CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

CUSTOMS APPEAL NO. 51721 OF 2021

[Arising out of Order-in-Original No. 33/2019/MKSINGH/PR. COMMR/ICD-IMPORT/TKD dated 25.10.2019 passed by the Pr. Commissioner of Customs (Import), New Delhi]

ROYAL BLANKETS **.....APPELLANT**

22/2753, Beadonpura,
First Floor, Karol Bagh,
New Delhi-110005

Vs.

PRINCIPAL COMMISSIONER, CUSTOMS (IMPORT)-ICD, TUGHLAKABAD, NEW DELHI-110020 **....RESPONDENT**

Appearance:
Shri Gurdeep Singh, Shri Jaideep Ahuja, Advocates for the appellant

Shri Nikhil Mohan Goyal, Authorised Representative for the department

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

FINAL ORDER NO. 51558 /2025

DATE OF HEARING : 21/07/2025
DATE OF DECISION: 13/10/2025

P. V. SUBBA RAO:

1. M/s Royal Blankets, Karol Bagh, New Delhi[1] filed this appeal to assail the order dated 25.10.2019[2] passed by the Principal Commissioner of Customs (Import), Inland Container Depot[3], Tughlakabad[4]. The operative part of this order is as under:

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1 Appellant
2 impugned order
3 ICD

ORDER

"(i) I hereby reject the declared transaction value of Rs. 2,18,56,454/-(Two Crores Eighteen Lakhs Fifty Six Thousand Four Hundred Fifty four only) of goods entered and declared in the Bills of Entry, as detailed in Table-II & III of the Show Cause Notice, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) I determine the collective amount of Rs. 8,40,16,707/-(Rupees Eight Crores Forty Lakhs Sixteen Thousand Seven Hundred and Seven only), which include adjustment of freight, insurance and handling charges, as actual transaction value in respect of goods covered under Bills of Entry, as detailed in Table II & III to the Show Cause Notice, under Rule 3 & 9 of Customs Valuation (Determination of Value of Import Goods) Rules, 2007 read with Rule 10(2) of the Customs Valuation (Determination Value of Imported Goods) Rules, 2007 and Section 14(1) of the Customs Act, 1962.

(iii) I hold that total duty amounting to Rs. 2,49,86,167/- (Rupees Two Crores Forty Nine Lakhs Eighty Six Thousand One Hundred Sixty Seven only) should be charged under section 12 of the Customs Act, 1962 read with Section 2 &3 of the Customs Tariff Act, 1975 in respect of goods covered under the Bills of Entry, as detailed in Table - II & III of the Show Cause Notice, and confirm the demand of differential duty of Rs. 1,85,84,364/- (Rupees One Crore Eighty five Lakhs Eighty Four Thousand Three Hundred Sixty Four only)under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA of Customs Act 1962.

(iv) I impose a penalty of Rs. 1,85,84,364/- (Rupees One Crore Eighty five Lakhs Eighty Four Thousand Three Hundred Sixty Four only)under Section 114A of Customs Act, 1962 upon M/s Royal Blanket through its proprietor Shir Nitin Khandelwal. Accordingly, no penalty under Section 112 of Customs Act, 1962 is imposed.

(v)I impose a penalty of Rs. 50,00,000/- (Rupees Fifty Lakhs only) on M/s Royal Blanket through its proprietor Shri Nitin Khandelwal under Section 114AA of the Customs Act, 1962."

2. The appellant is a proprietorship firm of Shri Nitin Khandelwal[5]. It imported goods which appeared to the department to have been undervalued based on the pieces of evidence unearthed during another investigation against M/s Wide Impex, New Delhi owned by Shri Mayank Khandelwal[6]. Shri Mayank was summoned by officers in connection with the enquiry but since he was ill, he authorized his brother Nitin to appear on his behalf who joined the investigation. Wide Impex belonged to Mayank but Nitin was managing it. Nitin had also his own firm-Royal Blankets-the appellant herein and he was also managing another partnership firm called KLM Overseas.

3. Nitin gave a statement on 09.01.2018 on the strength of the authorization letter dated 08.01.2018 issued by Mayank. In this statement, Nitin explained that he used to visit China to place orders for goods on behalf of Wide Impex which were then sold to three persons-Shri Prateek Jain, Rajnish Maurya and Shri Piyush; he would undervalue the goods by submitting fake invoices for the sake of customs clearance and that he would remit the amount shown in these invoices through bank. The remaining amount (difference between the actual price and the under-invoiced value) would be paid by his buyers Shri Prateek Jain, Shri Rajnish Maurya and Shri Piyush directly to the exporter.

