CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 231 of 2011

[Arising out of Order-in-Original No. 20/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

M/s. Rochi Ram & Sons **... Appellant**
C-21, Shri Ji Ki Mori, Tripolia Bazar
Jaipur, Rajasthan 302 002

VERSUS

Commissioner of Customs **... Respondent**
NCR Building, Statue Circle
Jaipur

with

Customs Appeal No. 233 of 2011

[Arising out of Order-in-Original No. 20/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Nanak Das Moolrajani **... Appellant**
M/s. Rochi Ram & Sons
C-21, Shri Ji Ki Mori, Tripolia Bazar
Jaipur, Rajasthan 302 002

VERSUS

Commissioner of Customs **... Respondent**
NCR Building, Statue Circle
Jaipur

with

Customs Appeal No. 234 of 2011

[Arising out of Order-in-Original No. 20/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Neeraj Moolrajani **... Appellant**
M/s. Rochi Ram & Sons
C-21, Shri Ji Ki Mori, Tripolia Bazar
Jaipur, Rajasthan 302 002

VERSUS

Commissioner of Customs **... Respondent**
NCR Building, Statue Circle
Jaipur

with

Customs Appeal No. 235 of 2011

[Arising out of Order-in-Original no. 20/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Om Prakash Pareek **... Appellant**
M/s. Rochi Ram & Sons
C-21, Shri Ji Ki Mori, Tripolia Bazar
Jaipur, Rajasthan 302002

VERSUS

Commissioner of Customs **... Respondent**
NCR Building, Statue Circle
Jaipur

with
Customs Appeal No. 236 of 2011

[Arising out of Order-in-Original No. 20/2010-Commr dated 31.12.2010 passed by the Commissioner of Customs, Jaipur]

Shri Ishwar Das Moolrajani **... Appellant**
M/s. Rochi Ram & Sons
C-21, Shri Ji Ki Mori, Tripolia Bazar
Jaipur, Rajasthan 302 002

VERSUS

Commissioner of Customs **... Respondent**
NCR Building, Statue Circle
Jaipur

APPEARANCE:
Shri None for the Appellants (Shri Keshav Krishnan, Advocate appeared proxy and sought adjournment)
Shri R P Sharma, Special Counsel for the Revenue

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

DATE OF HEARING: 23.04.2026
DATE OF DECISION: 23.06.2026

FINAL ORDER NO. 51079-51083/2026

P V SUBBA RAO

These five appeals assail the order No. 20/2010 dated 31.12.2010[1] passed by the Commissioner of Customs, Jaipur. The Commissioner had, in the impugned order, decided the proposals made in the show cause notice dated 19.6.2007[2] issued by the Additional Director General[3], Directorate of Revenue Intelligence[4], Delhi Zonal Unit[5], Delhi. In the impugned order, the Commissioner rejected the declared values of the goods (watch parts and watch movements) imported by **M/s. Rochi Ram & Sons**[6] through four

1. **Impugned order**
2. **SCN**
3. **ADG**
4. **DRI**
5. **DZU**
6. **The importer**

ports, re-determined the values, confirmed demand of differential duty amounting to Rs. 5,53,19,097/- under the proviso to section 28(1) of the Customs Act, 1962[7], along with interest under section 28AB of the Act, confiscated the imported watches under section 111 of the Act and imposed redemption fine in lieu of confiscation under section 125 of the Act and imposed penalties on the importer under sections 112 and 114A of the Act. He also imposed personal penalties on some persons including the appellants in Customs Appeals No. 233/2011, 234/2011, 235/2011 and 236/2011 as follows:

Appeal	**Appellant**	**Duty/Fine/ Penalty (Rs.)**	**Sections**
C/231/2011	Rochi Ram & Sons (the importer)	Duty Rs. 5,53,19,097/- Redemption fines Rs. 30,80,000/- Rs. 75,000/- Rs. 4,00,000/- Penalty Rs. 5,53,19,097/-	Proviso to section 28(1) Confiscated under section 111(d) & (m) and fine imposed under section 125 Sections 112 (a) & (b) and 114A
C/233/2011	Nanak Das Moolrajani	Penalty 30,00,000/-	112(b)
C/234/2011	Neeraj Moolrajani	Penalty 30,00,000/-	112(b)
C/235/2011	Om Prakash Pareek	Penalty 30,00,000/-	112(a) &(b)
C/236/2011	Ishwar Das Moolrajani	Penalty 1,90,00,000/-	112(a) &(b)

2. In Customs Appeals 233/2011, 234/2011, 235/2011 and 236/2011, no specific grounds of appeal have been taken and the appellants adopted the

7. Act

grounds in the appeal filed by the importer. The relevant portion of the appeal in C/233/2011 is reproduced below. Other appeals are identically worded.

> "….
>
> 4. The appellant says and submits that the said company is also filing an appeal against the impugned order dated 31.12.2010 on the facts and grounds set out in its memorandum of appeal which the appellant craves leave to refer to and rely upon as if the same were specifically set out herein and form a part of this appeal….."

