CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 40704 of 2019

(Arising out of Order-in-Original No.66257/2018 dated 22.11.2018 passed by the Commissioner of Customs (Imports), Chennai-II, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.Sansin Enterprises **.... Appellant**
336, Hegganahalli Main Road,
Opp. Government School,
Bangalore 560 091.

VERSUS

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

WITH

(2) Custom Appeal No. 40705 of 2019

(Arising out of Order-in-Original No.66257/2018 dated 22.11.2018 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

K. Ashok **.... Appellant**
No.1, R.V. Naik Lane,
Binny Mill Road Cross,
Cottonpet,
Bangalore 560 053.

VERSUS

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

WITH

(3) Custom Appeal No. 40706 of 2019

(Arising out of Order-in-Original No.66257/2018 dated 22.11.2018 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

P. Nitin, **.... Appellant**
Flat No.FF9, I Floor,
Sri Sai Shakthi Enclave, H.V.Hall,
Rajarajeswari Nagar,
Bangalore 560 098.

VERSUS

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

WITH

(4) Customs Appeal No. 40404 of 2019

(Arising out of Order-in-Original No.66257/2018 dated 22.11.2018 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

The Commissioner of Customs, **... Appellant**
Chennai II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai 600 001

VERSUS

M/s.Sansin Enterprises **.... Appellant**
336, Hegganahalli Main Road,
Opp. Government School,
Bangalore 560 091.

WITH

(5) Customs Appeal No. 40405 of 2019

(Arising out of Order-in-Original No.66257/2018 dated 22.11.2018 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

The Commissioner of Customs, **... Appellant**
Chennai II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai 600 001

VERSUS

P. Nitin **.... Respondent**
Flat No.FF9, I Floor,
Sri Sai Shakthi Enclave, H.V.Hall,
Rajarajeswari Nagar,
Bangalore 560 098.

AND

(6) Customs Appeal No. 40406 of 2019

(Arising out of Order-in-Original No.66257/2018 dated 22.11.2018 passed by the Commissioner of Customs, Custom House, No.60, Rajaji Salai, Chennai 600 001)

The Commissioner of Customs, **... Appellant**
Chennai II Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai 600 001

VERSUS

K. Ashok **.... Respondent**
No.1, R.V. Naik Lane,
Binny Mill Road Cross,
Cottonpet,
Bangalore 560 053.

APPEARANCE :

Shri J. Shankarraman, Advocate for the Assessee
Shri Sanja Kakkar, Authorized Representative
for the Revenue

CORAM :

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

FINAL ORDER Nos.41208-41213/2026

DATE OF HEARING : 15.06.2026
DATE OF DECISION :25.11.2026

Per: Shri P. Dinesha

M/s. Sansin Enterprises (M/s.Sansin, for short, Appellant-firm in Appeal No.**C/40704/2019)** and the Partners of Appellant-firm viz. Shri K. Ashok and P. Nitin [Appellants in Appeal Nos.**C/40705/2019 & C/40706/2019** respectively] have assailed the Order-in-Original No.66257/2018 dated 22.11.2018 of Commissioner of Customs (Imports), Chennai-II. Revenue also has filed Appeal Nos.**C/40404 to 40406/2019** against the same Order-in-Original for non-imposition of Redemption Fine.

2. Brief facts as could be gathered from the impugned order as well as the documents placed on record are that the M/s.Sansin Enterprises, a partnership firm, is engaged in the business of importing industrial sewing machines of brands viz., GEMSY, JUKKY, KANSAI etc. from China and sell the same to various dealers in India and it is their

case that they did not sell the above imported items in retail. It is also their further case that the above industrial sewing machines are not attracting RSP-based assessment [Section 4A of Central Excise Act, 1944] and it appears that in order to overcome the legal requirements of RSP, there was an understanding between M/s.Sansin and their exporter/s suggesting that the RSP to be affixed.

2.1 It appears that there was an investigation launched into the imports of various industrial sewing machine brands including those imported by the Appellant-firm herein [M/s.Sansin] as well, searches were also conducted at the residential premises of both the Partners of M/s.Sansin including office/godown and during the course of search statements appear to have been recorded. The investigation team appears to have found and seized certain loose sheets and three small pocket size books handwritten by one of the partner viz. Ashok. It is the case of the Revenue that during the search of the residential premises of Nitin, the other partner, incriminating documents relating to undervaluation of imports of the goods in question appear to be found and

seized and the team also seized mobile phones/handsets of both the Partners and the search in respect of office cum godown of M/s.Sansin appears to have resulted in the recovery of proforma invoices, apparently showing higher values than the ones declared. The search team also appears to have drawn an inventory of the stock of the goods in question found during the search.

