

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

CUSTOMS APPEAL No. 86115 of 2016

(Arising out of Order-in-Appeal No. 111&112(Adj.-Imp)/2016(JNCH)-Appeal-II dated 22.03.2016 passed by the Commissioner of Customs (Appeals-II), Jawaharlal Nehru Custom House, Mumbai Customs Zone-II, Nhava Sheva.)

Anil Mathuradas Chopra

.... Appellant

Director of M/s Kay Tee Lon Impex Pvt. Ltd.
Shop No.1128, Lower Ground, Ambaji Market,
Kamela Darwaja, Ring Road,
Surat – 395 002.

Versus

Commissioner of Customs (Import)

.... Respondent

Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluk Uran
District Raigad, Maharashtra – 400 707.

With

CUSTOMS APPEAL No. 86117 of 2016

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Kay Tee Lon Impex Private Limited

.... Appellant

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Versus

Commissioner of Customs (Import)

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Maharashtra – 400 707.

Appearance:

Ms Kiran Dhoiphode, Advocate for the Appellant

Shri Krishna Azad, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85737-85738/2026

Date of Hearing: 26.02.2026

Date of Decision: 15.06.2026

PER: M.M. PARTHIBAN

These appeals have been filed by M/s Kay Tee Lon Impex Private Limited, Surat and its Director Shri Anil Mathuradas Chopra (herein after, referred together as 'the appellants'), assailing the Order-in-Appeal No. 111 & 112(Adj.-Imp)/2016(JNCH)-Appeal-II dated 22.03.2016 (herein after, referred to as 'the impugned order') passed by the Commissioner of Customs (Appeals-II), Jawaharlal Nehru Custom House (JNCH), Mumbai Customs Zone-II, Nhava Sheva.

2.1 The brief facts of the case are that the appellants during the period March, 2005 to October, 2006 had imported 27 consignments consisting of about 2,35,000 kgs. of 'embroidery threads' from China. For the purpose of such imports, the appellants had filed 27 Bills of Entry (B/Es) declaring the classification of goods under Customs Tariff Item (CTI) 5403 4190 with jurisdictional Customs Commissionerate/Custom House, at JNCH, Nhava Sheva and Chennai seaports, seeking clearance of goods from Customs authorities at the port of import. Upon payment of customs duty on the basis of declared value, the goods were cleared for home consumption.

2.2 On the basis of intelligence gathered by Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (DRI) indicating that the appellants importer is indulging in evasion of customs duty by resorting to undervaluation of the imported goods through suppression of the actual value of goods in the commercial invoice and paying the differential value of goods to the overseas supplier through illegal means, details were called for by issue of summons. During the investigation by DRI, Shri Anil Mathuradas Chopra, Director in depositing his voluntary statement dated 19.12.2006, had elaborated the modus operandi, produced additional invoices for the differential amount paid to the overseas supplier in 6 B/Es and had accepted that such undervaluation was also adopted in other imports. Further, appellants also paid the differential duty of Rs.24,81,480/- during the investigation. On the basis of the above details, upon culmination of the investigation, Show Cause Notice (SCN) dated 13.06.2007 was issued by DRI seeking for recovery of differential duties of customs; confiscation of goods and for imposition of penalties on the appellants.

2.3 In adjudication of the said SCN, Commissioner of Customs (import), Nhava Sheva passed Order-in-Original dated 28.02.2008 in confirming all proposals made in the SCN. In an appeal filed against the said order, the

Tribunal vide Order No. A/596-597/WZB/MUM/2008/CSTBC-II dated 13.10.2008, remanded the matter back to the adjudicating authority for reconsideration, as adequate opportunity of personal hearing was not given to the appellants. Subsequently, the said issue was adjudicated by the Additional Commissioner of Customs (Import), JNCH vide Order-in-Original dated 29.02.2012. Being aggrieved with the order of the original authority, the appellants had filed an appeal before the Commissioner of Customs (Appeals), who in upholding the order of the original authority had rejected the appeal filed by the appellant vide his Order-in-Appeal dated 22.03.2016. Feeling aggrieved with the said order of the Commissioner (Appeals) which is impugned herein, the appellants have filed these appeals before the Tribunal.