4. Further, he explained that Shri Anuj Gupta co-ordinates export of goods from China and two invoices would be issued for each consignment-a genuine invoice showing the value of goods

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5 Nitin
6 Mayank

in RMB and a fake invoice showing the value of goods in USD. He would use the fake invoices for customs clearance. Nitin further said that he had three email accounts in which he would get the invoices viz,nitin.khandelwal22@yahoo.com, nitinkhandelwal22.nk@gmail.com and nitinji1983@gmail.com. Invoices would be sent from three email id's of the supplier viz, 1303224870@qq.com, sourcingleo@yahoo.com and anujgupta.29@gmail.com.

5. Nitin also opened his email account nitin.khandelwal22@yahoo.com using the computer installed in room of the Special Intelligence and Investigation Branch[7] voluntarily and took a print out of the original invoices in excel form which he had received from 1303228470@qq.com and put his signature certifying it. The data contained in the email and the excel sheets were collected by SIIB officers. His further statement was recorded on 17.07.2018 in which he re-affirmed that he had opened his email id while giving his statement on 9.01.2018 and had taken printouts of the excel sheets which he had signed. He stated that the prices therein were on CIF basis.

6. During investigation, it emerged that apart from imports by Wide Impex there were also invoices pertaining to consignments imported by Royal Blankets (owned by Nitin) - the appellant herein- in the excel sheet in the email of nitin.khandelwal22@yahoo.com. This led to the investigation against the appellant.

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7 SIIB

7. After completing the investigation, show cause notice dated 27.6.2018[8] was issued to the appellant proposing to reject the transaction value in 23 Bills of Entry filed by the appellant under Rule 12 of Customs Valuation (Determination of value of imported goods) Rules, 2007[9] and to re-determine the values as shown in tables II and III of the SCN as per Section 14 of the Customs Act, 1962[10] read with Rule 10(2) of the Valuation Rules. It was also proposed to recover differential duty under section 28(4) of the Act along with interest, and impose penalties on under sections 112/114A and 114AA of the Act. The SCN sought reply within 30 days. The appellant sent replies dated 3.10.2019 (preliminary submissions) and 2.10.2019 (final submissions) resisting the proposals in the SCN. The Principal Commissioner fixed personal hearing on 31.7.2019, 28.8.2019, 07.9.2019, 3.10.2019 and finally on 24.10.2019 during which the appellant appeared and made submissions. The Principal Commissioner framed the following three questions for decision in the impugned order:

(i) Whether the allegation that importer has undervalued the goods imported vide impugned Bills of entries filed is sustainable; and if so, whether re-determination of the transaction value based on the evidences in the show cause notice is legal and correct?

(ii) Whether the differential duty is liable to be recovered from the importer on account of alleged undervaluation under section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Act ibid?

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8 SCN
9 Valuation rules
10 Act

(iii) Whether the importer through its proprietor is liable to penal action under sections 112, 114A and 114AA of the Customs Act, 1962?"

8. He recorded that the invoices in the form of excel sheets were found in the emails. The Excel sheets corresponded to the Bills of Entry. He also recorded that the details in the Excel sheets matches with the invoices attached by the importer with the Bills of Entry for Customs clearances to minute details such as Shop, Deposit, account no., user, Mark, CTN, PCS.CTN, TTL PCS, Unit Price, TTL value, CBM, TCBM, Weight and Total weight.

9. He also noted that in the email dated 24th September 2016 with the subject as "23092016RMB", the text of the email says "please don't consider the value of JBJ in the container file of 18 and 24 Sept. Consider this file coco and cherry files for accurate information cbm weight and value." Similarly in another email dated July 1 with subject "USD RMB", the conversation says "kindly find file attached for the 2nd June (USD and RMB) values for PVC, cushion mat have not been mentioned, 9th June (RMB) waiting for a man invoice, 21st June (RMB)". He also recorded that the information given in the Excel sheets indicated that the goods were first purchased from different sellers whose names were indicated in codified form in column 'Shop' and the buyer's name in 'Mark column.

