

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

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40225 of 2017

(Arising out of Order-in-Appeal No.130/2016-TTN (CUS) dt. 31.10.2016 passed by Commissioner of Customs & Central Excise (Appeals-2), No.1, Williams road, Cantonment, Tiruchirappalli 620 001)

M/s.Abirami Weaving Mills

.... Appellant

103/4, Surya Gounder Kadu,
Nadu Karadu, Seelanaickenpatty,
Salem 636 201.

VERSUS

The Commissioner of Customs

... Respondent

New Harbour Estate,
Tuticorin 628 004.

APPEARANCE :

Ms. K. Ramya, Advocate for the Appellant
Shri Vineet Goyal, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40423/2026

DATE OF HEARING : 19.01.2026

DATE OF DECISION : 25.03.2026

Per: Shri P. Dinesha

The brief facts of the case as could be gathered from Order-in-Original and Order-in-Appeal are that the Appellants have filed a Bill of Entry for the import of 20 nos. of "Used Picanol GTM AS Rapier Looms with CAM Motion Type : GTM - 2N190 with Standard Accessories", declaring the unit price at USD4000 (CF) and the total invoice value at 80000 USD (CF) as per invoice No.02/BSTM/X2015 dated 07.10.2015 of their supplier M/s.PT Bandung Sakura Textile Mills, Indonesia. The subject machineries have been manufactured in Belgium during 1993 and imported from Indonesia in used condition. The importer was not able to produce any Certificate issued by an independent Chartered Engineer or any equivalent in the country of supply with details like price of new machinery if purchased now, present condition of machinery, nature of reconditioning of repairs carried out, if any, and the cost including the dismantling cost, if any thereof and expected life span. The declared price of the said used machinery could not be verified by the deprecation method on the basis of the certified price of the new machinery work out to Rs.67.76 per kg which was much lesser than the minimum reference

value (Rs.90 per kg.) prescribed under CCR instructions. Therefore, in the absence of proper Load Port Certificate, the consignment was referred for examination and valuation by any DGFT notified agency or by any Empanelled Chartered Engineer as per the choice of the importer. At the time of assessment of the Bill of Entry based on the Chartered Engineer's value, the importer accepted the Chartered Engineer's value. Accordingly, the Bill of Entry was assessed and the duty was paid by the importer on the enhanced value without any protest. After due process of law, the Adjudicating Authority vide the Order-in-Original No.03/2016 - A.C (Imports) dated 28.01.2016 rejected the Appellant's declared value of USD 4000 (CF) per unit and re-determined the value of USD 7500 (CF) per unit. Being aggrieved by the order of Adjudicating Authority, the Appellant filed its first Appeal before Commissioner (Appeals). The First Appellate Authority vide the impugned Order-in-Appeal No.130/2016 dt. 31.10.2016 upheld the Order-in-Original. It is against this order that the present Appeal has been filed before Tribunal.

2. Heard Ms. K. Ramya, Ld. Advocate for the Appellant and Shri Vineet Goyal, Id. Superintendent for the Respondent.

3. Ld. Advocate would submit that in terms of para-8 of the Board Circular No.4/2008-Cus. dt. 12.02.2008 the valuation of second-hand machinery based on the Lord Port Chartered Engineer's certificate if available, to be accepted and only the absence of the same, a local Chartered Engineer's certificate is to be accepted. In this instant case, the Load Port Chartered Engineer's certificate has been obtained on 28.09.2015 based on which the valuation of the second-hand machinery has been determined by them.

3.1 She would refer to Section 14 of the Customs Act, 1962, to submit that the value of the imported goods shall be the transaction value of such goods i.e. the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation where the buyer and seller are not related and the price is the sole consideration for sale. There is no allegation by Revenue that neither the Appellant and the foreign suppliers are related persons nor is it their case that the Appellant remitted any amount to foreign supplier more than the

amount actually paid as per the declared value and hence, rejection of transaction value is unsustainable.

3.2 Further, Id. Advocate would contend that there is no reference to any technical or manual or additional information based on which the value of the machineries have been reassessed by the local Chartered Engineer. There is contrary to local Chartered Engineer's certificate as compared to overseas Chartered Engineer's certificate inasmuch as the local Chartered Engineer's certificate is silent as to the test carried out as to the operational condition of the machines imported. In this regard, reliance is placed on **Barani Industries Vs CC** [2025 (10) TMI 829 CESTAT Chennai].

3.3 The First Appellate Authority has not considered the Load Port Chartered Engineer's certificate dt. 28.09.2015 on the ground that said certificate did not contain the details of the price of the machinery as in the year of manufacture, date of manufacture as per Form A annexed to Board's Circular No.25/2015 dt. 15.10.2015. Id. Advocate submitted that in this case, the Overseas Chartered Engineer's certificate was obtained on 28.09.2015, the commercial invoice was issued by the supplier on 07.10.2015 and the date of Bill of Lading was 11.10.2015 i.e. prior to issuance

of circular dt. 15.10.2015, and hence rejection of Load Port Chartered Engineer's certificate is not correct.