3. These appeals were initially disposed of by Final Order No. 54724-54769/2017 dated 27.6.2017 by remanding the matter to the Commissioner with a direction to decide the matter after the decision of the Supreme Court in the appeal against the judgment of Delhi High Court in **Mangli Impex** versus **Union of India**[8] in which it was held that the officers of DRI could not issue SCNs demanding duty as the order of the Delhi High Court was stayed by the Supreme Court[9].

4. Revenue assailed the Final Order of this Tribunal dated 27.6.2017 before the Rajasthan High Court in some appeals including these appeals but not in other appeals. Rajasthan High Court, by judgment dated 22.8.2019, set aside the Final Order of this Tribunal and remanded the matter back to this Tribunal to decide.

5. The question of power of DRI to issue SCNs demanding duty has been finally decided in favour of Revenue by the Supreme Court in Review Petition No. 400 of 2021 in Civil Appeal No. 1827 of 2018 **Commissioner of**

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8. 2016 (335) ELT 605 (Del.)
9. 2016(339) ELT A 49

Customs vs M/s. Canon India Pvt. Ltd. and it has been held that DRI is competent to issue SCNs demanding duty.

6. Thereafter, these appeals were listed on several dates. Today, when the matter was called, Shri Keshav Krishnan, appearing proxy for the counsel sought another adjournment. As the matter is over 15 years old, we have declined to adjourn the matter. The question which arises is how should this Tribunal decide if the appellant does not appear on the dates fixed for hearing has been decided by the Supreme Court in **Shri Balaji Steel Re-rolling Mills** *Versus* **Commissioner of Central Excise & Customs**[10] the relevant portion of which is reproduced below:

> **12.** A similar question came up for consideration before this Court in *The Commissioner of Income-Tax, Madras* v. *S. Chenniappa Mudaliar, Madurai* - 1969 (1) SCC 591 wherein this Court considered the provisions of Section 33 of the Income-tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 which gave power to the Tribunal to dismiss the appeal for want of prosecution. For ready reference, Section 33(4) of the Income Tax Act, 1922 and Rule 24 of the Appellate Tribunal Rules, 1946 are reproduced below :-
>
> **Section 33(4) of the Income Tax Act, 1922**
>
> "**33(4).** The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and shall communicate any such orders to the assessee and to the Commissioner."
>
> **Rule 24 of the Appellate Tribunal Rules, 1946**
>
> "**24.** Where on the day fixed for hearing or any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Tribunal may dismiss the appeal for default or may hear it *ex parte*."
>
> Considering the aforesaid provisions, this Court held as under :-
>
> "7. The scheme of the provisions of the Act relating to the Appellate Tribunal apparently is that it has to dispose of an appeal by making such orders as it thinks fit on the merits. It follows from the language of Section 33(4) and in particular the use of the word "thereon" that the Tribunal has to go into the correctness or otherwise of the points decided by the departmental authorities in the light of the submissions made by the appellant. This can only be done by giving a decision on the merits on questions of fact and law and not by merely disposing of the appeal on the ground that the party concerned has failed to appear. As observed in *Hukumchand Mills Ltd.* v. *CIT,* the word "thereon" in Section 33(4) restricts the jurisdiction of the Tribunal to the subject-matter of the appeal and the words "pass such orders as the Tribunal thinks fit" include all the powers (except possibly the power of enhancement) which are conferred upon the Appellate Assistant Commissioner by Section 31 of the Act. The provisions contained in Section 66 about making a reference on questions of law to the High Court will be rendered nugatory if any such power is attributed to the Appellate Tribunal by which it can dismiss an appeal, which has otherwise been properly filed, for

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10. 2014 (36) S.T.R. 1201 (S.C.)

default without making any order thereon in accordance with Section 33(4). The position becomes quite simple when it is remembered that the assessee or the CIT, if aggrieved by the orders of the Appellate Tribunal, can have resort only to the provisions of Section 66. So far as the questions of fact are concerned the decision of the Tribunal is final and reference can be sought to the High Court only on questions of law. The High Court exercises purely advisory jurisdiction and has no appellate or revisional powers. The advisory jurisdiction can be exercised on a proper reference being made and that cannot be done unless the Tribunal itself has passed proper order under Section 33(4). It follows from all this that the Appellate Tribunal is bound to give a proper decision on questions of fact as well as law which can only be done if the appeal is disposed of on the merits and not dismissed owing to the absence of the appellant. It was laid down as far back as the year 1953 by S.R. Das, J. (as he then was) in *CIT,* v. *Mtt. Ar. S. Ar. Arunachalam Chettiar* that the jurisdiction of the Tribunal and of the High Court is conditional on there being an order by the Appellate Tribunal which may be said to be one under Section 33(4) and a question of law arising out of such an order. The Special Bench, in the present case, while examining this aspect quite appositely referred to the observations of Venkatarama Aiyar, J. in *CIT* v. *Scindia Steam Navigation Co. Ltd.* indicating the necessity of the disposal of the appeal on the merits by the Appellate Tribunal. This is how the learned judge had put the matter in the form of interrogation :

"How can it be said that the Tribunal should seek for advice on a question which it was not called upon to consider and in respect of which it had no opportunity of deciding whether the decision of the Court should be sought."

