IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Customs Appeal No. 40089 of 2014

(Arising out of Order in Original No. 22244/2013 dated 24.10.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

Shri Mahesh Varman **Appellant**
Partner, M/s. Swamy Agencies
No. 13, Bazaar Street
Royapuram, Chennai – 600 013.

Vs.

Commissioner of Customs **Respondent**
Chennai II Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001.

With

(i) Customs Appeal No. 40161/2014 (J.R. Smelters Pvt. Ltd.)
(ii) Customs Appeal No. 40162/2014 (S. Vijaya Shankar)
(iii) Customs Appeal No. 40163/2014 (Pramod Singh, Director)
(iv) Customs Appeal No. 40543/2014 (Santon Shipping Services)
(v) Customs Appeal No. 40544/2014 (Bose J Fernando, Partner, Santon Shipping Services)

(All appeals arising out of Order in Original No. 22244/2013 dated 24.10.2013 passed by the Commissioner of Customs (Seaport – Import), Chennai)

APPEARANCE:

Shri A.K. Jayaraj, Advocate for Shri Mahesh Varman
Shri E. Ramesh, Advocate for Sl. Nos. (i) to (iii)
Shri R. Sethu Prabhakaran, Advocate for Sl. Nos. (iv) and (v)
Smt. Anandalakshmi Ganeshram, Auth. Representative for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

FINAL ORDER NOS. 41042-41047/2026

Date of Hearing: 25.03.2026
Date of Decision: 23.09.2026

Per M. Ajit Kumar,

These appeals are filed by the appellants against common Order in Original No. 22244/2013 dated 24.10.2013. They were heard together and the appeals are disposed by this common order.

Facts in Brief

2. Briefly stated, M/s. J.R. Smelters Pvt. Ltd. (**JRS**), imported goods under Bills of Entry Nos. 616429 dated 02.09.2010 and 626444 and 626445 dated 14.09.2010 through M/s. Santon Shipping Services, Chennai, Custom House Agents (**CHA**), declaring the goods as 'Scrap Metal/Heavy Melting Scrap' under CTH 7204 4900. Acting on intelligence that used railway rails were being imported as heavy melting scrap to evade higher duty, officers of DRI took up investigation and the impugned consignments were examined. They were found to contain used rails, metal railway sleepers, bars, PR clips and re-rollable scrap, besides excess quantity in two consignments. The first consignment of 20 containers was seized under mahazar dated 17.09.2010, the goods being valued at about Rs. 1 crore and allegedly found materially different from the declared description. Investigation revealed that the clearances were handled by Shri Mahesh Varman, Partner, M/s. Swamy Agencies, who were allegedly handling the goods on behalf of the CHA as a proxy, and that Shri N. Dhanraj and Shri M. Mahesh Varman were allegedly the principal persons facilitating the import clearances of the said importer. It was also noticed that though examination was ordered at Sanco CFS, Chennai, the examination report was entered in the Customs system by an officer posted at Gateway Distriparks Ltd. CFS, while the goods were lying at Sanco CFS. On reference, National Metallurgical Laboratory, Chennai (**NML**), opined that the goods were not fit for re-use and were suitable only for melting/re-rolling. Based on investigation, Show Cause Notice (**SCN**), dated 25.02.2011 was issued alleging misdeclaration of description, quantity and value and violation

of the Customs Act, 1962 (**CA 1962**). After due process, the Commissioner adjudicated the matter as follows:

> "i. I hold that the goods imported under Bill of Entry No.616429 dated 02.09.2010 are 501 MTs of "Used rails/Used metal railway sleepers" and not "Scrap Metal (HMS1&2)" as declared by the importers.
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> ii. I hold that the goods imported under Bill of Entry No.626444 dated 14.09.2010 are 42.65MTs of "Re-rollable Scrap", 9.83MTs of "G.I. Angles" and 169.49MTs of "Melting Scrap" and not 202.015 MTs of "HMS (1&2) Scrap Metal as declared by the importers.
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> iii. I hold that the goods imported under Bill of Entry No.626445 dated 14.09.2010 are 54.05MTs of "Re-rollable Scrap" and 171.59MTs of "Melting Scrap" and not 199.760 MTs of "HMS (1&2) Scrap Metal as declared by the importers.
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> iv. I hold that the goods imported under 17 Bills of Entry as listed in the Annexure VI to the subject Show Cause Notice are 2334.31 Mts consisting of 836.65 MTs of "used rails", 202.81 MTs of "used bails", 53.280 MTs of "Light Melting Scrap" and 1240.580 MTs of "Heavy Melting Scrap and not 2054.31 MTs of "Scrap Metal HMS 1&2 Loose", "HMS 1&2 un-shredded Scrap", "Heavy Melting Scrap", "Scrap Metal (H.M.S) 1&2", "Heavy Melting Scrap-1", "Heavy Melting Scrap-1", "Shredded Scrap (HM51 &2)" as declared by the importers.
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> v. I hold that the goods "Used rails"/"used metal railway sleepers"/"used bails" and "G.I. Angles" imported under 20 Bills of Entry and referred to at Clause (i) to (iv) above are classifiable under Customs Tariff Heading 7302 and 7301 respectively.
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> vi. I deny the benefit of Notification No.21/2002 (Sl. No.200) for the goods "Used rails"/"used metal railway sleepers"/"used bails" and "G.I. Angles" as referred to at Clause (v) above.
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> vii. I reject the declared value of USD 85170 for the goods imported vide Bill of Entry No.616429 dated 02.09.2010 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same as USD 2,00,125 CIF under Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14(1) of the Customs Act, 1962.
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> viii. I reject the total declared value of USD 34,342.55 CF and USD 33,959.20 CF for the goods imported under Bills of Entry No. 626444 and 626445 both dated 14/9/2010

respectively under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules and re-determine the same as USD 86,886.14 CIF and USD 77,795.58 CIF under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14(1) of the Customs Act, 1962.

