CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Customs Appeal No. 86623 of 2024

[Arising out of Order-in-Original No. 305/2023-24/Commr/NS-I/CAC/JNCH dated 29.03.2024 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva.]

M/s. Surbhit Impex Pvt. Ltd.……Appellant
618, Dalamal Tower, 211 Nariman Point,
Mumbai – 400 021

VERSUS

Commissioner of Customs, Nhav Sheva-I .……Respondent
Jawaharlal Nehru Customs House, Nhava Sheva,
Tal. - Uran, Dist. – Raigad, Maharashtra – 400 707

WITH

(i) Customs Appeal No. 86624 of 2024 (Mahendra Bhanmal Jain); (ii) Customs Appeal No. 86625 of 2024 (Vatsal Mahendra Jain); (iii) Customs Appeal No. 86931 of 2024 (Rajesh Kumar Jain); (iv) Customs Appeal No. 86932 of 2024 (Lalith Kumar Jain); (v) Customs Appeal No. 87680 of 2024 (Bharat Nathalal Vaghani)

[Arising out of Order-in-Original No. 305/2023-24/Commr/NS-I/CAC/JNCH dated 29.03.2024 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva.]

APPERANCE:

Shri Ashwini Kumar, Advocate with
Shri Abhishek B. Godase, Advocate for the Appellant

Shri Mahesh Yashwant Patil, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 85257-85262/2026

Date of Hearing: 19.12.2025
Date of Decision: 06.02.2026

PER: DR. SUVENDU KUMAR PATI

Reduction of assessable value of imported melamine from the declared value and imposition of Anti-Dumping Duty (ADD) on the

differential amount as specified in Notification No. 10/2010-Cus. dated 19.02.2010 on the Appellant-Importer Surbhit Impex Pvt. Ltd. (SIPL) and its alleged collaborator namely the other Appellants who are being fastened with ADD, interest and penalties respectively as summarised in the table given below are before this Tribunal assailing such order passed by the Commissioner in confirming rejection of the assessable value, imposing ADD with penalties, redemption fines etc.

Amounts in ₹

Sr. No.	Name of the Entity	ADD confirmed	Redemption Fine [Goods not available for confiscation]	Penalty u/s 114A of Customs Act, 1962	Penalty u/s 112(a)/112(b) of Customs Act, 1962	Penalty u/s 114AA	Remarks
1	Surbhit Impex Pvt. Ltd. [SIPL]	3,15,75,013/-	74,00,000/-	3,15,75,013/-	NIL	5,00,00,000	Value decreased from 10,31,67,596/- to 7,42,53,179/-
2	B.M. Jain and Sons Pvt. Ltd. (BMJSPL) (Merged with SIPL vide NCLT Order dated 06.05.2022)	3,40,72,156/-	92,00,000/-	3,40,72,156/-	NIL	7,00,00,000/-	Value decreased from 12,30,74,823/- to 9,20,83,435/-
3	Mahendra Bhanmal Jain (Director of SIPL and BMJSPL)	NIL	NIL	NIL	65,00,000/-	7,00,00,000/-	Allegation for being instrumental in overvaluation of goods
4	Vatsal Mahendra Jain (Director of SIPL and BMJSPL)	NIL	NIL	NIL	65,00,000/-	4,00,00,000/-	Allegations for signing and suing documents and also dealing with the goods liable to confiscation
5	Rajesh Kantilal Jain	NIL	NIL	NIL	10,00,000/-	NIL	Alleged to be involved with foreign based entity supplying the goods, although denied in all statements and also identity not tallying
6	Lalith Kumar Jain	NIL	NIL	NIL	24,00,000/-	NIL	Alleged to be involved with foreign based entity supplying the goods, although denied in all statements and also identity not tallying
7	Bharat Nathalal Veghani (Proprietor of M/s B.J. International)	NIL	NIL	NIL	15,00,000/-	NIL	Supplier who supplied the goods on High Sea Sales to the Importers allegedly by involving in overvaluation of goods

2. Fact of the case, as noted in the appeal paper book and written submission, would go to reveal that Appellant Surbhit Impex Pvt. Ltd. (SIPL) and B.M. Jain & Sons Pvt. Ltd. (BMJSPL), that merged with

SIPL *vide* NCLT order dated 06.05.2022, had imported together 38 consignments which were subjected to investigation on the basis of intelligence gathered by DRI, Mumbai Zonal Unit. It was noticed that Appellants- Importers have deliberately declared the value of such melamine just marginally below the Anti-Dumping Duty (ADD) to neutralise ADD though in the international market, as per Independent Commodity Intelligence Services (ICIS), the FOB price of melamine got substantially declined/reduced to a range between USD1160 to USD920 PMT (Per Metric Ton) and therefore ADD at the rate of difference between re-determined landed value *vis.-a-vis*. USD1681.49 PMT, as determined under Notification No. 10/2010-Cus. was demanded from the Appellant-Importer alongwith proposal for redemption fine in lieu of confiscation as well as penalty under Section 112(a) & (b), 114A, 114AA were proposed against the Directors of involved companies as per detailed noted in the above referred table, through a show-cause notice and *vide* above referred adjudication order it got confirmed, which order is assailed by these Appellants before this Tribunal.

