

Guru Rajendra Metalloys India Pvt Ltd vs Ahmedabad on 29 May, 2020

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

Customs Appeal No. 12338 of 2019

[Arising out of Order-in-Appeal No-AHD-CUSTOM-000-APP-215-265-19-20 dated-03/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

Guru Rajendra Metalloys India Pvt Ltd
101, Gr House, 8 Gautam Vihar Society, Aroma
School Road, Opp. Sukhsagar Complex, Ashram
Road, Usmanpura
AHMEDABAD
GUJARAT

.... Appellant

VERSUS

C.C. -Ahmedabad
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD,
GUJARAT

....Respondent

WITH

- (1) Customs Appeal No. 12339 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (2) Customs Appeal No. 12340 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (3) Customs Appeal No. 12341 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (4) Customs Appeal No. 12342 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (5) Customs Appeal No. 12343 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (6) Customs Appeal No. 12344 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (7) Customs Appeal No. 12345 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (8) Customs Appeal No. 12346 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (9) Customs Appeal No. 12347 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (10) Customs Appeal No. 12348 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (11) Customs Appeal No. 12349 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (12) Customs Appeal No. 12350 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (13) Customs Appeal No. 12351 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)

- Ltd.)
- (14) Customs Appeal No. 12352 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (15) Customs Appeal No. 12353 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (16) Customs Appeal No. 12354 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)

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- (17) Customs Appeal No. 12355 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (18) Customs Appeal No. 12356 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (19) Customs Appeal No. 12357 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (20) Customs Appeal No. 12358 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (21) Customs Appeal No. 12359 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (22) Customs Appeal No. 12360 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (23) Customs Appeal No. 12361 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (24) Customs Appeal No. 12362 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (25) Customs Appeal No. 12363 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (26) Customs Appeal No. 12364 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (27) Customs Appeal No. 12365 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (28) Customs Appeal No. 12366 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (29) Customs Appeal No. 12367 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (30) Customs Appeal No. 12368 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (31) Customs Appeal No. 12369 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (32) Customs Appeal No. 12370 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (33) Customs Appeal No. 12371 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (34) Customs Appeal No. 12372 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (35) Customs Appeal No. 12373 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (36) Customs Appeal No. 12374 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (37) Customs Appeal No. 12375 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)

- (38) Customs Appeal No. 12376 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (39) Customs Appeal No. 12377 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (40) Customs Appeal No. 12378 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (41) Customs Appeal No. 12379 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (42) Customs Appeal No. 12380 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)

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- (43) Customs Appeal No. 12381 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (44) Customs Appeal No. 12382 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (45) Customs Appeal No. 12383 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (46) Customs Appeal No. 12384 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (47) Customs Appeal No. 12385 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (48) Customs Appeal No. 12386 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (49) Customs Appeal No. 12387 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (50) Customs Appeal No. 12388 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (51) Customs Appeal No. 12389 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (52) Customs Appeal No. 12390 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (53) Customs Appeal No. 12391 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (54) Customs Appeal No. 12392 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (55) Customs Appeal No. 12393 of 2019 (Guru Rajendra Metalloys Pvt Ltd.)
- (56) Customs Appeal No. 12765 of 2019 (GR Metalloys Pvt Ltd.)
- (57) Customs Appeal No. 12766 of 2019 (GR Metalloys Pvt Ltd.)
- (58) Customs Appeal No. 12767 of 2019 (GR Metalloys Pvt Ltd.)
- (59) Customs Appeal No. 12768 of 2019 (GR Metalloys Pvt Ltd.)
- (60) Customs Appeal No. 12769 of 2019 (GR Metalloys Pvt Ltd.)
- (61) Customs Appeal No. 12770 of 2019 (GR Metalloys Pvt Ltd.)
- (62) Customs Appeal No. 12771 of 2019 (GR Metalloys Pvt Ltd.)
- (63) Customs Appeal No. 12772 of 2019 (GR Metalloys Pvt Ltd.)
- (64) Customs Appeal No. 12773 of 2019 (GR Metalloys Pvt Ltd.)
- (65) Customs Appeal No. 12774 of 2019 (GR Metalloys Pvt Ltd.)
- (66) Customs Appeal No. 12775 of 2019 (GR Metalloys Pvt Ltd.)
- (67) Customs Appeal No. 12776 of 2019 (GR Metalloys Pvt Ltd.)
- (68) Customs Appeal No. 12777 of 2019 (GR Metalloys Pvt Ltd.)

