

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

CUSTOMS APPEAL NO. 51124 OF 2020

AND

CUSTOMS CROSS OBJECTION NO. 50150 OF 2021

(Arising out of Order-in-Appeal No. 152-382/(CRM)/JPR/2019 dated 20.09.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

Commissioner of Customs (Preventive)

Customs Commissionerate, Jodhpur
Hqrs. at N C R Building, Statue Circle, C-Scheme
Jaipur - 302005 (Rajasthan)

.....Appellant

VERSUS

CMR Nikkei India Pvt. Ltd.

Plot No. 65, Section-15, Phase-II,
Industrial Growth Centre, Bawal
Rewari - (Haryana)

.....Respondent

WITH

C/51305/2024	C/51335/2024	C/51365/2024	C/51395/2024
C/51306/2024	C/51336/2024	C/51366/2024	C/51396/2024
C/51307/2024	C/51337/2024	C/51367/2024	C/51397/2024
C/51308/2024	C/51338/2024	C/51368/2024	C/51398/2024
C/51309/2024	C/51339/2024	C/51369/2024	C/51399/2024
C/51310/2024	C/51340/2024	C/51370/2024	C/51400/2024
C/51311/2024	C/51341/2024	C/51371/2024	C/51401/2024
C/51312/2024	C/51342/2024	C/51372/2024	C/51402/2024
C/51313/2024	C/51343/2024	C/51373/2024	C/51403/2024
C/51314/2024	C/51344/2024	C/51374/2024	C/51404/2024
C/51315/2024	C/51345/2024	C/51375/2024	C/51405/2024
C/51316/2024	C/51346/2024	C/51376/2024	C/51406/2024
C/51317/2024	C/51347/2024	C/51377/2024	C/51407/2024
C/51318/2024	C/51348/2024	C/51378/2024	C/51408/2024
C/51319/2024	C/51349/2024	C/51379/2024	C/51409/2024
C/51320/2024	C/51350/2024	C/51380/2024	C/51410/2024
C/51321/2024	C/51351/2024	C/51381/2024	C/51411/2024
C/51322/2024	C/51352/2024	C/51382/2024	C/51412/2024
C/51323/2024	C/51353/2024	C/51383/2024	C/51413/2024
C/51324/2024	C/51354/2024	C/51384/2024	C/51414/2024
C/51325/2024	C/51355/2024	C/51385/2024	C/51415/2024
C/51326/2024	C/51356/2024	C/51386/2024	C/51416/2024
C/51327/2024	C/51357/2024	C/51387/2024	C/51417/2024
C/51328/2024	C/51358/2024	C/51388/2024	C/51418/2024
C/51329/2024	C/51359/2024	C/51389/2024	C/51420/2024
C/51330/2024	C/51360/2024	C/51390/2024	C/51421/2024
C/51331/2024	C/51361/2024	C/51391/2024	C/51422/2024
C/51332/2024	C/51362/2024	C/51392/2024	C/51423/2024
C/51333/2024	C/51363/2024	C/51393/2024	
C/51334/2024	C/51364/2024	C/51394/2024	

APPEARANCE:

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

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

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

**DATE OF HEARING: 28.08.2024
DATE OF DECISION: 02.09.2024**

FINAL ORDER NOS. 58233-58351/2024

JUSTICE DILIP GUPTA:

M/s CMR Nikkei India Pvt. Ltd.¹ imported aluminum scrap of various grades and filed 119 Bills of Entry for clearing the consignment on the basis of self-assessment of duty on the transaction value. The Assessing Officer doubted the correctness of the value declared by CMR Nikkei in the Bills of Entry and when confronted with contemporaneous data by the Assessing Officer, CMR Nikkei not only submitted letters that the value declared in the Bills of Entry should be rejected, but also accepted the value proposed by the Assessing Officer. The value was, accordingly, enhanced by the Assessing Officer and CMR Nikkei, paid the differential duty of customs. The goods were cleared after the out of charge order was issued by the Assessing Officer. Thereafter, CMR Nikkei filed 119 appeals before the Commissioner (Appeals), Central Excise and CGST, Jaipur² to challenge the enhancement of the value. These appeals have been allowed by a common order dated 20.09.2019. The enhancement of the value has been set aside by the Commissioner (Appeals) and the value declared

1. CMR Nikkei
2. the Commissioner (Appeals)

by CMR Nikkei in the Bills of Entry has been accepted. This order has been assailed by the department in these 119 appeals. Customs Cross Objection No. 50150 of 2021 has been filed by CMR Nikkei.

