SUPREME COURT OF INDIA

Century Metal Recycling Pvt.Ltd.

Vs.

Union of India

C.A.No.5011 of 2019

(Ranjan Gogoi,CJI., Deepak Gupta and Sanjiv Khanna,JJ.,)

17.05.2019

JUDGMENT

Sanjiv Khanna,J.,

SLP(Civil)No.33602 of 2017

1. Leave granted.

2. Impugned order dated 12th September, 2017 passed by the Division Bench of the High Court of Judicature at Allahabad dismisses Writ Petition Tax No.307 of 2017 filed by the appellants, namely M/s Century Metal Recycling Pvt. Ltd. and Gauri Shankar Agarwala, inter alia, on the grounds that the High Court would not exercise extraordinary jurisdiction under Article 226 of the Constitution of India as the matter relates to the valuation of imported aluminium scrap which could be assailed in a statutory appeal and it would not be appropriate for the writ court to decide whether the appellant had or had not agreed to valuation by the customs authorities.

3. The appellant Company is stated to be engaged in the manufacture of aluminium alloys, for which they regularly import aluminium waste as a raw material for self-consumption. Imported scrap, it is accepted, falls under different code names as per specifications of the Institute of Recycling Industry. The grievance raised by the appellants is that the 2nd respondent i.e. the Principal Commissioner of Customs, Noida Customs Commissionerate and its Officers almost uniformly do not clear the consignments as per the declared transaction value in the bill of entry but insist that the appellants write a letter agreeing to pay customs duty as per the valuation by the customs authorities and compel them to forego their right to provisional assessment under Section 18 of the Customs Act, 1962 ('the Act', for short). The appellants, coerced and intimated, have no option but to give in and issue a letter of consent agreeing to assessment/valuation by the customs authorities to avoid delay in clearance, levy of demurrage, ground rent and container detention charges, etc. It is also alleged that the respondents without observing and contrary to the mandate of Section 14 of the Act discard the declared transactional value and recompute the consignment value in view of the Valuation Alert dated 1st December, 2016 issued by the

Central Board of Excise and Customs ('the Board', for short).

4. At the outset, we would record that the appellants had given up prayers (a) and (b) before the High Court as is recorded in the impugned order and we are, therefore, primarily to confine our decision to prayer (c) of the Writ Petition which reads as under:

> "In the aforesaid facts and circumstances of the petitioner respectfully prays that this Hon'ble Court may be graciously pleased to:
>
> (c) Issue a suitable writ, order or direction in the nature of MANDAMUS commanding the Assessing Officer that Respondent No.2 and his subordinate officers to make assessment of aluminium scrap being imported by the petitioner on the basis of the declared transaction value in accordance with statutory provisions under Section 14 & 17(1) of the Customs Act, and in case of non-acceptance, to allow Provisional Assessment thereof under Section 18 of the Customs Act in accordance with Circular No.38 dated 22.08.2016 (Annexure-5)"

We would for the reasons stated also examine validity of the adjudication order dated 7th April, 2017.

5. We are not inclined to remit the appellant to an alternative remedy by way of statutory appeal under Section 128 of the Act for the reason that the impugned order dated 7th April, 2017 in Assessment No.12/AC/CUS/2017 cannot be sustained in view of the decision of this Court in *Commissioner of Central Excise and Service Tax, Noida v. M/s Sanjivini Non-Ferrous Trading Pvt. Ltd.*[1], the latter being the sister concern of the first appellant in this case. Further, Civil Appeal Nos. 18300-18305 of 2017 decided on December 10, 2018 having heard learned counsel for the parties, we would like to clarify the legal position and therefore in the facts of this case would exercise our discretion to entertain this appeal despite the alternative remedy.

6. We would begin by reproducing Section 14 of the Act and Rules 3 and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('the 2007 Rules', for short) which read as under:

> "Section 14: Valuation of Goods.
>
> (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for, —

(i) the circumstances in which the buyer and the seller shall be deemed to be related;

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

Provided also 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 of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation. —For the purposes of this section—

(a) "rate of exchange" means the rate of exchange—

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).