(69)	Customs	Appeal	No.	12778	of	2019	(GR Metalloys Pvt Ltd.)
(70)	Customs	Appeal	No.	12779	of	2019	(GR Metalloys Pvt Ltd.)
(71)	Customs	Appeal	No.	12780	of	2019	(GR Metalloys Pvt Ltd.)
(72)	Customs	Appeal	No.	12781	of	2019	(GR Metalloys Pvt Ltd.)
(73)	Customs	Appeal	No.	12782	of	2019	(GR Metalloys Pvt Ltd.)
(74)	Customs	Appeal	No.	12783	of	2019	(GR Metalloys Pvt Ltd.)
(75)	Customs	Appeal	No.	12784	of	2019	(GR Metalloys Pvt Ltd.)
(76)	Customs	Appeal	No.	12785	of	2019	(GR Metalloys Pvt Ltd.)
(77)	Customs	Appeal	No.	12786	of	2019	(GR Metalloys Pvt Ltd.)
(78)	Customs	Appeal	No.	12787	of	2019	(GR Metalloys Pvt Ltd.)
(79)	Customs	Appeal	No.	12788	of	2019	(GR Metalloys Pvt Ltd.)
(80)	Customs	Appeal	No.	12789	of	2019	(GR Metalloys Pvt Ltd.)
(81)	Customs	Appeal	No.	12790	of	2019	(GR Metalloys Pvt Ltd.)

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(82)	Customs	Appeal	No.	12791	of	2019	(GR Metalloys Pvt Ltd.)
(83)	Customs	Appeal	No.	12792	of	2019	(GR Metalloys Pvt Ltd.)
(84)	Customs	Appeal	No.	12793	of	2019	(GR Metalloys Pvt Ltd.)
(85)	Customs	Appeal	No.	12794	of	2019	(GR Metalloys Pvt Ltd.)
(86)	Customs	Appeal	No.	12795	of	2019	(GR Metalloys Pvt Ltd.)
(87)	Customs	Appeal	No.	12796	of	2019	(GR Metalloys Pvt Ltd.)
(88)	Customs	Appeal	No.	12797	of	2019	(GR Metalloys Pvt Ltd.)
(89)	Customs	Appeal	No.	12798	of	2019	(GR Metalloys Pvt Ltd.)
(90)	Customs	Appeal	No.	12799	of	2019	(GR Metalloys Pvt Ltd.)
(91)	Customs	Appeal	No.	12800	of	2019	(GR Metalloys Pvt Ltd.)
(92)	Customs	Appeal	No.	12801	of	2019	(GR Metalloys Pvt Ltd.)
(93)	Customs	Appeal	No.	12802	of	2019	(GR Metalloys Pvt Ltd.)
(94)	Customs	Appeal	No.	12803	of	2019	(GR Metalloys Pvt Ltd.)
(95)	Customs	Appeal	No.	12804	of	2019	(GR Metalloys Pvt Ltd.)
(96)	Customs	Appeal	No.	12805	of	2019	(GR Metalloys Pvt Ltd.)
(97)	Customs	Appeal	No.	12806	of	2019	(GR Metalloys Pvt Ltd.)
(98)	Customs	Appeal	No.	12807	of	2019	(GR Metalloys Pvt Ltd.)
(99)	Customs	Appeal	No.	12808	of	2019	(GR Metalloys Pvt Ltd.)
(100)	Customs	Appeal	No.	12809	of	2019	(GR Metalloys Pvt Ltd.)
(101)	Customs	Appeal	No.	12810	of	2019	(GR Metalloys Pvt Ltd.)
(102)	Customs	Appeal	No.	12811	of	2019	(GR Metalloys Pvt Ltd.)
(103)	Customs	Appeal	No.	12812	of	2019	(GR Metalloys Pvt Ltd.)
(104)	Customs	Appeal	No.	12813	of	2019	(GR Metalloys Pvt Ltd.)
(105)	Customs	Appeal	No.	12814	of	2019	(GR Metalloys Pvt Ltd.)
(106)	Customs	Appeal	No.	12815	of	2019	(GR Metalloys Pvt Ltd.)
(107)	Customs	Appeal	No.	12816	of	2019	(GR Metalloys Pvt Ltd.)
(108)	Customs	Appeal	No.	12817	of	2019	(GR Metalloys Pvt Ltd.)
(109)	Customs	Appeal	No.	12818	of	2019	(GR Metalloys Pvt Ltd.)
(110)	Customs	Appeal	No.	12819	of	2019	(GR Metalloys Pvt Ltd.)
(111)	Customs	Appeal	No.	12820	of	2019	(GR Metalloys Pvt Ltd.)
(112)	Customs	Appeal	No.	12821	of	2019	(GR Metalloys Pvt Ltd.)
(113)	Customs	Appeal	No.	12822	of	2019	(GR Metalloys Pvt Ltd.)
(114)	Customs	Appeal	No.	12823	of	2019	(GR Metalloys Pvt Ltd.)
(115)	Customs	Appeal	No.	12824	of	2019	(GR Metalloys Pvt Ltd.)
(116)	Customs	Appeal	No.	12825	of	2019	(GR Metalloys Pvt Ltd.)
(117)	Customs	Appeal	No.	12826	of	2019	(GR Metalloys Pvt Ltd.)