3. During course of hearing of the appeal, learned Counsel for the Appellant Mr. Ashwini Kumar submitted that out of 38 consignments imported by both SIPL & BMJSPL, 27 consignments were purchased on High Sea Sale basis between the period 28.01.2013 and 30.06.2014 at a price range between USD1530 and USD1554 but the Adjudicating Authority had rejected the transaction value of goods under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 merely on suspicion on the basis of data published in ICIS that price of melamine had got a downward division since 2010 to USD931-1306 PMT (CIF) and applied ADD on the differential amount with price noted in Notification No. 10/2010-Cus. without offering any reason as to why such products' value would continue to be kept at the 2010 pricing specified in the said notification for imposition of ADD. He further argued on the basis of Rule 12, Explanation (1)(iii) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to justify that the proper officer shall have powers to raise doubts on the truth or accuracy of the declared value if, among other reasons,

(a) significantly higher value at which identical or similar goods are imported at or about the same time in comparable quantities or (b) the sale involves an abnormal discount or abnormal reduction or special discount but in the instant case when transaction value is at a higher price than what was determined by the proper officer and out of 38 consignments in only 5 consignments sale per KG was made at a marginally lower price that varies between 86 paisa and 23 Rupees 34 paisa (excluding taxes) i.e. less than 10% of the cost, as noted in table vii of the Order-in-Original at para 12 containing comparative analysis of melamine's landing cost *vis. a vis.* local sale, it would be impermissible under Rule 12 to reject the transaction so as to proceed under Rule 3 Sub-Rule 1 of the said Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. His further submission on redetermination of value on the basis of contemporary Bills of Entry is that learned Commissioner of Customs had relied on the Bills of Entry which were taken under Advance Licence or EPCG scheme in which quality of goods and variety of goods were not compared, apart from the fact that Bills of Entry of the relevant period filed by various Importers, as submitted by Appellant, were not taken into consideration.

3.1 On the ground of invocation of extended period, learned Counsel for the Appellant placed his submission on record to the effect that all Bills of Entry were assessed at the first check and queries were also raised which were addressed by the Appellant-Importer, as could be noticeable from page 180 onwards of the appeal paper book (second volume) and statements recorded under Section 108 of the Customs Act under intimidation were all retracted through letters sent to the Director General of the DRI, ADG DRI and also to the Trial Court, before whom Appellants were also prosecuted and produced after being arrested and therefore, it can't be said that Respondent was unaware of the transactions since after being satisfied with their reply to the query, goods were released.

3.2 In the context of certain retrievable electronic evidence and documents from the computer system placed in the premises of the Importer-Appellants, he further argued that Forensic Examination of

the same was done behind the back of the Appellants without even addressing the preliminary objection of the Appellants regarding admissibility of the said documents and its procedure of seizure, which can never be treated as in due compliance to Section 138B and 138C(4) of the Customs Act and High Sea Sale being a legally valid mode of commercial transaction, in the absence of proof regarding throw back of remitted amount transacted through banking platform, Valuation Rules can't be invoked for re-determination of value at a lower price than the transaction value which is the core principle for Customs Valuation under Section 14 of the Customs Act, 1962. He concluded his argument in saying that Article vii of GATT, upon which Customs Valuation in India is based, specifically prohibits such valuation method in Anti-Dumping matters for which the order passed by the Commissioner is unsustainable in both law and facts.

