

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 219 of 2009

(Arising out of Order-in-Original No. 02/APSS/CC/DRI/NCH/2009 dated 06.02.2009 passed by the Commissioner Central Excise (Adjudication), New Delhi.)

M/s. Elegant International

301, Nikita Tower-II, Azadpur
Commercial Complex, Delhi

...Appellant

versus

Commissioner of Central Excise (Adjudication),

Room No. 214, 2nd Floor,
New Customs House, Near IGI Airport,
New Delhi - 110037

...Respondent

APPEARANCE:

Shri B. L. Narasimhan, Ms. Jyoti Pal, Shri Ashwani Bhatia and Ms. Srishti Bajaj,
Advocates for the Appellant

Shri Nagender Yadav, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 10.02.2025

Date of Decision: 23.06.2025

FINAL ORDER NO. 50912/2025

JUSTICE DILIP GUPTA:

M/s. Elegant International¹ has filed this appeal to assail the order dated 06.02.2009 passed by the Commissioner Central Excise (Adjudication), New Delhi² in so far as it rejects the transaction value of the imported silk fabrics from China through 37 Bills of Entry during the period from September 2003 to January 2005 under rule 10A of the Customs Valuation (Determination of Price of Imported goods) Rules, 1988³ and re-determines the transaction value under rule 5 of the 1988 Valuation Rules. Accordingly, the demand of differential customs duty

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- 1. the appellant**
 - 2. the Commissioner**
 - 3. the 1988 Valuation Rules**

has been confirmed. The Commissioner has also imposed redemption fine on the silk fabric confiscated under section 111(M) of the Customs Act, 1962⁴ and has also imposed penalty upon the appellant under section 114(A) of the Customs Act.

2. It transpires that intelligence was received that certain **other** importers of silk fabrics were engaged in under-valuation of this product imported from China and were thereby evading customs duty. Intelligence further suggested that two sets of invoices were raised by the said overseas suppliers for the same consignment; one set of invoices showed the actual value, while the other set showed lesser value. It is the latter invoice which was submitted by other Indian importers to the customs for clearance purposes so as to evade customs duty. An investigation was initiated by the Directorate of Revenue Intelligence⁵, New Delhi on the import of silk-fabrics from China by other importers and the premises of M/s. Purnima Enterprises at Chennai and M/s. Om Fabrics at Bangalore were searched. It also transpired that M/s. Zhejiang Cathaya International, China⁶ had issued the invoices to such Indian importers. Searches were also conducted at the business premises of M/s. Vedant Enterprises at Bangalore, which who had also been supplied silk fabric by Zhejiang, China.

3. Based on the aforesaid investigation initiated by the officers of DRI on the other importers of silk fabrics, the premises of the appellant, to whom Zhejiang, China had also supplied silk fabrics, were searched. The residential premises of the Director were also searched. It is the case of the appellant that no incriminating documents were recovered

4. **the Customs Act**

5. **DRI**

6. **Zhejiang, China**

from the premises of the appellant and the Director. The DRI also recorded statement of Ajit Gupta, who was looking after the work of the appellant, under section 108 of the Customs Act.

4. A show cause notice dated 06.08.2005 was thereafter issued by Additional Director General of DRI, New Delhi to the appellant proposing to demand differential duty from the appellant with interest; confiscation of the impugned goods; and imposition of penalties, based on under-valuation of the impugned goods by relying upon contemporaneous imports and documents retrieved from premises of other importers pertaining to import of silk fabrics from China. It is basis the investigation carried out by DRI against other importers named above that it was alleged that the appellant had also declared lesser value which needed to be re-determined. The show cause notice placed reliance on the following evidence to allege under-valuation on part of the appellant:

- (i) Two sets of invoices by the foreign supplier issued to three other importers namely Om Fabrics, M/s. Poornima Enterprises and M/s. Vedant Enterprises, wherein one invoice showed the actual transaction value of the imported goods and the other invoice showed less value for customs purposes;
- (ii) Account statements between one Mrs. Wu of Zhejiang, China and one Mr. Sunil of M/s. Om Fabrics;
- (iii) Copy of unsigned sale contract entered between Mrs. Wu and M/s. Vedanta Enterprises;
- (iv) Seizure of Rs. 25 lacs and a certain quantity of silk fabric valued at Rs. 77 lacs approximately;
- (v) Retracted statements of Ajit Gupta; and
- (vi) Bills of Entry filed by Regent Exim International Ltd.

