikkie submitted a reply dated 20.01.2021 to the show cause notice pointing out that there was no instance of contemporaneous import of similar goods in comparable quantity from the same country of origin at higher transaction value.

53. Annexure 'A' to the show cause notice provides a detailed chart showing the value declared and self-assessed by CMR Nikkie in the Bills of Entry. In respect of each of the categories of aluminium scrap, it provides a computation of reference price in terms of DGoV Circular and also gives particulars of contemporaneous import as per the NIDB data. It also gives the country of origin and the self-assessed rate as also the rates proposed to be re-determined.

54. All these facts have been taken into consideration by the Deputy Commissioner. The Deputy Commissioner noticed that the DGoV alert was used only as a reference to test the truthfulness and accuracy of the value declared by the importer. At the stage of rejection of the transaction value, the Deputy Commissioner was not required to determine the actual value, for which a

separate exercise is undertaken, after the value declared in the Bills of Entry is rejected.

55. Learned counsel appearing for the respondents, however, submitted that the NIDB data cannot form the basis for rejection of the transaction value under rule 12 of the Valuation Rules and in this connection placed reliance upon the decision of the Tribunal in *Atlantis Trading Company vs. Commissioner of Customs, Tuticorin*, 2024 (388) ELT 526 (Tri.-Chennai). The portion on which reliance has been placed by the learned counsel is reproduced below:

"4.3 It appears that the Assistant Commissioner entertaining a doubt as regards the declared value by the importer, having looked into the NIDB data wherein similar goods appeared to have been cleared at a higher rate as depicted in the table under Paragraph 4 of the Order-in-Original, chose to hold that the declared value was liable for rejection and that the same was required to be re-determined at USD 20.70 per piece under Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In adjudication, the original authority proceeded to reject the declared value and re-determined the unit price solely based on the NIDB data. Other than this, we do not find any findings as to whether the declared value of the appellant was false or incorrect, or that any contemporaneous/actual imports suggested any discrepancy in the declared value, etc.

6. The issue in the present appeal lies on a very narrow compass. The reason for the Assistant Commissioner to reject the declared value is solely based on the NIDB data and other than this, we do not find any contemporaneous imports of similar goods declaring higher value having been referred to, by the said authority. Moreover, it is a fact borne on record that the appellant had tried to impress upon the Assistant Commissioner by furnishing imports of similar goods by various other importers, the value of which almost matched with that of the appellant before us, but however the same has not at all been considered by the said authority.

7.1 It is the settled position of law that NIDB data cannot be the only basis for rejection of the declared value, which has been reiterated by various CESTAT Benches, including the Chennai Bench, in the case of *M/s. Almaa Traders v. Commissioner of Customs (Export), Chennai* [Final Order No. 40898 of 2023, dated 11-10-2023 in Customs Appeal No. 40935 of 2014 - CESTAT, Chennai] [(2024) 16 Centax 282 (Tri. - Chennai)],

7.2 A similar view was also expressed by this Bench in the case of *M/s. Shah B. Impex v. Commissioner of Customs (Imports), Chennai* [Final Order No. 40917 of 2023, dated 12-10-2023 in Customs Appeal No. 40823 of 2014 - CESTAT, Chennai] [(2024) 16 Centax 288 (Tri. - Chennai)],

8. We are therefore prima facie satisfied that the Revenue has not made out a case firstly, for the rejection of the declared value and secondly, no case is either made out justifying re-determination of the same. We find that the decisions/orders relied upon by the appellant support our above view, and hence, we hold that the adjudicating authority was clearly in error in rejecting the declared value and then re-determining the same; and hence, the impugned order is clearly unsustainable for the above reasons. Hence, we set aside the impugned order.”

(emphasis supplied)

56. This decision of the Tribunal in Atlantis Trading holds that the NIDB data cannot be the sole basis for rejection of the transaction value. In the present matter, as noticed above, three reasons were made known to the importer for rejection of the value and adequate opportunity had been provided to the importer to respond, but the Deputy Commissioner was not satisfied with the reply given by the importer. Annexure 'A' to the show cause notice categorizes the imported aluminium scrap into various categories. The importer did not deny any of the particulars given in Annexure 'A' to the show cause notice and only made a general statement that there was no instance of any contemporaneous import of similar goods in comparable quantity from the same country of origin at higher transaction value. It is not a case where without categorization of the aluminium scrap and without giving particulars of the imports made at or about the same time in comparable quantities, the transaction value was proposed to be rejected.

