

Hon'ble CESTAT has issued E-compendium volume 1 to 4 (available on CBIC website) wherein decisions in favour of department have been enlisted. Efforts have been made to highlight the cases wherein valuation has been one of the issues decided by the Tribunal and the cases found have been categorised on following vital points:

**1. Once the re-determined value is accepted, the same cannot be challenged:**

In cases wherein the importer or his representative accepts the valuation re-determined by the department (either through NIDB data or market enquiry or from e-market site, etc.), the department need not produce any evidence i.e., the burden of the Department to establish the declared value to be incorrect is discharged, as the consented value, in effect, becomes the declared transaction value. Later on, it is not open to the appellant (importer) to contend the same. Facts admitted need not be proved (Indian Evidence Act, Sec 58). Also, the Assessing Officer is not required to issue a speaking order.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	1	6	Jai Shiv Trading Co. Vs. Commissioner of Customs	C/53151/2016 -CU[DB]	55379/2017
2	1	7	CC (Import), ICD, TKD, New Delhi Vs. M/s Sodagar Knitwear	50546/2018	51708/2018
3	1	8	Laxmi Enterprises Vs. CC (Prev.) New Delhi	C/51536/2017	50544/2018
4	1	12	Commissioner of Customs ICD Patparganj Vs. M/s Hanuman Prasad & Sons and Ors.	51601/2019 and 35 others	51584-51619/2020
5	1	63	N. R. International Vs. CC, Delhi	52328/2018	51159/2019
6	2	25	Shahid Ali and Ors. Vs. Principal Commissioner Customs (Import), New Delhi (ICD TKD)	50105, 50106, 50107, 50108, 50109, 50112, 50117 of 2016 and 51350 of 2019	12/2015 dated 20/21.10.2015
7	2	26	M/s Sheikh & Mahajan LLP New Delhi. Vs. Commissioner of Customs (Preventive), Delhi	52368 OF 2019	52052/2021
8	3	37	M/s. Swastik Creation & Shri. Manish Shah, Proprietor Vs. Commissioner of Customs, Air Special Cargo	C/86144/2022 -[DB]-Mumbai & C/86151/2022 -[DB]-Mumbai	A/86089-86090/2022

9	3	41	M/s. Bansal Marble Traders Vs Commissioner of Customs (Import), ICD TKD New Delhi.	50158 of 2020 [DB]	51070/2022 dated 11.11.2022
10	3	43	Commissioner of Customs ICD Patparganj & Others ICDS (ICD Palwal, Haryana) versus M/S Manvi Exim Pvt. Ltd. (08 Appeals )	52793 - 52800 OF 2019 (Bunch of 08 Appeals)	50552-50559/2022 dated 04.07.2022
11	3	67	M/s. Manvi Exim Pvt. Ltd. versus Commissioner of Customs (Appeals) , New Delhi	53600 of 2018	51862/2019
12	3	71	M/s Tecmax Electronics Vs. Commissioner of Customs (Import), ICD Tughlakabad, New Delhi	51544 OF 2019	50944/2022 dated 30.09.2022
13	3	80	M/s. Sukhdev Exports Overseas Vs. Commissioner of Customs (Preventive) .New Delhi (Bunch of 05 Appeals)	51948 of 2019; 51949 of 2021; 51950 of 2021; 51951of 2021& 51952 of 2021	50155-50159/2021 dated 21.02.2023
14	3	81	Commissioner of Customs, New Delhi (ICD TKD) (Import), Vs. M/s Tirupati Overseas	52394 OF 2018	51222/2022 dated 16.12.2022
15	3	86	Aggarwal Traders Versus Commissioner of Customs, TKD New Delhi.	51898 OF 2021	50123/2023 dated 14.02.2023
16	3	132	M/s Tirupati Overseas Vs Commissioner of Customs (Import) ICD, TKD, New Delhi. Final Order No. 5122	52394 OF 2018	51222/2022
17	4	2	Sumridhi Aluminium (P) Ltd. Vs. The Commissioner of Customs	52491of 2019	51191-51282/2023 dated 13.09.2023
18	4	14	Javeria Impex India Pvt. Ltd. Vs. Commissioner of Customs (ICD) TKD	3 OF 2011	51525-51526 /2023 dated 08.11.2023
19	4	17	Shree Shyam Enterprises Vs. Commissioner of Customs (Import) ICD	51513 OF 2018	51546/2023 dated 14.11.2023
20	4	31	Surendra Electricals Vs Commissioner of Customs (Exports)	50938 of 2020	50033/2024
21	4	65	Fobin Poly Glass Vs. The Commissioner of Customs, City Customs-Bangalore F		21423/2023
22	4	76	C. C. New Delhi (Import & General) vs Namu Alloys Pvt Ltd	60151 Of 2021	60034/2024 dated 31.01.2024