5. The appellant submitted a detail reply dated 13.12.2007 to the show cause notice and denied the allegations. Additional submissions were also filed by the appellant on 19.12.2007.

6. The Commissioner passed the impugned order dated 06.02.2009. The relevant portions of the order rejecting the transaction value under rule 10A of the 1988 Valuation Rules are reproduced below:

"146. xxxxxxxxxxxx. In the background of above statutory provisions, I find that in the present case, it has been alleged that the value declared by the importers in the Bills of Entry that were the subject matter of the show cause notice was not the true transaction value as defined in Rule 4(1) of the Customs Valuation Rules, 1988. The DRI had challenged in correctness of the value declared in the Bills of Entry as true transaction value on the basis of evidence collected by them during investigations at Chennai and Bangalore. **These evidences were in form of certain communications like e-mails, actual transaction invoices and sales contracts recovered by them from the other importers, namely, M/s. Poornima Enterprises, M/s. Om Fabrics and M/s. Vedant Enterprises. Apart from this DRI had relied upon evidence in form of bill of entry filed by other importers, namely, M/s. Regent Exim for clearance of indential/comparable goods having same article numbers as imported by M/s. Elegant Industries and M/s. Elegant International.**

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149. xxxxxxxxxxxx. **During investigation, Shri Ajit Gupta who was looking after all the activities of M/s. Elegant Industries & M/s. Elegant International had tendered his voluntary statement under Seciton 108 of the Customs Act, 1962. In none of his statements, he has taken the plea of variation in the pricing of silk fabric on account of different grades. In fact, he had admitted that he use to mis-declare the price of imported silk fabric by showing lesser value by 25% of the imported goods and use to submit fabricated undervalued**

invoice before the Customs authorities. The detailed discussion supra clearly brings out the undeniable fact that the issues pertaining to grades etc., which are being raised at this stage, is an after thought. xxxxxxxxxx.

150. **The identical nature of the goods imported by the noticees and the goods imported by M/s. Poornima Enterprises, M/s. Om Fabrics and M/s. Vedant Enterprises having been established by the DRI, I would now examine the evidence adduced by DRI, circumstantial or direct, on the basis of which DRI has sought for rejection of the declared value of the impugned goods by the noticees as it did not reflect their actual transaction value at which these goods were sold by foreign suppliers. It is a matter of record that investigations in respect of the three importers named above had led to recovery of sets of invoices of two each by the DRI at Bangalore and Chennai. Investigations revealed that the supplier of impugned goods i.e. M/s. Zhejiang Cathaya International Co. Ltd. used to issue two invoices for the same Article Number of the silk fabric supplied by them, one, showing the actual transaction value and the second showing lesser value than the actual for the Customs purposes. xxxxxxxxxx.** As a result of these investigations, the modus operandi adopted by these importers was revealed. **The recovery of two sets of invoices for the same Article Number of the silk fabric imported leads to an irrefutable conclusion that these importers were resorting to under valuation of the goods imported by them and that the invoices produced by these importers did not reflect the actual transaction value at which the goods had been sold. xxxxxxxxxx.**

151. **In the background of the evidence gathered by the investigating agency, the noticees have contended that no incriminating documents of the above nature have been recovered from their premises.** On going through the case records and the chronology of events, I find that the premises of M/s. Poornima Enterprises, M/s. Om Fabrics and M/s. Vedant Enterprises which ultimately led to the recovery of