(118)	Customs	Appeal	No.	12827	of	2019	(GR	Metalloys	Pvt	Ltd.)
(119)	Customs	Appeal	No.	12828	of	2019	(GR	Metalloys	Pvt	Ltd.)
(120)	Customs	Appeal	No.	12829	of	2019	(GR	Metalloys	Pvt	Ltd.)
(121)	Customs	Appeal	No.	12830	of	2019	(GR	Metalloys	Pvt	Ltd.)
(122)	Customs	Appeal	No.	12831	of	2019	(GR	Metalloys	Pvt	Ltd.)
(123)	Customs	Appeal	No.	12832	of	2019	(GR	Metalloys	Pvt	Ltd.)
(124)	Customs	Appeal	No.	12833	of	2019	(GR	Metalloys	Pvt	Ltd.)
(125)	Customs	Appeal	No.	12834	of	2019	(GR	Metalloys	Pvt	Ltd.)
(126)	Customs	Appeal	No.	12835	of	2019	(GR	Metalloys	Pvt	Ltd.)
(127)	Customs	Appeal	No.	12836	of	2019	(GR	Metalloys	Pvt	Ltd.)
(128)	Customs	Appeal	No.	12837	of	2019	(GR	Metalloys	Pvt	Ltd.)
(129)	Customs	Appeal	No.	12838	of	2019	(GR	Metalloys	Pvt	Ltd.)
(130)	Customs	Appeal	No.	12839	of	2019	(GR	Metalloys	Pvt	Ltd.)
(131)	Customs	Appeal	No.	12840	of	2019	(GR	Metalloys	Pvt	Ltd.)
(132)	Customs	Appeal	No.	12841	of	2019	(GR	Metalloys	Pvt	Ltd.)
(133)	Customs	Appeal	No.	12842	of	2019	(GR	Metalloys	Pvt	Ltd.)

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(134) Customs Appeal No. 12843 of 2019 (GR Metalloys Pvt Ltd.)

(135) Customs Appeal No. 12844 of 2019 (GR Metalloys Pvt Ltd.)

(136) Customs Appeal No. 12845 of 2019 (GR Metalloys Pvt Ltd.)

[Arising out of Order-in-Appeal No-AHD-CUSTOM-000-APP-215-265-19-20 dated-03/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

[Arising out of Order-in-Appeal No- JMN-CUSTOM-000-APP-095-097-19-20 dated-03/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

[Arising out of Order-in-Appeal No- MUN-CUSTOM-000-APP-017-018-19-20 dated-03/07/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

[Arising out of Order-in-Appeal No- AHD-CUSTOM-000-APP-136-210-19-20 dated-21/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

[Arising out of Order-in-Appeal No- MUN-CUSTOM-000-APP-016-19-20 dated-21/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

[Arising out of Order-in-Appeal No- JMN-CUSTOM-000-APP-090-094-19-20 dated-21/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD]

APPEARANCE :

Shri S. Deepak Kumar, Consultant for the Appellant

Shri S. Airan, Assistant Commissioner (Authorised Representative) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)
FINAL ORDER NO. A/10889-11025/2020

DATE OF HEARING : 25.02.2020
DATE OF DECISION: 29.05.2020

RAMESH NAIR

All these appeals relating to the appellants involved identical issue of valuation of various types of aluminum scrap namely Taint Tabor, Tread, Tense, Zorba, Talk, Tromba, terse, Twitch, Telic, etc. imported from various countries during the period August 2018 to May 2019. The appellant uses these scrap as raw material for self consumption in the manufacture of Aluminum Ingots, Aluminium Alloy Ingots, etc. The case of the department is that the appellant have given a consent letter to the proposal of the enhancement of the value from USD 990 PMT as per invoice value to USD 1587PMT. In the consent letter it was stated that the appellant have gone through the contemporaneous data of import of

