

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

PRINCIPAL BENCH - COURT NO. 1

**CUSTOMS APPEAL NO. 50363 OF 2021**

(Arising out of Order-in-Appeal No. 55-75(SM)/CUS/JPR/2020 dated 26.11.2020 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**

**M/s JSB Aluminium Pvt. Ltd.**

F-147A, 147B, 148 & 149 RIICO Industrial Area  
Chopanki, Bhiwadi,  
Alwar (Rajasthan)

**.....Respondent**

**WITH**

<b>C/50884/2024</b>	<b>C/50888/2024</b>	<b>C/50892/2024</b>	<b>C/50896/2024</b>
<b>C/50885/2024</b>	<b>C/50889/2024</b>	<b>C/50893/2024</b>	<b>C/50897/2024</b>
<b>C/50886/2024</b>	<b>C/50890/2024</b>	<b>C/50894/2024</b>	<b>C/50898/2024</b>
<b>C/50887/2024</b>	<b>C/50891/2024</b>	<b>C/50895/2024</b>	<b>C/50899/2024</b>

**APPEARANCE:**

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

NONE 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 NO's. 58352-58368/2024**

**JUSTICE DILIP GUPTA:**

**M/s JSB Aluminium Pvt. Ltd.**<sup>1</sup> imported aluminum scrap of various grades and filed 17 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 JSB Aluminium in the Bills of Entry and when confronted with

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1. **JSB Aluminium**

contemporaneous data by the Assessing Officer, JSB Aluminium 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 JSB Aluminium, paid the differential duty of customs. The goods were cleared after the out of charge order was issued by the Assessing Officer. Thereafter, JSB Aluminium filed 17 appeals before the Commissioner (Appeals), Central Excise and CGST, Jaipur<sup>2</sup> to challenge the enhancement of the value. These appeals have been allowed by a common order dated 26.11.2020. The enhancement of the value has been set aside by the Commissioner (Appeals) and the value declared by JSB Aluminium in the Bills of Entry has been accepted. This order has been assailed by the department in these 17 appeals.

2. The records indicate that JSB Aluminium submitted 17 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 JSB Aluminium 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, 2007<sup>3</sup> and re-determined. On being confronted with such data, JSB Aluminium submitted the following letter dated 25.10.2019 to the

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2. the Commissioner (Appeals)  
3. the 2007 Valuation Rules

Assessing Officer in respect of one such Bill of Lading No. OOLU4048611590 dated 24.09.2019:

**"JSB ALUMINIUM PRIVATE LIMITED**

Dated : 25/10/19

To,

The Deputy Commissioner of Customs,  
ICD CONCOR KANAKPURA  
JAIPUR

**Subject: Enhancement of value of goods covered under Invoice No. AU2000624-SG DT. 24.09.2019 & BL No. OOLU4048611590 DT. 24.09.2019 As per valuation rules of assessment under the customs Act 1962**

**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 (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 Invoice No. AU2000624-SG DT. 24.09.2019 is liable to Customs Acts 1962. There after, the value of the goods imported by on the basis of data be rejected by the customs authorities under the provision of rule 12 of contemporaneous import of similar/identical goods in the terms of rule 9 of the custom valuation**

(Determination of value of imported goods) rules, 2007 read with section 14 of the custom acts, 1962 and the duty payable **is liable to be enhanced from US\$ 1040.00 to US\$ 1321.37 under section 17(5) of the Customs Act, 1962 and also agree to get our bill of entry assessed as per valuation alert F.No. VAL/TECH/36/2016 (AL SCRAP) Dated. 01.12.2016 issued by Directorate General of valuation CBEC, min of finance deptt. of revenue New Customs House Mumbai.**

**Accordingly, as we are in agreement and not aggrieved with the proposed enhancement of the 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 JSB ALUMINIUM PVT. LTD.

Sd/-

Authorized Signatory"

**(emphasis supplied)**

3. Identical letters were submitted by JSB Aluminium to the Deputy Commissioner of Customs in respect of the remaining 16 Bills of Entry.
4. The Assessing Officer, in view of the categorical statements made by JSB Aluminium, re-assessed the 17 Bills of Entry in terms of the consent letters given by JSB Aluminium and JSB Aluminium deposited the differential customs duty. Out of charge orders were given in respect of the goods imported through the 17 Bills of Entry and the goods were then cleared.
5. Thereafter, JSB Aluminium challenged the order passed by the Assessing Officer by filing 17 appeals before the Commissioner (Appeals). The Commissioner (Appeals), by a common order dated