duplicate sets of invoices were searched on 19.10.2004. **It is a fact that the premises of the noticees company were searched on 8.2.2005 i.e. after a gap of almost four months. Taking note of this time lapse, it is not surprising that no incriminating documents were recovered from the premises of the noticees company.** Even otherwise, while substantiating my findings given above regarding the rejection of transaction value declared by the noticees in the impugned Bills of Entry, I had analyzed that the goods imported by M/s. Elegant Industries & M/s. Elegant International were identical to those imported by M/s. Regent Exim, M/s. Poornima Enterprises, M/s. Om Fabrics & M/s. Vedant Enterprises. **It is a matter of record that the goods imported by the noticees as well as the four importers named above were of Chinese origin, majority of these goods were imported from the same supplier and as discussed and established above the goods were also identical in character. That being so, simply because no incriminating documents were recovered from the noticee's premises, does not absolve them from the charges of mis-declaration of value. The evidence recovered in the form of duplicate invoices from other importers of identical goods at Chennai & Bangalore mostly from the same supplier has to be kept in mind while deciding whether the value declared by the noticees represented the correct transaction value.** xxxxxxxxxxxx. They have not been able to produce manufacturer's invoices in respect of the impugned goods to show that the prices declared by them represented the correct transaction value. They have not cited any provisions of law which requires that a charge of mis-declaration could be made only if the incriminating evidence was recovered from their own premises or that it pertained to their own imports. **To my mind, the evidence, even if of other importers, if it pertains to identical goods with same country of origin and the same supplier was the good enough evidence unless effectively rebutted on merits. Further, in view of the circumstantial and direct evidence adduced by the DRI, there is no need to determine/prove the**

actual value of each of the imported consignments with mathematical precision.

154. xxxxxxxx. Applying the ratio of the above case laws to the present proceedings, I hold that the price declared by the noticees does not represent the "Transaction Value" under Rule 4 of the said rules and reject the same under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988."

(emphasis supplied)

7. The relevant portion of the order re-determining the transaction value is reproduced below:

"157. In respect of silk fabrics of Article No. 10103, 12101, 12103, 14656, 10101 & 14654, the actual value i.e. unit price had been determined by DRI in the form of actual transaction invoices of M/s. Zhejiang Cathaya Internationa, China, e-mail from the same supplier and sales contract of the said supplier i.e. M/s. Zhejiang Cathaya Internationa, China. Having made majority of their imports of above referred variety of silk fabrics from the above firm, the basis of valuation adopted by DRI appears to be correct. xxxxxxxxxx. Though the noticee in their defence has submitted details of imports made by other importers. I find that all these imports have been made from traders in China. **The DRI on the other hand has based its valuation in respect of the above article numbers on the prices declared by the other importers being much higher than the values declared by M/s. Elegant International and M/s. Elegant Industries for comparable quality and variety of silk fabrics. xxxxxxxxxx.**"

(emphasis supplied)

8. Shri B. L. Narasimhan, learned counsel for the appellant assisted by Ms. Jyoti Pal, Shri Ashwani Bhatia and Ms. Srishti Bajaj submitted that the Commissioner committed an illegality in rejecting the transaction value of silk fabric imported by the appellant. Learned

counsel pointed out that in the present case the department has not invoked the provisions of rule 4 of the 1988 Valuation Rules and reliance has been placed on rule 10A of the 1988 of the Valuation Rules for rejection of the declared value. The transaction value declared by the appellant was, therefore, required to be accepted and could not have been rejected. The submission that was, therefore, advanced was that in such circumstances there arose no occasion to re-determine the transaction value. Learned counsel also placed reliance upon a decision of the Tribunal rendered in **Regent Exim International Ltd. vs. Commr. of C. Ex., New Delhi**⁷. Learned counsel also submitted that once the goods were cleared for home consumption, the goods ceased to be 'imported goods' in terms of the definition of 'imported goods' under section 2(25) of the Customs Act and, therefore, the transaction value of the goods cleared for home consumption could not have been rejected by invoking rule 10A of the 1988 Valuation Rules.

9. Shri Nagender Yadav, learned authorized representative appearing of the department, however, contented that rule 10A of the 1988 Valuation Rules was correctly invoked by the department for rejecting the transaction value and the re-determination was correctly done under rule 5 of the 1988 Valuation Rules. Learned authorized representative also submitted that rule 10A of the 1988 Valuation Rules would be applicable even if the goods were cleared for home consumption. Learned authorized representative also submitted that order passed by the Commissioner is a reasoned order and does not call for any interference in this appeal.

7. **2009 (245) E.L.T. 450 (Tri.-Del.)**

10. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

11. It is apparent from the order passed by the Commissioner that the reason assigned for rejecting the transaction value of the goods imported by the appellant under rule 10A of the 1988 Valuation Rules is the evidence recovered in the form of duplicate invoices submitted by other importers of silk fabric at Chennai and Bangalore, which invoices were recovered from them when a search was conducted of their premises on 19.10.2004. The Commissioner has, however, also noticed that when the search was conducted at the premises of the appellant on 08.02.2005, no incriminating documents were recovered. After having rejected the transaction value under rule 10A of the 1988 Valuation Rules, the Commissioner proceeded to re-determine the value of the imported goods under rule 5 of the 1988 Valuation Rules read with section 14 of the Customs Act.