10. When the prices in RMB in the Excel sheets were compared with the commercial invoices indicating prices in USD, the description of the goods, number of cartons, total number of cartons, etc. fully matched. Therefore, the Principal Commissioner concluded that the goods were purchased by the

importer's agent from suppliers in China and given to the consolidator to supply the goods to India who prepared invoices heavily undervaluing and indicated the values in USD which were produced before Customs to clear goods. The real values in RMB were sent to the importer on email and were never disclosed to the Customs.

11. In respect of 6 Bills of Entry listed in table II of the SCN, the Commissioner confirmed the demand on the basis of the values found in parallel invoices in the form of Excel sheets. These are as follows:

TABLE-II

Sr No.	Bill of Entry No.	Date of filing of bIll of Entry	Quantity of goods	Declared value as per Bill of Entry (Amount in Rs.)	Actual Transaction value of goods, as per actual invoice recovered from email id of Shri Nitin Khandelwal (in Rs.)	Total Duty (Amount of Rs.)	Duty already paid as per Entry (Amount in Rs)	Differential duty (Amount in Rs.)	Detail duty calculation annexure
1	9880346	14.07.2015	56,334	1248287	3951947	1163493	365287	798206	1
2	2213140	11.08.2015	28,270	754587	6584361	1832461	204494	1627967	2
3	2329062	21.08.2015	29,936	968660	3604611	1037001	268455	768546	3
4	6881963	27.09.2016	43,777	852836	4432755	1307105	256324	1050781	4
5	*6985117	05.10.2016	27,817	681600	3643463	1131467	201830	1009584	5
6	7182006	21.10.2016	66,979	851852	5225288	1524932	236914	1288018	6
		Total	**253,113**	**5357822**	**27442424**	**7996459**	**1533304**	**6543102**	

12. In respect of another 17 Bills of Entry, no parallel invoices were found in the Excel Sheet but on comparison of the goods imported in these Bills of Entry and the value of the goods found in the excel sheet in respect to the goods imported in other Bills of Entry, it was evident that the same *modus operandi* was

adopted. Accordingly, the demands in these Bills of Entry were confirmed on the basis of values in contemporaneous imports. These are as follows:

TABLE-III

Sr No.	Bill of Entry No.	Date of Filing of Bill of Entry	Declared value as per Bill of (Amount in Rs.)	Actual transaction value of goods in terms of Rule 10(2) of CVR, 2007, as per actual invoice recovered from email id of Shri Nitin Khandelwal (in Rs.)	Total Duty payable (Amount in Rs.)	Duty already paid as per Bill of Entry (Amount in Rs.?)	Diff. Duty to be paid (Amount in Rs.)	Detail of duty calculation on annexure (RUD)
1	3681219	30.10.2013	563957	4837571	1395736	184475	1211261	7
2	2255279	14.08.2015	616670	2820720	830449	181554	648895	8
3	2483297	04.09.2015	1069733	2639091	751463	298813	452649	9
4	2584182	14.09.2015	955915	3553256	1035570	260203	775367	10
5	2679253	22.09.2015	1198825	4551585	1332794	204494	1128300	11
6	6825282	22.09.2016	848811	1949538	647628	252170	395458	12
7	6837836	23.09.2016	1186140	1797687	592052	326783	265269	13
8	7038892	10.10.2016	590270	1655413	484400	156070	328330	14
9	7676107	01.12.2016	976210	2574136	730490	295435	435055	15
10	2225684	24.06.2017	845644	2997459	881222	238656	642566	16
11	2230851	24.06.2017	931329	1749211	490713	252337	238376	17
12	2363296	07.07.2017	975548	4833875	1300944	300847	1000097	18
13	2444349	14.07.2017	122476	2618118	974726	389197	585529	19
14	2521444	19.07.2017	954533	3048050	826641	381946	444695	20
15	2641295	28.07.2017	1128754	3234573	929171	378751	550420	21
16	2656110	29.07.2017	1157263	7557108	2460864	388468	2072396	22
17	2714936	03.08.2017	1276554	4156889	1244907	378308	866599	23
		TOTAL	**16498632**	**56574283**	**16909769**	**4868507**	**12041262**	