57. Learned counsel for the respondents also placed reliance upon the decision of the Tribunal in Aggarwal Foundries (P) Ltd. vs. Commissioner of Customs, 2020 (371) ELT 859 (Tri-Hyd) and in particular to paragraph 2, which is reproduced below:

“2. The appellant imported pig iron from various overseas traders for use in manufacture of billets. The declared value of pig iron varied from USD 229 per MT to USD 300 per MT. These values were rejected by the assessing officer who enhanced the value to USD 500 per MT based on the data available with the NIDB. NIDB is the data of the Customs Department which gives values of various commodities based on various transaction values of different goods. The question which falls for consideration is whether the invoice value can be rejected and the duty can be charged as per NIDB data without any specific evidence that the invoice values do not reflect actual transaction value. This issue was decided in respect of the same assessee vide Final Order No. A/30143-30156/2018, dated 29-1-2018. It has been held that the NIDB data can be a guideline for the customs to arrive at the value of the goods but the NIDB data cannot be applied directly unless the value given therein falls within the parameters of identical goods or similar goods. Relying on the decisions in the cases of Topsia Estates Pvt Ltd v. CC (Import-Seaport) Chennai [2015 (330) E.L.T. 799 (Tri. - Chennai)],

CC New Delhi v. Nath International [2013 (289) E.L.T. 305 (Tri. - Del.)], Impex Steel & Bearing Co. v. CC Delhi-IV [2014 (302) E.L.T. 464 (Tri. - Del.)] and Eicher Tractors Ltd v. CC Mumbai [2000 (122) E.L.T. 321 (S.C.)] it has been decided that the department cannot reject the declared value and assess the goods as per the NIDB data."

(emphasis supplied)

58. This decision again holds that invoice value cannot be rejected on the basis of NIDB data without any specific evidence. In fact, it holds that NIDB data can be used as a guideline, but cannot be applied directly unless the value therein falls within the parameters of identical goods or similar goods.

59. Learned counsel for the respondents also placed reliance upon the decision of the Supreme Court in Commissioner of Customs, Calcutta vs. South India Television (P) Ltd., 2007 (214) 3 (SC). Paragraph 6 of the decision is reproduced below:

"6.However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods....."

(emphasis supplied)

60. The aforesaid decision holds that casting suspicion on invoice produced by

the importer is not sufficient to reject it as evidence of value of imported goods and if the department wants to allege under valuation, it must make detailed inquiries and collect material.

61. Learned Commissioner (Appeals) has relied upon the decision of the Tribunal in Maruti Fabric Impex, wherein a finding was recorded that since there was no evidence to show that the importer had paid over and above the transaction value, there was no reason to reject the transaction value. The Commissioner (Appeals), in the present case, has also observed that the transaction value could not be rejected because the Department had failed to even allege that any additional consideration was paid by the importers to the sellers.

62. For rejection of the transaction value, the principles enshrined in section 14 of the Customs Act and the Valuation Rules have to be adhered to. In fact, Explanation (iii) to rule 12 of the Valuation Rules provides examples where the proper officer shall have the powers to raise doubts about the truth or accuracy of the declared value. Payment of additional consideration is not even a ground stated therein. The finding recorded by the Commissioner (Appeals), that in the absence of any additional consideration having been paid by the importers to the sellers, the transaction value could not have been rejected is not in conformity with the provisions of the Customs Act or the Valuation Rules.

63. Even if no additional consideration is paid, still the proper officer can proceed to reject the value under rule 12 of the Valuation Rules, if he has a reasonable doubt that the declared value does not represent the transaction value. Doubts can be raised on the truth or accuracy of the declared value based on certain reason which may include the six reasons mentioned in Explanation (iii) of rule 12 of the Valuation Rules. One such reason is where identical or similar goods imported at or about the same time in comparable quantities in comparable commercial transaction were assessed at a significantly higher value.

64. The Commissioner (Appeals) has also relied upon the decision of the Tribunal in Marble Agencies. This decision merely holds that the transaction value can be rejected only on the basis of tangible evidence. The present matter is not a case where there is no evidence. This decision, therefore, does not help the respondents.

65. The Commissioner (Appeals) has also placed reliance upon the decision of the Supreme Court in Motor Industries. This decision holds that formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said ground to the importer is mandatory. This procedure had been followed by the Deputy Commissioner in the present case.