12. The first issue, therefore, that would arise for consideration is whether the Commissioner was justified in rejecting the transaction value of the imported goods under rule 10A of the Valuation Rules.

13. Section 14 of the Customs Act deals with valuation of goods for purposes of assessment and it is reproduced below:

"Section 14. Valuation of goods for purposes of assessment. – (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods 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 or exportation, as the case may be, in the course of international trade, where-

- (a) the seller and the buyer have no interest in the business of each other; or
- (b) one of them has no interest in the business of the other,
and the price is the sole consideration for the sale or offer for sale

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill or bill of export, as the case may be, is presented under section 50;

(1A) Subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf."

14. Rule 10A of the 1988 Valuation Rules which deals with rejection of declared value is reproduced below:

"10A. Rejection of declared value:- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 4.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1)."

15. Rule 3 of the 1988 Valuation Rules deals with determination of the method of valuation and it is reproduced below:

"3. Determination of the method of valuation. -

For the purposes of these rules, -

- (i) subject to rules 9 and 10A, the value of imported goods shall be the transaction value;
- (ii) if the value cannot be determined under the provisions of Clause (i) the value shall be determined by proceeding sequentially through rules 5 to 8 of these rules."

16. Rule 4 of the 1988 Valuation Rules deals with transaction value and the relevant portions are reproduced below:

"4. Transaction value. - (1) The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of rule 9 of these rules.

(2) The transaction value of imported goods under sub-rule (1) above shall be accepted;

Provided that –

- (a) the sale is in the ordinary course of trade under fully competitive conditions;
- (b) the sale does not involve any abnormal discount or reduction from the ordinary competitive price;
- (c) the sale does not involve special discounts limited to exclusive agents;
- (d) objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions or rule 9, to the transaction value.
- (e) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which, -
 - (i) are imposed or required by law or by the public authorities in India;

or

- (ii) limit the geographical area in which the goods may be resold; or
- (iii) do not substantially affect the value of the goods;

- (f) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being value;
- (g) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller unless an appropriate adjustment can be made in accordance with the provisions of rule 9 of these rules; and
- (h) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below."

17. A perusal of sub-rule (1) of rule 4 of the 1988 Valuation Rules, which deals with transaction value, shows that the transaction value of the imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of rule 9. However, sub-rule (2) of rule (4) provides that the transaction value of the imported goods under sub-rule (1) shall be accepted provided that the circumstances set out in clauses (a) to (h) are satisfied.

18. The burden to prove undervaluation is on the department, as was observed by the Supreme Court in **Mirah Exports Pvt. Ltd. vs. Collector of Customs**⁸. The relevant observations contained in paragraph 12 of the judgment are produced below:

"12. **The legal position is well settled that the burden of proving a charge of under-valuation lies upon Revenue and Revenue has to produce**

8. **1998 (98) E.L.T. 3 (S.C.)**

the necessary evidence to prove the said charge.

"Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs" and what is to be examined is "whether the revenue has succeeded in showing that the apparent is not the real and that the price shown in the invoices does not reflect the true sale price." [See: Union of India v. Mahindra & Mahindra, (supra), at P. 487]."

19. It would also be pertinent to refer to the decision of the Supreme Court in **Commissioner of Customs, Calcutta vs. South India Television (P) Ltd.**⁹, wherein the Supreme Court again observed:

"6. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports."

20. In **Commissioner of Cus., Vishakhapatnam vs. Aggarwal Industries Ltd**¹⁰, the Supreme Court analyzed the provisions of section 14(1) of the Customs Act and rule 4(2) of the 1988 Valuation Rules and observed that save and except for the circumstances indicated in section 14(1) of the Customs Act and particularized in sub-rule (2) of rule 4 of the 1988 Valuation Rules, the invoice price is the basis for determination of the transaction value. The Supreme Court also observed that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports were at a higher price and for this rule 10A of the 1988 Valuation Rules would have to be resorted to. The relevant portions of the judgment of the Supreme Court are reproduced below:

9. 2007 (214) E.L.T. 3 (S.C.)

10. 2011 (272) E.L.T. 641 (S.C.)