Thus looking at the substantive provisions of the Act there is no escape from the conclusion that under Section 33(4) the Appellate Tribunal has to dispose of the appeal on the merits and cannot short-circuit the same by dismissing it for default of appearance."

13. Applying the principles laid down in the aforesaid case to the facts of the present case, as the two provisions are similar, we are of the considered opinion that the Tribunal could not have dismissed the appeal filed by the appellant for want of prosecution and it ought to have decided the appeal on merits even if the appellant or its counsel was not present when the appeal was taken up for hearing. The High Court also erred in law in upholding the order of the Tribunal.

14. We, therefore, set aside the order, dated 18-1-2014 passed by the High Court of Judicature of Bombay, Bench at Aurangabad and also the order, dated 22-8-2012 passed by the Tribunal and direct the Tribunal to decide the appeal on merits.

15. Accordingly, the appeal is allowed with a cost of Rs. 25,000/- to be payable by the Respondent.

(emphasis supplied)

7. Following the law laid down by Supreme Court, we have heard learned special counsel for the Revenue and perused the appeals and proceed to decide the matter.

Submissions in the appeals

8. The following submissions were made in the appeals asserting that the impugned order is not correct and praying that it may be set aside:

i) The re-determination of value, confirmation of differential duty, confiscation of the goods and imposition of penalties is erroneous.

ii) Statements of persons who had not appeared for cross examination were wrongly relied upon.

iii) Not allowing cross-examination of the concerned persons is a breach of natural justice.

iv) Third party documents retrieved from the computers seized from their office, etc. are irrelevant.

v) The burden of proving undervaluation is on the department.

vi) Addition of notional freight is patently illegal.

vii) Demand of duty is time-barred as they have not suppressed any fact or restored to any wilful misstatement.

viii) Confiscation of the goods is illegal.

ix) Interest is not payable since the differential duty itself is not payable by the importer.

x) Since the goods were not liable to confiscation, no penalties are imposable on the importer or others.

xi) Simultaneous imposition of penalty under sections 112 and 114A of the Act is illegal.

Submissions of the Revenue

9. Learned special counsel for the Revenue made the following submissions:

i) The importer herein and five related firms viz., (i) Rochees Watches Pvt. Ltd, (ii) Rajasthan Watch Manufacturers; (iii) M/s Rochees Time Pvt. Ltd., (iv) M/s Jaipur Time Industries and (v) M/s. HMD Exim Pvt. Ltd. were engaged in manufacture of wrist watches and wall clocks for which purpose, various parts like watch cases, watch movements, watch, dials, hands, leather straps, metal bands and winding knobs, etc. were imported from Hong Kong. Intelligence was gathered by DRI that all the above firms were controlled by Shri Ishwar Das Moolrajani, and were evading customs by mis-declaring the value and description of the goods imported. The officers searched the premises of the importer and its partners and directors on 23 June 2006 and seized relevant

records. After conducting a detailed investigation in the matter, DRI issued SCN dated 19.6.2007 to the importer and others.

ii) The proposals in the SCN were decided by the Commissioner in the impugned order rejecting the transaction value of the imported goods under Rule 10A of the Customs Valuation (Determination of Prices of Imported Goods) Rules, 1988[11], re-determining the value, confirming demand of differential duty, confiscating the imported goods, and imposing penalties.

iii) As per section 14 of the Act and Rule 3 of the Valuation Rules, the transaction value shall be the value for the purpose of determining the duty where the seller and buyer have no interest in the business of each other and price is the sole consideration for sale. Valuation Rule 10A empowers the proper officer to reject the transaction value and if he does so, the value should be determined sequentially under Valuation Rules 5 to 8.

iv) In this case, of the 354 consignments of watch parts, 241 consignments were imported through M/s. Legend Watch Manufacturers Ltd. Hong Kong and 27 consignments were imported through Compu X press, Hong Kong which were set up by the Moolrajani family in Hong Kong. The Directors of Legend Watch were Shri Narain Das Moolrajani, his son Naresh Moolrajani, brother and nephew of Ishwar Das Moolrajani and Nanak Das Moolrajani who were also the Directors of the importer herein. Shri Naresh Moolrajani was the director of both the importer and Legend Manufacturers Ltd. The exports by the Hong Kong firms including issuing invoices, choosing mode of transport were controlled by Shri Moolrajani. This was evident from the statements recorded as well as the documents recovered during the investigation.

v) The relationship between the importer and the exporter firms were never declared before the Customs at the time of import to avoid investigation by the Special Valuation Branch[12] as is the standard practice where imports are made from related firms.