2. The records indicate that CMR Nikkei submitted 119 Bills of Entry. The value of the goods declared in these Bills appeared to be on the lower side to the Assessing Officer when compared to the price of contemporaneous imports data of similar goods imported at the port by other importers. As the Assessing Officer had reasons to doubt the accuracy of the value declared in the Bills of Entry, he informed CMR Nikkei of the grounds as to why the value declared, which appeared to be on the lower side, should not be rejected under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007³ and re-determined. On being confronted with such data, CMR Nikkei submitted the following letter dated 10.11.2018 to the Assessing Officer in respect of one such Bill of Entry No. 966390873 dated 10.11.2018:

"CMR NIKKEI INDIA PRIVATE LIMITED

Dated : 10/11/18

To,

The Assistant Commissioner of Customs,
ICD Kanakpura Jaipur (Rajasthan)

Subject: Enhancement of value of goods covered under Bill of Entry No. 966390873 dated 10/11/18

Proposing re determination of value and consequential reassessment of duty, in this regard it is submitted that we have been informed about grounds or rejection of our declared value under the provisions of Rule 12 of Customs Valuation

3. the 2007 Valuation Rules

(Determination of Value of Imported Goods) rules, 2017 read with Section 14 of Customs Act, 1962.

We have also gone through and understood the details of contemporaneous imports of similar/identical goods, as informed by the Customs Department and we accept that the value declared by us is lower than the value at which identical/similar goods have been imported at or about the same time in comparable quantities and in comparable commercial transaction were assessed at other ports of the country.

We fully agree that the value of goods declared by us in respect of BE. No. 966390873 dated 10/11/18 is liable to be rejected by the Customs Authorities under the provision of Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 read with Section 14 the Customs Act, 1962. **Thereafter, the value of the goods imported by on the basis of data of contemporaneous import of similar/identical goods in terms of Rule 9 of the Customs Valuation (Determination of value of imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and the duty payable is liable to be enhanced from US\$ 960.00 to US\$ 1878.00 under Section 17(5) of the Customs Act , 1962.**

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

Yours sincerely,

FOR CMR NIKKEI INDIA PVT. LTD.

Sd/-

Authorized Signatory"

(emphasis supplied)

3. Identical letters were submitted by CMR Nikkei to the Assistant Commissioner of Customs in respect of the remaining 118 Bills of Entry.

4. The Assessing Officer, in view of the categorical statements made by CMR Nikkei, re-assessed the 119 Bills of Entry in terms of the consent letters given and CMR Nikkei deposited the differential customs duty. Out of charge orders were given in respect of the goods imported through the 119 Bills of Entry and the goods were then cleared.

5. Thereafter, CMR Nikkei challenged the order passed by the Assessing Officer by filing 119 appeals before the Commissioner (Appeals). The Commissioner (Appeals), by a common order dated 20.09.2019, allowed the appeals and accepted the value declared in the Bills of Entry, basis the decision of the Tribunal in **Sanjivani Non-Ferrous Trading Pvt. Ltd. vs. C.C.E. & S.T., Noida**⁴, against which the appeal filed by the department was dismissed by the Supreme Court. This decision of the Supreme Court is reported in **C.C.E. & S.T., Noida vs. Sanjivani Non-Ferrous Trading Pvt. Ltd.**⁵.

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

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

4. 2017(7) G.S.T.L. 82 (Tri.-All.)

5. 2019 (365) ELT (3) (SC)

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

- (ii)** The out of charge was given only after the importers had deposited the differential customs duty on the enhanced value and all the appeals were filed by the importers before the Commissioner (Appeals) after the out of charge order was given. It was, therefore, not open to CMR Nikkei to challenge the assessed value of goods determined on the basis of the consent given by them by filing appeals before the Commissioner (Appeals);
- (iii)** What is admitted need not be proved. In support of this contention, reliance has been placed on the judgment of the Supreme Court in **Commissioner of C. Ex., Madras vs. Systems & Components Pvt. Ltd.**⁶;
- (iv)** Principles of natural justice have not been violated as the importers themselves stated that they accepted the value proposed by the department and this statement in the letters addressed to the Assistant Commissioner has not been retracted. In support of this contention, reliance has