3.4 Ld. Advocate placed reliance on the following orders / decisions :

(i) **Motor Industries Co. Ltd. vs CC**
2009 (244) ELT 4 (SC)

(ii) Bangalore Bench of Tribunal's Final Order
dt. 27.06.2024 in the case of Saash
Enterprises Vs CC Cochin reported in
MANU/CB/0141/2024.

She would thus pray for setting aside the impugned order and for allowing the Appeal.

4. Ld. Departmental Representative supported the findings in the orders of lower authorities.

5. Heard the rival contentions and perused the documents placed on record. We have also carefully considered the case of the Revenue as forthcoming from the Order-in-Original as well as the impugned Order-in-Appeal. We find that the only issue that arises for our consideration is, 'whether the declared value of the imported second hand machines was rightly enhanced based solely on the Chartered Engineer's Certificate ?'.

6. From a perusal specifically para-54 of the impugned order, we find that the Appellant did file a Chartered Engineer's certificate at the port of loading, which is also

placed before us as part of the Appeal Memorandum. The Commissioner (Appeals) has ignored the same by holding that the *'CE Certificate dated 28.09.2015 produced by the importer does not have any details of the Price of the machinery as in the year of manufacture, Current CIF value of new machinery if purchased now, S.No assigned to the machinery and the date of manufacture'*.

7. We have carefully perused the certificates of both Load Port as well as local Chartered Engineer; the present condition as is visible from the local Chartered Engineer certificate reveals that goods in question i.e. *'Twenty numbers of used Picanol GTM AS rapier looms with cam motion Type:GTM-2N-190 with standard accessories mentioned in the Bill of Entry B/L, Packing List & Commercial Invoice is tallying with the items available inside the containers'*. There is also no denial of the fact that the machines in question are used machines and they have also been found to be 'not reconditioned'. To the above extent, we find that there is no dispute between the Chartered Engineer certificates of Load Port as well as local Chartered Engineer. Further, the only specific item not mentioned in the Load Port Certificate is the year of manufacture. But there is specific mention of the original value of the machinery, which

is absent in the report of the Chartered Engineer. This apart, we do not find any good reason even by the Original Authority or even the Commissioner (Appeals) as to the rejection of Load Port Chartered Engineer's certificate and the non-mentioning of year of manufacture alone has been treated as fatal. Even the Board's circular dt. 12.02.2008 mentioned the guidelines at para-8 about the contents of Load Port Chartered Engineer certificate but however, it concludes that in the absence of proper Load Port Certificate, a local Chartered Engineer's certificate may be accepted, which indicates that the authorities should hold that such a Load Port Certificate was not in order or was improper and only then, could they obtain the local Chartered Engineer's certificate. Hence, we are of the view that redetermination of the declared value of the imported second hand machinery by rejecting the declared value is clearly untenable because from a reading of both the Order-in-Original as well as Order-in-Appeal, it is clear that what is rejected is only the declared value and not the local Chartered Engineer's certificate. Hence, we are of the view that the redetermination of declared value based solely on local Chartered Engineer's certificate is not in order and in this regard, our view stands supported by the decision/order

relied upon by the Appellant in the case of **Mech. And Tech. Vs Commissioner – 2009 (247) ELT 305 (Tri.-Chennai)** which decision/order has been applied by this very Bench in the case of **Barani Industries Vs Commissioner of Customs – 2025 (10) TMI 829-CESTAT Chennai**. To our minds, the purpose of Board's circular issued in 2008 was perhaps due to the practice in vogue at that relevant point in time that there were perhaps imports of new machinery / equipments, etc. in the guise of used / second hand machinery / equipments, which required strict examination. This perhaps mandated the obtaining of Load Port certificate that would include all materials particulars of the goods in question mainly indicates the year of manufacture, etc. In today's advanced technology, perhaps the said circular requires a re-look. We have perused the Load Port certificate which contains all materials particulars of the items in question and the crucial aspect that the said goods were used / second hand stands established. Hence, as long as all the particulars of the used machinery is concerned, are available in the said Load Port certificate and the same also does not indicate that the items in question are hazardous in nature, the item in question also has a life span of some years including an approximation as to the present market

value, the same should serve the purpose. A small information which may not essentially dislodge the very nature of the goods imported, cannot be fatal to the extent of disbelieving the said Load Port certificate. In view of the above, we do not find any justifiable reasons to accept the redetermination of declared value and hence, the impugned order cannot sustain.

8. In the result, the impugned order stands set aside and the Appeal is allowed.

(Order pronounced in open court on 25.03.2026)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)