RULES

Rule 3. Determination of the method valuation:

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

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

Provided that –

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which-

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

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

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

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

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

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

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

Rule 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."

7. Section 14 has to be read with Rule 12 of the 2007 Rules. Rule 12 uses the expression 'the proper officer has reason to doubt the truth or accuracy of the value declared in relation to the imported goods'. This expression is distinctly different from the words and preconditions imposed for rejecting the declared transactional value under the repealed Customs Valuation (Determination of Price of Imported Goods) Rules,1988 ('the 1988 Rules', for short) and the pre-amended Section 14(1) of the Act which were considered and interpreted by this Court in *Eicher Tractors Limited, Haryana v. Commissioner of Customs, Mumbai*[2]. In fact, the judgment in Eicher Tractors Limited (supra) had not considered Rule 10-A of the 1988 Rules enforced with effect from 19th February, 1998 as the imports therein related to the year 1993. Rule 10-A brought the concept of 'reason to doubt the declared value' in place of special or extraordinary circumstances particularised in Rule 4(2) of the 1988 Rules. However, the interpretation given to Section 14(1) in Eicher Tractors Limited (supra) as to the meaning of the word 'payable' used therein would be still applicable. The word 'payable' used in Section 14(1) refers to the particular transaction and the payability in respect of 'the transaction'. It refers to the notional value, albeit the transaction value as declared in the bill of entry plus the amount which has to be added in terms of Rule 10 of the 2007 Rules.

8. This Court in M/s Sanjivini Non-Ferrous Trading Pvt. Ltd. (supra), while interpreting the provisions of Section 14 and Rules 3, 4 and 12 of the 2007 Rules, had held as under:

"10. The law, thus is clear. As per Sections 14(1) and 14(1-A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. This is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule

4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which Assessing Officer arrives at his own assessable value."

The Division Bench has quoted the following sub-para from

Commissioner of Customs, Calcutta v. South India Television (P) Ltd.[3]*:*

"13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

9. As per Section 14(1) of the Act, value of the imported goods shall be the transactional value of such goods, which means the price actually paid or payable for the goods when sold for export to India where the buyers and sellers are not related and the price fixed is the sole consideration for sale. As per the first proviso to Section 14(1) of the Act, the transactional value for the purpose of customs duty would include amounts paid or payable as costs and services like commission, brokerage, engineering, design work, cost of transportation, etc., as may be specified in the rules made in this behalf. These amounts are to be added to the declared transactional value. Accordingly, in terms of Rule 10 of the 2007 Rules, the value and price of costs and services are added to the price actually paid or payable for the imported goods for determining the transaction value.

10. Sub-section (2) of Section 14 is a non-obstante provision, which applies notwithstanding sub-section (1), i.e. when the Board has issued a notification in the Official Gazette fixing tariff values for any class of imported or exported goods. The Board has been authorised to issue notifications under Section 14(2) of the Act when it is satisfied that it is necessary or expedient. Thus, whenever tariff has been fixed vide notification issued by the Board under Section 14(2) of the Act, then notwithstanding the transactional value of the imported goods under sub-section (1) to Section 14 of the Act, as per sub-section (2) to Section 14 of the Act the customs duty is payable as per the tariff value so fixed. In the present case, the Board has not considered it necessary and expedient to issue a notification under Section 14(2) of the Act to fix a tariff for the imported aluminium waste.

11. The second proviso to Section 14 (1) deals with different situations, enumerated under

the three clauses; (i) when buyers and sellers are deemed to be related; (ii) when there is no sale, or buyers and sellers are related or the price is not the sole consideration for sale, etc. and (iii) where the proper officer has reason to doubt the truth or accuracy of such value. When the conditions specified in the second proviso are satisfied, the transactional value for the purpose of charging of customs duty is to be made as per rules framed in this behalf.