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similar/identical goods and the appellant has agreed to enhance the assessable value from the declared value of USD 990/- PMT to enhanced value of USD 1587/- PMT. The appellant challenged the assessment of Bills of Entry before the Commissioner (Appeals) who has dismissed the appeal. Shri Deepak Kumar, Learned Consultant appearing for the appellants submits that the enhancement was made on the basis of DGOV circular dated 01/12/2016. Therefore, though it is mentioned in the consent letter that the appellant have gone through the contemporaneous import data but the price is not on the basis of any contemporaneous import but in fact it is on the basis of DGOV Circular. As regard the application of price arrived at on the basis of DGOV Circular, this Tribunal in various cases held that the notional value on the basis of DGOV circular is not correct and legal. He further submits that since the enhancement is solely based on DGOV circular and no contemporaneous data was relied upon the enhancement is illegal and on this ground itself the appeal needs to be allowed. He further submits that even if the appellant has given a consent letter, the enhancement of the value must be done in accordance with the law by applying rules of Customs Valuation Rules sequentially which was not done in the present case. He submits that even though the consent was given by the importer, the Bills of Entry assessment can be challenged by the assessee. This has been held in various judgments. He further submits that in the present case, since the enhancement has no basis except the DGOV circular, there is no need to remand the matter and this Tribunal being a final fact finding authority, is competent to decide the appeal finally. In support of this submission, he placed reliance on the following judgments:

- (1) Century Metal Recycling Pvt. Ltd. 2019 (367) ELT 3 (SC)
- (2) Sanjivani Non- Ferrous Trading Pvt. Ltd. 2019 (365) ELT 3 (SC)
- (3) Sanjivani Non- Ferrous Trading Pvt. Ltd. 2017 (7) G.S.T.L 82
(Tri-All.)
- (4) Prabhu Dayal Prem Chand 2010 (253) ELT 353 (S C)
- (5) South India Television (P) Ltd. 2007 (214) ELT 3 (SC)
- (6) Kuber India 2016 (340) ELT 404 (Tri- Del.)
- (7) Nico Extrusions Pvt. Ltd. 2019 (369) ELT 1183 (Tri Mumbai)
- (8) Andrew Telecommunication Pvt. Ltd. 2018(362) E.L.T. 896 (Tri-
Mumbai)

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- (9) Ankit Electronics 2013 (294) E.L.T 336 (Tri- Del.)
- (10) Bharathi Rubber Lining & Allied Services P. Ltd. 2013 (287) ELT
124 (Tri- Mumbai)
- (11) Palco Metals Limited 2009 (234) E.L.T. 472 (Tri-Ahmd.)
- (12) Modern Manufacturers 2018 (363) ELT 1020 (Tri Del.)
- (13) Raj Kumar Shivhare 2010 (253) ELT 3 (SC)
- (14) Northern Plastics Ltd. 1997 (91) E.L.T. 502 (S.C)
- (15) Arignar Anna Sugar Mills 2012 (277) E.L.T. 63 (Mad.)
- (16) Rabindra Chanda Paul 2007 (209) E.L.T. 326 (S.C)
- (17) Tamil Nadu Petro Products Ltd. 2008 (226) ELT 51 (Mad.)
- (18) Pushpak Metal Corpn. 2014 (312) ELT 381 (Tri-Ahmd.)

3 Shri Sharad Airan, Learned Assistant Commissioner (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the order of the Commissioner (Appeal). He also relied on the decision of the Tribunal in the case of Saraswati Sales Corp. 2011 (266) ELT 237 (Tri- Del.).

4. We have heard both sides and perused the records. We find that the enhancement of the Customs Valuation is on the basis that the appellant have given consent letter wherein they have mentioned that they have gone through contemporaneous import data and agreed the enhancement of the value. We find that as per the submission made by Learned Consultant on behalf of the appellant, in one particular case, i.e. Bill of Entry no. 8487132 dated 16/10/2018 of Appeal No. C/12377/2019 of Guru Rajendra Metalloys Pvt Ltd.. It is for import of 21.50 MT of Taint/Tabor aluminium scrap. The appellant showed the invoice valued at USD 990 PMT. Assessing Officer has enhanced value to USD 1587/- PMT. This enhancement of the value as explained by the learned consultant in their additional submission filed on 16/03/2020 is as under.

The value of Taint/Tabor as per DGOV alert/circular comes to \$2035- (22% of \$2035)+ \$1587/- PMT.

4.1 This clearly shows that the enhanced value is exactly the value

arrived at on the basis of LME price of prime metal minus discount given in DGOV circular. This clearly shows that the enhancement of value is not

on the basis of contemporaneous import data but it is based on DGOV circular irrespective of the mention made in the consent letter that the appellant have gone through the contemporaneous import data. Therefore, it is clear that contemporaneous import data was either available nor relied upon for enhancement of the value. Therefore, the enhancement of value is absolutely illegal and incorrect. We are of the clear view that merely based on DGOV circular also, value cannot be enhanced which is without authority of law.