"11. On a plain reading of Sections 14(1) and 14(1A), it is clear that the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in Section 14(1) of the Act. Section 14(1) is a deeming provision as it talks of deemed value of such goods. **The determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1) of the Act. Conjointly read, both Section 14(1) of the Act and Rule 4 of CVR, 1988 provide that in the absence of any of the special circumstances indicated in Section 14(1) of the Act and particularized in Rule 4(2) of CVR 1988, the price paid or payable by the importer to the vendor, in the ordinary course of international trade and commerce, shall be taken to be the transaction value. In other words, save and except for the circumstances mentioned in proviso to Sub-rule (2) of Rule 4, the invoice price is to form the basis for determination of the transaction value.** Nevertheless, if on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the correct price, it would be justified in rejecting the invoice price and determine the transaction value in accordance with the procedure laid down in CVR, 1988. **It needs little emphasis that before rejecting the transaction value declared by the importer as incorrect or unacceptable, the revenue has to bring on record cogent material to show that contemporaneous imports, which obviously would include the date of contract, the time and place of importation, etc., were at a higher price. In such a situation, Rule 10A of CVR, 1988 contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Needless to add that 'reason to doubt' does not mean 'reason to suspect'. A mere**

suspicion upon the correctness of the invoice produced by an importer is not sufficient to reject it as evidence of the value of imported goods. The doubt held by the officer concerned has to be based on some material evidence and is not to be formed on a mere suspicion or speculation. We may hasten to add that although strict rules of evidence do not apply to adjudication proceedings under the Act, yet the Adjudicating Authority has to examine the probative value of the documents on which reliance is sought to be placed by the revenue. It is well settled that the onus to prove undervaluation is on the revenue but once the revenue discharges the burden of proof by producing evidence of contemporaneous imports at a higher price, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct.

12. **In Eicher Tractors Ltd. (supra), relied upon by the Tribunal, this Court had held that the principle for valuation of imported goods is found in Section 14(1) of the Act which provides for the determination of the assessable value on the basis of the international sale price.** Under the said Act, customs duty is chargeable on goods. According to Section 14(1), 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 it has to be decided 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 and importation in the course of international trade. **The word "ordinarily" implies the exclusion of special circumstances. This position is clarified by the last sentence in Section 14(1) which describes an "ordinary" sale as one where the seller or the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances**

stand fulfilled, the price of imported goods shall be decided under Section 14(1A) read with the Rules framed thereunder. The said Rules are CVR, 1988. It was further held that in cases where the circumstances mentioned in Rules 4(2)(c) to (h) are not applicable, the Department is bound to assess the duty under transaction value. Therefore, unless the price actually paid for a particular transaction falls within the exceptions mentioned in Rules 4(2)(c) to (h), the Department is bound to assess the duty on the transaction value. It was further held that Rule 4 is directly relatable to Section 14(1) of the Act. Section 14(1) read with Rule 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in Section 14(1). **Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in Rule 4(2).** [Also See: Rabindra Chandra Paul v. Commissioner of Customs (Preventive), Shillong, (2007) 3 SCC 93 = 2007 (209) E.L.T. 326 (S.C.)]"

(emphasis supplied)

21. It is in the light of the aforesaid discussion that it has to be examined whether the value declared by the appellant in the Bills of Entry could have been rejected under rule 10A of the 1988 Valuation Rules.

22. It is not in dispute that it is because of the searches carried out by DRI of the premises of certain other importers of silk fabrics from Zhejiang, China that it came to light that two sets of invoices were issued by Zhejiang, China to the importers and what was presented to the customs authorities for clearance of goods by these importers were the invoices of lesser value. It is basis such searches that the premises

of the appellant and the Director were also searched but no incriminating documents were recovered from the premises. The burden to prove under valuation is on the department. If the department intended to reject the transaction value declared by the appellant, then the department had to bring on record cogent material to substantiate the allegations. In the present case, the impugned order merely refers to the duplicate invoices issued to the three importers by Zhejiang, China and because the invoices showing lesser value were presented by the other importers to the customs for clearance of the goods an inference has been drawn that in all cases Zhejiang, China, while exporting silk fabric to India, issued duplicate invoices. Such an inference could not have been drawn against the appellant, more particularly when the premises of the appellant and the Director of the appellant were searched duplicate invoices were not found, as had been found when the premises of three importers had been searched.