5. Learned Authorised Representative Mr. Mahesh Yashwant Patil on behalf of the Respondent has objected to such submissions made on behalf of the Appellant and argued in favour of the reasoning and rationality of the order passed by the Commissioner. To him, investigation revealed a well-planed *modus operandi* involving artificial inflation of CIF value, use of a dummy intermediary (M/s. Sure Horizon Inc. Ltd. Hong Kong), fabrication of invoices and packing list, suppression of actual negotiated price and overvaluation was done as a conscious act to evade ADD (Anti-Dumping Duty). Though not argued, it is placed in his written note that rubber stamp of Authorised Signatory of the allegedly Dummy Exporter M/s. Sure Horizon Incorporation Ltd., (who handled around 25% of the total imports) alongwith editable invoices, packing list, commission note of M/s. Sure Horizon Inc. Ltd. as well as a letter was recovered during search and seizure operation that would establish that inflected invoices were created in the name of Dummy Company M/s. Sure Horizon Inc. Ltd. to evade ADD and apart from those editable invoices as well as commission notes, digital invoices including email communication between Importer and Chinese supplier would go to establish negotiation of the imported goods at much lower price, that was also admitted by Appellant Mehendra Bhanmal Jain in his statement, which

as per the decision of *Principal Commissioner of Customs Vs. Kishan Manjibhai, reported in 2023 (2) Centax 63 (Guj.),* being computer printout is to be considered as evidence when veracity of such document is admitted in the statement of Mehendra Bhanmal Jain coupled with production of a certificate as required under Section 138C(2) of the Customs Act, 1962. He further placed his reliance on the decision of this Tribunal passed at its Chennai Bench in the case of *Lawn Textile Mills Pvt. Ltd., as reported in 2018 (362) ELT 559 (Mad.)* to argue that when seized records indicate *prima facie* case and Assessee is not able to give plausible explanation, then allegation stands proved for which the order passed by the Commissioner of Customs need not be interfered with.

6. Such submissions of learned Authorised Representative has been contradicted by learned Counsel for the Appellant in his additional written note that has also covered the query made by this Bench regarding applicability of the judgment passed by Hon'ble Supreme Court in the case of *ADG, DGI Vs. Suresh Kumar And Co. Impex Pvt. Ltd. and Others as decided on 20.08.2025* in Civil Appeal Nos. 11339-11342 of 2018 in which admissibility of electronic evidence was held in the affirmative even without the necessary certificate required under Section 138C(iv) of the Customs Act if Assessee's statement recorded under Section 108 admits the contents, effectively meeting the compliance requirement. He has placed on record in writing through additional written submission that no investigation was carried out to decipher the coded version available in the allegedly retrieved documents from the person who feeded such records and when it is claimed by the Department that such documents were in editable format, the content being denied by the Appellant, blame cannot be thrown alone on the Appellant as to if any editing is done in respect of those documents since its origin and source were not examined. His further submission on this issue is that out of 5 overseas suppliers of those goods, Respondent chooses to investigate against only one supplier despite the fact that two other suppliers were from China and investigation has not brought on record any evidence which could have casted a suspicion on the dealing with those suppliers to prove that

any part of the purchased value was remitted back to them in any form, nor any proof of any amount being remitted back by the Importers to the High Sea Sellers and concerning certain inconsistencies in the statements, explanations were dully offered during investigation as well as in the reply to the show-cause notice and therefore, alleged presence of certain inconsistencies in the statement, that may raise a suspicion can't take the place of proof which is required to be established in a quasi-judicial proceeding. He concluded his submission in saying that all statements recorded under Section 138B of the Customs Act being retracted at the earliest possible opportunity available, the ratio developed through the judgment of Hon'ble Supreme Court in *ADG, DRI cited supra* can never be applied in Appellant's case.

7. We have perused the appeal paper book, relevant provisions of law, written submissions and additional written submissions filed by the adversaries and relied upon decisions placed on record. The show-cause notice starts with an allegation of evasion of Anti-Dumping Duty (ADD) on import of melamine by mis-declaration of value through artificial inflation to match landed value specified in Notification No. 10/2010-Cus. by Importer SIPL and BMJSPL. This claim is refuted by Appellant-Importers in saying that most of the purchases were made from High Sea Sellers apart from the fact that Bills of Entry of contemporary imports produced by the Appellant even from same Country of Origin would indicate that importation had taken place at around same price but by relying on Bills of Entry, on which concession was available for import through advance licence or EPCG scheme, such a valuation in making downward revision of the cost of goods was made in rejection of transaction value which is not permissible in view of clear wording available in Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 since such power to raise doubt on the truth and accuracy of the declared value has to be based upon certain reasons like 'significantly higher value at which similar or identical goods were imported', in comparison to the lesser value at which Appellant had transacted its business or when compared with goods imported by the Appellant, abnormal or special