6. 2004 (165) ELT 136 (SC)

been placed on the decision of the Tribunal in **DJP International vs. Commissioner of Customs (ICD), New Delhi**⁷. Learned authorised representative also pointed out that the appeal filed by the department against the aforesaid decision of the Tribunal was dismissed by the Supreme Court on 08.07.2016 in **DJP International vs. Commissioner of Customs (ICD), New Delhi**⁸;

- (v) The basis for re-determination of the value was shown and explained to the importers and the method of re-determination of value was also shown to the importers;
- (vi) Once the out of charge had been given, it is not open to the importers to contest the value for the reason that it is not possible for the department to inspect the goods. In this connection, reliance has been placed on the decision of the Tribunal in **Advanced Scan Support Technologies vs. Commissioner of Customs, Jodhpur**⁹; and
- (vii) The Commissioner (Appeals) committed an error in observing that the value of the imported goods had been enhanced on the basis of a Circular issued by the Director General of Valuation.

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

- (i) The so-called 'consent/acceptance letters' which have been relied upon heavily by the Assessing Officer to adopt the

7. 2017 (350) E.L.T. 294 (Tri.- Del)
8. 2017 (350) E.L.T. A65 (S.C.)
9. 2015 (326) E.L.T. 185 (Tri.-Del.)

enhanced value in terms of the 2007 Valuation Rules cannot be considered as consent letters as the same have been obtained under pressure to clear the goods to avoid any further delay;

- (ii) The value that has been enhanced by the Assessing Officer is exactly the value arrived at on the basis of **London Metal Exchange**¹⁰ price minus the discount given in the Director General of Valuation Circular. This clearly shows that the enhancement of value is not on the basis of contemporaneous import data, but is based on Director General of Valuation Circular, irrespective of the mention made in the consent letter by the importers that they have gone through the contemporaneous import data;
- (iii) Due to urgency of the matter and to mitigate losses, including demurrage charges, the importers had accepted the enhanced value. The importers, being regular importers, were left with no choice but to issue coerced letters;
- (iv) The importers were not furnished with NIDB/LME data documents relied upon for enhancement of the value. This violates the principles of natural justice;
- (v) The transaction value or the invoice value cannot be rejected arbitrarily without giving any valid reasons. The allegations of undervaluation should be buttressed by valid evidence, like the price of contemporaneous imports of comparable goods;
- (vi) Even assuming without admitting that the letters were not coerced, the Assessing Authority still should have followed

10. LME

the principles of valuation as laid down under the Customs Act and the 2007 Valuation Rules;

(vii) The issue stands decided in favour of the importers by decisions of the Tribunal and the Supreme Court in the own case of the respondent wherein it has been held that enhancement of value solely on the basis of coerced consent letters, Director General of Valuation Circular and in the absence of contemporaneous import data or any investigation is illegal. In this connection, reliance has been placed on the following decisions:

- (a) Sanjivani Non-Ferrous Trading Pvt. Ltd.;**
- (b) Century Metal Recycling Pvt. Ltd. vs. UOI¹¹;**
- (c) Guru Rajendra Metalloys India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad¹²; and**
- (d) Supreme Industries Ltd. vs. CBIC¹³;**

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

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

11. 2019 (367) E.L.T 3 (SC)
12. 2020 (374) ELT 617 (Tri-Ahmd)
13. 2021 (377) ELT 698 (Bom)

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

9. The issues that have been raised in these appeals have been considered at length by this Bench of the Tribunal in **Commissioner of Customs (Preventive), Jaipur vs. Century Metal Recycling Pvt. Ltd.**¹⁴ In the said decision, while examining the contention of learned counsel for the respondents that letters were submitted by the importers under coercion, the Bench referred to a chart. It would, therefore, be appropriate to provide details contained in the following chart:

S. NO.	BILL OF ENTRY NO.	DATE OF BILL OF ENTRY	DATE OF CONSENT LETTER	OUT OF CHARGE DATE
1.	8794215	10.11.2018	10.11.2018	29.11.2018
2.	8927396	20.11.2018	N.A.	#N/A
3.	8906379	19.11.2018	20.11.2018	10.12.2018
4.	8950249	22.11.2018	22.11.2018	#N/A
5.	8951588	22.11.2018	22.11.2018	#N/A
6.	8982550	24.11.2018	N.A.	10.12.2018
7.	8989617	24.11.2018	24.11.2018	10.12.2018
8.	9050097	29.11.2018	29.11.2018	10.12.2018
9.	9050710	29.11.2018	06.12.2018	14.12.2018
10.	9085863	01.12.2018	01.12.2018	12.12.2018
11.	9090053	03.12.2018	03.12.2018	11.12.2018
12.	9109902	04.12.2018	04.12.2018	22.12.2018
13.	9144624	06.12.2018	06.12.2018	20.12.2018
14.	9176461	08.12.2018	08.12.2018	27.12.2018
15.	9176601	08.12.2018	08.12.2018	20.12.2018
16.	9177234	08.12.2018	08.12.2018	20.12.2018
17.	9276346	15.12.2018	12.12.2018	#N/A
18.	9276809	15.12.2018	14.12.2018	28.12.2018
19.	8941371	21.11.2018	21.11.2018	04.12.2018
20.	9276084	15.12.2018	14.12.2018	27.12.2018
21.	9320516	19.12.2018	19.12.2018	05.01.2019
22.	9320924	19.12.2018	19.12.2018	02.01.2019
23.	9394800	24.12.2018	24.12.2018	29.12.2018

14. Customs Appeal No. 51976 of 2019 decided on 19.08.2024

24.	9412545	26.12.2018	26.12.2018	05.01.2019
25.	9424125	27.12.2018	26.12.2018	16.01.2019
26.	9424203	27.12.2018	26.12.2018	05.01.2019
27.	9443388	28.12.2018	28.12.2018	07.01.2019
28.	9482549	01.01.2019	01.01.2019	16.01.2019
29.	9485041	01.01.2019	N.A.	10.01.2019
30.	9524450	04.01.2019	04.01.2019	19.01.2019
31.	9535495	05.01.2019	05.01.2019	18.01.2019
32.	9554360	07.01.2019	07.01.2019	16.01.2019
33.	9555103	07.01.2019	07.01.2019	21.01.2019
34.	9555544	07.01.2019	07.01.2019	18.01.2019
35.	9572140	09.01.2019	N.A.	23.01.2019
36.	9603422	11.01.2019	09.01.2019	29.01.2019
37.	9620946	12.01.2019	12.01.2019	25.01.2019
38.	9654332	15.01.2019	15.01.2019	24.01.2019
39.	9659218	16.01.2019	15.01.2019	30.01.2019
40.	9721371	21.01.2019	21.01.2019	30.01.2019
41.	9721616	21.01.2019	19.01.2019	25.01.2019
42.	9730505	21.01.2019	21.01.2019	30.01.2019
43.	9731277	21.01.2019	21.01.2019	31.01.2019
44.	9444767	28.12.2018	28.12.2018	16.01.2019
45.	9524788	04.01.2019	04.01.2019	16.01.2019
46.	9332712	20.12.2018	20.12.2018	31.12.2018
47.	9184886	10.12.2018	10.12.2018	27.12.2018
48.	9730897	21.01.2019	21.01.2019	30.01.2019
49.	2001492	11.02.2019	09.02.2019	16.02.2019
50.	2037853	13.02.2019	12.02.2019	22.02.2019
51.	2038125	13.02.2019	12.02.2019	26.02.2019
52.	2041767	13.02.2019	12.02.2019	21.02.2019
53.	2049574	14.02.2019	13.01.2019	20.02.2019
54.	2079497	16.02.2019	15.02.2019	19.02.2019
55.	2133297	20.02.2019	20.02.2019	26.02.2019
56.	2134021	20.02.2019	20.02.2019	26.02.2019
57.	2141822	21.02.2019	21.02.2019	26.02.2019
58.	2142171	21.02.2019	20.02.2019	26.02.2019
59.	2151363	22.02.2019	22.02.2019	27.02.2019
60.	9747806	22.01.2019	22.01.2019	02.02.2019
61.	9747991	22.01.2019	22.01.2019	05.02.2019
62.	9758258	23.01.2019	22.01.2019	04.02.2019
63.	9759567	23.01.2019	22.01.2019	04.02.2019
64.	9759770	23.01.2019	22.01.2019	05.02.2019
65.	9846368	29.01.2019	29.01.2019	05.02.2019
66.	9847968	30.01.2019	29.01.2019	12.02.2019
67.	9879174	31.01.2019	29.01.2019	12.02.2019
68.	9941942	05.02.2019	05.02.2019	18.02.2019
69.	9969709	07.02.2019	04.02.2019	15.02.2019
70.	9992781	09.02.2019	08.02.2019	20.02.2019
71.	2017203	11.02.2019	11.02.2019	15.02.2019
72.	2203472	26.02.2019	25.02.2019	02.03.2019