ix. I reject the total declared/assessed value in respect of the goods imported under 17 Bills of Entry under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same under Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14(1) of the Customs Act, 1962.

x. I confirm the demand of differential duty amounting to Rs.54,14,265/-[(Rupees fifty four lakhs, fourteen thousand two hundred and sixty five only) (Rs.19,74,114/- + Rs.4,52,306, + Rs,3,27,122/-+ Rs.26,57,368/-)] in respect of 20 Bills of Entry viz., Bill of Entry No. 616429 dated 02.09.2010, 626444 dated 14.09.2010 and 626445 dated14.09.2010 and 17 Bills of Entry under Section 28(2) of the Customs Act, 1962 along with applicable interest under Section 28AA/28AB of the Customs Act, 1962;

xi. I confiscate the goods imported vide Bill of Entry No.616429 dated 02.09.2010 and valued at Rs.96,57,908/- (Rupees Ninety Six Lakhs Fifty Seven Thousand Nine Hundred and Eight Only) under Section 111(d) and 111(m) of the Customs Act, 1962. However, I allow the importers, M/s. J.R. Smelters Private Limited, Chennai -103 to redeemed the said goods on payment of redemption fine of Rs.10,00,000/- (Rupees Ten lakhs only) under Section 125(1) of the Customs Act, 1962 and on payment of differential duty as determined above

xii. I confiscate the goods imported vide Bills of Entry No.626444 & 626445 Both dated 14.09.2010 valued at Rs.38,00,003/- (Rupees Thirty Eight Lakhs and Three Only) and Rs.33,74,934/- (Rupees Thirty Three Lakhs Seventy Four Thousand Nine Hundred and Thirty Four Only) respectively under Section 111(1) and 111(m) of the Customs Act. 1962. However, I allow the importers, M/s. J.R.Smeltters Private Limited, Chennai -103 to redeemed the said goods on payment of Redemption Fine of Rs.7,00,000/- (Rupees Seven lakhs only) under Section 125(1) of the Customs Act, 1962 and on payment of differential duty as determined above.

xiii. I hold that the 2334.31 MTs of goods covered by the 17 Bills of Entry (past clearances-Annexure VI of the subject SCN) totally valued at Rs.23,32,54,425/-(Rupees Three Crores Thirty Two Lakhs Fifty Four Thousand Four Hundred and Twenty Five Only) are liable to confiscation under Section 111(1) and (m) of Customs Act, 1962 and also I hold that the 1040.45 MTs out of 2334.31 MTs of the goods valued at Rs.1,46,12,369/- imported under 17 Bills of Entry are liable to confiscation under Section 111(d) ibid. However, as the goods are not physically available and stands cleared from Customs, I am not imposing any redemption fine on the said goods.

xiv. I impose a penalty of Rs.54,14,265/- along with interest amount payable as per Clause (x) supra (Rupees Fifty Four lakhs Fourteen thousand Two hundred and Sixty Five, along with interest payable as per Clause (x) supra) on M/s. J.R. Smelters Private Limited under Section 114A of the Customs Act, 1962.

xv. I impose a penalty of Rs.5,00,000/- (Rupees Five lakhs only) on M/s. J.R. Smelters Private Limited under Section 114AA of the Customs Act, 1962.

xvi. I order for appropriation of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only) paid during the investigation by the importer towards duty and adjudication liabilities.

xvii. I order for enforcement and appropriation of Bank Guarantee of Rs.33,80,000/-(Rupees Thirty Three Lakhs and Eighty Thousands only) executed by the importer towards adjudication liabilities.

xviii. I impose a Penalty of Rs.5,00,000/-(Rupees Five lakhs only) on Shri. Pramod Singh, Director of M/s. J.R. Smelters Private Limited under Section 112(a) of the Customs Act, 1962.

xix. I impose a Penalty of Rs.3,00,000/- (Rupees Three lakhs only) on M/s. Santon Shipping Services under Section 112(a) of the Customs Act, 1962.

xx. I impose a Penalty of Rs.2,00,000/- (Rupees Two lakhs only) on Shri. Bose J. Fernando, Director of M/s. Santon Shipping Services under Section 112(a) of the Customs Act, 1962.

xxi. I impose a Penalty of Rs.2,00,000/- (Rupees Two lakhs only) on Shri. N. Dhanaraj under Section 112(a) of the Customs Act, 1962.

xxii. I impose a Penalty of Rs.2,00,000/- (Rupees Two lakhs only) on Shri. Mahesh Varman under Section 112(a) of the Customs Act, 1962.

xxiii. I impose a Penalty of Rs.2,00,000/- (Rupees Two lakhs only) on Shri. S. Vijaya Sankar under Section 112(a) of the Customs Act, 1962.”

3. The ld. Counsel's Shri A.K. Jayaraj appeared for Shri Mahesh Varman, Shri E. Ramesh appeared for appellants at Sl. No. (i) to (iii) and Shri R. Sethu Prabakaran for appellants at Sl. No (iv) and (v). Smt. Anandalakshmi Ganeshram, ld. Authorized Representative appeared for the respondent.