26.11.2020, allowed the appeals and accepted the value declared in the Bills of Entry. The relevant portions of the order dated 26.11.2020 passed by the Commissioner (Appeals) are reproduced below:

**"5.1 I observe that the Appellant has imported the goods and filed the bills of entry on the transacted value. The assessing officer loaded the value without giving the reason and the Appellant paid duty on the enhanced value and got the clearance of the goods.** The Appellant is aggrieved because the invoice value has been rejected with any basis and reason. Neither allegation of any sort has been made nor any evidence of contemporaneous import has been adduced to assail the transaction value. **The assessing authority has indicated no reason or the rejection of the transaction value or enhancement of value. \*\*\*\*\***

**5.2 The Hon'ble Supreme Court in the case of M/s. Eicher Tractors Ltd. (2000 (122) E.L.T. 321), have settled the law that transaction value cannot be rejected without clear and cogent evidence produced by the Department with regard to the quantity, quality, country of origin and place and time of import.** It is also well-settled that it is for the Department to produce the evidence to show that the transaction value is not acceptable in view of the comparable price. In these cases, the Department has not adduced even an iota evidence to reject the transaction value on the ground that it is not the true commercial value of the goods. It is also not the case of the Department that there was any special relationship between the importer and the supplier and that the former has paid anything extra over and above the transacted value. In fact, contrary to Section 17(5) of the Customs Act, 1962, the assessing officer has not passed any speaking order for rejecting the transaction value which could have enlightened the appellate authority of the reasons for rejecting the transaction value. The circumstances that permit such rejection and the alternative basis for fixing assessable value are specified in the Valuation Rules themselves. No such

legally permissible steps were taken in present case. There is catena of decision including the one given by the Supreme Court in the case of M/s. Eicher Tractors Ltd. (supra), which say that in the absence of exemption particularized in Rule 4(2) of the Customs Valuation Rules and clear and cogent evidence of contemporaneous import, it is mandatory for the Customs to accept the invoice value. **In these cases, no evidence is brought on record to show that the transaction value is not the true commercial value.**

**6. I further observe that an identical issue has already been decided by the undersigned vide Order-in-Appeal No. 59-115 (SM)CUS/JPR/2019 dated 05.04.2019 passed in the appeal filed by M/s. Century Metal Recycling Pvt. Ltd., Tarapur Palwal & M/s. CMR Nikkei India Pvt. Ltd., Bawal Rewari wherein I set aside the enhancement of the assessable value and allowed the appeal accepting the value declared by the appellant(s)."**

**(emphasis supplied)**

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 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 JSB Aluminium 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.**<sup>4</sup>;
- (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 been placed on the decision of the Tribunal in **DJP International vs. Commissioner of Customs (ICD), New**

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4. 2004 (165) ELT 136 (SC)

**Delhi**<sup>5</sup>. Learned authorized 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**<sup>6</sup>;

- (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**<sup>7</sup>;
- (vii) The order passed by the Commissioner (Appeals) deserves to be set aside for the reason that the consent letters submitted by the importers have not been considered at all;
- (viii) The Commissioner (Appeals) committed an error in placing reliance on the decision of the Supreme Court in **Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai**<sup>8</sup>; and
- (ix) The Commissioner (Appeals) has placed reliance on the earlier order dated 05.04.2019 passed by the Commissioner (Appeals) in the appeals filed by M/s Century Metal Recycling Private Limited and M/s CMR Nikkei Private Limited. This order has already been set aside by the Tribunal in

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5. 2017 (350) E.L.T. 294 (Tri.- Del)  
6. 2017 (350) E.L.T. A65 (S.C.)  
7. 2015 (326) E.L.T. 185 (Tri.-Del.)  
8. 2000 (122) E.L.T. 321 (S.C.)



**Commissioner of Customs (Preventive), Jaipur vs.  
Century Metal Recycling Pvt. Ltd.<sup>9</sup>**

7. The learned counsel appearing for the respondents has merely sent a communication that he would not like to make any oral submissions and the appeals may be decided on the basis of the grounds contained in the Memorandum of Appeal.

8. The submissions advanced by the learned authorized representative for the department have been considered. The grounds taken in the Memo of Appeal have also been considered.

