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

CUSTOMS APPEAL NO. 148 OF 2008

[Arising out of Order in Original No. 21/MDS/07 dated 29.10.2007 passed by the Commissioner of Customs (I & G), New Delhi]

M/S H.R. ELECTRONICS **APPELLANT**
746, Old Lajpat Rai Market,
Delhi-110006

Vs.

COMMISSIONER OF CUSTOMS(IMPORT & GENERAL)- NEW DELHI **RESPONDENT**
New Customs House, Near IGI Airport
New Delhi-110037

Appearance:

Shri Prabhat Kumar and Shri Karan Kanwal, Advocates for the Appellant

Shri Rakesh Kumar, Authorised Representt for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51700 /2025

DATE OF HEARING : 20/08/2025
DATE OF DECISION : 11/11/2025

P.V. SUBBA RAO

The Order dated 29.10.2007[1] passed by the Commissioner of Customs (Import & General), New Delhi[2] is assailed by M/s. HR Electronics, Delhi[3] in this appeal. In the impugned order, the Commissioner decided the proposals in the Show Cause Notice dated 9.2.2007[4] issued by the Directorate of Revenue

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1 **Impugned order**
2 **Commissioner**
3 **Appellant**
4 **SCN**

Intelligence[5] and confirmed demand of Rs. 21.09 lakhs under the proviso to section 28(1) of the Customs Act, 1962[6] on the appellant in respect of the goods imported between February 2003 to September 2004 along with interest under section 28AB of the Act and imposed an equal amount as penalty under section 114A of the Act.

2. The facts which led to the issue of the impugned order are that the appellant had imported 12 consignments component of Digital Receiver Sets of Chinese origin to assemble Direct to Home (DTH) Assembly.

3. Receiving intelligence that the appellant had undervalued the imported goods, DRI investigated the matter and issued the SCN the proposals in which were confirmed by the Commissioner in the impugned order.

4. The CIF value of the goods declared by the appellant was HK$ 35 (equal to US$ 4.5) in 10 consignments and HK$ 25 (equal to US$ 3.2) in 2 consignments. The Commissioner found that during the relevant period, three other importers, viz., MCBS, Ahmedabad, Electronic Enterprises, Delhi and Catvision Products Ltd. had imported the same goods at much higher prices of US$ 10-12 apiece and, therefore, rejected the declared value under the Customs Valuation (Determination of Price or Imported Goods) Rules, 1988[7] read with section 14 of

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5 DRI
6 Act
7 Valuation Rules

the Act and confirmed the demand of duty invoking extended period of limitation under the proviso to section 28(1) of the Act along with interest. He also held that the imported goods were liable to confiscation under section 111(m) of the Act but did not confiscate them as they had already been cleared. He imposed penalty equal to the duty under section 114A of the Act.

Submissions of the appellant

5. Learned counsel for the appellant made the following submissions:

(i) The prices of components of DTH vary with the make and brand and a host of other factors and the appellant had correctly declared its transaction values in the Bills of Entry.

(ii) The Commissioner held that the appellant had undervalued the goods based on the fact that others had imported similar goods at higher prices. The Commissioner did not even allow cross-examination of other importers whose values were relied as evidence to reject the appellant's transaction values.

(iii) The values declared by the appellant were already enhanced at the time of assessment by the proper officer. A second enhancement of value of the same goods is not sustainable. Reliance is placed on the following decisions.

a) Mohan Meakin Ltd. vs Commissioner of Central

Excise, Kochi[8]

b) Agarwal Metals & Alloys vs Commissioner of Customs, Kandla[9]

c) Commissioner of Customs (Imports), Mumbai vs Lord Shiva Overseas[10]

d) Hitashi Fine Kraft Indus Pvt. Ltd. vs Commissioner of Customs, West Bengal[11]

(iv) Assessment of the Bill of Entry is an adjudication order which is appealable by both sides and without assailing the assessment of the Bill of Entry, the demand could not have been raised. Reliance is placed on **Priya Blue Industries vs Commissioner of Cusotms**[12]**.**

(v) If there were several contemporaneous imports, the lowest of such values must be adopted for assessment as per Rule 4(3) of the Valuation Rules. Values of contemporaneous imports were produced by the appellant but they were ignored by the Commissioner.

