

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 52270 OF 2016

(Arising out of Order-in-Original No. 08/PR. COMMR./ADJ/2016 dated 12.05.2016 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi)

Jatin Ahuja

C 1090 A, Sushant Lok I,
Gurgaon, Haryana

...Appellant

VERSUS

Commissioner of Customs,

(Import), ICD, Tughlakabad, New Delhi

...Respondent

WITH

CUSTOMS APPEAL NO. 52359 OF 2016

(Arising out of Order-in-Original No. 08/PR. COMMR./ADJ/2016 dated 12.05.2016 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi)

M/s. Mera Baba Realty Associates Pvt. Ltd.

354, Tarun Enclave, Pitampura,
New Delhi - 110034

...Appellant

VERSUS

Commissioner of Customs,

(Import), ICD, Tughlakabad, New Delhi

...Respondent

WITH

CUSTOMS APPEAL NO. 52360 OF 2016

(Arising out of Order-in-Original No. 08/PR.COMMR./ADJ/2016 dated 12.05.2016 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi)

Vikrant Kalia,

G-Card Holder, Payless Cargo 6,
Krishna Market, 3rd Floor, Kalkaji,
New Delhi - 110019

...Appellant

VERSUS

Commissioner of Customs,

(Import), ICD, Tughlakabad, New Delhi

...Respondent

AND

CUSTOMS APPEAL NO. 52361 OF 2016

(Arising out of Order-in-Original No. 08/PR.COMMR./ADJ/2016 dated 12.05.2016 passed by the Principal Commissioner of Customs, ACC (Imports), New Delhi)

M/s. Payless Cargo

6, Krishna Market, 3rd Floor, Kalkaji,
New Delhi - 110019

...Appellant**VERSUS****Commissioner of Customs,**

(Import), ICD, Tughlakabad, New Delhi

...Respondent**APPEARANCE:**

Shri Pradeep Jain, Shri Sambhav Jain and Shri Sumit Sarna, Advocates for the Appellant

Shri Shiv Shankar, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 30.04.2025

DATE OF DECISION: 08.08.2025

FINAL ORDER NO's. 51157-51160/2025

JUSTICE DILIP GUPTA:

Jatin Ahuja, Director of M/s Big Boyz Toyz has filed **Customs Appeal No. 52270 of 2016** to assail the order dated 12.05.2016 passed by the Principal Commissioner that:

- (i) Rejects the declared assessable value of Rs. 73,84,842.25 of the imported Bentley Flying Spur Automatic Car¹ as declared in the Bill of Entry No. 838339 dated 12.10.2009 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007² read with section 14 of the Customs Act, 1962³ and re-determines the assessable value of the said Bentley Flying Spur Automatic Car at Rs.

-
1. the Automatic Car
2. the 2007 Valuation Rules
3. the Customs Act

88,61,962.20/- in terms of rule 3 of the 2007 Valuation Rules read with section 14 of the Customs Act;

- (ii) Denies the benefit of concessional rate of duty under Serial No. 344 of the Notification No. 21/2002-CUS dated 01.03.2002⁴ in respect of the Automatic Car as the vehicle was not new and was also registered/sold prior to its importation into India and, accordingly, directs for charging duty;
- (iii) Confirms the demand of customs duty short paid amounting to Rs. 61,93,939/- on the basis of re-determined assessable value under the provisions of section 28(4) of the Customs Act and orders for recovery from the importer Jatin Ahuja, Director of M/s Big Boyz Toyz. The amount deposited by Jatin Ahuja during investigation has been ordered to be appropriated;
- (iv) Directs for recovery of interest on the delayed payment of differential duty under section 28AA of the Customs Act;
- (v) Imposes penalty of Rs. 10,00,000/- on Jatin Ahuja, under section 112(a) of the Customs Act for fraudulent import of the Automatic Car; and
- (vi) Imposes a further penalty of Rs. 5,00,000/- on Jatin Ahuja under section 114AA of the Customs Act for the fraudulent import of the Automatic Car.