Submissions made by the Appellants Counsels

3.1 **Shri E. Ramesh** the ld. Counsel appearing for M/s. JRS and its personnel, Shri Pramod Singh, Director and Shri S. Vijaya Shankar, Accountant, submitted that:

A. Out of the total duty demand of Rs. 54,14,262/-, liability of Rs. 7,82,782/- is admitted in respect of Bills of Entry Nos. 626444 and 626445 dated 14.09.2010 and No. 616429 dated 02.09.2010, pertaining to "Re-rollable Scrap", "G.L. Angles" & "Melting Scrap" arising from change in classification of goods declared as 'HMS (1&2) Scrap Metal'. The Appellant has also agreed to pay Rs. 6,08,797/- in respect of 17 past bills of entry on account of alleged excess quantity of imports. The admitted liability is stated to be Rs. 18,73,351/- as against the total demand of Rs. 54,14,262/-.

B. The Appellant disputes the classification of the imported "used rails" under CTH 7302 and submits that the goods are properly classifiable under CTH 7204 as Heavy Melting Scrap/re-rollable scrap. The goods are stated to fall within the statutory definition of "waste and scrap" under Chapter Note 8(a), Section XV of the Customs Tariff Act, 1975, as metal goods not usable as such due to breakage, cutting, wear or other reasons.

C. The Appellant relies on test reports relating to Bills of Entry Nos. 626444 and 626445 dated 14.09.2010, which record assorted size, extensive rust, edge damage, cuts and severe surface defects. It is further submitted that the Appellant manufactures angles, flats, squares and TMT bars from ingots and iron and steel scrap. Therefore, the goods were intended for melting/re-rolling and not for use as rails.

D. The Appellant relies on **Hinduja Foundries Ltd. v. Commissioner of Customs (Import), Chennai,** 2013 (288) E.L.T. 571 (Tri.-Chennai), where used rails meant for melting were held classifiable under CTH 7204. Reliance is also placed on **Indo Deutsche Trade Links v. Commissioner of Customs (Import), Chennai**, 2014 (303) E.L.T. 442 (Tri.-Chennai). Though the latter decision was overruled by the Supreme Court, the Appellant submits that it is distinguishable because the importer there admitted the goods to be used rails and the merits were not examined in detail.

E. Without prejudice, the Appellant submits that the goods would qualify as re-rollable scrap under CTH 7204, consistent with customs practice and BIS Standard 2549:1994, which includes rails and railway materials suitable for re-rolling. The Appellant contends that, where a statutory definition and trade practice exist, HSN Explanatory Notes cannot override them. Reliance is placed on **O.K. Play (India) Ltd. Vs Commissioner of Central Excise** [2005 (180) E.L.T. 300 (S.C.)], which holds that classification must consider functional utility, design, shape and predominant use.

F. The Appellant submits that duty liability would stand reduced depending on whether the Tribunal holds the goods classifiable under CTH 7204 as Heavy Melting Scrap or re-rollable scrap, instead of CTH 7302.

G. The Appellant further submits that Rs. 1.08 crore had already been paid or secured during investigation, comprising Rs. 75,00,000/- through pay orders and a bank guarantee of Rs. 33,80,000/-. Even on the original demand of Rs. 54,14,265/-, the duty, interest and penalty together worked out to Rs. 70,38,354/-. Therefore, the Appellant contends that the entire liability stood discharged during investigation and that relief under Section 28(5) of the Customs Act, 1962 ought to have been granted. The Appellant also claims entitlement to refund of the excess amount depending on the Tribunal's final decision on classification.

3.2 Ld. Counsel **Shri A.K. Jayaraj** submitted on behalf of Shri Mahesh Varman Partner at M/s Swamy Agencies that:

A. The Show Cause Notice is legally defective because it does not specify the essential ingredients of the alleged offence.

B. The impugned order identifies no contemporaneous conduct, deliberate defiance of law, conscious disregard of obligations, or other evidence establishing mens rea on the part of the Appellant.

C. The statements of co-accused or other persons are uncorroborated, and no independent direct or circumstantial evidence connects the Appellant with the alleged offence.

D. The Appellant rebutted the allegations through its reply to the Show Cause Notice, supporting evidence, and submissions at the personal hearing; the contrary finding is factually incorrect.

E. Payment of freight charges beyond the invoice value does not establish the Appellant's involvement in the import activities or any act of omission or commission.

F. The penalty of Rs. 2,00,000/- is therefore unsupported by the evidence and contrary to the principles stated in **Akbar Badruddin** [1990 (47) E.L.T. 161 (S.C.)] that there has to be a clear mental element or mens rea to impose penalty, and **Hindustan Steel Ltd. Vs State of Orissa** [AIR 1970 SC 253], whereby it was necessary to show that the appellant had acted in deliberate defiance of law or in conscious disregard to their obligations, before imposing a penalty.

3.3 Ld. Counsel **Shri R. Sethu Prabakaran**, appearing for M/s. Santon Shipping Services and Shri Bose J. Fernando, Partner of the firm, submitted that:

A. M/s. Santon Shipping Services was a licensed Customs House Agent and had filed Bill of Entry No. 616429 dated 02.09.2010 on behalf of JRS, declaring the goods as Scrap Metal (HMS 1 and 2). On examination, the goods were found to include used rails and railway metal sleepers and were seized. Bills of Entry Nos. 626444 and 626445 dated 14.09.2010 were also taken up for investigation and the goods therein were similarly seized.

B. It was submitted that samples drawn from the consignments were tested by the National Metallurgical Laboratory, which, by report dated 13.10.2010, opined that the goods were not suitable for re-use but were fit for melting/re-rolling, with certain materials being suitable for re-rolling and the remaining material constituting Heavy Melting Scrap.

C. Learned Counsel further submitted that, during investigation, statements were recorded from the importer, the Partner of the appellant firm and Shri N. Dhanraj and Shri M. Mahesh Varman, who were H-card holders of the appellant firm. The Partner stated that he was stationed at Tuticorin and that the Chennai office was managed by other employees, including Shri Dhanraj, and that he was not aware of the matter under investigation.