13. Therefore, the Commissioner found that the declared transaction values in respect of the Bills of Entry were liable to be rejected under Valuation Rule 12. He then proceeded sequentially from Valuation Rules 4 to 9 to determine the value. Valuation Rule 4 requires the valuation to be done on the basis of value of identical goods. Since the goods were assorted and different items were sourced from different sellers, the Commissioner found that they cannot compared and, therefore, Valuation Rule 4 could not be applied. For the same reason, he also found that

Valuation Rule 5 (value of similar goods) also could not be applied. Valuation Rule 6 only provides that Valuation Rule 8 can be applied before the Valuation Rule 7 if the importer so desires. Thus, it is not an actual method of determining the value. The Commissioner found that Valuation Rule 7 (deductive method) could not be applied in the case because there was no one-to-one co-relation between the goods found in the market and the imported goods. He also found Valuation Rule 8 deals with computed value calculated on the basis of cost of production manufacturing etc., which also could not be applied. Therefore, he determined the value as per Valuation Rule 9 which provides for determination of value using reasonable means consistent with the principles and general provisions of these rules.

14. In order to determine the value under this Valuation Rule, he adopted the values of similar goods imported from the same supplier through parallel invoices recovered in the form of excel sheets in respect of 6 Bills of Entry. In other words, parallel invoices were found in 6 cases and in respect of these 17 Bills of Entry he adopted the same valuation as was found in the parallel invoices in respect of the remaining three Bills of Entry.

15. The prices indicated in the excel sheets were taken by the Commissioner as FOB prices and not as CIF prices. Since the actual cost of freight and transit insurance were not available he added 20 % of FOB as a freight and 1.125 % of FOB as the transit insurance under Valuation Rule 10(2)(b). Thus, the Commissioner confirmed demand of differential customs duty of Rs. 1,85,84,364/- under section 28(4) of the Act with interest.

16. The Commissioner imposed penalty equal to the differential duty on the appellant under section 114A for non-payment or short payment of duty, by reason of collusion or willful mis-statement or suppression of facts. He also imposed penalty of Rs. 50,00,000/- under section 114AA on the appellant for knowingly or intentionally making false or incorrect declarations.

Submissions of the appellant

17. Shri Gurdeep Singh, Learned counsel for the appellant made the following submissions:

(a) The SCN and the impugned order were issued with total non-application of mind;

(b) The entire case is based on unsigned, unstamped, Excel Sheets recovered from the email of the proprietor;

(c) The transaction value in the invoices in USD was rejected without following the procedure under Valuation Rule 12. The sequence of following Rules 4 to 9 sequentially was not carried out. In respect of the 17 Bills of Entry in Table III, the differential duty was calculated taking the values found in the excel sheet in respect of the 6 Bills of Entry but the description of the goods do not match totally;

(d) Reliance has been placed on the statement of Nitin, the proprietor given in connection with the enquiry in M/s. Wide Impex of which he was the manager;

(e) The Bill of Entry no. 2521444 dated 19.7.2017 was not cleared by the customs on the basis of self-assessment. It was re-assessed by the proper officer enhancing the value from Rs.7,91,689/- to Rs. 8,89,221/-. The re-assessed Bill of Entry was assailed by the appellant before Commissioner (Appeals), who, by order dated 8.3.2019, upheld such re-assessment. confirmed only on the basis of presumption. The value is now further enhanced in the impugned order which is not permissible;

(f) In respect of Bill of Entry No. 6985117 dated 5.10.2016, anti-dumping duty of Rs. 79,947/- has been imposed. While the appellant gave a reply on this issue, no finding has been given in the impugned order;

(g) The Excel sheet on which the SCN and the impugned order relied was not accompanied by a certificate in section 138C of the Act and hence it cannot be relied upon;

(h) Penalty under section 114AA could not have been imposed because this section covers only mis-declaration in the case of exports as is evident from the 27th Report of the Standing Committee on Finance. The quantum of penalty imposed is also exorbitant;

(i) The impugned order may be set aside and the appeal may be allowed with consequential relief.