2.2 It appears that there was also a search in the premises of the Accounts Assistant viz. Santhosh Kumar wherein the team appears to have found and seized unsigned blank letters with the seal of Chinese supplier "Zhejiang Fanghua Sewing Machine Co. Ltd."

3. The above resulted in issuance of a Show Cause Notice dated 20.12.2014 by (i) Commissioner of Customs (II), Chennai, (ii) Commissioner of Customs (IV), Chennai and (iii) Commissioner of Customs (General), Nhava Seva, Maharashtra, *inter alia* proposing as to why -

(i) declared/assessed unit value of industrial sewing machine imported *vide* 54 Bills of Entry as mentioned in column 18 of the Worksheet-I to SCN should not be rejected ?

(ii) declared/assessed unit value of industrial sewing machine imported *vide* 4 Bills of Entry as mentioned in column 18 of the Worksheet-II to SCN should not be rejected ? and

(iii) declared/assessed unit value of industrial sewing machine imported *vide* 2 Bills of Entry as mentioned in column 18 of the Worksheet-III to SCN should not be rejected ?

with a further proposal to demand differential duties, confiscation, apart from applicable interests and penalties.

3.1 The Appellants-Assessee appear to have filed a very detailed reply to the above SCNs wherein they appear to have requested for a common Adjudicating Authority as the imports were from three different ports had resulted in 3 SCNs (*supra*) and the CBEC accordingly appointed a common Adjudicating Authority. It is the case of the Appellants-Assessee in their reply that primarily the proposal to demand differential duty is solely based on the proforma invoices and the uncorroborated statements recorded during investigation and other than this, the Department has not brought out anything on record and therefore, the proposed demand was liable to be dropped.

They also appear to have explained that the Partners had in respect of proforma invoices clearly explained along with corresponding Bills of Entry wherein the actual transaction value was declared, that though the proforma invoices were raised, the same were never final and negotiations with their suppliers resulted in the reduction of the value by about 20 to 30% which was duly reflected in the respective commercial invoices.

3.2 With regard to freight, the Partners appear to have explained that the same was always arranged by their Chinese suppliers who also covered the risk on the goods in question, proforma invoices had nothing to do with the price and the freight which was only indicative. With regard to freight charges indicated in the documents of M/s.Bliss Logistics and Shipping Pvt. Ltd., it is their case that the freight was paid in Indian rupees and the price adopted for the purposes of Customs duty was inclusive of ocean freight since the commercial invoices issued by the suppliers were all on CIF basis as certified by the very suppliers.

3.3 It was further explained that there was difference in the quantities of each consignment and also the quality; the quality meant for the sewing machines were light or medium or heavy duty machines which were combinedly imported.

3.4 Regarding the Chartered Engineer's certificate, it was the case of M/s.Sansin that they had imported three qualities of machine as indicated, i.e. light, medium & heavy duty which was also recorded in the mahazar drawn on 25.06.2014 and the differences would arise due to the overall weight of the machine combined with other factors like the coils used whether such coils are fully made of copper or aluminium or alloy of the two and the strength and number of strands used in the coil, which the Chartered Engineer had ignored. It was Chartered Engineer's duty to verify such minute aspects and then arrive at a proper conclusion, which having not been done, the said certificate cannot be relied upon.

3.5 They also appear to have requested the Authority to get a second opinion but however, the same is not done.

3.6 They also appear to have pleaded that the D.R.I did not bring out anything on record as to payment of extra money over and above the commercial invoices to their Chinese suppliers and therefore, the price indicated in the proforma invoices could not have been acted upon.

3.7 With regard to the reliance on the statement of one R.K.Bansal who is the other importer, M/s.Sansin have countered the same by contending that the statement of said Bansal was itself self-contradictory, his levels of import in terms of quantity from the Chinese suppliers were very much incomparable with the level of imports made by M/s.Sansin and hence, comparison as well as reliance was without any merit.

