

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No. 40466 of 2023

(Arising out of Order in Original No. 101760/2023 dated 03.05.2023 passed by the
Principal Commissioner of Customs (General), Chennai)

Commissioner of Customs

Chennai – II Commissionerate (Imports)
Custom House, 60, Rajaji Salai
Chennai – 600 001.

Appellant

Vs.

M/s. Pratik International

No. 5, Mc Lean Street
2nd Floor, Broadway
Chennai – 600 001.

Respondent

APPEARANCE:

Smt. Rajni Menon, Authorised Representative for the Appellant
Shri S. Sankaravadivelu, Advocate for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40003/2026

Date of Hearing: 16.07.2025
Date of Decision: 08.01.2026

Per M. Ajit Kumar,

This appeal is filed by the Revenue against Order in Original No. 101760/2023 dated 03.05.2023 passed by the Principal Commissioner of Customs (General), Chennai (impugned order).

2. Brief facts of the case are that based on specific information that certain importers were engaged in undervaluation of welding machines imported from various China-based suppliers, the DRI, New Delhi initiated investigation. One such importer taken up for investigation is the respondent herein, a proprietrix firm managed by her husband.

The respondent imported welding machines, welding equipments, parts and accessories from China and their main suppliers were M/s. Grand Bless Technology Co. Ltd. M/s. Shenzhen General Welder Technology Co. Ltd., M/s. Shenzhen Jone Welding Technology Co. Ltd. etc. The goods imported by them were unbranded. After importing the goods the respondent used to put their own brand name 'Weltronix' on the goods before selling them. The respondent mainly imported arc welding machines, MIG welding machines, TIG welding machines etc. along with accessories. They allegedly obtained a lesser invoice value from the suppliers, and cleared the goods through Chennai Port resulting in misdeclaration of value of the goods. The statement recorded from the Customs Broker indicated that 48 consignments of welding machines and accessories were imported by the respondent and cleared as above. The differential duty was calculated by the department on the basis of the redetermined assessable value for the period between 10.12.2015 and 31.3.2017. Accordingly, Show Cause Notice dated 31.12.2020 was issued to reject the declared value of Rs.1,73,66,128/- and to redetermine the same at as Rs.2,68,52,058/- 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. The notice also proposed to impose fine and penalties. After due process of law, the Ld. Adjudicating Authority held that the undervaluation against the importer is not substantiated and dropped the proceedings. Hence the present appeal has been filed by the department.

3. The learned Authorized Representative Smt. Rajini Menon appeared for the appellant and Ld. Counsel Shri S. Sankaravadivelu appeared for the respondent.

3.1 The learned A.R. Smt. Rajini Menon, stated on behalf of the appellant-revenue that the Adjudicating Authority had found strong suspicion of undervaluation by the importer but disregarded clear evidence, including the importer's voluntary statement to the DRI under Section 108 of the Customs Act, 1962, which was not retracted during investigation. The retraction only occurred after the Show Cause Notice was issued, suggesting it was an afterthought. The importer's own data on import rates almost matched Department evidence for the relevant period, yet this was overlooked. Further, the Adjudicating Authority has failed to appreciate the fact as to how voluntary payments towards differential duty made by the importer by various instalments over a period of time can be construed as non-voluntary. The Authority also failed to recognize that voluntary payments towards duty difference further support the case. Overall, the Authority unjustifiably dropped proceedings despite conclusive evidence of deliberate undervaluation. She further took us through the findings and prayed that the appeal may be allowed.

3.2 Ld. Counsel Shri S. Sankaravadivelu, representing the respondent, stated that the respondent, M/s. Pratik International, is a proprietorship Concern managed by Mrs. Minakshi Agarwal as Proprietrix, with her husband Mr. Sunil Kumar Agarwal overseeing company operations. The Ld. Counsel stated that:

- i) The respondent premises were not searched, and no incriminating documents were seized.