D. It was submitted that the Show Cause Notice proposed rejection of the declared particulars and enhancement of the value and sought imposition of penalties on the CHA under Sections 112(a) and 114AA of the Customs Act, 1962. The appellants duly replied to the notice and participated in the personal hearing. However, without properly considering their submissions, the learned Commissioner imposed a penalty of Rs.3,00,000/- on M/s. Santon Shipping Services under Section 112(a) and Rs.2,00,000/- on Shri Bose J. Fernando, Partner, under the said provision. Aggrieved thereby, the present appeals have been filed.

Submission made by the Respondent-Revenue

3.4 Ld. Authorized Representative, **Smt. Anandalakshmi Ganeshram** appearing on behalf of Revenue, took us through the impugned order and stressed on the following issues:

A. The goods covered by the three current Bills of Entry and the 17 past Bills of Entry had been correctly found to be misdeclared as HMS 1&2/scrap metal and, on examination and the evidence on record, correctly identified as used rails, metal railway sleepers, rails or beams, re-rollable scrap, G.I. angles, light melting scrap and heavy melting scrap. The used rails, railway sleepers, rails or beams and G.I. angles were rightly classified under CTH 7302 and 7301, respectively. The rejection and re-determination of the declared values under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (**CVR 2007**), read with Section 14 of the Customs Act, 1962, were also proper. Accordingly, the differential duty demand of Rs. 54,14,265/- under Section 28, along with applicable interest, should be upheld and the appeal dismissed.

B. Seized emails, hard-disk data and records allegedly disclosed systematic misdeclaration of description, quantity and value across earlier consignments, including suppression of freight and transit charges and payments outside normal banking channels. These records were corroborated by statements under Section 108 and by liner information. The investigation conclusively established suppression of actual value, freight and transit charges. The assessable value was therefore liable to redetermination on the basis of evidence unearthed by DRI.

C. The statement of Shri Bose J. Fernando established that M/s Santon Shipping Services permitted its H-card holders, including Shri Mahesh Varman and Shri N. Dhanaraj, to undertake Customs work using signed blank forms. Shri Bose attributed the duplicate presentation of Bill of Entry No. 616429 to the said persons and their assistant, Shri Chandrasekar.

D. Shri Mahesh Varman's in his statement accepted that Swamy Agencies used Santon Shipping Services' CHA licence and signed blank forms. After rails were found at SANCO CFS, a second docket for the same Bill of Entry was allegedly presented at Gateway CFS, at the importer's request, to obtain an examination report.

E. Shri N. Dhanaraj likewise admitted that Swamy Agencies operated through Santon Shipping Services' licence and blank documents. He confirmed that, after rails were detected at SANCO CFS, another docket was presented at Gateway CFS as though the containers were located there.

F. The importer wrongly classified used rails and bails as ferrous scrap under CTI 72044900. Such goods are specifically classifiable under Heading 7302, whereas Heading 7204 covers only ferrous waste and scrap.

G. As per Note 8(a) to Section XV and the HSN Explanatory Notes to Heading 7204. These provisions confine "waste and scrap" to metal goods definitely unusable as such and expressly exclude worn railway lines capable of reuse or conversion into other articles.

H. Accordingly, used rails fall under CTI 7302 1090 and used bails under CTI 7302 4040. The nil-BCD exemption under Notification No. 21/2002-Cus. was therefore unavailable for 836.65 MT of used rails and 202.81 MT of used bails cleared under the 17 Bills of Entry. Assessment merits to be done at the applicable rates of BCD, CVD, cess and additional duty, as per the impugned order.

I. Hence there was a deliberate misdeclaration of description, quantity and value in 20 consignments and import of restricted used rails, bails, sleepers and GI angles without a valid licence, which warranted confiscation under Section 111(d), (m) and (l), and penalties on J.R. Smeltters under Sections 114A and 114AA. Personal penalties on Shri R. Pramod Singh and Shri S. Vijaya Sankar under Section 112(a).

J. Santon Shipping Services and Shri Bose J. Fernando knowingly facilitated presentation of a duplicate docket at an unrelated CFS and abetted payment of undeclared freight. Hence penalties were correctly imposed under Section 112(a), while treating licence subletting separately under the CHALR.

K. Shri N. Dhanaraj and Shri Mahesh Varman actively abetted the importer by arranging undeclared freight payments and preparing duplicate dockets to secure clearance of misdeclared goods. Their admitted roles and failure to contest the notice justified penalties under Section 112(a).

She hence prayed that the appeal may be rejected.

4. We have heard the rival parties and perused the connected documents filed by the parties to the appeal, on record. We find that

the appeal raises several distinct questions on classification/ misdeclaration, exemption, valuation, confiscation, demand, and penalties. The same are discussed below.

Issues for Determination

5. The following issues arise for our determination:

A. Classification

(i) Whether the goods covered by Bill of Entry No. 616429 dated 02.09.2010, Bills of Entry Nos. 626444 and 626445, both dated 14.09.2010, and the 17 Bills of Entry relating to past clearances, were mis-declared as 'HMS 1&2/Scrap Metal' and, upon examination, were liable to be treated as 'used rails/used metal railway sleepers/used rails or beams, re-rollable scrap, G.I. angles, light melting scrap and heavy melting scrap', as held in the impugned order or classifiable under CTH 7204 as Heavy Melting Scrap/ re-rollable scrap as stated by the appellant?

(ii) Consequent upon the determination of the nature of the goods, whether the goods described as 'used rails/used metal railway sleepers/used rails or beams and G.I. angles', were correctly classified under Customs Tariff Headings 7302 and 7301 respectively as held in the impugned order, and whether such classification was supported by the tariff entries and the evidence on record?

