

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 89891 OF 2014

[Arising out of Order-in-Original No: 08/2014/CAC/CC(I)/AB/Gr.V dated 11th February 2014 passed by the Commissioner of Customs (Import), Mumbai.]

RP Cranes & Hiring Co

J5/113, 3rd Floor, Rajouri Garden, New Delhi - 110027

... Appellant

versus

Commissioner of Customs (Import)

New Custom House, Ballard Estate, Mumbai - 400001

...Respondent

WITH

CUSTOMS APPEAL NO: 89892 OF 2014

[Arising out of Order-in-Original No: 08/2014/CAC/CC(I)/AB/Gr.V dated 11th February 2014 passed by the Commissioner of Customs (Import), Mumbai.]

Gurvinder Singh

J5/113, 3rd Floor, Rajouri Garden, New Delhi - 110027

... Appellant

versus

Commissioner of Customs (Import)

New Custom House, Ballard Estate, Mumbai - 400001

...Respondent

APPEARANCE:

Shri Sujay Kantawala, Advocate for the appellants

Shri Ram Kumar, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85979-85980/2025

DATE OF HEARING:	28/11/2024
DATE OF DECISION:	13/05/2025

PER: C J MATHEW

The dispute in these appeals pertains to import of 16 nos. ‘used cranes’ between 18th July 2007 and 19th January 2008 by M/s RP Cranes & Hiring Co that came up for scrutiny during investigation of similar imports upon which appellant-importer deposited ₹ 20,00,000 towards possible duty liability in December 2010. The investigation culminated in show cause notice of 27th July 2012 and, even as another notice of 17th July 2012 proposing similar recoveries and detriments on 3 nos. ‘used cranes’ imported against bills of entry no. 779969/16.07.2007, no. 708652/18.07.2007 and no. 780656/18.07.2007 was pending to be adjudicated, the impugned order¹ of Commissioner of Customs (Import), Mumbai confirmed revision of value to ₹ 209,77,215 with attendant liability to differential duty of ₹ 95,91,518 under section 28 of Customs Act, 1962, along with interest therein under section 28A of Customs Act, 1962, as well as confiscation under section 111(m) of Customs Act, 1962 besides imposing penalty under penal provisions of Customs Act, 1962. At the same time, ₹ 3,55,096 remaining out of the ₹ 20,00,000 deposited during the investigation was ordered to be appropriated towards the dues now crystallized; it would appear that ₹

¹ [order-in-original no. 08/2L014/CAC/CC(I)/AB/Gr.V dated 11th February 2014]

16,44,904 (customs duty of ₹ 11,38,999 and interest of ₹ 5,05,905) was appropriated towards the recovery proposed in the notice pertaining to the three cranes in the earlier notice which stands impugned, consequently, in this appeal even though the order is categorical about that pending as show cause notice. Shri Gurvinder Singh is in appeal against penalties imposed on him.

2. Learned Counsel for the appellants relied upon the decision of the Tribunal in *Karim Jaria and Crown Lifters Pvt Ltd v. Commissioner of Customs (Import-I), Mumbai [2022 (4) TMI 948 – CESTAT MUMBAI]* and of the Hon'ble Supreme Court in *Parle Beverages Pvt Ltd v. Collector of Central Excise, Bombay [1998 (98) ELT 585 (SC)]*.

3. Learned Authorized Representative reiterated the findings in the impugned order.

4. With the revision in value of 16 nos. 'used cranes', duty liability was reassessed to ₹ 161,61,899 of which ₹ 65,70,381 had been discharged at the time of import leaving ₹ 95,91,518 as 'short-paid' and to be recovered. In diverting ₹ 16,94,904 towards other unconfirmed dues, the adjudicating authority committed a gross error and, particularly, for not having assigned any reason for such, or cause for such, appropriation towards dues proposed in a show cause notice that was not adjudicated concurrently. This transgression invalidates the impugned order to that extent.

5. An identical issue on valuation of similar goods had come up before the Tribunal and, while setting aside unsupported appropriation, the re-assessment was called in question on the plea of importer therein that reliance upon statements for the purpose, and that, too, without testing for relevancy under section 138B of Customs Act, 1962, for disturbing the declared value was improper even if the manner of such declaration was questionable. In other words, except by strict compliance with the Rules framed under the authority of section 14 of Customs Act, 1962, re-assessment would not meet the test of soundness to enable which the matter was remanded. Thereafter, the culmination of de novo proceedings was agitated once again before the Tribunal and, in *re Karim Jaria and Crown Lifters Pvt Ltd*, while holding that

'8. However, as recovery of differential duty has been proposed for the subsequent imports, M/s Crown Lifters Pvt Ltd is not immune to consequence of evasion of duty liability in the event of undervaluation being established. The sole evidence of misdeclaration of value appears to be the admission in the statement of Shri Karim Jaria and the confessional statement of the illicit fund mover, Shri Brijesh Gala. As in the case of the earlier imports, the actual price of each of the five 'used cranes' has not been ascertained. Reliance on statements alone is too fragile a foundation to build a case of undervaluation; such depositions are reliable only with corroborative support. In the absence of corroboration, test of cross-examination is of essence, as mandated by section 138B of Customs Act, 1962, for relevancy. This was the crux of the direction

'7.1 We find that the whole case of undervaluation is essentially based on statements are certain people and the confessional

statement of Shri Karim Jaria. However, the statements do not corroborate with each other... We are unable to appreciate these gaps in the proceedings.

7.2 The Counsel contended that cross-examination of persons whose evidence was relied upon such as Shri Brijesh Gala, was not allowed. In his findings the Commissioner simply brushes aside the request by stating that he does not find any compelling reasons for offering the cross-examination. The Commissioner relies on various judgements to state that cross-examination is not a matter of right. We find that the reliance placed on these judgements is misplaced and misunderstood.... The Commissioner cannot rely on the judgements without first recording specific reasons for not allowing the cross-examination. In our view Shri Brijesh Gala is a crucial link in illegal transfer of money abroad and therefore deny the cross-examination without recording any reasons is violative of the principles of natural justice and must be right....'

in the remand order of the Tribunal.'

the impugned order was set aside. As, in the present dispute, the value had been similarly determined solely on the basis of statements recorded during the course of investigation, it would be appropriate to set aside the impugned order similarly and remand the matter back to the original authority to determine the value afresh in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 1988/2007, as applicable.

6. Appeals are allowed by way of remand.

(Order pronounced in the open court on 13/05/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)