- ii) No parallel invoices were recovered from the respondents.
- iii) Even though it was claimed that the respondents had received actual invoices through "WhatsApp" / social media platforms, the cell phone of the respondent was impounded by the Department on 18.11.2019 when he appeared first and not subject to forensic analysis to justify their claim.
- iv) No parallel invoices or invoices for contemporary imports at higher prices were provided, even though it was claimed that the prices shown in the letter dated 18.12.2020 agreed with those in the evidence available with the Department.
- v) The letter dated 18.12.2020 was typed by the DRI officers on the Xerox copy of the letterhead and rubber stamp was made in Delhi as desired by the officers.
- vi) No contemporary import prices were furnished. Without satisfying these requirements, the declared values were rejected as per Explanation (1) (iii) (1) to Rule 12 of Customs Valuation Rules, 2007, as if the respondent have produced fraudulent or manipulated documents. Further, values were re-fixed under Rule 9 of the Customs Valuation Rules, 2007.
- vii) The statements dated 18.11.2019 and 22.12.2020 were only dictated by the officers of DRI.
- viii) If the letter dated 18.12.2020 was truly prepared by the respondent what was the necessity for him visit to Delhi on 22.12.2020. They should have sent it by post and paid the differential duty at Chennai.
- ix) There is no signature of the officers, who recorded the statement dated 22.12.2020:
- x) The copies of the letter dated 18.12.2020 statements dated 18.11.2019 and 22.12.2020 were provided only along with the show cause notice as RUDs and not before. The respondents have retracted their statements on the earliest occasion. The Revenue is aware that the provisions of the Taxation and other Laws (Relaxation and Amendment of certain provisions) Act, subsequent notifications and the order of the Apex Court in the matter of **M/s. Cognizance for Extension of Limitation**, [2022 (56) GSTL 385 (S.C)], which provided crucial relief by extending limitation periods for court filings during the COVID-19 and is applicable to both the Revenue and tax payers. The

respondent has withdrawn the statement dated 22.12.2020 and disputed the authenticity of letter dated 18.12.2020, at the earliest occasion. Therefore, the retraction was not belated. Further, the credibility of these two RUDs are not established by the investigation.

xi) The live consignment was stopped even after payment of duty due and allowed clearance only after payment of some amount, and

xii) If, the payments were voluntary, the respondents would have straight away paid under challans with designated banks in Chennai, instead of sending Demand Drafts to DRI, Delhi and DRI forwarding Demand Drafts to Customs House, Chennai.

xiii) It is acknowledged that goods referenced in the show cause notice were imported solely by M/s. Pratik International, with no denial of responsibility for any goods/imports by the Proprietrix. Therefore, invoking the legal concept of "beneficial owner" is unwarranted in these circumstances. Mr. Sunil Kumar Agarwal managed business operations as the spouse of the Proprietrix.

xiv) The allegations appear intended only to impose penalties on both the company and Mr. Sunil Kumar Agarwal. This approach also aims to justify simultaneous application of Sections 112 and 114A of the Customs Act, 1962, notwithstanding restrictions under Section 114A.

xv) No evidence has been provided to support the allegation of payment of differential amounts to supplier representatives.

The Ld. Counsel stated that, in as much as, the Revenue has not provided any contrary evidence even after adjudication, he prayed that the Revenue's appeal against the impugned Order may be dismissed.

4. We have examined the issue and have heard the parties. Strict rules of evidence do not apply to adjudication proceedings, but the burden of proving its case is upon the department. Allegations of under-invoicing must be backed by evidence without which the invoice price should be accepted. It is well settled that strong suspicion, strange

coincidences and grave doubts cannot take the place of legal proof. [See: **State of Kerala Vs M.K. Mathew** - (1978) 42 STC 348]. We find the evidence in this case is based near totally on self-incriminating evidence gathered from the respondent.