23. Learned counsel for the appellant has placed reliance upon a decision of the Tribunal in **Regent Exim International**, which is a decision on similar facts. Regent Exim was also engaged in the import of silk fabrics from Zhejiang, China. On receipt of intelligence about under invoicing in import of silk fabrics by M/s. Purnima Enterprises at Chennai, M/s. Om Fabrics at Bangalore and M/s. Vedant Enterprises at Bangalore, the DRI searched their premises in the course of which incriminatory documents indicating issue of two sets of invoices by Zhejiang, China for each consignment of silk fabric supplied to the aforesaid three companies were recovered. The documents showed that one set of invoices showed 30 to 35% less value. Since Regent Exim International was also importing silk fabrics from Zhejiang, China, the

godown and the premises of the Director were searched and a statement of the Director was recorded. However, incriminating evidence was not recovered received at the time when search was conducted of the premises Regent Exim and its Director but as the declared per unit price was found to be lower than the actual per unit transaction value based on the invoices mentioned in the invoices issued by Zhejiang, China to M/s. Purnima Enterprises and M/s. Vedant Enterprises, proceedings were initiated against Regent Exim. It is in this context that the Tribunal observed that merely because Zhejiang, China had under invoiced the value of silk fabrics for other importers, it would not mean that it had under invoiced the value in the case of Regent Exim. The observations of the Tribunal are:

"5.1 There is no dispute about the fact that in course of search of the office and godown premises of the Appellant company and search of the residential premises of Shri Subhash Gupta, no documents of the type recovered from the premises of M/s. Om Fabrics, M/s. Purnima Enterprises and M/s. Vedant Enterprises - i.e. parallel sets of invoices and correspondence of the imports with the supplier showing that the actual value of the goods imported was higher than the value declared, were recovered. There is no statement of Shri Subhash Gupta or Shri Sunil Gupta admitting the allegation of under invoicing. All Shri Subhash has stated in his statements is that he had negotiated with the supplier to bring down the price. **We also find that the SCN nowhere alleges that the declared transaction values for different varieties of silk fabrics imported by the Appellants from M/s. Zhejiang, were the same as the transaction values declared for those varieties by M/s. Om Fabrics, Purnima Enterprises and M/s. Vedant Enterprises - if this had been so, the same would have been the basis for exercising**

reasonable doubt about the declared transaction values of the Appellant company and rejecting the same. We, therefore, have no hesitation in holding that just because M/s. Zhejiang had abetted under invoicing by M/s. Om Fabrics, M/s. Purnima Enterprises and M/s. Vedant Enterprises by issuing parallel sets of invoice, it cannot be presumed that they had done so for their every customer in India xxxxxxxxx.

(emphasis supplied)

24. In the present case also the impugned order proceeds to hold that since under invoicing was done by Zhejiang, China in respect of imports of silk fabrics by other importers namely, M/s. Purnima Enterprises, Om Fabrics and Vedant Enterprises, it should be presumed that Zhejiang, China would have done so for every customer in India, including the appellant. It was imperative for the department to have substantiated the allegation of undervaluation of the silk fabric imported by the appellant from Zhejiang, China by cogent evidence and not by drawing an inference from the imports made by other importers of silk fabrics from Zhejiang, China.

25. The impugned order also relies upon the statement made by Ajit Kumar Gupta, who was looking after the activities of the appellant as a Director, to establish that the goods were undervalued.

26. This statement was made by Ajit Kumar Gupta under section 108 of the Customs Act. In the absence of the procedure contemplated under section 138B of the Customs Act having been followed, this statement could not have been relied upon. In this connection, it may be pertinent to refer to the decision of the Tribunal in **M/s. Surya**

Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur¹¹

wherein it was observed:

"**21.** It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. **What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of**

11. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain."

(emphasis supplied)

27. After examining various judgments of the High Courts and the Tribunal, the Tribunal observed:

"28. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. **The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/ investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority,**

after which such statements can be admitted in evidence.”

(emphasis supplied)

28. Thus, for the reasons stated above, the transaction value of silk fabric imported by the appellant could not have been rejected under rule 10A of the 1988 Valuation Rules. In such a situation, re-determination of the transaction value would not arise.