12. Rules 3 and 12 of the 2007 Rules i.e. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were enacted and enforced with effect from 10th October, 2007 replacing and superseding the 1988 Rules. Rule 3(1) of the 2007 Rules states that value of the imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the 2007 Rules which Rule, as observed above, deals with the costs and services which are to be added to the price actually paid or payable for the imported goods for determining the transaction value. Sub- rule (1) to Rule 3 is however subject to Rule 12 and therefore give primacy to Rule 12 which we shall subsequently elaborate and explain. Sub-rule (2) to Rule 3 states that value of the imported goods under sub-rule (1) shall be accepted i.e. accepted by the customs authorities. The proviso then vide different clauses sets out the pre-conditions for accepting value of the imported goods. Rule 11 provides for declaration to be given by the importer or his agent certifying that they had disclosed full and accurate details of the value of the imported goods and any other statement, information and document including invoice of the manufacturer or producer of the goods where the goods are imported from or through a person other than the manufacturer of goods, as considered necessary by the proper officer for valuation of the imported goods. Sub-rule (2) states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after an enquiry in consultation with the importers.

13. Sub-rule (3) to Rule 3 deals with cases when the buyer and seller are related. We would not dilate on the said sub-rule for this is not required for the purpose of the present decision. As per sub-rule (4), where the value cannot be determined under sub-rule (1) to Rule 3, the transaction is to be valued by step wise applying Rules 4 to 9. Rule 4 deals with transaction value based on identical goods. Rule 5 deals with transaction value based on similar goods. Rule 6 deals with the determination of value where the transactional value cannot be determined under Rules 3, 4 and 5. Rules 7 and 8 deal with deductive value and computed value respectively. Rule 9 prescribes the residual method for computing the transaction value. What is important to note is that Rules 4 to 9 are subject to the provisions of Rule 3 thereby giving primacy to Rule 3 which in turn gives primacy to Rule 12 of the 2007 Rules.

14. Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the

value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause-(iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause-(i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules. Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

15. The requirements of Rule 12, therefore, can be summarised as under:

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

16. Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.

17. The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'.

18. The expression 'proof beyond reasonable doubt' in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge 'beyond reasonable doubt'. In *Ramakant Rai Vs. Madan Rai & Ors*[4]. referring to the expression 'reasonable doubt' in criminal law it was held as under:

> "24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

Proof beyond 'reasonable doubt' is certainly not the requirement under proviso to Section 14 of the Act and Rule 12 of the 2007 Rules, albeit the above quote draws a distinction between a simple doubt and a doubt which is reasonable. In the context

of the proviso to Section 14 read with Rule 12 and clause (iii) of Explanation to the 2007 Rules, the doubt must be reasonable and based on 'certain reasons'. The proper officer must record 'certain reasons' specified in (a) to (f) or similar grounds in writing at the second stage before he proceeds to discard the declared value and decides to determine the same by proceeding sequentially in accordance with Rules 4 to 9 of the 2007 Rules. It refers to a doubt which the proper officer possesses even after the importer has been asked to furnish further information including documents and evidence during the preliminary enquiry to clear his doubt about the truth and accuracy of the value declared. Therefore, there has to be a preliminary enquiry by the proper officer in which the importer must be given an opportunity for clarification of the doubts of the officer by furnishing of documents and evidence as to the accuracy or truth of the value declared. It is only in case where the doubt of the proper officer persists after conducting examination of information including documents or on account of non-furnishing of information that the procedure for further investigation and determination of value in terms of Rules 4 to 9 would come into operation and would be applicable. Reasonable doubt will exist if the doubt is reasonable and for 'certain reasons' and not fanciful and absurd. A doubt to justify detailed enquiry under the proviso to Section 14 read with Rule 12 should not be based on initial apprehension, be imaginary or a mere perception not founded on reasonable and 'certain' material. It should be based and predicated on grounds and material in the form of 'certain reasons' and not mere ipse dixit. Subjecting imports to detailed enquiry on mere suspicion because one is distrustful and unsure without reasonable and certain reasons would be contrary to the scheme and purpose behind the provisions which ensure quick and expeditious clearance of imported goods.