2. **M/s. Mera Baba Realty Associates Pvt. Ltd.** has filed **Customs Appeal No. 52359 of 2016** to assail the order aforesaid dated 12.05.2016 that:

- (i) Confiscates the Automatic Car valued at Rs. 88,61,962.20/- under section 111(m) and section 111(d) of the Customs Act

4. **the Notification**

but with an option to M/s Mera Baba Reality Associates Pvt. Ltd. to redeem the same on payment of redemption fine of Rs. 10,00,000/-;

- (ii) Imposes penalty of Rs. 10,00,000/- on M/s Mera Baba Reality Associates Pvt. Ltd. under section 112(a) of the Customs Act for fraudulent import of the Automatic Car; and
- (iii) Imposes a further penalty of Rs. 5,00,000/- on M/s Mera Baba Reality Associates Pvt. Ltd. under section 114AA of the Customs Act for fraudulent import of the Automatic Car;

3. **Vikrant Kalia**, G-Card holder of M/s Payless Cargo has filed **Customs Appeal No. 52360 of 2016** to assail that part of the order dated 12.05.2016 passed by the Principal Commissioner that imposes a penalty Rs. Rs. 7,00,000/- upon him under section 112(b) of the Customs Act.

4. **M/s. Payless Cargo**, customs house agent, has filed **Customs Appeal No. 52361 of 2016** to assail the order dated 12.05.2016 passed by the Principal Commissioner that imposes a penalty Rs. 7,00,000/- upon it under section 112(b) of the Customs Act.

5. Jatin Ahuja claims that in August, 2009, when there was a recession in U.K, large number of dealers were selling cars by extending reduction up to 40% in the price and so he imported the brand new Automatic Car from M/s A.K International (IE) Ltd U.K for his personal use and an Invoice No.44846 dated 17.09.2009 was issued for an amount of GBP 91,500. The said Automatic Car was cleared at ICD, Tughlakabad Port through a Bill of Entry dated 12.10.2009 by assessing the value of the Automatic Car at Rs. 73,84,842/-. Jatin Ahuja further claims that he paid Rs. 78,40,297/- on 22.10.2009 as customs duty. After import of the Automatic Car, he decided to dispose the same and

after negotiation, M/s Mera Baba Reality Associates Pvt. Ltd, New Delhi purchased the said Automatic Car for a consideration of Rs. 1.51 crores.

6. However, a show cause notice dated 21.10.2014 was issued to the appellant by the Additional Director General for re-determination of the assessable value of the Automatic Car under rule 3 of the 2007 Valuation Rules. The relevant portions of the show cause notice are reproduced below:

"13. With regard to the duty liability, the standard Basic Customs Duty rate of 100% was applicable at the relevant time to motor cars falling under tariff heading 8703 of the First Schedule to the Customs Tariff Act, 1975. **Vide exemption Notification No. 21/2002-Customs dated 01.03.2002, a lower rate of 60% was prescribed for import of specified categories of cars subject to certain conditions as mentioned in Sl. No. 344 of this notification. The benefit of this exemption has been claimed in the bill of entry filed for clearance of the impugned car at the time of import.**

xxxxxxxxxxxxx

It is evident that to avail the above exemption, the car has to satisfy two conditions, namely it has to be new and it should not have been registered anywhere prior to its importation. Thus, any car which was either not new or which was registered anywhere prior to its importation into India would not be eligible for the benefit of the above exemption and in such cases the standard Basic Customs Duty (BCD) rate applicable shall be 100% plus other duties as applicable at the relevant time.

xxxxxxxxxxxxx

16.3 The facts mentioned above make it is clear that the impugned Bentley Flying Spur Automatic car was clearly not a new car fulfilling the terms of conditions specified in Sl. No. 344 of Notification No.21/2002-Customs dated 01.03.2002, as it existed at the relevant time. The