discount was being offered or else there was mis-declaration or non-declaration of goods in certain parameters such as description, quality, quantity, country of origin, brand, specifications etc. As we have noticed, in the instant scenario, the allegation is just the opposite, in the sense that the declared value at which Appellant imported is much higher than the value at which similar or identical products are imported, as claimed by the Respondent-Department, and the purpose of such enhancement of value is attributed to avoidance of payment of ADD, since on no other parameters including Country of Origin, description of goods, etc. there was any allegation of mis-declaration. Further, through the investigation, Respondent-Department had tried to establish that proof of negotiated price was available in the form of electronic evidence and there was a request made for 'sharing of commission' from the overseas allegedly dummy Exporter company namely M/s. Sure Horizon of Hongkong, whose company's seal in the form of a rubber stamp was allegedly seized during the investigation, coupled with statement of witness, namely Mahendra Bhanmal Jain (also Appellant in this case) who was associated with both the Importer Companies as its Director, to the effect that there was difference in declared value and prevalent international market price and landing cost being higher than the sale price would clearly show the *modus operandi* of the Appellants in enhancing the value of melamine for the purpose of evading ADD. All these allegations were time and again refuted by the Importer-Appellants, which were even noted in the order passed by the Commissioner from para 22 onwards, as written submission of noticee supported by reply to the show-cause notice, the sum and substance of which would go to reveal that:

(a) Customs Valuation Rules having framed on the basis of GATT guidelines prescribed for valuation of imported goods and the price determination made by the Department that was based on the ICIS periodicals does not reveal the name of the publisher of that weekly bulletins and the basis of such determination of value and therefore, show-cause notice has not clarified as to if ICIS price list is aligned with prices of actually exported or imported goods;

(b) Seizure of allegedly retrieved hard disk under panchnama dated 25.07.2014 was done in the absence and without intimation to the Appellants and copy of those seized correspondence were not furnished to the Appellants nor their request for cross examination of the Officers of Central Forensic Laboratories, who had prepared the panchnama on 15.07.2014 and 25.07.2014 was accepted. Additionally, in its additional written submission Importer-Appellant has placed on record that the allegation concerning use of coded words was available there in the alleged retrieved data but the person who feeded the data or the person who could decipher the same was not examined and when the data itself is stated to be in editable format, it can't be said that those were not tampered with by any person at any point of time, to vary the commercial invoices, packing lists, etc.;

(c) Concerning seizure of a stamp containing seal of M/s. Sure Horizon Incorporation Ltd., Appellant's, reply to the show-cause notice is worth reproducing as main Appellant has disowned its control and ownership on the said company and despite having admitted the seizure of such rubber stamp from its position, it has explained the circumstances in which it had come to its possession, which is noted in para 22.33 sub-para V & VI of the order as reply that also covers answer to the allegation about request for payment of differential value. Those two paragraphs are reproduced hereunder for better clarity:-

> *"V. The one reason for alleging that M/s. Sure Horizon is a dummy company being run by our cronies is that one rubber stamp of M/s. Sure Horizon was recovered from our premises. We submit that the said rubber stamp was not for us, in the month of April 2014, representative of supplier i.e. Mr. Liuming paid visit to the noticee. In order to sign certain business documents, he informed that he had not brought the "Rubber Stamp" of his Company and that a Rubber Stamp was needed to sign the documents. In such a scenario, the said representative of overseas suppliers was introduced to one* ***Rustam Copy Center*** *in Mumbai. The said Rustam Copy Center, on the instructions of representative of overseas suppliers, prepared a*

Rubber Stamp for him and his use. The representative of foreign Company forgot to take the said Rubber Stamp with him. An intimation was also given to the said representative where upon he regretted and assured to get the same collected as soon as possible. The DRI has failed to bring on record even a single documents showing that we have utilized the said rubber stamp for manipulating any documents. No details of any such documents which is manipulated and on which the said stamp is used is brought on record and this itself proves that the said rubber stamp was not used by us and the same was found lying in our office and we were not even aware of the same and thus no adverse inference can be drawn in this regard.

VI. The last reason for making such an allegation is that one of the directors had written a letter to M/s. Farmasino Pharmaceuticals (Jiangsu Co.) Ltd. urging them to pay differential value to the M/s. Sure Horizon, in this regard the communication does not say that the differential value should be paid to M/s. Sure Horizon as is stated in the SCN and thus the facts are being mis-represented in the SCN and the said letter refers to release of commission to M/s. Sure Horizon and not payment of any differential value and the facts are being twisted to make false allegations against us in the SCN."

(Underlined to emphasise)

(d) On admissibility of those electronics evidence on the basis of findings of the Hon'ble Supreme Court in judgement dated 20.08.2025 in the case of *ADG DRI Vs. Suresh Kumar and Company Impex Pvt. Ltd. and Ors.*, Appellant has contended that not only collection of electronics evidence or its seizure had been disputed by it but also statements recorded under Section 108 of the Customs Act were all retracted within the reasonable time for which it can't be treated as a compliance of Section 138B of the Act, so as to bring the *ratio* of the judgment referred applicable in Appellants' case.