29. Learned counsel for the appellant also submitted that the department failed to produce contemporaneous imports of identical goods. Learned counsel pointed out that the impugned order has solely relied upon the value declared by other four importers of silk fabric namely, Om Fabrics, Purnima Enterprises, Vedant Enterprises and Regent Exim International to reject the value of silk fabric imported by the appellant under rule 10A of the 1988 Valuation Rules. In this connection, learned counsel for the appellant pointed out that the said importers as well as the appellant described the silk fabrics using specific ‘article number’ and the order has noted that since ‘article numbers’ of the goods imported by the appellant tallies with the ‘article numbers’ of the goods imported by other four importers, the goods are comparable.

30. There is substance in the submission advanced by the learned counsel for the appellant that identical article numbers simply indicate that quality of weave and a range of grammage of silk fabric are same, but within the same article number, there exists various varieties of silk fabrics.

31. The Commissioner has, in the impugned order, noted that the silk fabrics have article numbers depending primarily on the quality of raw

silk used and the grammage of fabrics. However, what is important to note is that the variety of silk fabric under each article is dependent upon the quality of silk yarn and the quality of weaving used in the making of the silk fabric. The quality of silk fabric under each article is measured in terms of 'Grades'. For instance, to indicate the quality of silk yarn used in the silk fabric, Grades 1a to 7a or more are used. Grade 1a is the cheapest and as the number increases, the price increases. These grades are well recognized in India and in this regard reliance can be placed on Customs Notification dated 10.07.2003 issued in reference to the anti-dumping duty on grade '2a or lower' raw silk.

32. The appellant had imported various grades of silk fabrics. The grade of each of them have been provided in the sales contract which the appellant entered with the suppliers. The sale contract has been cross-referenced in the invoices issued by the suppliers to the appellant. However, none of the documents of other importers relied upon by the department show the grammage, grade of silk fabric and quality of weave. In the absence of such information, the comparison of quality of the silk fabric imported by the other importers and the quality of the silk fabric imported by the appellant could not have been drawn.

33. This apart, there are other factors which impact the prices of silk fabrics. It would depend on the quantity imported, the time of importation and existence of multiple suppliers. The appellant has provided a chart that shows significant differences between the imports made by the appellant and the imports by the other four importers. The illustration with respect to article 10103 of silk fabric imported by the appellant and M/s. Om Fabrics Imports provided by the appellant is reproduced below:

Article 10103			
Basis	Appellant Imports	M/s. Om Fabrics Imports	Differences
Time	10.10.2003 to 25.11.2004	18.10.2004	There is huge time difference as majority of the imports by appellants took place prior to 18.10.2004.
Supplier(s)	Zhejiang Cathaya International Co. Ltd. Hozhou Hal Ymn Trade Co. Ltd. Zhejiang Cathaya Light Products & Textiles Imp. & Exp. Co. Ltd. Zhejiang sunny Imp & Exp. Co. Ltd. Jiangsu Hongbao Group Imp & Exp Co. Ltd.	Zhejiang Cathaya International Co. Ltd.	Apart from the common supplier, there are also other Supplier of the appellant.
Quantity	10,86,629.9 meters	72,141 meters	There is huge difference is the quantity imported by the appellant and the quantity imported by M/s. Om Fabrics (as per the data given to appellant)
Quality	B/C Grade	Not Known	The grades the silk fabric imported by M/s. Om Fabric is not mentioned so it cannot be compared.

34. In this view of the matter, the finding recorded by the Commissioner that the silk fabric imported by the other four importers and the silk fabric imported by the appellant were identical as same ‘article member’ was provided in the Bills of Entry cannot be sustained.

35. What follows from the aforesaid discussion is that the Commissioner was not justified in rejecting the transaction value of silk fabrics in the 37 Bills of Entry during the period from September 2003

to January 2005 under rule 10A of the 1988 Valuation Rules. The issue of re-determination of the transaction value under the provisions of rule 5 of the 1988 Valuation Rules would, therefore, not arise. The imposition of redemption fine or imposition of penalty under section 114(A) of the Customs Act cannot, therefore, also be sustained.

36. It would, therefore, not be necessary to examine the contention advanced by learned counsel for the appellant that once the goods had been cleared for home consumption, they cease to be 'imported goods' and, therefore, the transaction value cannot be rejected by invoking rule 10A of the 1988 Valuation Rules.

37. The order dated 06.02.2009 passed by the Commissioner would, therefore, have to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order pronounced on **23.06.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)