19. Section 18 of the Act, reads:

"Section 18. Provisional assessment of duty. —

(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of Section 46 and Section 50, —

(a) where the importer or exporter is unable to make self-assessment under sub-section (1) of Section 17 and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

(2) When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then—

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be and if the amount so paid falls short of, or is in excess of, the duty finally assessed or re- assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in the excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under Section 28AA from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally or re- assessment of duty, as the case may be, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under Section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section
(2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to—

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and

interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in Section 26;

(e) drawback of duty under Sections 74 and 75."

The significance of Section 18 of the Act can be understood in light of the above provisions. Section 18 provides for provisional assessment of duty in cases specified in sub-section (1) of the Section. Clause (c) of sub-section (1) deals with cases where importer or exporter has produced necessary documents and furnished full information for assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty. However, Clause (d) is wider and would apply when the importer or exporter does not produce necessary documents or furnish information. In all cases covered under Clauses (a) to (d), the proper officer may direct provisional assessment of the duty leviable on the imported goods. Where duty is assessed provisionally, the importer or exporter has to furnish security as the proper officer deems fit for payment of deficiency, if any, between the duty provisionally paid and the duty finally assessed. On interpreting Section 18 of the Act, it is held that when there is a dispute between the customs authorities and the importer as regards the valuation of the imported goods, on satisfaction of the conditions enumerated in sub-section (1), the authorities should make provisional assessment of customs duty under Section 18 of the Act. This expedites clearance, pending final adjudication on merits which may take time. This is also the mandate of the Board Circular No.38/2016 dated 22nd August, 2016. Any insistence and compulsion by the authorities that the importer should disclaim and forgo his statutory right under Section 18 of the Act would not be correct. Neither would it be right to reject the valuation as declared by the importer without reasonable doubt for certain reasons.

20. We would ex facie for the reasons recorded below reject the contention of the respondents predicated on the letter of appellants dated 6th March, 2017 that the appellants did not seek provisional assessment of the bill of entry and had accepted and paid duty on the valuation done by the customs authorities. This letter exposits the predicament faced by the appellants as it states that the appellants were in urgent requirement and wanted clearance of the goods. Pertinently, the appellants had earlier written several letters, including communications dated 22nd December, 2016 and 4th March, 2017 requesting for clearance of the imported consignment of aluminium scrap on the declared transaction value pointing out therein that on account of delay in the clearance of the imported

consignments, the appellants and its sister concern had been compelled to pay excess duty of over Rs.25 crores from August 2013 onwards. It is unfortunate and has to be accepted that the respondent authorities had compelled and forced the appellant to furnish the letter dated 6th March, 2017 thereby waiving of its right to provisional assessment and accepting valuation in terms of Rules 4 to 10. As per sub Rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory, subterfuge to by-pass and circumvent the statutory mandate is unacceptable. Formation of belief and recording of reasons as to reasonable doubt and communication of the reasons when required is the only way and manner in which the proper officer in terms of Rule 12 can proceed to make assessment under Rules 4 to 9 after rejecting the transaction value as declared.

21. The mandate to record reasons at the second stage of enquiry is not expressly stipulated, albeit it has been read by us by implication in Rule 12. Being conscious that this mandate if applied to past cases would possibly lead to complications and difficulties, we would invoke the doctrine of prospective application with the direction that the past cases will be decided on a case to case basis, depending upon the factual matrix and considerations like whether the importer has asked for 'certain reasons', whether the reasons were not communicated, whether 'certain reasons' can be deciphered from the assessment/valuation order, whether misdescription or false declaration was apparent, etc.