3. Learned Advocate appearing for the appellants stated that the entire case of undervaluation is based on the admission given by Shri Anil Mathuradas Chopra, in respect of 6 consignments for which supplementary invoices was produced by him. There is no other independent evidence to show that the appellants having indulged in undervaluation. Further, he stated that the Department did not give adequate information or data on comparable contemporaneous value for confirmation of the duty demands on other 21 consignments. In support of his stand, he relied upon the Final order dated 11.12.2025 passed by the Co-ordinate Bench of the Tribunal in the case of *Sino Import and Export Private Limited Vs. Commissioner of Customs, Chennai-II (Imports)* in rejecting the demand of undervaluation as there was no sufficient evidence, by further relying upon the judgement of the Hon'ble Supreme Court in the case of *Commissioner of Customs, Calcutta Vs. South Indian Television (P) Ltd. - 2007 (214) ELT 3 (S.C.)*. Therefore, he submitted that adjudged demands cannot survive without such evidence and he pleaded that the appeal filed by them may be allowed.

4. Learned Authorised Representative (AR) reiterated the findings made by the Commissioner of Customs (Appeals) in the impugned order and submitted that issue of valuation of impugned goods, has been examined by the authorities below based on invoices produced for the difference in value which was paid back through illegal channels and the voluntary statement given by the Director of the company. Thus, learned AR justified the action in the impugned order, for demand of duty and for subjecting the goods to confiscation and for imposition of penalties on appellants.

5. We have heard both the learned Advocate appearing for the appellants and the learned Authorized Representative of the Department and perused the case records along with the additional submissions made by both sides in the form of written submissions.

6. The following issues arise for determination before the Tribunal:

(i) whether the impugned order by upholding of duty demand confirmed by the original authority under Section 28 of the Customs Act, 1962 by re-determination/enhancement of the assessable value of imported goods in terms of Section 14 of the Customs Act, 1962 read with Rule 3, 4 and 9 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 [herein after, for short, referred to as "the CVR, 1998"] is sustainable;

(ii) Whether imposition of penalties on appellant company under Section 114A *ibid* and on the Director of the said appellant company under Section 112(b) *ibid* is legally sustainable;

The disputed period in the present case is from April, 2005 to October, 2006 as the B/Es for import of goods in 27 consignments had been filed between 01.04.2005 to 09.10.2006.

7. The dispute between the appellants-importer and the department lies in determination of appropriate duties of customs payable on the imported goods, duly determining its assessable value for the purpose of calculation of duty under Section 14 of the Act of 1962 read with CVR, 1998. Further, it is also required to be determined whether the appellants concerned with importation of such goods are liable for penalty under the various provisions of Customs Act, 1962.

8.1 Before we consider the issues under dispute along with the submissions made by both sides, it is important to note that the undisputed facts with the respect to the factual matrix of the case are as follows:

(i) the details of remittances made to the supplier in respect of imports of embroidery thread, partly as advance TT to the extent of 20 to 25%; part of the value through their bank viz., Oriental Bank of Commerce and balance by cash payment to one Shri Altafbhai was explained by Shri Anil Mathuradas Chopra. Further, he submitted six supplementary invoices indicating the value suppressed from customs authorities, for which payments were made through illegal channel by cash payment, for onward transmission to the supplier abroad;

(ii) the voluntary statement made by Shri Anil Mathuradas Chopra on 19.12.2006 before the investigation authorities had not been retracted;

(iii) the details of the value that was suppressed in respect of all the 27 B/Es were given by Shri Anil Mathuradas Chopra in his statement deposited before the DRI.

(iv) the appellants, during the investigation have paid an amount of Rs.24,81,480/- towards the differential duty which were deposited by DRI vide various challans into the Government exchequer.

8.2 In terms of the legal provisions under the Customs Act, 1962, determination of the duty liability of imported goods including *inter alia* in arriving at the appropriate valuation of such imported goods are carried out in accordance with the provisions of Section 14 *ibid* and Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 framed thereunder. These are extracted for convenience of reference and given below:

Section 12. Dutiable goods. -

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

Section 14. Valuation of goods for purposes of assessment. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where—

(a) the seller and the buyer have no interest in the business of each other; or

(b) one of them has no interest in the business of the other,

and the price is the sole consideration for the sale or offer for sale :

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

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

**Customs Valuation (Determination of Price of Imported Goods)
Rules, 1998**

Definitions

Rule 2. (1) In these rules, unless the context otherwise requires, -

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(b) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(c) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plant or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(e) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(f) "transaction value" means the value determined in accordance with Rule 4 of these rules.