8. From the above noted explanation in respect of all those allegations, it appears that Appellant-Importer had adequately

explained those allegations concerning unusual inflating of value of goods imported but it is not noticeable from the order as to on which grounds, the defence then offered by the Appellants-Importers were not accepted by learned Commissioner of Customs particularly on the points noted above and more particularly on the point of invocation of extended period which Appellant had demonstratively established through cogent documentary evidence that it was well within the knowledge of the Respondent-Department as at the time of release of goods namely melamine, queries were raised at the first check point of assessment of Bills of Entry which were adequately replied back, as revealed from the written submission and also acceptance of Customs duties with CVD and SAD by the Department on the basis of assessable value which was allegedly at higher rate, as revealed from para 22.36 of the Order-in-Original.

9. On close scrutiny of the allegations and submissions referred by the adversaries it can very well be said that certain efforts have been initiated by the Department to establish over-valuation of the goods imported but that can't itself give rise to a finding that inflating of price was made for the purpose of evading ADD except Section 108 statements, which are not verified by tendering the same before the Adjudicating Authority with right of cross examination available to the Appellant-Importers that was being retracted and communicated to the Higher Authorities and even to the Judicial Authorities before whom prosecution was launched at the earliest possible occasion, no other cogent evidence is available on record to substantiate the allegations of overvaluation to escape ADD.

10. At this juncture, we would like to bring on record two more aspects ancillary to these issues that would also help determine the legality of the order of confirmation of duty, penalty, etc. passed by the Commissioner. The first point that is required to be noted here is that going by Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, proper officer of Customs can have reason to doubt the truth or accuracy of the value declared in relation to any imported goods but it does not provide a method for determination of value and only 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 and such power to raise doubt on the truth and accuracy of the declared value has to be based on certain conditions like higher value at which identical or similar goods were being imported, abnormal discount being offered, special discount given for exclusive agent, etc. and it has not empowered him to do so when the value is noted at a higher side, which he/she could reduce to lower level to enable the Department to impose ADD on the differential amount. Therefore, such redetermination of lesser value against higher transaction value is impermissible under the rules during such redetermination of value. That apart, even if the unsustainable argument regarding availability of email communication etc. in the form of electronic evidence is accepted and going by the content of those evidence as narrated by the Department concerning enhancement of value, it can't be considered as proper to revise the price downward so as to justify imposition of ADD when at the higher transaction value, which was closer to the value noted in the Notification No. 10/2010-Cus., Customs duty including CVD and SAD were all paid by the Importer and accepted by the Department and there is no evidence available to the effect that such overvaluation was done to escape payment of ADD.

10.1 The second point, though not the least one, that is required to be placed on record herein is the genesis of imposition of ADD. Going by the Statement of Object and Reason of the introduction of ADD legislation in India, it can be seen that it is imposed to counter act unfair international trade practices that would cause material injury to the domestic industry and it is a remedial and protective major designed to ensure fair competition. It is also designed to protect local manufacturer from material injury such as lost sales, reduced profit, declining market share and potential job losses caused by dumping of goods which are adequately addressed through Section 9A, 9B and 9C of the Customs Tariff Act and Anti-Dumping Rules, 1995. Therefore, levy and collection of duty on imported goods for generation of revenue for the country was never the criteria for imposition of ADD,

though it might increase the revenue, its sole purpose is to establish a level playing field for domestic producers who would otherwise be unable to compete with the artificially low priced dumped imports. In this contest, it would be worthwhile also to refer to Article 7 of the GATT (General Agreement on Tariffs and Trade) that establishes the fundamental principle for Customs Valuation on the basis of actual transaction value (price paid in a competitive market) and not arbitrary figures or national origin values though, its Article 6 empowers the members to impose ADD on imported goods sold below their normal value (usually home market price value) and therefore, in the instant case when no lower price of dump imports is referred as transaction value in substitution of usual home market price, one price range published by a periodic journal/weekly bulletin i.e. ICIS can't be taken as transaction value only for the purpose of levy of ADD which would be contrary to the procedure referred in Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and therefore, such an order confirming duty, interest, penalty, redemption fine on any of these Appellants is unsustainable both in law and facts. Hence the order.

THE ORDER

11. The appeals are allowed and the order passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva *vide* Order-in-Original No. 305/2023-24/Commr/NS-I/CAC/JNCH dated 29.03.2024 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 06.02.2026)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Prasad