B. Valuation

(iii) Whether the declared transaction values in respect of the 20 Bills of Entry were liable to be rejected under Rule 12 of the CVR 2007 and, if so, whether the values were correctly re-determined under the applicable rule of the CVR 2007, read with Section 14 of the Customs Act, 1962?

(iv) Whether, in respect of the 17 Bills of Entry relating to past clearances, the rejection of the declared/ assessed values and the consequent re-determination of value were legally sustainable on the basis of the material relied upon by the Revenue?

C. Duty

(v) Whether the benefit of Notification No. 21/2002-Cus., particularly Sl. No. 200 thereof, was available in respect of the goods classified under CTH 7302 and 7301, and whether such benefit was correctly denied by the adjudicating authority?

(vi) Whether the consequent demand of differential customs duty of Rs.54,14,265/- under Section 28 of the Customs Act, 1962, together with applicable interest, is sustainable in law?

E. Confiscation

(vii) Whether the goods covered by the impugned Bills of Entry were liable to confiscation under Sections 111(d), 111(l) and/or 111(m) of the Customs Act, 1962 on account of the alleged misdeclaration of their description, quantity, classification and/or value?

(viii) In respect of the goods covered by the 17 Bills of Entry relating to past clearances, whether the finding of liability to confiscation under Sections 111(l) and 111(m), and, in respect of 1040.45 MTs thereof, under Section 111(d), could legally be sustained notwithstanding that the goods had already been cleared and were not physically available for confiscation?

F. Penalty

(ix) Whether the penalty of Rs.54,14,265/- imposed on M/s. J.R. Smelters Pvt. Ltd. under Section 114A of the Customs Act, 1962 is sustainable?

(x) Whether the penalty of Rs.5,00,000/- imposed on M/s. J.R. Smelters Pvt. Ltd. under Section 114AA of the Customs Act, 1962 is sustainable on the facts and evidence on record?

(xi) Whether the penalties imposed under Section 112(a) of the Customs Act, 1962 upon Shri Pramod Singh, Director of M/s. J.R. Smelters Pvt. Ltd., M/s. Santon Shipping Services, Shri Bose J. Fernando, Shri N. Dhanaraj, Shri Mahesh Varman and Shri S. Vijaya Sankar are sustainable, and whether the individual roles attributed to them satisfy the statutory requirements for imposition of penalty?

Analysis

Classification

6. We find that the Adjudicating Authority has held that the goods covered by Bill of Entry No. 616429 dated 02.09.2010 and Bills of Entry Nos. 626444 and 626445 dated 14.09.2010, declared as 'HMS 1 & 2 Scrap Metal', comprised used rails/railway sleepers, re-rollable scrap, G.I. angles and melting scrap. In respect of 17 earlier Bills of Entry covering 2334.31 MT, the goods were similarly held to comprise 836.65 MT of used rails, 202.81 MT of used bails, 53.280 MT of light melting scrap and 1240.580 MT of heavy melting scrap.

6.1 At the outset, we note that the Appellant has admitted liability in respect of the reclassification of certain goods covered by Bills of Entry Nos. 616429, 626444 and 626445 and has also agreed to discharge the liability relating to the 17 past Bills of Entry on account of the alleged excess quantity. The Appeal Memorandum states as under:

> "10. I submit at the outset the appellant is ready to accept the additional duty liability of Rs.4,55,660 for the B/E 626444 and Rs.3,27,122 for B/E 626445 viz. total Rs.7,82,782 as detailed out in Para 5 above.
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> 11. As far as B/E 616429 /02.09.2010 is concerned importer had declared USD170/MT for HMS. DRI had

> enhanced this value to the standard value usually adopted by the Group viz. USD 280/MT. The difference duty is Rs.4,81,972/- [Detailed working sheet in Annexure A]. Importer is ready to accept this additional duty liability.
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> 12. The appellant is also ready to accept the duty liability of the additional 280 MTS of HMS imported in Past 17 B/E's. This additional duty amount in this regard works out to Rs.6,08,797/- [Detailed working sheet in Annexure B].
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> 13. The total additional liability accepted by the appellant in para 10, 11 and 12 above is Rs.7,82,782 + Rs.4,81,972 + Rs.6,08,797 = Rs.18,73,551/-"

To the extent of the liability so admitted, the issue does not survive for determination and attains finality. The dispute before us is, therefore, principally with regard to the classification of the goods described by the Department as used rails/railway sleepers and used bails, which had been declared as 'HMS 1 & 2 Scrap Metal'.

6.2 The competing entries are Heading 7204, covering ferrous waste and scrap, and Heading 7302, covering railway or tramway track construction material, including rails and sleepers. The Revenue has relied upon Section Note 8(a) to Section XV and the HSN Explanatory Notes to Heading 72.04 to contend that articles which remain usable as such, or which can be adapted for another use by re-rolling, are excluded from the scope of waste and scrap. On this basis, the goods identified as used rails have been classified under Heading 7302.

6.3 We are unable to accept, however, that an article which was originally manufactured as a railway rail must, merely by reason of its identity or residual physical form, invariably be classified under Heading 7302. Equally, the mere description of goods as 'scrap' by the importer cannot determine their classification. The relevant consideration is the condition and character of the goods **as imported** and whether, at that stage, they continued to be usable as railway/track material or had ceased to be so and constituted waste or scrap within the meaning of Section Note 8(a) to Section XV. The extent of wear, cutting, damage, corrosion and other defects, together with the evidence regarding usability, are therefore material.