car was not a new car also in terms of the Import Licensing Note to Chapter 87 of ITC (HS) discussed earlier. **Further the specific condition of the Customs notification is not fulfilled as the car was registered in UK prior to its importation into India. This fact has been admitted by Shri Jatin Ahuja in his statement dated 26.04.2011. This indicates that the car has been subjected to sale transaction as car was manufactured in UK and sold and registered in UK and the same has then been exported to India by M/s A.K. International (IE) Ltd., as per documents filed at the time of import. In view of the above facts, the impugned car does not appear to be eligible to avail the benefit of concessional rate of duty prescribed under Sl. No. 344 of Notification No.21/2002-Cus., as it existed at the relevant point of time.** Therefore, the standard rate of Basic Customs duty at the rate of 100% prescribed under the First Schedule to the Customs Tariff Act, 1975, would be leviable on this car, in addition to other duties as applicable. Further, immediately after registration, Shri Jatin Ahuja has sold the car to M/s Mera Baba Reality Associates Pvt. Ltd. **Thus, it is evident that the car was actually imported for M/s Mera Baba Reality Associates and they willfully did not accept/go for the registration of the car in the name of their company just to avoid any legal action, if any investigation regarding import of the impugned car by way of undervaluation and mis-declaration is initiated.**

17. (i) to (iv) xxxxxxxxxxxx

17(v). **The impugned Bentley Flying Spur Automatic was imported by resorting to undervaluation by claring C&F value of GBP 91500.00 instead of FOB value of GBP 109850 as brought out in the report of First Secretary (Trade), High Commission of India, London dated 07.12.2011.** The price declared before the HRM Customs is much higher than the price declared before the Indian Customs. Thus, there is clear evidence of

mis-declaration of value of the impugned car before the Customs authorities.

xxxxxxxxxxx

20. (i) to (v) xxxxxxxxx

(vi) **The assessable value of the impugned car i.e. Bentley Flying Spur Automatic bearing Chassis No. SCBBE53W39C060425 imported by Shri Jatin Ahuja under bill of entry no. 838339 dated 12.10.2009 is liable for re-determination on the basis of the actual transaction value which is 88,61,962.20 in terms of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962."**

(emphasis supplied)

7. Replies were filed to the show cause notice and the allegations made were denied.

8. However, the Principal Commissioner did not accept the submissions made in the replies and confirmed the demand. The relevant portions of the order dated 12.05.2016 passed by the Principal Commissioner are reproduced below:

"29.1 xxxxxxxx **I find that in the present case, the transaction value for the purpose of assessment and Customs Duty liability of the importer was required to be the price actually paid or payable for the Bentley Flying Spur Automatic Car sold for export to the importer in India, which I find has been found to be GBP 109850 FOB as has been brought out in the show cause notice on the basis of enquiries caused through First Secretary (Trade), High Commission of India, London from HMR Customs and not GBP 91500 C&F as has been declared by the importer at the time of import of the impugned car.** This suggests that the transaction value declared by the noticee was not the correct value paid by the importer to the overseas exporter and hence the declared assessable value of Rs. 73,84,842.25 of the imported Bentley Flying Spur

Automatic Car as declared in the Bill of Entry No. 838339 dated 12.10.2009 merits rejection in terms of Rule 12 of the Rules, cited supra. **I further find that on the basis of transaction value being GBP 109850 of the said Bentley Flying Spur Automatic Car imported under Bill of Entry No. 838339 dated 12.10.2009, the assessable value thereof comes to Rs. 88,61,962.20 (GBP 109850 x 79.70 + Insurance 19,175 = 8774220 + 87742.20 Landing Charges @ 1% = 8861962)** I further find that the subject Bentley Flying Spur Automatic Car is of U.K. origin and has been imported from M/s. A.K. International (IE) Ltd., U.K. **The standard Basic Customs Duty rate at the relevant time for Motor Cars falling under Heading 8703 of the Schedule to the Customs Tariff Act, 1975 was 100% and under Notification No. 21/2002-Cus. Dated 01.03.2002, a lower rate of 60% was prescribed for import of specified types of cars subject to certain conditions as mentioned at Sl. No. 344 of the said notification. xxxxxxxxxxxx. From the above, I note that in order to avail the above-stated exemption, the car has to satisfy two conditions namely – (i) it has to be new; and (ii) it should not have been registered anywhere prior to its importation.** Thus, any car, which is either not new or which has been registered anywhere prior to its importation into India will not be eligible for the benefit of the above exemption and in such cases the standard Basic Customs Duty rate of 100% is applicable. **As has been brought out in the show cause notice, the subject Bentley Flying Spur Automatic Car imported under Bill of Entry No. 838339 dated 12.10.2009 was manufactured in England. Shri Jatin Ahuja in his statement dated 26.04.2011 has admitted that the specific condition of the Customs Notification is not fulfilled as the car was registered in U.K. prior to its importation into India. This establishes that impugned car had been subjected to sale transaction as the car was manufactured in U.K. and sold and registered there and then exported to India by M/s. A.K. International (IE) Ltd. as per documents filed at**