(vi) The goods which were imported were different from the goods whose values were adopted.

Submissions on behalf of Revenue

6. Learned authorized representative for the Revenue vehemently supported the impugned order and made the following submissions:

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8 2000 (115)ELT 3 (SC)
9 2021 (378) ELT 155 (Tri-Ahmd.)
10 2005 (181) ELT 213 (Tri-Mumbai)
11 2002 (148) ELT 364 (Tri-
12 2004 (172) ELT 145 (SC)

(i) The submission of the appellant that the department cannot reopen an assessment under section 28 of the Act is not correct.

(ii) there was gross undervaluation of imported goods as has been confirmed from the contemporary import data corroborated by the statements of Sh Hari Ram Gupta and Sh Deepak Gupta; what is admitted need not to be proved;

(iii) The appellant's contention that the goods were bought in stock lot is factually incorrect, they were regular importers for three years and other importers were also importing same goods in the relevant period;

(iv) The onus on the department has been discharged beyond doubt. The gross undervaluation was done by the appellant which has also been admitted by them;

(v) The statements made before Customs Officers are admissible as evidence in a court of Law as Customs Officers are not Police Officers. The Hon'ble Apex Court in **Surjeet Singh Chhabra Vs Union of India 1997 (89) E.L.T. 646 (S.C.)**

(vi) The impugned order may be upheld and the appeal may be dismissed.

Findings

7. We have considered the submissions on both sides and perused the records. Section 14 of the Act as applicable during the relevant period provided for valuation of the goods as per price at which such goods are ordinarily sold at the time and place of importation. The appellant declared the transaction values which were rejected by the proper officer assessing the Bills of Entry and they were assessed at enhanced values. This fact is recorded in paragraph 34 of the impugned order.

8. Thereafter, DRI found some others had imported similar goods at still higher values and issued the SCN. The impugned order rejecting the transaction values is meaningless because the Bills of Entry were not assessed on the transaction values at all. It is not a case where some new documents or parallel invoices were recovered from the appellant during investigation. The transaction values were rejected by the proper officer and in the impugned order, the Commissioner maintained the rejection. The values at which the Bills of Entry were re-assessed by the proper officer have now been effectively rejected and the Bills of Entry have now been assessed at still higher values at which others had imported similar goods. In short, DRI has a view different from the views of the proper officer regarding the assessable value and the Commissioner agreed with the DRI. No reasons are available as to why the values at which the goods assessed by the proper officer were wrong. If the proper officer had enhanced

the values at the time of assessment, he must have done so based on the contemporaneous imports. There is no indication as to why the values of contemporaneous imports adopted by the proper officer were wrong and why values of contemporaneous imports now adopted by DRI were correct.

9. Thus, the demand of duty redetermining the assessable values in the Bills of Entry cannot, in our considered opinion, be sustained in the absence of any evidence or reason as to why the values determined by the proper officer assessing the Bills of Entry were not correct.

10. We also find that the demand has been issued under the proviso to section 28(1) of the Act which can be invoked only if the non-payment or short payment of duty is due to collusion, wilful mis-statement or suppression of facts. The SCN was only issued based on the fact that some other importers had imported goods at higher prices and based on statements recorded under section 108 of the Act. The statements recorded under section 108 are relevant to prove the truth of the contents of the statements only if they are admitted in evidence by the adjudicating authority after following the procedure prescribed under section 138B, i.e., examining the person as a witness and decide that the statement should be admitted and thereafter, if necessary, allowing cross- examination. None of the statements relied upon were admitted as evidence as per section 138B and therefore, they are not relevant to prove this case. The details of

the documents establishing that others had imported similar goods at higher prices only proves that fact and NOT that the appellant had resorted to any collusion, wilful misstatement or suppression of facts.

11. The demand of duty in the case, therefore, cannot be sustained and the same needs to be set aside along with interest and consequential penalties.

12. The impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant.

[Order pronounced on **11/11/2025**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

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

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