9. The order passed by the Commissioner (Appeals) has completely ignored the consent letters submitted by JSB Aluminium. In the present case, as noticed above, JSB Aluminium had made a categorical statement in the letters that it was accepting that the value declared by it in the Bills of Entry was lower than the value at which identical/similar goods had been imported at or about the same time in comparable quantities and in comparable commercial transactions and so the value declared by it in the Bills of Entry should be rejected under rule 12 of the 2007 Valuation Rules and re-determined under rule 9 on the price made known to it by the Assessing Officer, which price was acceptable to JSB Aluminium. JSB Aluminium also specifically stated that because of the acceptance of the enhanced value, it did not want any personal hearing to be provided or a speaking order to be passed and that the value should be re-determined in accordance with the value as proposed by the Assessing Officer, and accepted by it. The Assessing Officer was,

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**9. Customs Appeal No. 51976 of 2019 decided on 19.08.2024**

therefore, not required to give reasons for rejection of the transaction value and determination of the assessable value.

10. It is well settled that what is admitted is not required to be proved by the department. This issue has been settled by the Supreme Court in **Systems & Components** and the relevant portion of the judgment of the Supreme Court is reproduced below:

**"5. The Appeal filed by the Department has been disposed of by the Tribunal by holding that the Department has not proved that these parts were specifically designed for manufacture of Water Chilling Plant in question.** The Tribunal has noted the Technical details supplied by the Respondents and the letter of the Respondents dated 30th November, 1993 giving details of how these parts are used in the Chilling Plant. The Tribunal has still strangely held that this by itself is not sufficient to show that they are specifically designed for the purpose of assembling the Chilling Plant. We are unable to understand this reasoning. **Once it is an admitted position by the party itself, that these are parts of a Chilling Plant and the concerned party does not even dispute that they have no independent use there is no need for the Department to prove the same. It is a basic and settled law that what is admitted need not be proved."**

**(emphasis supplied)**

11. The decision of the Supreme Court in **Eicher Tractors**, on which reliance has been placed by the Commissioner (Appeals) to hold that the transaction value cannot be rejected without clear and cogent evidence, would not be applicable to the facts of the case. The observations made by the Supreme Court that the transaction value cannot be rejected without clear and cogent evidence produced by the department was not in respect of a case where the importer had

accepted the value proposed by the Assessing Officer and had also made a request that neither a show cause notice should be issued nor a speaking order should be passed.

12. It also needs to be pointed out that the earlier order dated 05.04.2019 passed by the Commissioner (Appeals) in the appeals filed by M/s Century Metal Recycling Private Limited and M/s CMR Nikkei Private Limited, wherein the enhancement of the assessable value was set aside and the appeals were allowed accepting the value declared by the appellant, was set aside by this Bench of the Tribunal in **Century Metal**.

13. The issues that have been raised in these appeals have been considered at length by this Bench of the Tribunal in **Century Metal**. 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 in the following chart:

S.NO.	BILL OF ENTRY NO.	DATE OF BILL OF ENTRY	DATE OF CONSENT LETTER	OUT OF CHARGE DATE
1.	5437334	25.10.2019	25.10.2019	31.10.2019
2.	5439099	25.10.2019	25.10.2019	31.10.2019
3.	5450703	26.10.2019	26.10.2019	01.11.2019
4.	5450769	26.10.2019	26.10.2019	02.11.2019
5.	5450815	26.10.2019	26.10.2019	02.11.2019
6.	5473410	29.10.2019	29.10.2019	31.10.2019
7.	5527000	02.11.2019	02.11.2019	07.11.2019
8.	5560782	05.11.2019	05.11.2019	13.11.2019
9.	5644728	12.11.2019	12.11.2019	16.11.2019
10.	5659100	13.11.2019	13.11.2019	22.11.2019
11.	5659860	13.11.2019	13.11.2019	18.11.2019
12.	5725778	18.11.2019	18.11.2019	21.11.2019
13.	5726230	18.11.2019	18.11.2019	21.11.2019
14.	5755998	20.11.2019	20.11.2019	22.11.2019
15.	5756417	20.11.2019	20.11.2019	22.11.2019

16.	5790096	22.11.2019	22.11.2019	28.11.2019
17.	5790870	22.11.2019	22.11.2019	28.11.2019

14. Thus, for the reasons recorded in this order, and the reasons recorded by the Bench in **Century Metal** for setting aside the order passed by the Commissioner (Appeals), the present impugned order dated 26.11.2020 passed by the Commissioner (Appeals) allowing the 17 appeals deserves to be set aside and is set aside. All the 17 appeals filed by the department are, accordingly, allowed and the enhancement in the value of the imported goods by the Assessing Officer is maintained.

(Order pronounced on **02.09.2024**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

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

Golay, Shreya