the time of import and hence the conditions specified at Sl. No. 344, cited supra, are not fulfilled and the said car cannot be termed as a new car in terms of the Import Licensing Note to Chapter 87 of ITC (HS). Accordingly, I hold that the condition mentioned at Sl. No. 344 of Notification No. 21/2002-Cus. is not fulfilled and the importer is not eligible to concessional rate of duty prescribed under the said notification.”

(emphasis supplied)

9. Shri Pradeep Jain, learned counsel appearing for the appellant assisted by Shri Sambhav Jain and Shri Sumit Sarna, submitted that:

- (i)** Rule 3 of the 2007 Valuation Rules is not applicable as there is no evidence to substantiate that the car was sold to Jatin Ahuja for GBP 1,09,850; and
- (ii)** The benefit of the Notification was available to the appellant as registration of the car was a must in UK before it could be exported. In support of this contention learned counsel placed reliance upon the judgment of the Bombay High Court in **Commissioner of Customs (Import) vs. Noshire Moody⁵** and the decision of this Tribunal in **Abbas Kuramputhoor vs. Commissioner of Customs, Cochin⁶**.

10. Shri Shiv Shankar, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

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

5. **2014 (300) E.L.T. 205 (Bom.)**

6. **2009 (240) E.L.T. 98 (Tri. – Bang.)**

12. The benefit of the Notification has been denied to the appellant for the reason that the appellant had not purchased a new car. It would, therefore, be appropriate to reproduce the said Notification, as it stood at the relevant time, and it is as follows:

**"Notification No. 21/2002-Cus.
Effective rates of basis and additional duty for
specified goods falling under Chapters 1 to 99**

xxxxxxx, The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table:

Table

S. No.	Chapter or Heading No. or sub-heading No.	Description of goods	standard Rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(5)
344	8703	Motor cars and other			

		vehicles principally designed for the transport of persons (other than those of heading 87.02), including station wagons and racing cars, new, which have not registered anywhere prior to importation,-			
		(a) if imported as completely knocked down (CKD) Unit	10%	-	-
		(b) if imported in any other form	60%	-	-

13. The contention for learned counsel for the appellant is that the appellant is entitled to the benefit of the Notification and the applicable customs duty would be only 60%. Learned counsel pointed out that before the Automatic Car could be exported from UK, it had necessarily to be registered and that is why registration was done. The car was a new car and had run only 123 kms.

14. It needs to be noted that the Automatic Car was subjected to inspection at the time of time of import when the Bill of Entry was filed and the Report of the Inspector is reproduced below:

“Inspector’s Report.
.....
Opened and examined 1 pkgs in the presence of the special observation

100% of the goods in the pre. of rep. of cha and found to contain
New Bentley flying spur automatic car
As per inv p/t and b/e attd. Chasis no. scbbe53w39C060425, engine no. bwr020990, color. Silver tempest/ mangnola hide country of origin- U.K. right hand drive speedometer and in km presently 123 km, photometric head lamp type approval attached.
By monish09 dated 16.10.2009 at 01.11 p.m.”

Remarks by AC
Remarks by Superintendent

docs seen by dc shed. b/e assessed by group.
by sahdev09 dated 22.10.2009 at 04.19 p.m.”

15. The first issue, therefore, that arises for consideration is as to whether the appellant had imported a new Automatic Car because only then the appellant would be entitled to the benefit of the Notification. The Principal Commissioner has held that the Automatic Car imported by the appellant was not a new car since it had been registered in U.K. prior to its import to India.