66. The Commissioner (Appeals), as also learned counsel appearing for the importers, also placed reliance upon the decision of the Supreme Court in Sanjivani Non-ferrous Trading. The Supreme Court held that the declared price could be rejected only with cogent reasons. In the present case, as noticed above, cogent reasons have been given by the Deputy Commissioner for

rejection of the transaction value.

67. The Commissioner (Appeals), as also the learned counsel appearing for the importers, placed reliance upon the decision of the Supreme Court in Century Metal Recycling. The observations of the Supreme Court are as follows:

"17. The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to uncertainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.

25. Before closing, we would observe that the Valuation Alerts, as also stated by the respondents, 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. They provide guidance to the field formation in valuation matters. They help ensure uniform practice, smooth functioning and prevent evasion and short payment of duty. However, they should not be construed as interfering with the discretion of the assessment authority who is required to pass an Assessment Order in the given factual matrix. Declared valuation can be rejected based upon the evidence which qualifies and meets the criteria of 'certain reasons'. Besides the opinion formed must be reasonable. Reference to foreign journals for the price quoted in exchanges etc., to find out the correct international price of concerned goods would be relevant but reliance can be placed on such material only when the adjudicating authority had conducted enquiries and ascertained details with reference to the goods imported which are identical or similar and 'certain reasons' exists and justifies detailed investigation. These reasons are to be recorded and if requested disclosed/communicated to the importer. Valuation alerts could be relied upon for default valuation computation under the Rules. (See Varsha Plastic Pvt. Ltd. vs. Union of India (2009) 3 SCC 365).

26. We would also like to clarify that we have not issued any general or omnibus direction that the transaction value declared in the bill of entries should invariably be accepted in all cases and/or that in all cases where imports of aluminium scrap are involved. The matter has to be examined on a case to case basis, the evidence before the authorities, the material placed on record and the enquiries conducted by the adjudicating authorities etc."

(emphasis supplied)

68. It will be seen that the Supreme Court in the aforesaid decision in Century Metal Recycling held that the expression "reason to doubt" cannot be equated with the requirements of positive reasons to believe. However, the doubt must be reasonable based on a degree of objectivity. The Supreme Court also observed that the reasons have to be recorded and if requested disclosed/communicated to the importer. The Supreme Court also clarified that a general direction is not being issued that the transaction value declared in the Bills of Entry should invariably be accepted in all cases where the imports of aluminium scrap are involved, and the matter has to be examined on a case to case basis on the basis of the evidence and the material placed on record.

69. In the present case, as noticed above, the reason assigned by the Deputy Commissioner for rejection of the transaction value was not based on mere suspicion but was based on proper and objective consideration of the facts. The reasons were also communicated to the importers.

70. The Commissioner (Appeals) was, therefore, not justified in holding that the transaction value declared by the importers in the Bills of Entry could not be rejected. The Deputy Commissioner has given good and cogent reasons for rejecting the transaction value declared by the importers in the Bills of Entry.

'RE-DETERMINATION OF VALUE'

71. After having rejected the value mentioned by the importers in the Bills of Entry, the Deputy Commissioner was required to re-assess the duty leviable on the imported goods and pass a speaking order on the re-assessment.

72. Rule 3(4) of the Valuation Rules provides that if the value cannot be determined under sub-rule (1), it shall be determined by proceeding sequentially through rule 4 to 9.

73. The show cause notice issued to CMR Nikkie makes it known to the importer that the value of the goods was required to be re-determined by proceeding sequentially through rules 4 to 9 of the Valuation rules. The show cause notice also gives reasons as to why rules 4 to 8 would not be applicable and, therefore, the value was required to be re-determined in accordance with the provisions of rule 9 of the Valuation Rules. The show cause notice also informs the importer that Interpretative Note to rule 9 specified in the Schedule to the Valuation Rules would be applicable.