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11. Valuation Rules
12. SVB

vi) The third firm of Hong Kong from which imports were made was M/s. Royal Exports which was a dummy firm set up by Shri Moolrajani only to issue invoices as per the prices dictated by him. Royal Exports had no manufacturing facilities and it only issued invoices. Even the telephone numbers and fax numbers were the same as of Legend Watch Manufacturers set up by Moolrajani family.

vii) For the above reasons, the values of the imported goods were correctly rejected and the values were re-determined.

viii) Further, in Invoice 601074 dated 16.2.2006 of Richmond (HK) Ltd. issued to Royal Exports, the value of imported plastic case with band was HK$ 8.8 per piece (equal to Rs. 51.04) and Royal Exports, in turn, issued an invoice to the importer for only USD 0.06 (equal to Rs. 2.69 per piece) which shows undervaluation by 95%.

ix) Further, in some imports by other related firms viz., HMD Exim Pvt. Ltd., Rochi Ram & Sons, etc. more than one invoice of the same number were found and the lower values were declared before the Customs.

x) Shri Ishwar Das Moolrajani paid the actual price to the Hong Kong suppliers in cash through Shri R K Mansukhani and others during his visits to Hong Kong. Shri Moolrajani had, with him even signed and unsigned copies of invoices in the name of Legend Watch, HK and even letters addressed by this firm to the bank in India for remission of payments. He also had various letterheads of the exporting companies.

xi) The appellants cannot disown the invoices issued by the HK suppliers calling them third parties because these were the companies which sold them the goods.

xii) With reference to **Leather straps** the duplicate invoice no. LW/8843/05 dated 30.9.2005, submitted by the appellant, the value declared was USD 420 for 7000 leather straps whereas the original invoice was found to be for HK$ 6749.5 (equal to USD 868.67).

xiii) As per invoice no. LW 9090/06 received under email dated 23.1.06, M/s. Legend Watch, HK despatched 583 cartons of various parts for USD 32268.77 (C&F) but the value was mis-declared before customs as USD 27,695.77 (C&F) before customs producing a duplicate invoice showing the same number and date.

xiv) As per invoice no. LW 9065/06 received under email dated 16.1.06, M/s. Legend Watch, HK despatched various parts to the appellant for USD 17,225 (CIF) but the value was mis-declared before customs as USD 16964.93 (CIF) before customs producing a duplicate invoice showing the same number and date.

xv) An email dated 7.6.06 was sent by M/s. Henkei Watch Electro Plating Co. Ltd. HK to Shri R K Mansukhani along with four invoices for which payment of HK$ 21,255 was pending. Similar emails were received from other sellers in Hong Kong.

xvi) In view of the above the impugned order is correct and proper and calls for no interference.

xvii) The impugned order may be upheld and all three appeals may be dismissed.

Findings

10. We have considered the submissions in the appeals and the submissions by the learned Special Counsel for the Revenue and perused the records.

11. The first issue to be decided is valuation. The undisputed legal position is that as per section 14 of the Act, the transaction value shall be the value for the purpose of determining the duty if the buyer and seller are not related and price is the sole consideration for sale. Similarly, Valuation Rule 3 stipulates that the transaction value shall be the value but it is subject to Rules 9 and 10A.

12. The two stipulations to accept transaction value as the value are (i) the buyer and seller are not related; and (ii) price is the sole consideration for sale. Cases in which these two conditions are not met are dealt with differently in the valuation Rules. If price is not the sole consideration for sale, evidently, the additional consideration for sale or if some other elements such as cost of transport and transit insurance were not included in the transaction value, Rule 9 provides for addition of such amounts to the transaction value to arrive at the value for determining the duty. In other words, the transaction value is to be accepted after some adjustments.

13. On the other hand, if the buyer and seller are related or if there are other reasons to doubt the truth and accuracy of the transaction value, Rule 10A provides for rejection of the transaction value by the proper officer instead of making some adjustments to the transaction value as in Rule 9. If the proper officer rejects the transaction value under Rule 10A, the value should be determined sequentially through Rules 5 to 8.

14. The relevant Rules are reproduced below:

> **Rule 5 Transaction value of identical goods. —**(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.
>
> (b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.
>
> (c) Where no sale referred to in clause (b) of sub-rule (1) of this rule, is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.
>
> (2) Where the costs and charges referred to in sub-rule (2) of Rule 9 of these rules are included in the transaction value of identical goods, an adjustment

shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found; the lowest such value shall be used to determine the value of imported goods.

Rule 6 Transaction value of similar goods. —(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.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of Rule 5 of these rules shall, mutatis mutandis, also apply in respect of similar goods.

Rule 7 Deductive value.—(1) Subject to the provisions of Rule 3 of these rules, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : —

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1) of this rule, be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1) of this rule.

7A. Computed value. — Subject to the provisions of Rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) An amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 9 of these rules.