73.	2228933	28.02.2019	27.02.2019	05.03.2019
74.	2267057	02.03.2019	03.02.2019	11.03.2019
75.	2267466	02.03.2019	02.03.2019	11.03.2019
76.	2288025	05.03.2019	04.03.2019	11.03.2019
77.	2288331	05.03.2019	04.03.2019	11.03.2019
78.	2288701	05.03.2019	04.03.2019	16.03.2019
79.	2332489	08.03.2019	07.03.2019	15.03.2019
80.	2333121	08.03.2019	07.03.2019	18.03.2019
81.	2354640	09.03.2019	08.03.2019	15.03.2019
82.	2363091	11.03.2019	09.03.2019	#N/A
83.	2404506	13.03.2019	13.03.2019	26.03.2019
84.	2447176	16.03.2019	15.03.2019	26.03.2019
85.	2452360	16.03.2019	15.03.2019	22.03.2019
86.	2460509	18.03.2019	18.03.2019	22.03.2019
87.	2482514	19.03.2019	19.03.2019	27.03.2019
88.	2371953	11.03.2019	11.03.2019	23.03.2019
89.	2164023	22.02.2019	22.02.2019	27.02.2019
90.	2859827	16.04.2019	16.04.2019	22.04.2019
91.	2482843	19.03.2019	N.A.	28.03.2019
92.	2483483	19.03.2019	N.A.	26.03.2019
93.	2593707	27.03.2019	27.03.2019	#N/A
94.	2594572	27.03.2019	27.03.2019	06.04.2019
95.	2598208	27.03.2019	27.03.2019	06.04.2019
96.	2598382	27.03.2019	27.03.2019	03.04.2019
97.	2614866	28.03.2019	28.03.2019	03.04.2019
98.	2622586	29.03.2019	28.03.2019	#N/A
99.	2622952	29.03.2019	28.03.2019	03.04.2019
100.	2674608	02.04.2019	02.04.2019	12.04.2019
101.	2676586	02.04.2019	02.04.2019	08.04.2019
102.	2690098	03.04.2019	03.04.2019	09.04.2019
103.	2690519	03.04.2019	03.04.2019	09.04.2019
104.	2716148	05.04.2019	05.04.2019	09.04.2019
105.	2716153	05.04.2019	05.04.2019	#N/A
106.	2751519	08.04.2019	08.04.2019	10.04.2019
107.	2751721	08.04.2019	08.04.2019	20.04.2019
108.	2761498	08.04.2019	08.04.2019	23.04.2019
109.	2761933	08.04.2019	08.04.2019	15.04.2019
110.	2778975	10.04.2019	09.04.2019	16.04.2019
111.	2779001	10.04.2019	09.04.2019	19.04.2019
112.	2785267	10.04.2019	10.04.2019	20.04.2019
113.	2895107	18.04.2019	18.04.2019	03.05.2019
114.	2778983	10.04.2019	09.04.2019	12.04.2019
115.	2893483	18.04.2019	10.03.2019	23.04.2019
116.	2893141	18.04.2019	18.04.2019	26.04.2019
117.	2784973	10.04.2019	10.04.2019	26.04.2019
118.	2535202	23.03.2019	22.03.2019	01.04.2019
119.	2857751	16.04.2019	16.04.2019	23.04.2019

10. In view of the detailed reasons given by the Bench in **Century Metal** for setting aside the order passed by the Commissioner (Appeals), the present impugned order dated 20.09.2019 passed by the Commissioner (Appeals) allowing the 119 appeals deserves to be set aside and is set aside. All the 119 appeals filed by the department are, accordingly, allowed and the enhancement in the value of the imported goods by the Assessing Officer is maintained. Cross Objection No. 50150 of 2021 filed by CMR Nikkei is rejected.

(Order pronounced on **02.09.2024**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Golay