18. Learned authorized representative appearing for the department has made the following submissions:

(a) During investigation into Wide Impex, it was found that the appellant had also undervalued the goods. Nitin was the person behind both these cases. He was the manager of Wide Impex and the owner of the appellant firm. The *modus operandi* as explained by Nitin in his statement dated 09.01.2018 is that two invoices were issued for every consignment one in RMB which declared the correct price and another in USD which is undervalued invoice prepared for getting the good cleared through customs;

(b) During investigation, Nitin also explained how he would receive the invoices on his email i.d's and from whom. Further, Nitin opened his email using his password in the office of SIIB and from that produced copies of invoices and also excel sheets showing the correct values and the undervalued prices. He took a print of excel sheets when his statement was recorded and signed on it. This excel sheet formed the basis for further investigation;

(c) Nitin explained during investigation that one, Anuj Gupta, from China would co-ordinate with him and provide both genuine and fake invoices. He also gave the email id of the Anuj Gupta. The excel sheet was taken out of email sent from Anuj's email to Nitin's. During investigation it was found that Nitin was also involved in imports of other firms in the name of the

appellant herein and KLM (partner firm) of which Nitin and Anshul were partners;

(d) Therefore, the SCN was issued to the appellant to recover the differential duty and impose penalties which culminated in the impugned order;

(e) The Principal Commissioner was correct in confirming demand and imposing penalties that order required no interference.

19. We have considered the submissions on both sides and perused the records.

20. The issues to be decided by us are:

(i) Whether the Principal Commissioner was correct in rejecting the transaction value under rule 12 of Valuation Rule 12 and re-determining it under Valuation Rules 3 and 9 read with rule 10(2) of the Valuation Rules and confirming recovery of differential duty;

(ii) Whether the Commissioner was correct in imposing penalties on the appellant under section 114A and 114AA?

(iii) Whether the Commissioner was correct in raising a demand in respect of the Bill of Entry no. 2521444 dated 1.7.2017 which had already been re-assessed by order dated 12.10.2017 and the re-assessment

upheld by the Commissioner (Appeals) by order dated 8.3.2019?

(iv) Whether the Commissioner was correct in imposing anti-dumping duty on goods imported by Bill of Entry dated 6985117 dated 5.10.2016 without recording any findings on the question of anti-dumping duty?

(v) Whether the Excel sheet can be relied upon without a certificate under section 138C of the Act?

21. Investigation in this case is an offshoot of the investigation in Wide Impex of which Nitin was the manager. Suspecting undervaluation, Mayank was summoned and Nitin appeared on his behalf in connection with the investigation to Wide Impex and gave a statement on 09.01.2018 explaining his *modus operandi* in undervaluation of the goods. According to him, the person in China, Shri Anuj Gupta, would supply him goods and two sets of invoices-the correct invoice in which value is shown in RMB and a fake invoice showing a much lower value in US dollars. He also gave details of his email accounts and email accounts of Anuj Gupta. He further confirmed that he would receive invoices on those email from Anuj Gupta. He then opened his email account in the office of SIIB, took prints of the emails and put his signature certifying them. The details of the actual prices of each good was present in the form of excel sheet in his email account. Nitin also took print of excel the sheet, signed and produced it before the investigating officer. These excel sheets formed the basis of of re-determination of values in the case of Wide Impex.

22. While Nitin was the manager of Wide Impex, he was the owner of the appellant herein- Royal Blankets and was also a partner in another firm KLM Overseas. So, he was managing three firms- Wide Impex, Royal Blankets (appellant herein) and KLM Overseas.

23. This excel sheet produced by Nitin not only contained details of imports by Wide Impex but also some entries with respect to imports made by KLM and six entries with respect to imports by the appellant herein. These six entries formed the basis of re-determination of value in respect of six Bills of Entry in the present case listed in Table II of the show cause notice. There were another 17 Bills of Entry where the goods were very similar to those in Table III and the Commissioner rejected the transaction value of the goods under Valuation Rule 12 and re-determined it under Valuation Rule 9.

24. Rule 12 of the Valuation Rules reads as follows:

> **"12. 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 transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3. (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). Explanation.-
>
> (1) For the removal of doubts, it is hereby declared that:- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not

represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents."