22. In *Commissioner of Customs vs. Prabhu Dayal Prem Chand*[4], this Court had rejected the plea that the Revenue was justified in redetermining the value of brass and copper scrap on the basis of information received from London Metal Exchange on the price of the said metals on the ground that the importer was not confronted with any contemporaneous material for enhancing the transaction value. This Court affirmed the order of the Tribunal in Prabhu Dayal Prem Chand (supra) and held that the order in original had not indicated details of any contemporaneous import or other material in the form of corroborative material which had necessitated the enhancement in the transaction valuation.

23. We would now refer to the findings of the order in original in the present case which observes that the appellants had declared value of the aluminium scrap as Rs.81.31 per kg, albeit the contemporaneous import data in the form of different bills of entry had indicated aluminium scrap values between Rs. 83.26 to Rs. 120.897 per kg. The said portion of the order refers to at least four bills of entries declaring assessable value of less than Rs. 85 per kg. Interestingly, the order in original also records that the imported goods being aluminium scrap was not a homogeneous commodity and therefore, cannot be evaluated on the basis of the samples or lab testing. Further, the order holds that it was very difficult to find any identical/ similar goods imported in India having same chemical and physical composition and that the values of aluminium scrap identical/similar to the imported goods in nature and specification were not available. Without commenting on correctness of the said statements, we would observe that the aforesaid reasoning for rejection of the

transactional value, would not meet the mandate of Section 14 and the Rules as elucidated in M/s Sanjivini Non- Ferrous Trading Pvt. Ltd. (supra) wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry. We have also elaborated and explained the legal position with reference to Rule 12 of the 2007 Rules.

24. Therefore, in the facts and circumstances of the present case, it has to be held that the adjudication order in original is flawed and contrary to law for it does not give cogent and good reason in terms of Section 14(1) and Rule 12 for rejection of the transaction value as declared in the bill of entry. The order in original is not in accordance with Section 14 and Rules 3 and 12 as the mandate of these provisions has been ignored. The Assistant Collector has rejected the transaction value as declared in the bill of entry which, as noticed above, is clearly and fundamentally erroneous besides being contradictory. In the aforesaid circumstances, we do not think that the order in assessment dated 7th April, 2017 can be sustained and upheld. It is set aside and quashed.

25. Before closing, we would observe that the Valuation Alerts, as also stated by the respondents, are issued by the Director General of Valuation based on the monitoring of valuation trends of sensitive commodities with a view to take corrective measures. They provide guidance to the field formation in valuation matters. They help ensure uniform practice, smooth functioning and prevent evasion and short payment of duty. However, they should not be construed as interfering with the discretion of the assessment authority who is required to pass an Assessment Order in the given factual matrix. Declared valuation can be rejected based upon the evidence which qualifies and meets the criteria of 'certain reasons'. Besides the opinion formed must be reasonable. Reference to foreign journals for the price quoted in exchanges etc., to find out the correct international price of concerned goods would be relevant but reliance can be placed on such material only when the adjudicating authority had conducted enquiries and ascertained details with reference to the goods imported which are identical or similar and 'certain reasons' exists and justifies detailed investigation. These reasons are to be recorded and if requested disclosed/ communicated to the importer. Valuation alerts could be relied upon for default valuation computation under the Rules. (See *Varsha Plastic Pvt. Ltd. vs. Union of India*[5]).

26. We would also like to clarify that we have not issued any general or omnibus direction that the transaction value declared in the bill of entries should invariably be accepted in all cases and/or that in all cases where imports of aluminium scrap are involved. The matter has to be examined on a case to case basis, the evidence before the authorities, the material placed on record and the enquiries conducted by the adjudicating authorities etc.

27. With the aforesaid clarification, we allow the present appeal and quash and set aside the order of Assessment dated 7th April, 2017 by issuing a writ of certiorari. In the facts of the case, there shall be no order as to costs.

Judgment Referred.

[1]*C.A.No.18300-18305 of 2017*
[2]*(2001) 1 SCC 0315*
[3]*(2007) 6 SCC 0373*
[4]*(2010) 13 SCC 0535*
[5]*(2009) 3 SCC 0365*