Rule 8 Residual method. —(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 this rule on the basis of —

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

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iiia) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 7A;

(iv) the price of the goods for the export to a country other than India;

(v) minimum customs values; or

(vi) arbitrary or fictitious values.

Rule 9 Cost and services. — (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.

(2) For the purposes of sub-section (1) and sub-section (1A) of Section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include -

(a) the cost of transport of the imported goods to the place of importation;

(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and

(c) the cost of insurance :

Provided that —

(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;

(ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);

(iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods;

Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods :

Provided also that where the free on board value of the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii) above.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

…….

Rule 10A. 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 value of such imported goods cannot be determined under the provisions of sub-rule (1) of Rule 4.

(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).

15. In the impugned order, the transaction values were rejected under Valuation Rule 10A and the values were re-determined. The relevant part of the impugned order is reproduced below:

"ORDER

1. I reject under Rule 10A of the Customs Valuation (Determination of prices of the imported goods) Rules, 1988, the assessable value declared in the Bill of Entry and the Import Declaration and I re-determine under Rules 4,5,6,7,7A & 8 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988, the correct value as detailed below in respect of consignments detailed in Annexure A-I,II,III& IV:-

S. No.	Name of the Port	Declared assessable value	Re-determined value

i	Ports at Jaipur	5,14,02,260/-	12,91,48,111/-
ii	ACC, Sahar Airport, Mumbai	40,36,050/-	1,41,60,593/-
iii	JNPT, Nhava Sheva	1,94,81,603/-	6,38,91,134/-
iv	New Custom House, Mumbai	60,410/-	2,76,687/-
	Total	**7,49,80,323/-**	**20,74,76,525/-**

….."

16. As per the Valuation Rules, the value should be determined as per the transaction value (Rule 3) with adjustments as per Rule 9 if necessary or it should be determined sequentially under Rules 5 to 8. There is no provision for determining the value under several Rules (4,5,6,7,7A &8). Annexures I,II,III and IV to the SCN are at pages 139 to 183 of the appeal by the importer (C/231/2011). These also do not indicate as to which Rule was adopted to re-determine the value for which good. The columns of the tables in these two Annexures are listed below:

1. S. No.
2. Name of the supplier
3. Bill of Entry No./ Parcel No.
4. B/E date/ Date
5. Invoice No.
6. Inv. Date
7. Description of goods
8. Origin of goods
9. Unit of quantity
10. Quantity
11. Decl/ass Rate per unit in US$
12. Relevant exchange rate for US$

13. Declared rate per unit in INR
14. Re-determined per unit value (C&F)
15. Unit of Currency
16. Relevant rate of exchange
17. Re-determined per unit value in INR
18. Differential value per unit in INR
19. Total differential value in INR
20. Total differential ass. Value (D.Value+1% landing charges)
21. Applicable Rate of Duty
22. Basic Customs Duty
23. Countervailing duty (CVD)
24. Cess on CVD
25. Edu. Cess
26. SAD
27. Addl. Duty
28. Total
29. Ass. Value per B/E

17. In the four annexures to the SCN, Bill of Entry wise/parcel wise details of the goods are given in different rows. However, nothing in the Annexures or in the operative part of the impugned order indicates as to which Valuation Rule was adopted to re-determine the value of which good under which Bill of Entry and why. Thus, the basis on which the values were re-determined are neither in the operative part of the impugned order nor in the Annexures to the SCN referred to in it.

18. The first part of the question to be answered is whether the Commissioner has correctly rejected the transaction values under Rule 10A. The second part is whether he has correctly re-determined it as per the Rules. The reasons for rejecting the transaction values given in the impugned order and summarized in the submissions of the learned special counsel as follows:

(i) The importer and five other importer firms were all related and owned by the same set of people with Shri Ishwar Das Molrajani being the main person. The goods were imported from Legend Manufacturers Ltd. Hong Kong, Compu Xpress, Hong Kong and Royal Exports Hong Kong. The Hong Kong based firms were also owned and managed by the same family. Thus, they are related persons.

(ii) The above relationship was never declared before the Customs and it was found during investigation evidenced both by the documents recovered during the investigation as well as the statements.

(iii) Some of the invoices- both signed and unsigned and letterheads of the exporter firms of Hong Kong were recovered from the appellants premises during investigation which further goes to show that the importer and the exporters were related persons.

(iv) The prices in the invoices which were declared were exceptionally low.

(v) The differential amount between the prices declared in the Bills of Entry and corresponding invoices and the actual price was paid in cash to the Hong Kong suppliers.

19. As per Rule 10A, the proper officer can reject the transaction value if he has reasonable doubt about the truth and accuracy of the transaction value. In our considered view the fact that the buyers and sellers are related being owned or controlled by the same set of persons is sufficient to entertain a reasonable doubt about the truth and accuracy of the transaction value. Therefore, the rejection of the transaction value in the impugned order needs to be upheld even if there is not sufficient evidence to prove that any amount was paid in cash to the suppliers.