**2. If SCN & PH are waived and goods are cleared, basis of re-assessment cannot be asked later on:**

In cases wherein during the course of investigation, the appellant (Importer), waived the requirement of SCN, personal hearing, and paid the re-assessed duty and cleared the goods for home consumption, cannot later on ask for the evidence or basis for re-assessment, thus, putting the department in an impossible situation.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	4	3	Sunlight Overseas Vs. Commissioner, Customs- New Delhi	52804 to 52807/2019	51328-51331 /2023 dated 20.09.2023
2	2	23	M/s Aestrik Techno-Signs VS The Commissioner of Customs, New Delhi	51101 of 2019	51146/2021

**3. Documents obtained through overseas investigation, although not signed/stamped, are admissible in evidence:**

Documents obtained through overseas investigation by Government channels, although not signed/stamped, are admissible in evidence (Section 139 ii of Customs Act, 1962) and even single quotation taken during market enquiry is proper for re-determining the value.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	4	11	Decor Rubber Industries Vs. Commissioner of Customs	50828 of 2021 [DB]	51494/2023 dated 03.11.2023

**4. Maximum depreciation allowed for second-hand machinery is upto 70%:**

As per Board's Circular No. 4/2008-Cus dated 12/2/2008 and Circular No. 493/124/86-Cus, VI dated 19/11/1987, it has been clarified that in case of the second-hand machinery, the maximum depreciation allowed would be to the tune of 70%. The Adjudicating Authority has followed this circular and arrived at the enhanced value. The tribunal upheld the order.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
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1	4	95	India Potteries Ltd. Vs. Commr. of Customs (Port), Kolkata	C/233 of 2011	77142/2023
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**5. Declared value is liable to be rejected in case of mis-match/mis-declaration:**

Rejection of declared value and re-determination of value has been upheld on ground of mis-declaration of quality, quantity, brand, Model No., contemporaneous data obtained through NIDB, etc.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	1	18	Burberry International Vs. Commissioner of Customs, New Delhi	52214/2019	50746/2020
2	1	70	Chintan Aluminium Pvt. Ltd. Vs. CC, Kandla	382/2009	11131/2019
3	3	108	M/s Nanz Med Science Pharma Pvt. Ltd., ... Versus The Commissioner of Customs (Appeals), ... New Customs House, Near I.G.I. Airport, New Delhi – 110 037.	50049 OF 2020	50497-50499/2023 dated 18.04.2023
4	3	133	M/s Global Technologies Ltd. Vs Pr. Commissioner of Customs (Imports) New Delhi.	51848 OF 2021	50935/2022
5	3	135	S.D. Overseas Vs the Joint Commissioner of Customs (ICD) Tughlakabad, New Delhi	50051 of 2019 [DB]	50480/2022

**6. If 'Sale Proceeds' of the subsequent use of the imported good goes to the Seller (abroad), the same to be added in the Assessable value.**

If any part of the 'Sale Proceeds' of the subsequent use of the imported good goes to the Seller (abroad) than that part needs to be added in the Assessable value under Customs Act, 1962.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	1	118	M/S Warner Bros. (F.E.) Inc. Vs. Commissioner of Customs (I), Mumbai	705,729 & 743/2004	A/85694-85696/2017