74. The Deputy Commissioner examined sequentially whether the value could be determined under rules 4,5,6,7 or 8 of the Valuation Rules. After holding that it could not be determined under rules 4 to 8, the Deputy Commissioner proceeded to determine it under rule 9 of the Valuation Rules. In this connection, the Deputy Commissioner examined the provisions of rule 9 which deals with residual method for determining the value and provides that the value shall be determined using reasonable means consistent with the principles and general

provisions of the rules and on the basis of data available in India. The Deputy Commissioner also considered Note to rule 9 of the interpretative Notes contained in the Schedule to the Valuation Rules. The Deputy Commissioner then re-determined the value on the basis of accepted transaction value of aluminium scrap of category "Zorba", "Twitch", "Tense", "Troma", "Taint Tabor" "Tense/Taint Tabor" on the basis of contemporaneous imports made at about the same time, irrespective of the country of origin. The findings recorded by the Deputy Commissioner are again reproduced below :

".....The data pertaining to contemporaneous imports have been compiled in Column 'T' to Column 'ZA' of the Annexure-"A" and the importer has already been informed that the veracity of the said data may be checked at URL: <https://enquiry.icegate.gov.in/enquiryatices/beTrack> ices. Therefore, the above referred Bills of Entries are being accordingly re-assessed under the provisions of Section 17(4) of the Customs Act, 1962 and the provisional assessment is being finalized in accordance with the provisions of Section 18(2) of the Customs Act, 1962 by enhancing the declared price mentioned in Column "K" (in USD per Kg.) of the Annexure "A" to the extent of price of contemporaneous imports at or about the same time as the goods being valued, irrespective of country of origin, as mentioned against each Bill of Entry in Column 'T' (in USD per Kg.) of the Annexure-"A", under the provisions of Rule 9 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962."

(emphasis supplied)

75. The re-determination of the value by the Deputy Commissioner has also been set aside by the Commissioner (Appeals). The Commissioner (Appeals) held that the enhancement of the value on the basis of the values prescribed in the DGoV Circular is contrary to the provisions of section 14 of the Customs Act and the Valuation Rules in view of the decision of the Supreme Court in Century Metal Recycling. The Commissioner (Appeals) also held that the LME prices of metals cannot also be made the basis for determination of the value of aluminium scrap as that would not only be contrary to the provisions of the Valuation Rules, but also contrary to the decision of the Tribunal in Jindal Strips Ltd. vs. Commissioner of Customs, New Delhi, 2001 (133) ELT 570 (Tri.-Del) and Rajeshwari Metallurgical Ltd. vs. Commissioner (Appeals), Bangalore, 2006 (205) ELT 796 (Tri.-Bang). The Commissioner (Appeals) also relied upon the decision of the Supreme Court in Century Metal Recycling to hold that it is difficult to find any identical/similar goods imported in India having same categorical and physical composition.

76. Learned authorized representative appearing for the department submitted that the view taken by the Commissioner (Appeals) to reject the redetermination of the value by the Deputy Commissioner is not a correct view. Learned authorized representative pointed out that the Deputy Commissioner was justified in holding that the rules 4 to 8 of the Valuation Rules would not be

applicable and the only method by which redetermination of the value could be undertaken was under rule 9 of the Valuation Rules. Learned authorized representative also pointed out that the Note to rule 9 contained in the Interpretative Notes was correctly applied by the Deputy Commissioner for re-determining the value.

77. Learned counsel appearing for the respondents, however, contended that the Commissioner (Appeals) was justified in holding that the re-determination of the value had not been done in accordance with the provisions of the Valuation Rules. Learned counsel also pointed out that in the fourth set of appeals pertaining to CMR Nikkie bearing Customs Appeal No. 51942 of 2022, Customs Appeal No. 51943 of 2022 and Customs Appeal No. 51944 of 2022, the Deputy Commissioner relied upon rule 5 and not rule 9 of the Valuation Rules as was done in the other appeals for re-determining the assessable value, which rule is not applicable.

78. The submissions advanced by the learned authorized representative appearing for the department and the learned counsel appearing for the respondents on this issue have been considered.

79. It is seen that in all the appeals, except Customs Appeal No. 51942 of 2022, Customs Appeal No. 51943 of 2022 and Customs Appeal No. 51944 of 2022, the value of the goods imported has been re-determined under rule 9 of the Valuation Rules. In the aforesaid three appeals, the value has been re-determined under rule 5 of the Valuation Rules.

80. Rule 9 of the Valuation Rules deals with "residual method" and provides that where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. It would also be useful to refer to Note to rule 9 contained in the Schedule to the Valuation Rules containing Interpretative Notes. It provides that the methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9. Examples of reasonable flexibility have also been provided in rule 3 regarding identical goods and similar goods. The Deputy Commissioner found that the data pertaining to contemporaneous imports had been compiled in column "T" to column "ZA" of Annexure 'A' to the show cause notice and the importer had also been informed that the veracity of such data could be checked on the website. Thus, the value was re-determined on the basis of accepted transaction value of aluminium scrap of categories "Zorba", "Twitch", "Tense", "Troma", "Taint Tabor" "Tense/Taint Tabor" on the basis of Bills of Entry of contemporaneous imports at or about the same time, irrespective of their country of origin by taking aid of Interpretative Notes to rule 9 of the Valuation Rules.