25. Goods have to be valued under the Customs Act as per the transaction value as per section 14 but a provision has been made for the proper officer to reject the transaction value under Valuation Rule 12 if he has reasonable doubt regarding a truth and accuracy of the transaction value. In this case, we find that on the basis of intelligence, the values of the goods declared in the Bills of Entry were doubted and when summoned, Nitin explained in his statement his entire modus operandi of business. He also produced documents by printing from his email account which showed much higher values. He clarified in his statement that he would get two sets of invoices of which a lower value was meant for customs and the original invoice with higher value was

the actual price. It must be pointed out that the email IDs of Nitin in which the invoices were received as well as the email IDs from which the invoices were sent were in the exclusive knowledge of Nitin. Nothing in the record shows that the investigating officers were aware of these. The issue of parallel invoices was also in the exclusive knowledge of Nitin. Nitin also had exclusive access to his email accounts and he opened his email and showed both sets of invoices. He printed them and signed them. In our considered opinion, considering all these facts, the Commissioner had reasonable doubt to reject the transaction value under Valuation Rule 12.

26. Once the transaction value is rejected under Valuation Rule 12 in terms of Valuation Rule 3 it should be re-determined sequentially from Valuation Rules 4 to 9.

27. Valuation Rule 4 requires the value to be determined as per the value of identical goods imported on or about the same time. The Principal Commissioner recorded that there were no identical goods because there were miscellaneous goods.

28. Valuation Rule 5 requires the value to be determined as per value of similar goods. The Principal Commissioner recorded that there were no imports of similar goods also. No evidence is adduced by either side which suggests that there were imports of identical or similar goods. Therefore, the matter of fact recorded by the Principal Commissioner that there were no imports of identical or similar goods whose value could be relied upon must be accepted.

29. Valuation Rule 6 provides that if value cannot be determined as per Valuation Rules 4 and 5 it should be determined as per Valuation Rules 7 or 8 and at the request of the importer Valuation Rule 8 could be adopted before following rule 7.

30. Valuation Rule 7 provides for deductive method of determining the value i.e., the value of identical or similar goods which are sold in India in the greatest aggregate quantity must be reckoned and from it, deduction should be made on account of commissions, margins, transport, insurance, customs duties and other taxes payable in India. In other words, we should reckon the domestic price of the goods in India and work backwards allowing deductions to determine the value for customs purposes.

31. Valuation Rule 8 provides for determination of the value on the basis of the cost of manufacture, reasonable profit, expenses etc.

32. Valuation Rule 9 provides that if the value cannot be determined under any of the provisions, rules there shall be determined using reasonable means consistent with the general principles of general provisions and on the basis of data available in India.

33. The Commissioner has followed Valuation Rule 9 after recording that the deductive method under Valuation Rule 7 or the computed value under Valuation Rule 8 were not feasible in the case of these goods.

34. In respect of six Bills of Entry, where the parallel invoices in the form of Excel Sheet were available, the Commissioner adopted the actual value of goods found in the excel sheet produced by Nitin after adjusting these values under Valuation Rule 10. The adjustments which he had made were addition of notional values of transport and transit insurance treating the invoice values in the Excel Sheet as FOB values.

35. He further recorded that in respect of 17 Bills of Entry no values were found in the excel sheets but the goods which were imported were similar to the goods which were found in the six Bills of Entry in respect of which the excel sheets were found.

36. Considering all the above, we find that the Commissioner was not only correct in adopting the Valuation Rule 9 after examining and excluding the applicability of Valuation Rules 4 to 8 but he has also accepted the declared value in majority of the items and only enhanced the value in such cases where it was warranted.

37. One of the contentions of the learned counsel for the appellant is that the excel sheet nowhere indicated that the values were on FOB basis. There was no ground for the Commissioner to have presumed that they were FOB values and add 20% towards the cost of transport and another 1.125% towards the cost of transit insurance. We find that the statement of Nitin recorded in the impugned order shows that he had NOT agreed to the contentions that the values in the excel sheets were FOB values.

38. In the absence of any evidence either in the excel sheet or in the statements that values in the excel sheet were on FOB basis, it cannot be concluded that they were FOB values and that freight and insurance have to be added as per Valuation Rule 10(2). In his statement, Nitin had stated that they were CIF values. Transactions both in FOB and CIF are common in international transactions. When the value is being re-determined based on excel sheet, the benefit of doubt should go to the importer and these values should be taken as CIF values. We, therefore, find that the addition of 20% towards freight and 1.125% insurance by the Commissioner under Valuation Rule 10(2) cannot be sustained and it needs to be set aside.

39. Learned counsel argued that this entire case is based on unsigned, unstamped, Excel Sheets recovered from the email of the proprietor. We find no force in this submission. In emails, one does not put one's signature and stamp even otherwise. When one is obtaining parallel invoices to evade duty, it will be much less so. It is a matter of record that excel sheet was printed by Nitin from his email account during investigation and that he also signed and submitted it.