3. Determination of the method of valuation -

For the purpose of these rules, -

(i) the value of imported goods shall be the transaction value;

(ii) if the value cannot be determined under the provisions of Clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

Transaction value.

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

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

Provided that -

(a) 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 same 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 9 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.

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Transaction value of identical goods.

Rule 5. - (1) (a) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.

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Transaction value of similar goods.

Rule 6. - (1) Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.

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Residual method

Rule 8. (1) Subject to the provisions of Rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India.

(2) No value shall be determined under the provisions of these rules on the basis of -

(i) the selling price in India of the goods produced in India;

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Cost of services.

Rule 9. (1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following cost and services, to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely :-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely :-

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

(d) the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.....”

9.1 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the duties of customs payable on imported goods by properly determining the assessable value under Section 14 ibid read with the CVR of 1998. In the present case, the proper officer of customs at the port of import had assessed the duty payable on the imported goods. However, on account of intelligence developed by DRI and upon conducting detailed investigation unearthing the modus operandi of undervaluation adopted by the appellants, the

Department had issued SCN dated 13.06.2007 demanding differential duty of customs payable on account of suppression of actual transaction value on which the imported goods were procured by the appellants and for determining the transaction value in terms of CVR of 1998.

9.2 In terms of the legal provisions governing recovery of duties not levied or short levied or short paid, such duty can be recovered by issue of SCN within 5 years from the relevant date under Section 28 ibid by invoking the extended period of time, if it involves the ingredients of collusion or wilful mis-statement or suppression of facts by the appellants with an intent to evade duty. On perusal of the case records, it transpires that in respect of 27 consignments of imported goods, the appellants had paid customs duty at the time of its import before clearance from customs control on different dates for the part value of the imported goods, as declared in the B/E and in the invoice routed through the banking channel. However, in respect of the part value of such consignments, for which additional invoices/supplementary invoices were produced by the Director of the appellant company Shri Anil Mathuradas Chopra, no customs duty had been discharged. It is not the case of the appellant that the department had recovered these additional invoices and such recovery of evidences are not proper in terms of Section 138C of the Act of 1962. Further, the appellant had disputed the method of valuation of goods to state that the value of identical or similar goods have not been produced by the department. However, since the authorities below have examined the evidences and on the basis of actual price/value of imported goods paid by the appellants had accepted the real transaction value by taking into account all the payments received by the supplier in terms of Rule 3, 4 & 9 of CVR of 1988, we find no infirmity in arriving at the re-determined value by them. Furthermore, we also note that the original authority in adjudicating the case, had re-calculated the import duty payable on the basis of the details provided by the appellant by reducing the duty to the extent it required correction in the value of goods under B/E No.728079 dated 24.03.2006.

9.3 In the relied upon case of *Commissioner of Customs, Calcutta Vs. South Indian Television (P) Ltd.* (supra), cited by the learned Advocate, the Hon'ble Supreme Court has observed that in the absence any evidence or information about comparable imports, the benefit of doubt must go to the importer. On the other hand, in the present case, DRI had made detailed investigation and the appellant had themselves provided the information

about the differential price paid through illegal channels and the fact of under-valuation, has been established with adequate evidence. Therefore, the present factual matrix of the case, differs from the facts of the case, whose decision had been relied upon by the appellants.

10. In view of the above analysis of the statutory provisions vis-à-vis the facts of the case, and our observations and findings on such issues, we are of the opinion that the duty demand confirmed against the appellants-importer and penalties imposed upon them are sustainable. For the same reason, the penalty imposed on the co-appellant namely, Shri Anil Mathuradas Chopra, is also sustainable. Therefore, the impugned order upholding the confirmation of adjudged demands on the appellants does not require any interference and the appeals filed by the appellants, are liable to be dismissed.

11. In the result, by upholding the impugned order dated 22.03.2016, the appeals filed by the appellants are dismissed.

(Order pronounced in the open court on 15.06.2026)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)