6.4 The decision of the Hon'ble Supreme Court in **Indo Deutsche Trade Links** (supra), relied upon by the Revenue, has been considered. In that case, the goods declared as heavy melting scrap were found to be used rails and, significantly, the importers themselves admitted the misdeclaration of cut rails as HMS and accepted the corrected value. The decision has, therefore, to be understood in the factual context in which it was rendered and cannot be read as an absolute proposition that every used rail, irrespective of its condition and usability, falls under Heading 7302.

6.5 On the other hand, in **Hinduja Foundries Ltd.**(supra), the Tribunal considered the classification of used rails in the light of the competing entries. It held that the competing Headings were 72.04 (scrap) and 73.02 (rails). That Notes to Heading 73.02 do not specifically classify old and used rails cut into pieces, and the reference to "irrespective of their intended use" concerns uses such as overhead transporters and mobile cranes, not re-rolling or melting. The real issue is whether the goods constitute "melting scrap" or "re-rollable scrap" for Notification No. 21/2002-Cus. Earlier decisions have consistently classified old and used iron and steel articles no longer serviceable for their original purpose under Heading 72.04, and there is no change in the tariff or notification warranting a departure from that settled position. Treating used and cut rails differently from other used articles such as railway axles would be inconsistent, particularly when the DGFT has also classified such goods under Heading 72.04. Between

Headings 72.04 and 73.02, the former is therefore the appropriate classification, especially as the goods were in fact used for melting. Accordingly, there is no basis to deny classification under Heading 72.04 or to hold that the goods are not “Melting scrap of Iron and Steel” covered by Notification No. 21/2002-Cus. (S. No. 200); consequently, the confiscation and penalty are not sustainable.

6.6 For Bill of Entry Nos. 626444 and 626445 dated 14.09.2010, the NML found the material to be assorted in size, extensively rusted, edge-damaged, cut and severely defective, rendering it unfit for re-use and suitable only for melting/re-rolling. This expert opinion directly establishes the lack of usability and remains unrebutted, no contrary technical evidence having been produced by the Revenue to show that the material retained its utility as railway rails.

6.7 In these circumstances, the mere fact that some of the material was identifiable as rails at an earlier stage of its existence cannot, by itself, determine its tariff classification at the time of import. The relevant enquiry is whether the goods, in the condition in which they were imported, continued to be railway rails capable of use as such. The NML opinion, read with the other examination/test reports indicating rust, cut edges and severe surface defects, establishes that the material had ceased to be fit for its original use and was suitable only for melting/re-rolling. Such material answers the description of waste and scrap under Section Note 8(a) to Section XV and is appropriately classifiable under Heading 7204. Hence the goods are classifiable under **CTH 7204 as ferrous waste and scrap**, and not under CTH 7302.

6.8 As regards **railway sleepers**, Heading 7302 specifically includes ‘sleepers (cross-ties)’. Where the imported goods are identifiable and usable as railway sleepers, their classification under Heading 7302 would follow from the specific tariff description. However, where the evidence establishes that the material had become unusable and was imported only as scrap for melting/re-rolling, its classification has to be determined with reference to the statutory provisions governing waste and scrap. The Department cannot, therefore, classify the goods under Heading 7302 merely from their original identity without establishing their condition and usability at the time of import. The burden not having been discharged by Revenue the benefit of classification must go to the Appellant.

6.9 As regards **G.I. Angles**, the same reasoning applies with greater force. An identifiable angle/section is ordinarily covered by Heading 7216 and cannot be brought under Heading 7302 merely because it was found in a consignment declared as HMS. If, on the other hand, the material had become definitely unusable and constituted waste and scrap, Heading 7204 would require consideration. The classification must consequently follow the nature and condition of the goods actually established by the evidence. Again the burden not having been discharged by Revenue the benefit of classification must go to the Appellant.

6.10 The classification of the above goods are hence not dislodged by Revenue and the same as declared by the Appellant is hence sustained.

6.11 In the case of the goods contained in the 17 B/E's cleared earlier, the goods are not available for inspection and hence the classification as declared is to be accepted.

Valuation

7. The next issue concerns rejection of the declared values and their re-determination. The adjudicating authority has rejected the declared

values under Rule 12 of the CVR 2007 and has thereafter determined enhanced values. In the case of Bill of Entry No.616429, the declared value of USD 85,170 has been enhanced to USD 200,125 CIF. In respect of Bills of Entry Nos.626444 and 626445, the declared values have similarly been enhanced. These enhanced values form the basis of the differential duty demand. The Appellant has accepted the enhanced value of Bill of Entry No. 616429 in accordance with the standard value ordinarily adopted by the Group.

7.1 This indicates that, in practice, standard or benchmark values have been adopted by Customs formations for certain categories of imports, including ferrous and non-ferrous scrap. Such "floor prices", "benchmark values", "valuation alerts" or similar reference values may serve as administrative benchmarks to identify or address possible undervaluation during normal assessment proceedings.

7.2 However, notwithstanding their practical use and the fact that acceptance of such values by importers may avoid disputes and consequently leave the practice untested in appeal, such internally adopted values have no independent statutory sanction and cannot, by themselves, constitute the legally prescribed basis for determination of assessable value, if contested. However, acceptance of such a value by the importer cannot, by itself, establish undervaluation or deliberate misdeclaration. The Hon'ble Supreme Court, in **Century Metal Recycling Pvt. Ltd. Vs Union of India** [2019 (367) E.L.T. 3 (S.C.)], held that merely because the assessee had furnished a consent letter agreeing to the enhanced value, the assessing authority was not absolved of its statutory obligation to determine the assessable value in accordance with the provisions of the Customs Act and the Customs Valuation Rules. Where the prescribed valuation principles had not been followed, the assessment could not be sustained. Thus, a consent to enhancement, by itself, cannot dispense with the mandatory process of reassessment prescribed by law, in case the value sought to be enhanced by Customs is contested.