16. It needs to be noted that at the time of import the car was subjected to inspection and the Inspection Report clearly mentions that it was found to be a new car. Merely because it was registered in U.K. prior to its export to India would not mean that the car will cease to be a new car because under the laws of U.K. it is necessary for a car to be registered before it can be exported.

17. In **Noshire Moody** the Bombay High Court examined a similar situation and noted that the car was registered in U.K. only to meet the transit requirement from Italy to India through U.K. The relevant portion of the judgment is reproduced below:

“4. The Settlement Commission noted that the purpose and intent of the exemption under the notification as brought out in a budget speech of the Finance Minister and the budget explanation note of 2001-02 is to discourage the import of second hand cars by fixing a higher rate of duty. The CBEC circular, however, clarifies that a mere documentary registration for enabling transit and shipment of a vehicle will not disqualify the motor vehicle from exemption. In this background, the Settlement Commission observed that unless the exemption notification were to be given a workable meaning so as to exclude registration for transit, the notification would become unworkable for import of motor vehicles from such countries where

temporary registration is mandatory before exportation of the vehicle. **Insofar as the facts are concerned, the Settlement Commission has noted that the car was imported by the U.K. dealer of Ferrari, Italy and sold to M/s. Hyperformance Cars Ltd., U.K. on 18 December, 2007. The car was entered for export to India at the relevant port on 20 December, 2007 and the consignment left for India on 30 December 2007 under a bill of lading. There is a finding of fact that the car was not used in the U.K. and was registered in the U.K. on 11 January, 2008 only to meet the transit requirement from Italy to India through the U.K."**

(emphasis supplied)

18. In **Abbas Kuramputhoor**, the Tribunal considered the inspection report and also the fact that registration in U.K. was a formality and held that the car should be treated as a new car entitled to the benefit of the Notification. The observations are:

"8. On a very careful consideration of the issue, we find that the benefit of Customs Notification for import of new car cannot be denied simply on the basis of its prior registration before shipment to India. The Board's Circular has also clarified the point. It is also seen from the impugned order that the car was registered in October 2007 and the shipment was made in January 2008. Further, from the Examination Report, it is seen that the car has run only for 16 km. From this, it is very clear that the registration is only a formality. Taking into account the facts and circumstances, we cannot come to the conclusion that the car is a used one. Hence, there is clear case here for extending the benefit of the said Customs Notification."

(emphasis supplied)

19. The benefit of the Notification has been denied to the appellant only for the reason that it was registered in UK prior to its export to

India. The aforesaid decisions hold that as registration is a necessity for a car to be exported from U.K., it would not mean that the car will not be treated as a new car. It has, therefore, to be held that the appellant had imported a new Automatic Car and was entitled to the benefit of the Notification.

20. The next issue that arises for consideration is whether the assessable value of the new Automatic Car could have been rejected under rule 12 of the 2007 Valuation Rules.

21. The appellant had disclosed the value of the car as GBP 91,500. This has been re-determined to GBP 1,09,850 in view of the report of the First Secretary (Trade), High Commission of India, London dated 07.12.2011. The report is reproduced below:

"Kindly refer to your office letter DRI F. No. 23/53/2011-DZU dated 04.05.2011, your letter dated 02.09.2011 and this office email communications, on the above cited subject.

2. The matter was referred and pursued with HMRC on the basis of the available documents, for conducting necessary verifications in the matter. **The HMRC, after conducting enquiries in the matter, have forwarded a schedule indicating price of the vehicle at the time of export and the vehicle registration documents. It is also informed that:**

- Mr. Kalra supplies brand new cars to customers through two agents/car dealers in India, as given below.
 - Mr. Jatin Ahuja, G-218, First Floor, Naraina Vihar, New Delhi - 110 057
 - Mr. Sumit Walia, 13, Paschimi Marg, Basement, Vasant Vihar, New Delhi - 110 057.
- Mr. Kalra no longer uses Mr. Walia's services, however Mr. Ahuja still works as his agent.
- **the cars were purchased from Main Dealers**

- **the cars attract VAT and were paid in full.**
 - Mr. Kalra claims VAT on all exported vehicles to India
 - None of the vehicles have been re-designed, except in some cases where extras such as car mats, televisions, navigation systems, wheels were removed at the purchaser's request.
3. The following documents forwarded by HMRC are enclosed.
- copy of the passport of Mr. Sumit Walia,
 - **schedule indicating the price of the vehicle at the time of export and vehicle registration documents,**
 - VAT return of M/s. AK International pertaining to periods 01.01.2010 to 31.03.2010 and 01.04.2010 to 30.06.2010.”

