OD – 3

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Customs]

ORIGINAL SIDE

CUSTA/37/2026
IA NO: GA/1/2026, GA/2/2026
COMMISSIONER OF CUSTOMS PORT KOLKATA
VS
M/S R A ELECTRICALS

BEFORE :
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 19th May, 2026

Appearance :
Mr. K.K. Maiti, Adv.
..for appellant.

Mr. Shovendu Banerjee, Adv.
Mr. Soumyajit Mishra, Adv.
…for respondent.

The Court: We have heard learned counsel for the parties.

There is a delay of 167 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application being IA NO: GA/1/2026 filed in the appeal is allowed.

Learned counsel appearing for the appellant suggests the following substantial questions of law by filing the appeal under Section 130 of the Customs Act, 1962.

"*1. Whether the Learned Tribunal erred in law and fact in holding that the department cannot reject the transaction value without proving that the invoices are fake and/or non-genuine, but ignoring Explanation 1 (iii)(a) to Rule 12 of the CVR, 2007, which provides that a doubt on the truth or accuracy of the declared value can be raised based on "the significantly higher value at which identical or similar goods imported at or about the same time... were assessed" and that the records will show that the adjudicating authority* *relied upon voluminous contemporaneous import data (NIDB) showing significantly higher values for similar goods to dislodge the declared value claimed by the respondent and as such when a discretion is given upon the appropriate authority regarding consideration of the declared value of imports by the concerned importer, the Department can rely upon similarly situated importations to verify as to whether there has been any suppression on the part of the respondent regarding declaration of the goods, and as such, the order of the learned Tribunal cannot be sustained?*

2. Whether the learned Tribunal erred in fact and law in rejecting the appeal of the Department, and arrived at a perverse finding when in fact the Department discharged its initial burden by providing substantial evidence of contemporaneous imports made at higher prices, and thereafter, the respondent is duty bound to dislodge the claim and/or shift its burden upon the Department by providing other documentary evidences such as manufacturers invoice, pricelist, details of negotiations and other relevant documents to prove the genuineness and authenticity of the declared value as required under Rule 11 of the CVR (Determination of Value of Imported Goods), 2007, and since the respondent did not provide any such documents to sustain the declared value provided by the respondent, the learned Tribunal should not have accepted the declared value given by the respondent, and as such, the order of the learned Tribunal cannot be sustained?

3. Whether the learned Tribunal has erred in law by not considering the ratio of the Hon'ble Supreme Court's judgment in the case of Commissioner of Customs, Kolkata -Vs.- Pioneer Impex, (2015) 319 ELT 355 (SC) which permits the department to rely on contemporaneous import data for valuation when goods are imported from a trader without a manufacturer's invoice and as such, the order of the learned Tribunal cannot be sustained?

4. Whether the learned Tribunal erred in fact and law in rejecting the NIDB data which the department relied upon for the purpose of having an insight regarding the declared value of contemporaneous imports of similar goods at higher value and such practice is an established prevailing ordinary price in international trade, which is the essence of Section 14 of the Customs Act and that the data of the department exhibits abnormal low declared value of the Respondent since the Respondent failed to provide manufacturers invoice, pricelist, details of negotiations and other relevant documents to prove the genuineness and authenticity of the declared value of the Respondent and as such, the Respondent did not come with clean hands to substantiate the declared value of the imports and as such the order of the Learned Tribunal cannot be sustained?

5. Whether the learned Tribunal has erred by failing to adjudicate on the substantial questions of law raised by the department concerning the interpretation of the Customs Valuation Rules, 2007, and the jurisdiction of the Commissioner (Appeal) to decide the *appeal when as per Section 5(3) of the Customs Act, Commissioner (Appeal) cannot exercise power other than those specified in Chapter XV and Section 108 and that the act of reassessment and finalization of provisional assessment falls under Section 17 and 18 of the Customs Act, which is beyond the jurisdiction of the Commissioner (Appeal) and as such the appellate order passed by the Commissioner (Appeal) is erroneous and without jurisdiction and hence the consequently the order of the Learned Tribunal cannot be sustained in law?*

6. Whether the Order passed by the Learned Tribunal is perverse, bad in law and liable to be set aside?"

Section 130 of the Customs Act 1962 speaks of appeal to High Court which is quoted below:-

"130. Appeal to High Court. – (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for the purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The [Principal Commissioner of Customs or Commissioner of Customs] or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be –

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the [Principal Commissioner of Customs or Commissioner of Customs] or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

[(2A) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (2), if it is satisfied that there was sufficient cause for not filing the same within that period.]"

The Customs Act, 1962 also speaks of appeal to Supreme Court which is quoted below:-

"130E. Appeal to Supreme Court. – An appeal shall lie to the Supreme Court from –

[(a) any judgment of the High Court delivered –

(i) in an appeal made under section 130; or

(ii) on a reference made under section 130 by the Appellate Tribunal before the 1st day of July, 2003;

(iii) on a reference made under section 130A, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or]

(b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

[(2) For the purposes of this Chapter, the determination of any question having a relation to the rate of duty shall include the determination of taxability or excisability of goods for the purpose of assessment.]"

On perusal of Sections 130 and 130E of the Customs Act, 1962 in our opinion, this appeal should be preferred before the Hon'ble Supreme Court under Section 130E of the Act.

The appeal [CUSTA/37/2026] and the connected application [GA/2/2026] preferred by the department are dismissed.

Leave is granted to the learned advocate-on-record of the appellant to receive certified copy of the tribunal from the department and replace it with a photocopy of the same.

(RAJARSHI BHARADWAJ, J.)

(CHAITALI CHATTERJEE (DAS), J.)

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