7.3 Hence a written acceptance of reassessment under Section 17(5) by the importer does not, by itself, operate as an absolute bar against the importer challenging the correctness of the final assessment. The concession contemplated under Section 17(5) is limited to relieving the proper officer of the statutory obligation to issue a speaking order where the reassessment is accepted by the importer. It does not dispense with the requirement to undertake a lawful reassessment in accordance with the Customs Act and the applicable Valuation Rules, nor does it extinguish the importer's statutory right to question the correctness of the assessment.

7.4 It is settled that the transaction value is the starting point of valuation. In **Eicher Tractors Ltd. Vs Commissioner of Customs, Mumbai** [2000 (122) E.L.T. 321 (S.C.)], the Supreme Court held that the price actually paid or payable is required to be accepted unless the conditions justifying rejection of the transaction value are established. The same was later reiterated by a three Judge Bench of the Apex Court in **Century Metal Recycling** (supra).

7.5 Rule 12 of the CVR 2007, is a provision enabling the proper officer to reject the declared transaction value where there is reasonable doubt regarding its truth or accuracy. Rule 12 is not itself a method for determining the substituted value. Once the transaction value is rejected, the value has to be determined in accordance with the sequential scheme of the Rules.

7.6 The Supreme Court in **COMMISSIONER OF CUSTOMS (IMPORTS), MUMBAI Vs GANPATI OVERSEAS** [2023 (386) E.L.T. 802 (S.C.)], emphasised the sequential application of the CVR 2007 and recognised the residual method only after the preceding methods cannot be applied.

7.7 Similarly, in **Commissioner of Customs, Calcutta v. South India Television (P) Ltd., (2007) 6 SCC 373 : 2007 (214) E.L.T. 3 (S.C.)**, the Supreme Court held that the invoice price is not sacrosanct, but before rejecting it the Department must have cogent reasons. Mere suspicion of under-valuation is insufficient; the Department must establish the basis for rejecting the declared value.

7.5 In **Varsha Plastics Pvt. Ltd. v. Union of India, (2009) 3 SCC 365 : 2009 (235) E.L.T. 409 (S.C.)**, the Supreme Court likewise recognised that the burden lies upon the Revenue to establish misdeclaration of value, while also holding that international price publications and comparable information may, in an appropriate case, constitute relevant material for determining value.

7.8 The present order does not sufficiently disclose the precise manner in which the enhanced figures were arrived at. In particular, where the value is sought to be determined under the residual mechanism, the order must demonstrate why the preceding methods could not be applied and what contemporaneous or other reliable data constitutes the basis of the substituted value.

7.9 We also notice that the adjudication order refers to determination under "Rule 3" after rejection of the declared value. Rule 3 is the provision which prescribes the sequential scheme for determination of value; it cannot, by itself, constitute an independent valuation methodology permitting the proper officer to adopt any value considered reasonable. The order must therefore identify the specific rule under which the substituted value is determined and demonstrate compliance with the sequence prescribed by the Rules.

7.10 We therefore set aside the valuation findings and remand the issue for fresh determination. In case the value suggested by the department is contested by the importer, the Original Authority shall first record its reasons for rejecting the declared transaction value and shall thereafter determine the value strictly in accordance with the sequential scheme of the 2007 Rules. Where contemporaneous imports, international prices, freight information or other documentary material are relied upon, the source and relevance of such material shall be disclosed to the appellants and they shall be given an opportunity to rebut the same.

Exemption under Notification No. 21/2002-Cus.

8. The adjudicating authority has denied the benefit of Notification No.21/2002-Cus. (Sl. No.200) to the goods classified under Headings 7302 and 7301.

8.1 Since the classification itself requires reconsideration, the consequential question of exemption cannot be finally decided at this stage. The entitlement to exemption shall necessarily follow the classification and the precise description of the goods as ultimately determined. In **Unichem Laboratories Ltd. Vs Collector of Central Excise, Bombay** [(2002) 7 SCC 145], the Hon’ble Supreme Court held that, in the absence of any prescribed time limit for claiming an exemption, the benefit thereof may be claimed subsequently and must be extended if the notification is otherwise applicable. The adjudicating authority shall therefore reconsider the benefit of the notification after recording a fresh finding on classification.

Demand of differential duty

9. The differential duty demand of Rs.54,14,265/- comprises the duty consequences arising from the classification, valuation and alleged misdeclaration in respect of 20 Bills of Entry. To the extent of the liability is admitted as discussed above, the issue does not survive for determination and attains finality.

9.1 Since the assessment of the three available consignments requires reconsideration, the assessment concerning the 17 past Bills of Entry also requires fresh determination and hence the present computation of differential duty cannot survive.

9.2 The demand under Section 28, including the applicable interest, is accordingly set aside for the present, with liberty to the adjudicating authority to re-determine the duty liability in accordance with law.

Confiscation of the three available consignments

10. The adjudicating authority has ordered confiscation of the goods covered by Bill of Entry No.616429 under Sections 111(d) and 111(m), with an option of redemption on payment of Rs.10 lakh, and of the goods covered by Bills of Entry Nos.626444 and 626445 under Sections 111(l) and 111(m), with redemption fine of Rs.7 lakh.

10.1 These findings are consequential upon the classification, valuation and alleged misdeclaration. Since those findings are being remanded, the confiscation and redemption fine in respect of the available goods also require reconsideration.

Past goods and redemption fine

11. In respect of the 17 past Bills of Entry, the adjudicating authority has held the goods liable to confiscation under Sections 111(l) and 111(m), and a portion under Section 111(d), but has not imposed

redemption fine on the ground that the goods had already been cleared and were not physically available.