81. The contention advanced by the learned counsel for the respondents that it was absolutely necessary that the goods should have been imported from the same country cannot be accepted because if that was the position, resort to rule 9 would not have been taken. Interpretative Note to rule 9 clearly permits such a mode to be adopted by the Deputy Commissioner. Annexure 'A' to the show cause notice is a chart dealing with all categories of aluminium scrap and the value has been re-determined by the Deputy Commissioner after comparing the value with the respective category. There is no dispute with regard to the figures mentioned in Annexure 'A' to the show cause notice because at no stage the importers challenged the figures, despite time having been given.

82. The Deputy Commissioner has not re-determined the value on the basis of DGoV Circular or the LME prices, but has determined it on the basis of NIDB data of the various categories of aluminium scrap pertaining to contemporaneous imports at or about the same time. These data contained in Annexure 'A' to the show cause notice were made known to the importers. The importers did not produce any data relating to contemporaneous imports at or about the same time. The decisions on which reliance has been placed by the Commissioner (Appeals) or by the learned counsel appearing for the respondents, therefore, do not come to the aid of the importers.

83. There is, therefore, no error in the order passed by the Deputy Commissioner re-determining the value of the imported goods. The order passed by the Commissioner (Appeals) in 359 appeals setting aside the order passed by the Deputy Commissioner would, therefore, have to be set aside.

84. The contention advanced by the learned counsel for the respondents in connection with three appeals bearing Customs Appeal No. 51942 of 2022, Customs Appeal No. 51943 of 2022 and Customs Appeal No. 51944 of 2022 needs to be now examined. The contention is that the Deputy Commissioner re-determined the value in these three appeals under rule 5 of the Valuation Rules. Rule 5 deals with "transaction value of similar goods" and provides that the value of imported goods shall be the transaction value of "similar goods" sold for export to India and imported at or about the same time as the goods being valued. The Deputy Commissioner, after noting that rule 4 would not be applicable proceeded to re-determine the value under rule 5 holding that "the data for similar goods, with near identical/similar description for grade/type/specification were found in NIDB for the contemporary times against various Bills of Entry" was available. The Commissioner (Appeals) has not examined this contention regarding rule 5 of the Valuation Rules raised by the importer and, in fact, has observed that the Deputy Commissioner had resorted to rule 9 of the Valuation Rules for re-determination of the value.

85. In view of the fact that a very cryptic finding has been given by the Deputy Commissioner for applying 5 of the Valuation Rules for re-determination of the value and the fact that the Commissioner (Appeals) has not examined this issue at all, it would be appropriate to remit the matter to the Deputy Commissioner

only in respect of three appeals bearing Customs Appeal No. 51942 of 2022, Customs Appeal No. 51943 of 2022 and Customs Appeal No. 51944 of 2022 for re-determining the value of the goods in accordance with the provisions of the Customs Act and the Valuation Rules.

CONCLUSION

86. Thus, for the reasons stated above, all the appeals filed by the department, except appeals bearing Customs Appeal No. 51942 of 2022, Customs Appeal No. 51943 of 2022 and Customs Appeal No. 51944 of 2022, are allowed. The orders passed by the Commissioner (Appeals) in 359 appeals are set aside and the orders passed by the Deputy Commissioner are restored.

87. The issue relating to re-determination of the value of the imported goods in Customs Appeal No. 51942 of 2022, Customs Appeal No. 51943 of 2022 and Customs Appeal No. 51944 of 2022 is remitted to the Deputy Commissioner. The order dated 01.06.2022 passed by the Commissioner (Appeals) in all these three appeals is, accordingly, set aside and the order dated 24.11.2021 passed by the Deputy Commissioner in connection with these three appeals is restored only to the extent it rejects the value mentioned by the importers in the Bills of Entry. The Deputy Commissioner shall now re-determine the value of the imported goods involved in these three appeals in accordance with the provisions of the Customs Act and Valuation Rules.

(Order pronounced on 21.10.2024)