3.8 They also appear to have contended that according to the D.R.I, evidence was available only in respect of 10 cases out of 60 imports under the various Bills of Entry and that there is also a further admission as to the non-existence of any evidence for the said 50 Bills of Entry and hence, the differential duty demand in respect of the above 50 Bills of Entry should have been dropped at the threshold.

4. The Appellants also relied on the decision in the cases of **Vijaya International Impex Vs CC [Seaport-Import], Chennai** [2018 (359) ELT 270-Tri-Chennai] and **Sarada Energy and Minerals** Vs **CCE Raipur** [2018 (359) ELT 262 (Tri-Del.)], wherein it has been held that the transaction value needs to be accepted unless valid reasons exist for rejection and that reliance on NIDB data alone is not sufficient to make addition.

5. The Adjudicating Authority apparently having considered the explanation however, confirmed the proposed demands in the respective SCNs *vide* common impugned Order-in-Original No.66257/2018 dated 22.11.2018. The present Appeals assail the same here, before us.

6. We have heard Shri J. Shankarraman, Ld. Advocate who contended that the demand of differential duty has been made without properly appreciating the contention of the Appellants-Assessee; the Commissioner has gone beyond the scope of SCN by placing heavy reliance on the proforma invoices as the basis for demand, the

Commissioner also did not identify and correlate all the proforma invoices *vis-a-vis* Bills of Entry and he would also place reliance on the following decisions in this regard:

(i) **Commissioner of Central Excise, Chandigarh Vs Shital International** [2010 (259) ELT 165 (SC)]

(ii) CC (Airport & General), New Delhi Vs Entire Logistics Pvt. Ltd. [2026 (3) TMI 860-Delhi High Court]

(iii) **CGST & Central Excise, Trichy Vs Kothari Sugars and Chemicals Ltd.** [(2025) 30 Centax 162 (Mad.)]

He would thus pray for allowing the Appeals filed by Assessees.

7. *Per contra*, Shri Sanjay Kakkar, Ld. Departmental Representative relied upon the findings of the impugned order. He would also contend that the incriminating documents in the form of proforma invoices are the clinching pieces of evidence and therefore, having not denied execution of proforma invoices which is in the nature of a contractual agreement between M/s.Sansin and their foreign suppliers, is binding on M/s.Sansin and hence it is presumed that the Appellant-firm has acted

upon the same. He would thus pray for sustaining the demands in the impugned order.

8. Having heard the rival contentions, we have carefully perused the documents placed on record including the impugned order; upon hearing both the sides, we find that the following issues arise for our consideration :

(i) whether the demand proposed and confirmed in terms of proviso to Section 28 (1) / 28 (4) of the Customs Act, 1962 is justified ?

(ii) whether the liability in so far as the demand of differential duty with consequential interest and penalty is concerned, is in order ? and

(iii) whether the non-imposition of redemption fine by the Adjudicating Authority is proper or not ?

9. We have carefully considered the rival contentions and perused the documents placed on record: at the outset we find that the Adjudicating Authority has considered all 60 Bills of Entry and made the impugned demand of differential duty though the SCN found discrepancies only in respect of 10 Bills of Entry *vis-à-vis*

proforma invoices/commercial invoices and since the impugned addition is made indiscriminately, we are of the *prima facie* view that the entire demand in respect of 60 Bills of Entry cannot be sustained. However, for want of correlation as to which 10 Bills of Entry was referred to in the SCN, we are left with no choice but to set aside the entire demand since the Appeal pertains to imports made around 2012.

10. Apart from the above, we find that the statements have been relied on as sacrosanct, on the ground that they remained unretracted. However, the fact remains that the Partners in their statements have clearly explained the nitty-gritties of their transaction, the proforma invoices and the actual commercial invoices raised by the foreign supplier which were honoured. They have also given a plausible explanation as to why profoma invoice was the only starting point and the actual true transaction price depended on the negotiations, however the Commissioner proceeded to consider the value reflected in the proforma invoices as the final/true transaction value and also by holding that the same was in the nature of contractual agreement between M/s.Sansin and the foreign supplier.

While holding so, the Commissioner has not rejected the explanation of the Partners, there is also no contrary finding to the fact that the price mentioned in the proforma invoices were only R.S.P at the hands of the sellers, the actual transaction value was reflected in the commercial invoices. There is also no negative finding as regards the identity of consignments where freight was alleged to have been collected and in this regard, no corroborative statement from M/s. Bliss Logistics and Shipping Pvt. Ltd. was also placed on record. There is also another explanation which was not found fault with, as regards the pricelists of the exporter recovered from M/s.Sansin alleged to be showing higher price, wherein the same pertained to automated and computerized sewing machines which were never imported at least during the period in dispute, in these Appeals. The impugned order is also silent as to the other vital fact that SCN proposed addition of freight and insurance without relying on any evidence.