4.2 In the identical case, in respect of the same product i.e. Aluminium scrap, the Hon'ble Supreme Court in the case of Sanjivani Non- Ferrous Trading Pvt. Ltd. (supra) passed the following judgment:

6. It was submitted that if the Original Authority/Assessing Officer had failed to examine the evidence that was available with the Department and had not undertaken the exercise regarding price being not the sole consideration, the Tribunal should have remanded the case back to the Assessing Officer for examining the material and undertaking that exercise. To put it otherwise, the entire thrust of the argument of Mr. Radhakrishna was that appeals could not have been allowed straightaway by accepting the transaction value given by the respondent/assessee and another opportunity should have been given to the Assessing Authority in this behalf.

7. This argument may seem to be attractive, but only when there is a cursory look at the aforesaid observations of the Tribunal that the Assessing Officer did not examine the evidence available with the Department which was necessitated for such a purpose. However, the observations of the Tribunal have to be understood in their entirety and in the context in which these are made. The Tribunal has categorically mentioned that as per the provisions of Section 14 of the Customs Act and the principles laid down in the case law (which it referred to in the earlier part of the judgment) interpreting this provision, the assessable value has to be arrived at on the basis of the price which is actually paid. It is the basic principle enshrined in the aforesaid provision, i.e., Section 14, which can be culled out from the catena of judgments pronounced by this Court.

8. In *Eisher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai-1*, (2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.), this Court held as under :

"6. Under the Act Customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the

value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be 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. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller and the buyer have no interest in the

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business of each other and the price is the sole consideration for the sale ...". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the Rules framed in this behalf.

xxx xxx xxx

9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid for the particular transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

xxx xxx xxx

12. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to Customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

xxx xxx xxx

13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable

means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule 4 were not limited to the particular transaction then the other rules which refer to other transactions and data would become redundant.

xxx xxx xxx

22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a misdescription of the goods imported as was the case in Padia Sales Corpn. [1993 Supp. (4) SCC 57] It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible

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commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1)."

9. To the same effect, are other judgments, reiterating the aforesaid principle, such as, Commissioner of Customs, Calcutta v. South India Television (P) Ltd., (2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.), Chaudhary Ship Breakers v. Commissioner of Customs, Ahmedabad, (2010) 10 SCC 576 = 2010 (259) E.L.T. 161 (S.C.) and Commissioner of Customs, Vishakhapatnam v. Aggarwal Industries Ltd., (2012) 1 SCC 186 = 2011 (272) E.L.T. 641 (S.C.).

10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of „deemed value“ of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule

4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.

11. In South India Television (P) Ltd., the Court explained as to how the value is derived from the price and under what circumstances the deemed value mentioned in Section 14(1) can be departed with. Following discussion in the said judgment needs to be quoted hereunder :

"10. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent importer alleging misdeclaration regarding the price. There is no allegation of misdeclaration in the context of the description of the goods. In the present case, the allegation is of underinvoicing. The charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the bill of entry is the value referred to above and not merely the invoice price.

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12. 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. Undervaluation has to be proved. If the charge of undervaluation 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 undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, 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 undervaluation. 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 underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

12. The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act and the case law referred to by it (In paragraph 5, the Tribunal referred to its own judgments which follow the aforesaid principle laid down by this Court).

13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of

the transaction value. Since there is no such exercise done by the

Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous.

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

"In the present case as mentioned above, even though there is a reference to contemporaneous import in the order passed by the Deputy Commissioner no material regarding such import has been placed before us or made available by the appellant at any point of time. Therefore, assessment in this case has to be taken as having been made purely on the basis of LME bulletin without any corroborative evidence of imports at or near that price which is not permissible under law. We, therefore, set aside the impugned order and allow the appeal."

Dismissing the appeals, this Court observed as follows :

"....It is manifest from the aforeextracted order of the Tribunal that no details of any contemporaneous imports or any other material indicating the price notified by LME had either been referred to by the adjudicating officer in the adjudication order or such material was placed before the Tribunal at the time of hearing of the appeal. The Learned Counsel for the Revenue has not been able to controvert the said observations by the Tribunal. In that view of the matter no fault can be found with the order passed by the Tribunal setting aside the additional demand created against the assessee."