11.1 The legal position regarding redemption fine where the goods are no longer available has been considered by the Bombay High Court in **Commissioner of Customs (Import), Mumbai Vs Finesse Creation Inc., 2009 (248) E.L.T. 122 (Bom.)**, where it was held that redemption under Section 125 presupposes the availability of the goods for redemption, particularly where the goods had been finally cleared and were not released against a bond. The position is to be distinguished from cases where goods were released against a bond or undertaking, as considered by the Supreme Court in **Weston Components Ltd. v. Commissioner of Customs, New Delhi, 2000 (115) E.L.T. 278 (S.C.)**.

11.2 Since the adjudicating authority has itself recorded that the 17 consignments were already cleared and physically unavailable, no redemption fine has been imposed. That part of the order does not call for interference.

Penalty under Section 114A

12. A penalty of Rs.54,14,265/- has been imposed upon J.R. Smelters under Section 114A, corresponding to the duty demand.

12.1 Section 114A is attracted only where the non-levy, short-levy or erroneous refund of duty is by reason of collusion or any wilful misstatement or suppression of facts.

12.2 The applicability of Section 114A must therefore be considered independently after the fresh determination of classification, valuation and duty liability.

Penalty under Section 114AA

13. The penalty under Section 114AA also requires a separate examination. The provision is attracted where a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, a declaration, statement or document which is false or incorrect in a material particular in the circumstances specified therein.

13.1 A finding of misdeclaration of the goods does not, without more, dispense with the requirement of identifying the declaration, statement or document alleged to be false or incorrect and the material particular which is said to be false. The adjudicating authority shall therefore identify the precise document relied upon and record the finding necessary to bring the conduct within Section 114AA, if applicable.

Penalties upon other persons

14. Penalties under Section 112(a) have been imposed upon Shri R. Pramod Singh, Shri Bose J. Fernando, Shri N. Dhanaraj, Shri Mahesh Varman, Shri S. Vijaya Sankar and others. The Revenue relies, inter alia, upon statements alleging that Santon Shipping Services permitted its H-card holders to undertake Customs work using signed blank forms and that duplicate dockets were presented after the goods had been found to be rails.

14.1 We find it necessary to emphasise that a penalty under Section 112(a) is personal in character. The Department must establish the particular act or omission of the person concerned which rendered the goods liable to confiscation or constituted abetment of such act or omission. The mere fact that a person is a partner, employee, H-card holder or is associated with a Customs Broker does not, by itself, establish the ingredients of Section 112(a).

14.2 At the same time, the absence of direct participation in the physical importation does not necessarily exonerate a person if reliable evidence establishes that he knowingly facilitated or abetted the offending transaction. The evidence must therefore be examined person-wise and the matter decided afresh.

Appropriation of amounts already paid

15. The adjudicating authority has also appropriated the amount of Rs.75 lakh paid during investigation and directed enforcement of the bank guarantee of Rs.33.80 lakh.

15.1 Since the principal duty liability itself requires fresh determination, the question of appropriation and enforcement cannot presently be finally decided. Any amount legally payable by the appellant after fresh adjudication may be appropriated in accordance with law, after giving credit for amounts already paid. The bank guarantee shall be dealt with only to the extent necessary in accordance with the liability finally determined.

Conclusion

16. In view of the foregoing, the impugned order is set aside to the extent indicated above, for fresh adjudicatio**n** on the following specific aspects:

(i) fresh determination of assessable value after recording reasons for rejection of transaction value and applying the CVR 2007 sequentially;

(iv) consequential determination of eligibility to Notification No.21/2002-Cus.;

(v) fresh computation of differential duty and interest;

(vi) reconsideration of confiscation and redemption fine in respect of the goods that are available;

(vii) reconsideration of the penalty under Section 114A after recording a specific finding on the statutory ingredients thereof;

(viii) reconsideration of the penalty under Section 114AA after identifying the particular false or incorrect declaration/document and the requisite statutory ingredients; and

(ix) person-wise reconsideration of the penalties under Section 112(a), based upon the particular act or omission attributable to each person.

For the sake of clarity, it is stated that, as the importer has admitted to the duty liability detailed in paragraph 6.1, the issue of duty on the said goods is final and no longer in dispute. Other issues, such as interest, penalties, and consequential liabilities, are left open to be decided in accordance with the findings and the specific directions given above.

Insofar as the duty liability on the impugned goods as at para 6.1, where the importer has admitted the same, as discussed hereinabove, the issue of determination of duty does not survive and has attained finality. All other issues, including interest, penalty and other consequential liabilities, are left open for consideration in accordance with the findings recorded hereinabove.

It is stated for clarity that as regards the tax liability of the impugned goods which has been admitted by the importer as discussed above, the issue of duty alone, does not survive for re-determination and has attained finality. Other issues like interest, penalty etc are left open on the lines stated above.

16.1 Having regard to the discussions above we remand the matter back to the Original Authority for de novo adjudication limited to the issues stated above. The lower authority shall follow the principles of natural justice and afford a reasonable and time-bound opportunity to the appellant to state their case both orally and in writing if they so wish, before issuing a speaking order in the matter. The appellants should also co-operate with the adjudicating authority in completing the process expeditiously and in any case within ninety days of receipt of this order. The impugned order stands modified on the said terms, and the appeals are disposed of accordingly. The appellants are eligible for consequential relief, if any, as per law. The appeals are disposed of on the above terms

(Order pronounced in open court on 23.09.2026)

Sd/-
(**M. AJIT KUMAR**)
Member (Technical)

Sd/-
(**P. DINESHA**)
Member (Judicial)

Rex