20. Next is the question of re-determination of the value. The Valuation Rules provide a sequence of methods to be employed for the purpose. It is not open to the officer to use any method. These are:

(i) Rule 4- Transaction value with some additions as per Rule 9.
(ii) Rule 5- Transaction value of identical goods.
(iii) Rule 6- Transaction value of similar goods
(iv) Rule 7- Deductive method- by considering the value of identical or similar goods sold in India and deducting some amounts towards customs duties, costs, commissions, etc.
(v) Rule 7A- Computed Value- based on the cost of production of such goods in India
(vi) Rule 8- Residual method- If the value cannot be determined under any of the above methods, using reasonable means broadly following the above principles. However, in applying this Rule, the sale price of goods manufactured in India cannot be taken into account. Similarly, the prices at which the goods are sold outside India also cannot be considered. Further, the prices at which the goods are sold to some other country also cannot be considered. Lastly, they cannot be based on some arbitrary fictional values.

21. It is a well settled legal principle that the above Rules have to be followed sequentially, i.e., before adopting the method prescribed under one Rule, all the preceding Rules have to be ruled out. Within a Bill of Entry, if there are several goods, one Rule may apply to some goods (say, because there are contemporaneous imports of identical or similar goods) and may not apply to some other goods. Further, the same goods may be valued under one Rule (say, based on value of identical goods) in one Bill of Entry and under some other Rule in another Bill of Entry (say, if there were no contemporaneous imports during the relevant period). Neither the operative part of the order nor the Annexures I,II,III& IV of the SCN which it refers to

give any indication as to which Rule was adopted for which good imported under which Bill of Entry and why.

22. However, in the discussion part of the impugned order in paragraphs 188.1 to 188.19, the methods of valuation adopted have been given for different categories of goods but without referring to the Bill of Entry. We proceed to examine these.

23. **Leather straps (7,000 pieces) imported under Invoice LW//8843/05 dated 30.9.2005 :** In paragraph 188.1, the consignment imported through Foreign Post Office, Jaipur declaring US$ 420@ US $0.06 per piece (equal to HK$ 0.46) as the value was rejected for the reason that another invoice bearing the same number and date was recovered during investigation showing much higher, actual value. Accordingly, the value was re-determined under Rule 4(transaction value) by adopting the actual transaction value of Rs. HK$ 0.96 per piece. The differential duty of Rs. 6,806/- was confirmed. We find no reason to interfere with this part of the demand because the re-determined value was based on the actual transaction value discovered during investigation in the form of an invoice with the same number and date.

24. **Leather straps of Chinese origin imported from Legend watch and Royal Exports, Hong Kong:** In paragraph 188.1.2 of the order, the declared prices in the invoice were rejected and the prices were re-determined under Rule 8 on the ground that Rules 4,5,6, 7 and 7A could not be applied. We find this assertion strange considering that in the previous paragraph, transaction prices of leather straps (which though may not be identical) were determined under Rule 4. To say that there were no transaction values of identical goods or similar goods and no sales of such

goods in India, etc. is simply not correct. How is it possible that no leather watch straps were either imported or sold in India during the relevant period? The re-determination of value of these straps under Rule 8 cannot therefore, be sustained and is set aside.

25. **Plastic cases with straps:** In paragraph 188.2 the declared values of these were rejected and the values were re-determined on the basis of the actual invoice retrieved from the computer of the importer as the correct transaction value. Since this value was on FOB basis, adjustments were made as per Rule 4 to determine the value on CIF basis and differential duty of Rs. 10,739/- was confirmed on the importer. We find no reason to interfere with this part of the demand as the value was determined as per the transaction value.

26. **Plastic cases with straps:** In paragraph 188.2.1, the declared values were rejected and the value was re-determined under Rule 8 on the ground that it was not possible to determine the value as per Rule 5 (transaction value of identical goods), Rule 6 (transaction value of similar goods), Rule 7 (Deductive method) or Rule 7A (computed value). This finding that there were no imports of identical or similar goods is clearly NOT correct because the very previous paragraph of the same order shows that there were imports of plastic cases with straps. Therefore, prices of contemporaneous imports must be available. Further, if such cases are imported, they would have been sold in India and therefore, deductive method under Rule 7 should also be feasible. Therefore, re-determination of the value of these goods under Rule 8 deserves to be set aside along with consequential demand of duty.