4.1 The demand for differential duty is based on the basis of a worksheet submitted by the importer as discussed at para 4.13.3 of the impugned order. This is not a procedure that is laid down under the Customs Act or the Valuation Rules framed there under. The Hon'ble Supreme Court in **Century Metal Recycling Pvt. Ltd. v. Union of India** [2019 (367) E.L.T. 3 (S.C.)], went on to summarise the provisions of Rule 12 of the Valuation Rules as follows:

"15. The requirements of Rule 12, therefore, can be summarised as under :

- (a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.
- (b) Proper officer must ask the importer of such goods further information which may include documents or evidence;
- (c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.
- (d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.
- (e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.
- (f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.
- (g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.”

4.2 We find that the Original Authority has not complied with the two-step verification and examination exercise, as stated by the Hon'ble Supreme Court above. Revenue has not followed the procedure under sub-rule (2) of Rule 12 of CVR, 2007. This was all the more necessary when the proper officer only relied upon a self-incriminating worksheet purportedly submitted by the importer and statement recorded, to arrive at the transaction value and little else. The issue of 'beneficial owner' has been examined by this Tribunal in the case of **M/s XIAOMI TECHNOLOGY INDIA PVT LTD & Ors Vs PRINCIPAL COMMISSIONER OF CUSTOMS** [2025-TIOL-1693-CESTAT-MAD / 2025 (11) TMI 1120 - CESTAT CHENNAI], however we do not find the need to examine the legal issues here, since the allegations against the importer and the demand for differential duty from him itself is not seen to be sustained by proper evidence or by following the requisite procedure. Hence the question of examining the allegations against the 'beneficial owner' does not arise. Gross errors in the investigation like not making an attempt to retrieve deleted electronic documents from the importers phone or by using a statement recorded under section 108 of the Customs Act 1962, that was not recorded before any officer, let alone a gazetted one. Hence the attempt to enhance the value of the imported goods fail and so does the demand for duty as rightly held by the Ld. Original Authority.

4.3 Moreover since no goods have been seized, as discussed at para 4.11.2 of the impugned order, the question of redemption fine does

not arise. The Hon'ble Supreme Court in **Asstt. Collector Vs Bussa Overseas and Properties Pvt. Ltd.** [2004 (163) E.L.T. A160 (S.C.)], dismissed the SLP against the judgment and order dated 04/08/1992 of the Bombay High Court in **Bussa Overseas and Properties Pvt. Ltd. Vs C.L. Mahar, Asstt. Collector** [2004 (163) E.L.T. 304 (Bom.)]. The High Court had held that once the imported goods are cleared for home consumption they cease to be 'imported goods' as defined in Section 2 of the Customs Act, 1962 and are consequently not liable to confiscation. This needs to be differentiated from the Supreme Court judgement in the case of **Weston Components Ltd. Vs Commissioner of Customs, New Delhi** [2000 (115) ELT 278 (SC)], wherein the Hon'ble Supreme Court, had earlier upheld confiscation of goods and consequently imposition of redemption fine on the goods not physically available but the same (goods) were allowed provisional release under Bond. In the present case no bond has been executed by the Appellant for the clearance of goods. The Hon'ble Supreme Court again in **Commissioner Vs Finesse Creation Inc.** [2010 (255) E.L.T. A120 (S.C.)], dismissed the SLP filed by Commissioner of Customs (Import) against the Judgment of the High Court of Bombay in **Commissioner Vs Finesse Creation Inc** [2009 (248) E.L.T. 122 (Bom.)]. The High Court had distinguished the Apex Court decision in case of Weston Components Ltd. (supra), while holding that concept of redemption fine arises in the event the goods are available and are to be redeemed, and if goods are not available, there is no question of redemption of goods.

5. We find that in the circumstances that the Original Authority followed proper principles during the decision-making process and considered all relevant factors while deciding the issues raised in the SCN. Hence the final conclusion drawn and 'Order' made, cannot be stated to be illegal, irrational, or procedurally improper.

6. We hence uphold the 'ORDER' as made in OIO No. 101760/2023 dated 03.05.2023. The respondent is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 08.01.2026)

Sd/-
(AJAYAN T.V.)
Member (Judicial)

Sd/-
(M. AJIT KUMAR)
Member (Technical)

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