15. We, thus, do not find any merit in these appeals and dismiss the same.

4.3 In the above case, the facts were narrated in the judgment of Allahabad High Court in the same case of Sanjivani Non Ferrous Trading Pvt. Ltd. 2017 (7) GSTL 82 (Tri-All.) which is reproduced below:

"2.The brief facts of Appeal No. C/70332/2016 are that during the period from 27-8-2013 to 29-12-2014 the appellant imported 843 consignments of „Aluminium Waste & Scrap such as "Twitch, Tense, Taint, Tabor, Tromas, Tally & Zorba, etc." falling under Customs Tariff Item No. 7602 00 10. The appellant filed Bills of Entry for each consignment along with copy of purchase order and invoice. The appellant

self-assess the goods in the said Bills of Entry on the basis of transaction value. The Assessing Officer rejected the self-assessment of duty made by the appellant and re-assessed the duty by increasing assessable value

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and levying Customs duty aggregating to Rs. 10,88,10,346/- more than duty self-assessed by the appellant put together in respect of 843 Bills of Entry. The appellant filed a writ petition before the Hon ble High Court of Allahabad bearing Writ Tax No. 72 of 2015. The said writ petition was disposed of by the Hon ble High Court by order dated 28-1-2015. The Hon ble High Court directed for passing the speaking order on the re-assessment of the assessable value through said order dated 28-1-2015. In compliance of said order passed by the Hon ble High Court of Allahabad, Deputy Commissioner of Customs passed Order-in-Original No. 01/DC/CUS/2015, dated 25-3-2015 wherein he rejected transaction value in respect of 843 Bills of Entry and enhanced assessable value for assessment of duty to the some extend to which value was enhanced originally. Aggrieved by the said Order-in-Original No. 01/DC/CUS/2015, dated 25-3-2015 appellant preferred appeal before Commissioner (Appeals). The said appeal was decided through Order-in-Appeal No. NOI-CUSTM-000-APP-0310-15-16, dated 12-2-2016 passed by Commissioner of Central Excise & Service Tax (Appeals), Meerut-II, Noida.

7. Having considered the rival contentions and on perusal of record, we find that the Original Authority was directed by the Hon ble High Court to pass speaking order on the enhancement of assessable value. We find that the Original Authority in its Order-in-Original dated 25-3-2015 has passed comments on the grounds of writ petition and did not properly examine the evidence available with the department required to be examined for enhancement of assessable value. Further, we find that as held in the case laws stated above and as provided by Section 14 of Customs Act, 1962, the assessable value has to be arrived at on the basis of the price which is actually paid and in a case the price is not sole consideration or if the buyers and sellers are related persons then after establishing that the price is not sole consideration the transaction value can be rejected and taking the other evidences into consideration the assessable value can be arrived at. Such exercise has not been done in these cases on hand. Therefore, we reject the enhancement of assessable value in respect of the Bills of Entry which are involved in all the appeals being decided and we restore the assessable value as declared by the appellant in said Bills of Entry. "

4.4 As regard the issued that the appellant had given the consent letter, Hon'ble Supreme Court dealing with the same facts in the case of Century Metal Recycling Pvt. Ltd. (supra) passed the following order:

3. The appellant Company is stated to be engaged in the manufacture of aluminium alloys, for which they regularly import aluminium waste as a raw material for self-consumption. Imported scrap, it is accepted, falls under different code names as per specifications of the Institute of Recycling Industry. The grievance raised by the appellants is that the 2nd respondent i.e. the Principal Commissioner of Customs, Noida Customs 14 E/11070/2015 Commissionerate and its Officers almost uniformly do not clear the consignments as per the declared transaction value in the bill of entry but insist that the appellants write a letter agreeing to pay Customs duty as per the valuation by the Customs authorities and compel them to forego their right to provisional assessment under Section 18 of the Customs Act, 1962 („the Act , for short). The appellants, coerced and intimidated, have no option but to give in and issue a letter of consent agreeing to assessment/valuation by the Customs authorities to avoid delay in clearance, levy of demurrage, ground rent and container detention charges, etc. It is also alleged that the respondents without observing and contrary to the mandate of Section 14 of the Act discard the declared transactional value and recompute the consignment value in view of the Valuation Alert dated 1st December, 2016 issued by the Central Board of Excise and Customs („the Board , for short).

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20. We would ex facie for the reasons recorded below reject the contention of the respondents predicated on the letter of appellants dated 6th March, 2017 that the appellants did not seek provisional assessment of the bill of entry and had accepted and paid duty on the valuation done by the Customs authorities. This letter exposits the predicament faced by the appellants as it states that the appellants were in urgent requirement and wanted clearance of the goods. Pertinently, the appellants had earlier written several letters, including communications dated 22nd December, 2016 and 4th March, 2017 requesting for clearance of the imported consignment of aluminium scrap on the declared transaction value pointing out therein that on account of delay in the clearance of the imported consignments, the appellants and its sister concern had been compelled to pay excess duty of over Rs. 25 crores from August 2013 onwards. It is unfortunate and has to be accepted that the respondent authorities had compelled and forced the appellant to furnish the letter dated 6th March, 2017 thereby waiving of its right to provisional assessment and accepting valuation in terms of Rules 4 to 10.