27. **Watch dials of Chinese origin:** In paragraph 188.3 of the impugned order, the values of watch dials were re-determined under Valuation Rule 8 as it was found not possible to determine the values under Rule 5 (transaction values of identical goods),Rule 6 (transaction values of similar goods) or Rule 7 (sale price of such goods in India). We find the assertion in the impugned order that no identical or even similar Watch dials were imported or sold in India during the relevant period unbelievable. Watch dials are not some hi-tech or rare or unusual goods. How is it likely that in a country of almost a billion people (even during the relevant time), watch dials were not imported, or sold during the relevant period? Having asserted so, the Commissioner has, in the impugned order determined the value based on (i) Bill of Entry no. 857611 dated 15.1.2005 filed by M/s. P A Time Industries indicating a price of HK$ 1.25 per piece (CIF), (ii) a letter dated 12.6.2006 of the All India Electronic Watch & Clock Manufacturers Association indicating the price of watch dials as HK 1 per piece FOB; (iii) the cost sheet submitted by the All India Electronic Watch & Clock Manufacturers Association that the minimum cost of one wrist watch dial worked out to Rs. 6/- per piece equivalent to HK$ 1.02 (FOB); and (iv) purchase invoices of M/s. Rochees Time Pvt. Ltd. and other firms and sale invoices of M/s. Jaipur Time Industries and others indicating ex-factory prices of watch dials between Rs. 7/- and Rs. 15/- per piece (HK$1.19 to HK$ 2.56) during 2004-05; (v) the average undervaluation in import of watch parts worked out as 60%. Of these, the lowest value HK1(FOB) was considered and loading the cost of freight at 20% re-determined the cost as HK$1.20 per piece. This calculation was, as per the impugned order as per the method adopted in the SCN.

28. From the pieces of evidence relied upon in the above calculation, it is evident that there were imports and sales of watch dials during the relevant period. Therefore, the finding in the impugned order that there were no imports, or sales of watch dials during the relevant period is NOT correct. Therefore, the re-determination of the value adopting Rule 8 cannot be sustained. The Commissioner should have adopted the values of contemporaneous imports of identical goods (Rule 5) and if they were not imported, contemporaneous imports of similar goods (Rule 6). Further, while Rule 7A provides for calculation of duty on computational basis based on the cost of manufacture of such goods in India, the sale price of domestically manufactured goods in India cannot be reckoned as per Rule 8. The redetermination of value of Watch dials and the consequent demand therefore, cannot be sustained.

29. **Watch cases with straps/ metal bands and other goods:** In paragraph 188.4, the declared values of these were rejected and it is recorded that there were no transaction values of identical goods or similar goods or sale prices or manufacturing costs of such goods and hence Rules 5,6,7&7A would not apply and the value was re-determined following Rule 8 by simply enhancing the value treating the declared values as having been undervalued to the extent of 60% on the ground that average undervaluation was to that extent. In other words, the values were enhanced two and a half times. This, in our considered view is an arbitrary value whose use is explicitly prohibited under Rule 8(2) (iii). The demand of differential duty on these goods needs to be set aside.

30. **Watch cases of Chinese origin:** In paragraph 188.5, the prices declared for watch cases imported by the importer from various Hong Kong

suppliers were rejected and the prices were re-determined under Rule 8 stating that Rules 5,6,7 &7A could not be applied because there were no imports of identical goods or similar goods nor were such goods sold in India or manufactured in India. We do not see how nobody else in the country imported during the period watch cases which are either identical or even similar and further, nobody even sold watch cases in India (to apply deductive method under Rule 7) and nobody manufactured watch cases and so constructive method under Rule 7A could be applied. Watch cases are a good of such common usage that it is impossible that in a country of a billion people nobody imported or sold or manufactured watch cases. The re-determination of the value of watch cases under Rule 8, therefore, cannot be sustained.

31. **Metal straps/bands of Chinese origin.** In paragraph 188.6, the values of metal straps/ bands of US$0.20 at Air Cargo Complex Jaipur and the value of US$ 0.05 to 0.08 in imports made through JNPT, Nhava Sheva were rejected and it is further stated that the complete description, quality and variety were not mentioned in the documents in order to suppress the value. Thereafter, finding that there were no imports of identical goods or similar goods and hence the value could not be determined under Rules 5&6 and such goods were also not sold in India and hence the value could not be determined under Rule 7 and such goods were also not manufactured in India and hence value could not be determined under Rule 7A either, the values were determined under Rule 8. This re-determination is based on (a) average under valuation of 60% said to be found during the investigation; (b) invoices of actual supplier Hang Kei watch, Hong Kong retrieved from the computer of the importer, and (c) sale invoices of such bands in India and

the corresponding ex-factory prices. The so called average undervaluation of 60% is not a method known to law. It is clearly an arbitrary value whose use is explicitly prohibited under Rule 8(2) (vi) of the Valuation Rules. If there were invoices of the actual supplier retrieved from the computer of the importer, there is no reason to presume that those invoices were of identical or similar goods (in which case, Rules 5 or 6 would clearly apply) and if the retrieved invoice was for sale within Hong Kong, such invoices cannot be the basis for determination of value as per Rule 8(2) (iii). As far as the sale invoices of bands in India is concerned, if they were for imported goods, the value could have easily been determined under Rule 7. If they were prices of domestically manufactured goods, then the value of such goods cannot be relied upon to determine value as per Rule 8(2) (i). Viewed from any angle, the re-determination of value of these goods under Rule 8 cannot be upheld and deserves to be set aside.