**7. In case of non-inclusion of freight element in assessable value the extended period of limitation is invokable.**

Non-inclusion of freight element actually paid to the freight forwarder in assessable value makes the intention to evade duty obvious, therefore, the extended period of limitation is invokable.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	1	74	Asia Motor Works Vs. CC, Kandla	12 & 72/2010	A/11945-946/2019

**8. Statements made and signed, in the course of business, by the dead persons or who cannot be found remain valid and admissible:**

Statements made (under Section 108 of Customs Act, 1962) and signed by the dead persons or who cannot be found remain valid and admissible as long as these statements are made in the course of business and the same are not hit by Section 25 of the Indian Evidence Act or Article 20(3) of the Constitution.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	4	52	Ply Point Vs. Commissioner of Customs Cochin	624 of 2009-DB	20869/2023 dated 23.08.2023

**9. In case of mis-declared goods (thermal paper), the sole burden is on the appellant to prove that the goods found were the stock lot and not prime:**

The Tribunal held that since examination goods revealed the goods to be prime grade thermal paper instead of declared stock lot of coated/uncoated paper, the sole burden was on the appellant to prove that the goods found were the stock lot. There was nothing on record to prove the same. Merely because thermal paper was found to be of different GSM and size, it cannot be called stock lot. Thus, there seems no infirmity in the re-determination of value as prime grade thermal paper and imposition of penalty under both the sections of Customs Act, 1962 (section 112 (a) & section 114AA).

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	3	125	M/s. S.D. Impex Vs. Principal Commissioner of Customs (Export)	51028 of 2020 [DB]	50985/2023

**10. For seizure of goods, the proper officer should only have 'reason to believe' that the goods are liable to confiscation:**

Based on market enquiry of goods akin to the export goods and reasonable belief that goods were grossly overvalued with intention of claiming undue export benefits. Tribunal held that for exercising power under section 110(1) (seizure of goods) of the Customs Act, 1962 the proper officer should only have reason to believe that the goods are liable to confiscation.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	1	58	Commissioner of Customs (Preventive), LUCKNOW VS. M/S BUSHRAH EXPORT HOUSE	70210/2020	51626/2020

**11. Mis-declaration of the assessable value attracts penalty under Section 114A of the Customs Act, 1962:**

In case of mis declaration of the assessable value i.e. under-invoicing by the appellant which resulted into short-payment of duty, imposition of penalty under Section 114A of the Customs Act, 1962 on the appellant has been upheld.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	4	61	Woodtech Consultants (P) Ltd. Vs. The Commissioner of Central Excise, & ST- Bangalore (West)	226-228 of 2010	21348-21350/2023 dated 13.12.2023
2	1	43	Smart Technologies Through Arvind Jawa (Prop.) Vs. Commissioner of Customs (ACC), New Delhi	50858/2019 [DB]	51145/2019

**12. If conditions prescribed for export or import of any goods are not fulfilled, the said goods would be considered as prohibited goods:**

The Tribunal held that **1.** Non mentioning a particular section of Customs Act, 1962 would not vitiate the proceedings when the allegations and charges against all the appellants were mentioned in clear terms in the show cause notice. **2.** Intentional aid and active complicity are the gist of the offence of the abetment. **3.** Where contravention has been committed with consent of or connivance of or attributable to negligence of partner of partnership firm, such partner can also be proceeded against. **4.** When importation or exportation of goods are subjected to certain prescribed conditions to be fulfilled either before or after clearance of the goods, and if those conditions are not fulfilled, the said goods would be considered as prohibited goods and Sections 2(23), 11 and 113(d) of the Customs Act, 1962 would come into play and the exporters would be liable for penalty.

Sr. No.	E-Comp edition (1/2/3/4)	Sr no. (within E-comp)	Names of appellant/ Respondent	Custom Appeal reference	Final order No./date
1	4	24	Asfaque Abubaker Naviwala Vs. Commissioner of Customs (Export) (ICD, TKD	52359 OF 2019	51635 /2023 dated 12.12.2023