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

communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.

21. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, albeit it has been read by us by implication in Rule 15 E/11070/2015

12. Being conscious that this mandate if applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case to case basis, depending upon the factual matrix and considerations like whether the importer has asked for „certain reasons , whether the reasons were not communicated, whether „certain reasons can be deciphered from the assessment/valuation order, whether misdescription or false declaration was apparent, etc.

22. In *Commissioner of Customs v. Prabhu Dayal Prem Chand*, [2010 (13) SCC 535 = 2010 (253) E.L.T. 353 (S.C.)] this Court had rejected the plea that the Revenue was justified in redetermining the value of brass and copper scrap on the basis of information received from London Metal Exchange on the price of the said metals on the ground that the importer was not confronted with any contemporaneous material for enhancing the transaction value. This Court affirmed the order of the Tribunal in *Prabhu Dayal Prem Chand* (supra) and held that the order-in-original had not indicated details of any contemporaneous import or other material in the form of corroborative material which had necessitated the enhancement in the transaction valuation.

23. We would now refer to the findings of the order-in-original in the present case which observes that the appellants had declared value of the aluminium scrap as Rs. 81.31 per kg, albeit the contemporaneous import data in the form of different bills of entry had indicated aluminium scrap values between Rs. 83.26 to Rs. 120.97 per kg. The said portion of the order refers to at least four bills of entries declaring assessable value of less than Rs. 85 per kg. Interestingly, the order in original also records that the imported goods being aluminium scrap was not a homogeneous commodity and therefore, cannot be evaluated on the basis of the samples or lab testing. Further, the order holds that it was very difficult to find any identical/similar goods imported in India having same chemical and physical composition and that the values of aluminium scrap identical/similar to the imported goods in nature and specification were not available. Without commenting on correctness of the said statements, we would observe that the aforesaid reasoning for rejection of the transactional value, would not meet the mandate of Section 14 and the Rules as elucidated in *M/s. Sanjivani Non-Ferrous Trading Pvt. Ltd.* (supra) wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry. We have also elaborated and explained the legal position with reference to Rule 12 of the 2007 Rules.

24. Therefore, in the facts and circumstances of the present case, it has to be held that the adjudication order in original is flawed and contrary to law for it does not give cogent and good

reason in terms of Section 14(1) and Rule 12 for rejection of the transaction value as declared in the bill of entry. The order in original is not in accordance with Section 14 and Rules 3 and 12 as the mandate of these provisions has been ignored. The 16 E/11070/2015 Assistant Collector has rejected the transaction value as declared in the bill of entry which, as noticed above, is clearly and fundamentally erroneous besides being contradictory. In the aforesaid circumstances, we do not think that the order in assessment dated 7th April, 2017 can be sustained and upheld. It is set aside and quashed.

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. v. Union of India, (2009) 3 SCC 365 = 2009 (235) E.L.T. 193 (S.C.)].

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.

27. With the aforesaid clarification, we allow the present appeal and quash and set aside the order of Assessment dated 7th April, 2017 by issuing a writ of certiorari. In the facts of the case, there shall be no order as to costs."

4.5 In view of the above judgments it is clear that when the enhancement was not based on any contemporaneous import, in the present case, particularly, when the invoice price of the appellant was not disputed on the basis of any evidence of wrong declaration of the value, the enhancement in the present case is illegal and incorrect.

4.6 In the case of Prabhu Dayal Prem Chand (supra), the value was enhanced on the basis of LME price and assessee was not confronted with 17 E/11070/2015 any contemporaneous material. The Hon'ble Supreme Court held that Tribunal order manifesting the detail of any contemporaneous imports or any material undertaking price notified by LME neither referred to by Adjudicating Officer nor such material was placed before Tribunal. Revenue has not been able to controvert the

said Tribunal's observations. The Hon'ble Supreme Court found no fault in Tribunal's order in setting aside the additional demand.

4.7 In the judgment of South India Television (P) Ltd. (supra), The Hon'ble Supreme Court regarding enhancement of the value gave the following observation:

"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. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion.

18 E/11070/2015 4.8 As regard the entire reliance of the Revenue that the appellant has given a consent letter, we find that this Tribunal in the case of Andrew Telecommunications Pvt. Ltd. (supra) categorically held as under:

5. The assessing authority places reliance on the price of the base metal published in bulletin of the London Metal Exchange and the consent of the importer to adopt that as the base for re-determination. However, it cannot be lost sight of that the clearance was ordered to be held up on the basis of raw material prices in the said bulletin when the goods under import were manufactured products. The rationale for the comparatively low prices was claimed to lie in the supply contracts to which importers had drawn the attention of the assessing officer who, however, chose to disregard these. We find that the resort to prices of base metal to reject the declared price of manufactured goods, particularly, in the light of an explanation offered and not disputed is not in accordance with Section 14 of Customs Act, 1962. Consent at gun-point is no consent and consent of any sort cannot condone deviation from the law.