11. We find force in the contentions of the Ld. Advocate that the differential duty demand in the impugned order has been made by going beyond the scope of the very

SCN, as supported by the decisions of (1) Hon'ble Supreme Court in **CCE Chandigarh Vs Shital International** (*supra*) and (2) Hon'ble Delhi High Court's decision in **CC (Airport & General), New Delhi Vs Entire Logistics Pvt. Ltd.** (*supra*) as well as (3) Hon'ble jurisdictional Madras High Court's decision in **Kothari Sugars and Chemicals Ltd**. (*supra*).

11.1 Relevant part of order of Hon'ble Supreme Court in **Shital International** (*supra*) reads as under :

> "17**.** ..... *it is trite law that unless the foundation of the case is laid in the show cause notice, the revenue cannot be permitted to build up a new case against the assessee.....*"

11.2 We also note that in a recent case, the Hon'ble High Court of Delhi in **Entire Logistics** (*supra*) has held that an Order-in-Original cannot be sustained if it travels beyond the scope of the Show Cause Notice and the vague SCNs lacking specific allegations violate the principles of natural justice.

11.3 The Hon'ble jurisdictional Madras High Court in **Kothari Sugars** (*supra*) has held as under :

> ***"30****. It is settled legal proposition that, the Revenue cannot improve their case beyond what has been shown in their show cause notices. Umpteen number of decisions have been rendered that, the Revenue must confine with the content of the show cause notice, as the show cause notice is the basis, based on which only adjudication process has to go on and to be decided.*
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> ***31****. To substantiate the aforestated principle, though number of citations could be relied upon, the following two decisions can be usefully referred to :*
>
> *(i) CCE v. Shital International reported in (2011) 1 SCC 109.*
> *… …..*
>
> *(ii) Techno Prints v. Chhattisgarh Textbook Corporation and Ors. reported in MANU /SC/0230/2025.*
>
> *……."*

12. In view of the above discussion, we do not find any justifiable reasons in the impugned order to sustain the demand. Ld. D.R has placed reliance on the decision of Supreme Court in the case of **Sharp Business Machines Pvt. Ltd. Vs Commissioner of Customs** [1990 (49) ELT 640 (SC)], wherein the Hon'ble Apex Court has held that the Customs authorities were not bound by the price stated in the invoices, and if there is material to show to the contrary, there is no difficulty in adopting the real value. We are bound by the above ratio, but in this case, other than the proforma invoices, nothing is placed on

record to having been unearthed by the Revenue. Ld. D.R also placed heavy reliance on the statements of the Partners on the ground that they remained unretracted, by placing reliance on the Apex Court in **Surjeet Singh Chhabra Vs Union of India** [1997 (89) ELT 646 (SC)]. In the case on hand, we find that the Commissioner in the impugned order has cherry-picked only selectively, rather each statement should have been read in full.

13. In view of the above discussion, we are of the clear view that the impugned demand is unsustainable and hence, the impugned order deserves to be set aside, which we hereby do. Appeal filed by M/s.Sansin Enterprises [Appellant in Appeal No. **C/40704/2019]** stands allowed.

13.1 For the very same reasons as discussed *supra,* we do not find any justification to sustain the personal penalties imposed under Sections 112 (a) and 114AA of the Customs Act, 1962 each on both the Partners viz. Shri P. Nitin [Appellant in **Appeal No.C/40705/2019]** and Shri K. Ashok [Appellant in Appeal

No.**C/40706/2019]** and hence, we set aside the impugned order to this extent also.

14. Resultantly, the Appeals filed by Appellant-firm and its Partners as indicated above are allowed.

15. For the very same reasons *supra*, we do not find any merit in the Revenue's Appeals and hence, Appeals filed by Revenue [**Appeal Nos.C/40404-40406/2019**] are dismissed.

(Order pronounced in open court on 25.11.2026)

sd/- sd/-

(VASA SESHAGIRI RAO) **(P. DINESHA)**
Member (Technical) Member (Judicial)

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