(emphasis supplied)

22. The relevant portion of the Schedule containing the price of vehicle is reproduced below:

(1)	(2)	(3)
Price of vehicle in GBP at the time of export	Vehicle classis No.	Sr. No. in the list (Annexure-A)
109850	Bentley SCBBE53W39C060425	71

23. Serial No. 71 of list A shows the value of the car GBP 91,500. It is evident that the price of the new vehicle from the showroom has been quoted in the aforesaid letter as GBP - 1,09,850.

24. According to the appellant it had purchased a brand new Automatic Car from M/s A.K International and the invoice price was mentioned as GBP 91,500. This car was purchased at a time when there was a recession in U.K. and the cars were sold by extending a deduction upto 40%. The showroom price has been mentioned in the letter and no efforts were made by the department to determine the price at which

the vehicles were being sold at that time. The assessable value of the new Automatic Car, therefore, could not have been rejected under rule 12 of the 2007 Valuation Rules.

25. The question of re-determination of the assessable value, therefore, will not arise. In any view of the matter, the re-determination of the assessable value under rule 3 of the 2007 Valuation Rules is also not justified.

26. Section 14 of the Customs Act provides that the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India subject to such other conditions as may be specified in the rules.

27. Rule 3 (1) of the Valuation Rules provides as follows:

"3. Determination of the method of valuation.

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that-

(a) 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;

(b) 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 valued;

(c) 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 10 of these rules; and

(d) 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.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9."

28. Though the operative part of the order passed by the Principal Commissioner has quantified the re-determined value of the Automatic Car in terms of rule 3 of the 2007 Valuation Rules, but paragraph 29.1 of the order has re-determined the transaction value on GBP 109850 without mentioning any provision of the 2007 Valuation Rules. Under rule 3(1) of the 2007 Valuation Rules, subject to rule 12, the value of the imported goods shall be the transaction value adjusted in accordance with the provisions of rule 10 of the 2007 Valuation Rules. Under rule 3(2) of the 2007 Valuation Rules, the value of the imported goods under sub-rule (1) shall be accepted subject to the conditions provided in the proviso. Rule 10 of the 2007 Valuation Rules which deals with cost and services would not be applicable in the present case.

29. Learned authorized representative appearing for the department has not been able to substantiate that rule 3 of the 2007 Valuation Rules would be applicable in the present case for re-determination of the assessable value of the imported Automatic Car.

30. Once it has been held that the car that was imported by the appellant was a new Automatic Car is entitled to the benefit of the Notification, and the assessable value could not have been rejected under rule 12 of the 2007 Valuation Rules, the question of demanding any duty short paid on account of re-determination of the assessable value does not arise.

31. For this reason penalty also could not have been imposed upon the appellant under section 112(a) or section 114AA of the Customs Act. For the same reasons the new Automatic Car could not have been confiscated nor penalty could have been imposed upon M/s. Mera Baba

Realty Associates either under section 112(a) or 114AA of the Customs Act.

32. For the same reasons penalty under section 112(b) of the Customs Act could not have been imposed upon either Vikrant Kalia or M/s. Payless Cargo.

33. The impugned order dated 12.05.2016 passed by the Principal Commissioner, therefore, cannot be sustained and is set aside. Customs Appeal No. 52270 of 2016, Customs Appeal No. 52359 of 2016, Customs Appeal No. 52360 of 2016 and Customs Appeal No. 52361 of 2016 are, accordingly, allowed.

(Order pronounced on **08.08.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Jyoti