32. **Winding knobs and hands of Chinese origin.** In paragraph 188.7, declared values of these goods were rejected and the values were re-determined under Rule 8 by simply treating the declared values as having been undervalued 60% based on the average undervaluation noticed during the investigation. This method of determination is completely arbitrary which is explicitly prohibited under Rule 8(2) (vi). Therefore, this re-determination of value also needs to be set aside.

33. **O-rings.** In paragraph 188.8, the declared values were rejected and the values were re-determined under Rule 8 after recording that there were no imports of identical goods, imports of similar goods, sale of such goods or domestic manufacture of such goods and hence the value could not be re-determined under Rules 5,6,7 & 7A of the Rules. The value was re-

determined under Rule 8 relying on (a) an invoice dated 16.1.2006 said to have been issued by the actual supplier M/s. Kelvin Far East Ltd., Hong Kong said to have been retrieved from the computer of the importer; and (b)reckoning average under valuation of 60%. It is not clear if the invoice pertained to supply of goods to India and if so, there was no reason to not follow Rule 5 or 6. If the invoice was from M/s Kelvin, Hong Kong to another buyer in Hong Kong or for supply to some other country, use of such invoices is explicitly prohibited under Rule 8(2) (iii) and (iv). Increasing the value based on an average under valuation of 60% is arbitrary and use of such arbitrary values is prohibited under Rule 8(2) (vi). The re-determination of values therefore, cannot be sustained and needs to be set aside.

34. Values of UV Glue-3013B (in paragraph 188.9 of the impugned order), PVA Abrasive wheels (in paragraph 188.10 of the impugned order), watch dials, hands and crowns (in paragraph 188.11 of the impugned order), watch movements (in paragraph 188.12 of the impugned order), Quartz movements (in paragraph 188.13 of the impugned order), were, likewise, determined under Rule 8 based on arbitrary loading of values. These also need to be set aside.

35. In paragraph 188.14, the values of 12 types of mini SD, MMC DV RSMMC, SD Card, RS MMC etc. which were imported without declaring in the invoices or other documents were determined. For this purpose, the values of contemporaneous imports of goods were relied upon to determine the values as per Rule 5. Details of the contemporaneous imports and the Bills of entry are given in the impugned order. The total duty payable on these goods which were imported but which were not declared worked out to Rs.

5,52,242/- We find no infirmity in the confirmation of this part of the demand and accordingly uphold it.

36. In paragraph 188.15, the values of 850 pieces of HYN 512 MB PC 400 8C Cards which were imported without declaring was determined was determined under Rule 8 and demand of duty of Rs. 2,21,125/- was confirmed. We find no infirmity in the confirmation of this part of the demand and accordingly uphold it.

37. Values of Watch movements of Chinese origin (paragraph 188.16), watch cases with accessories (paragraph 188.17) plastic straps, plastic straps PU, Nylon straps and Velcro straps and various miscellaneous items (paragraph 188.19) were all re-determined under Rule 8 by arbitrary loading of value considering that there was an average undervaluation of 60%. Use of such arbitrary values is explicitly prohibited under Rule 8(2) (vi) and hence the re-determination of values to this extent and the consequential confirmation of demands cannot be sustained.

38. To sum up, the following parts of the demand of duty in the impugned order is upheld and the rest of the demand is set aside.

Paragraph	Amount (Rs.)
188.1	6,806/-
188.2	10,739/-
188.14	5,52,242/-
188.15	2,21,125/-
Total	**7,90,912/-**

39. Since we have found in favour of the importer and against the Revenue in respect of re-determination of value and consequential demands, we do not find sufficient grounds to uphold the confiscation of the seized goods under section 111 or the consequential redemption fines under section 125 and penalties under Section 112. Penalty was imposed on the importer

under section 112 (a) & (b) and 114A. The Act does not provide for a penalty being imposed under several sections combined. Therefore, it deserves to be set aside.

40. In view of the above, we partly allow **Customs Appeal No. 231/2011** filed by M/s. Rochi Ram & Sons and uphold the demand of **Rs.7,90,912/-** under the proviso to section 28(1) with interest and set aside the rest of the impugned order insofar as it applies to this appellant.

41. We allow **Customs Appeal No. 233/2011** filed by Shri Nanak Das Moolrajani and set aside the penalties imposed on him in the impugned order.

42. We allow **Customs Appeal No. 234/2011** filed by Shri Neeraj Moolrajani and set aside the penalties imposed on him in the impugned order.

43. We allow **Customs Appeal No. 235/2011** filed by Shri Om Prakash Pareek and set aside the penalties imposed on him in the impugned order.

44. We allow **Customs Appeal No. 236/2011** filed by Shri Ishwar Das Moolrajani and set aside the penalties imposed on him in the impugned order.

45. All appellants will be entitled to consequential reliefs, if any.

(Order pronounced in open court on 23/06/2026.)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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

PK