40. Learned counsel also submitted that the email was opened during another investigation which covered only six Bills of Entry pertaining to the appellant and the goods in the remaining 17 Bills of Entry do not match in all respects. We find that it is for this reason, that the Principal Commissioner re-determined the values under Rule 9 of the Valuation Rules.

41. Learned counsel also submitted that the statement was given by Nitin in connection with the investigation under M/s. Wide Impex. However, we find that Nitin was managing imports by three firms- imports by Wide Impex owned by his brother as Manager, imports by the appellant (Royal Blankets) as its owner and imports by M/s. KLM Overseas as its partner. He explained his *modus operandi* and in the Excel sheet which he produced, the invoices of goods imported by all three firms were in it. It is for this reason that the values were re-determined based on the values of goods imported by Royal Blankets and found in the Excel sheet.

42. Learned counsel submitted that Bill of Entry no. 2521444 dated 19.7.2017, this Bill of Entry was re-assessed by the proper officer rejecting the declared values and on appeal, the Commissioner (Appeals) affirmed the re-assessment by his order dated 8.3.2019. He submits that it is not permissible now to modify the assessment through this notice under section 28. We find force in the submission. Once the Bill of Entry is re-assessed by the proper officer and such re-assessment is assailed before the Commissioner (Appeals) and an order is passed, the re-assessment of the Bill of Entry merges with the order in appeal passed by the Commissioner (Appeals) as per the doctrine of merger. The order of the Commissioner (Appeals) holds the field insofar as the assessment of that Bill of Entry is concerned unless it is modified on appeal by any higher judicial forum. It cannot be modified through an SCN issued under section 28. Therefore, the demand insofar as this Bill of Entry is concerned, cannot be sustained and needs to be set aside.

43. Learned counsel submitted that in respect of Bill of Entry No. 6985117 dated 5.10.2016, anti-dumping duty of Rs. 79,947/- has been imposed. The appellant had made submissions on why anti-dumping duty could not be levied but the Commissioner has not recorded any findings on the question of anti-dumping duty. We agree with the learned counsel that there is no discussion or finding in the impugned order on why anti-dumping duty would be payable on this Bill of Entry. The anti-dumping duty of Rs. 79,947/- on this Bill of Entry needs to be set aside.

44. Learned counsel also submitted that the Excel sheet cannot be relied upon as evidence as it was not accompanied by a certificate as per section 138C of the Act. We find that this section deals with cases where the data or information is produced by a computer and it reads as follows:

> **"Section 138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.** -
>
> (1) Notwithstanding any thing contained in any other law for the time being in force, -
>
> (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
>
> (b) a facsimile copy of a document; or
>
> (c) **a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question, shall be deemed to be also a document for the purposes of this Act** and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
>
> **(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely** :-

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b)during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied there to in any appropriate form and whether it is so supplied directly or(with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation . - For the purposes of this section, -

(a)"computer" means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

45. Clearly, section 138C would apply if the information is printed from a computer and the certificate should certify that the computer was being used for the purpose of business during the relevant period. In this case, the Excel sheet was printed in the office of the SIIB using the computer and printer in that office but the Excel sheet was not in that computer. It was also not in any computer in the office or residence of Nitin. The Excel sheet was in the Gmail of Nitin. In other words, it was in some server of Gmail cloud. The officers clearly could not have issued a certificate regarding the servers of Gmail. In fact, the only person who would have known if that particular email ID was used during the relevant period to conduct business or not is the one who owns the Gmail ID. Only such person would also be able to say with certainty as to which emails he was using during the relevant period to conduct his business. That person was Nitin

and he not only explained in his statement but also gave his and the exporter's email IDs and further opened his own Gmail account using his user ID an password which he alone knew and printed out the Excel sheet. He also explained the Excel sheet in his statement. Therefore, there is no force in this submission of the learned counsel that no certificate in section 138C was produced.