4.9 This issue was also decided by a principal bench of this Tribunal at Delhi in the case of Ankit Electronics wherein the following order was passed:

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We propose to dispose of the stay petition as also appeal by a common order as a short issue is involved.

2. As per facts on record, the respondents filed thirteen Bills of Entry on various dates for the clearance of Ferrite magnet & Ferrite magnet rings declaring the value based upon the invoices raised by the supplier. The assessing authority did not agree with the declared value and enhanced the same. The Bill of Entry was accordingly assessed.

3. The said assessment was challenged by the respondents before Commissioner (Appeals), who observed that inasmuch as the assessing authority has not passed a speaking order giving reasons for rejection of the declared price, he set aside the assessment order and directed the assessing authority to pass speaking order within a period of 15 days.

4. Being aggrieved with the said order, Revenue has challenged the same on the ground that value was enhanced as per instructions of C.B.E. & C. vide Circular No. 91/2003-Cus., dated 14-10-2003 which are as follows :

"at the request of the importer, the proper officer is required to intimate in writing, the grounds for doubting the truth the accuracy of the declared value and provide a reasonable opportunity of being heard, before taking a final decision. However, it may not be necessary to issue speaking orders in all such cases where enhancement of value has been resorted to with the consent of the importers"

19 E/11070/2015 Accordingly the Revenue has contended that inasmuch as the appellants cleared the goods on enhanced value, they were precluded from contesting the same.

5. We however, do not agree with the above contention of the Revenue. The said circular itself makes it clear that proper officer is required to intimate in writing the grounds for enhancing the value and a reasonable opportunity is required to be given to the importer before the final decision is taken. It is only in those cases where both the sides agree to resort to enhancement of value. That no orders are required to be passed. Merely because the importer has cleared the goods at enhanced value to save the demurrage charges or otherwise, by itself, does not mean that the importer is consenting to enhance the value. It is right of the importer to contest the enhancement and fact of clearance of goods, cannot preclude the importer from exercising the right of appeal. As such, we find no merit in the Revenue's appeal.

6. Inasmuch as the Commissioner (Appeals) has remanded the matter to the original adjudicating authority for deciding the assessable value of the imported goods, by following the principles of natural justice, we upheld the impugned order and direct the original adjudicating authority to do the needful.

7. Stay petition as also appeal gets disposed of in the above manner.

4.10 We find that both the lower authorities, they have not accepted that the prices are based on DGOV circular. However, the calculations shown by the Learned consultant, it is clear that the enhancement of the value is not on the basis of contemporaneous imports data but clearly on the basis of DGOV circular. This Tribunal dealing with identical case in the case of Bharathi Rubber Lining & Allied Services P. Ltd. clearly held that DGOV circular cannot override the provisions of Valuation Rules. Invoice price is not sacrosanct but before rejecting the invoice price the department has to give cogent reasons for such rejection. Assessing Authority has to examine each and every case on merit for deciding its validity. He could not form the view to reject all transaction only on the basis of same general criteria based on DGOV circular. It was, however, held that if contemporaneous import were not noticed, Rules 5 and 6 of Customs Valuation Rules 1988 could not be applied, the question of rejecting the transaction valued under the Rule 10(A) does not arise at all.

4.11 In the case of Modern Manufacturers (supra) this Tribunal dealing with identical issue held that enhancement of value of imported goods 20 E/11070/2015 based on NIDB data and circular issued by DGOV without rejecting declared value under Rule 12 of Customs Valuation Rules 2007. Redetermination of value based on NIDB data and DGOV circular is not sustainable. In the present case, no exercise of rejecting the declared value under Rule 12 and process of applying valuation rules sequentially were followed. Therefore, the value declared by the appellant has to be accepted.

5. In view of above judgments, particularly, in respect of the identical cases, and on the various issues, such as whether after giving consent by the importer, the value can be enhanced, whether enhancement can be made on the basis of DGOV circular have been considered and conclusively held that in such circumstances invoice prices cannot be disputed and enhancement of the value cannot be made. Considering the above judgments and the observations made by us hereinabove, we are of the view that enhancement of the value made by assessing authority and upheld by Commissioner (Appeals) is absolutely illegal and incorrect. Therefore, impugned orders are set

aside, appeals are allowed with consequential relief, if any.

(Pronounced in the open court on 29.05.2020) (Ramesh Nair) Member (Judicial) (Raju) Member (Technical) Diksha