46. We now proceed to examine the penalties imposed by the impugned order. Penalty of an amount equal to the differential duty confirmed under section 28(4) was imposed on the appellant under section 114A. This section reads as follows:

> **"114A. Penalty for short-levy or non-levy of duty in certain cases.**
>
> -Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:
>
> Provided that where such duty or interest, as the case may be, as determined under sub-section (4) of section 28, and the interest payable thereon under section 28-AB, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:
>
> Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:
>
> Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the Court, then, for the purposes of this section, the duty or interest as reduced of increased, as the case may be, shall be taken into account:
>
> Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the

> Court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, alongwith the interest payable thereon under section 28-AB, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:
>
> Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.
>
> Explanation.-For the removal of doubts, it is hereby declared that-
>
> (i)the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
>
> (ii)any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

47. As can be seen, the penalty section 114A is mandatory and is equal to the amount of duty evaded by suppression of facts. However, as we held that the duty needs to be re-computed by considering the figures in the excel sheet as CIF values and not FOB values and that the confirmation of demand on Bill of Entry no. 2521444 dated 19.7.2017 and confirmation of Anti-Dumping Duty on Bill of Entry No. 6985117 dated 5.10.2016 cannot be sustained, the total duty confirmed needs to be re-computed and the penalty under section 114A needs to re-determined accordingly.

48. Penalty of Rs. 50 lakhs was also imposed in the impugned order on the appellant under section 114AA. The submission of the learned counsel on this count is two fold- (a)that section 114AA cannot be invoked to impose penalty in case of mis-declaration in the Bills of Entry and it can be invoked only in case

of mis-declaration in the shipping bills; and (b) that the penalty of Rs. 50,00,000/- is anyway to high and disproportionate. We find section 114AA reads as follows:

> **"114AA. Penalty for use of false and incorrect material.**
>
> If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

49. A plain reading of the section shows that the person who knowingly makes any false declaration statement or produces a document which is false or incorrect in any material particular in the transaction of any business for the purposes of this Act, shall be liable to a penalty under Section 114AA. Bills of Entry are certainly documents meant for transaction under the Customs Act. There is nothing in the text of section 114AA which shows that it applies only to exports and does not apply to imports. Learned counsel relied on the 27th Report of the Standing Committee of the Finance in support. We have examined it. The Committee had expressed concerns about the introduction of an additional section 114AA as it was considered harsh. In response, the Ministry explained that this has been introduced consequent upon several cases of fraudulent exports for which no goods were being exported or papers being created claiming benefits under the scheme. After the Ministry's response, the Committee felt that the proposal to introduce Section 114AA was in the right direction but advised the Government to monitor the implementation of this provision with due care. Nothing in this report indicated that it would apply only to cases of export but it only stated the background in which this provision was made. At

any rate, any discussion during the Committee meeting cannot form the law. The law has to be read as it has been enacted by the Parliament. Nothing in the text of section 114AA shows that it applies only to exports and not to imports.

50. The value of the goods was re-determined as Rs. 8,40,16,707/- by the Principal Commissioner. Penalty under section 114 AA imposed on the appellant is Rs. 50,00,000/- which is less than 10% of the value of the goods. This quantum of penalty cannot be said to be excessive. We find this fair and proper and find reason to interfere with it.

51. In view of above the appeal is partly allowed and the impugned order modified as follows:

(a) The rejection of the declared transaction value under rule 12 of the Customs Valuation Rules and its re-determination is upheld partly in respect of 22 of the 23 Bills of Entry. As far as Bill of Entry no. 2521444 dated 19.7.2017, is concerned, during re-assessment the proper officer had already rejected the transaction value and re-determined it following some other method and this order of re-assessment merged with the order-in-appeal of the Commissioner (Appeals) which order holds the field and it cannot be modified through a notice under section 28. Therefore, the demand in respect of this Bill of Entry is set aside. In respect of the remaining Bills of Entry, the values found in the excel sheet must be considered as a CIF values instead of as FOB values in the absence of any

evidence to support that they were FOB values. Consequently, the assessable value and duty must be re-determined.

(b) The differential duty needs to be re-calculated as per re-determination of value as per (a) above and it is recoverable under section 28(4) along with interest.

(c) The demand of anti-dumping duty of Rs. 79,947/- in Bill of Entry No. 6985117 dated 5.10.2016 is set aside as the Commissioner has not given reasons for imposing it.

(d) The penalty imposed on the appellant under section 114AA is upheld.

(e) Penalty under Section 114A shall be recalculated as per the differential duty as above.

[Order pronounced on **13/10/2025**]

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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