

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

Customs Appeal No.40501 of 2024

(Arising out of Order-in-Appeal Seaport C. Cus. II No. 226/2024 dated 7.3.2024 passed by the Commissioner of Customs (Appeals – II), Chennai)

Hyundai Motor India Ltd.

Irungattukottai, Sriperumbudur,
Chennai – 602 105.

Appellant

Vs.

Commissioner of Customs

Seaport Commissionerate
Custom House, No. 60, Rajaji Salai
Chennai – 600001.

Respondent

APPEARANCE:

Shri M. Manickam, Advocate for the Appellant

Shri S. Subramaniam, Special Counsel for the Respondent

CORAM

Hon'ble Shri P. Dinesha, Member (Judicial)

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

FINAL ORDER NO. 40044/2025

Date of Hearing : 04.12.2024

Date of Decision: 08.01.2025

Per M. Ajit Kumar,

This appeal is filed against Order in Appeal Seaport C. Cus. II No. 226/2024 dated 7.3.2024 passed by the Commissioner of Customs (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellants are manufacturers of automobile passenger cars in India. The appellant is one of the 100% wholly owned subsidiary of M/s. Hyundai Motor Company, South Korea. The appellant regularly imports various automobile components, parts, assemblies and sub-assemblies from overseas countries. These are sourced from both related parties and also unrelated parties and are

being cleared through the three seaports of Chennai and the Air Cargo Complex, Chennai. The appellant submitted that the Special Valuation Branch (**SVB**), of the Custom House, has issued an Investigation Report (**IR**) No. 11/2023 dated 14.2.2023 regarding the related party imports made by them. The appellant was apprehensive about the outcome of the IR on the quantum of duty liability, not only for the bills of entry already provisionally assessed but also for the bills of entry to be filed on day-to-day basis. They hence requested SVB to re-examine the IR. On 23.10.2023 a letter was issued by the Additional Commissioner, SVB, to them, stating that there is no provision for re-examination of the IR. Aggrieved by the said letter they filed an appeal before the Commissioner (Appeals). The said Authority held that the IR is not an appealable order as per the Customs Act and rejected their appeal. Hence this appeal.

3. The Ld. Counsel Shri M. Manickam appeared for the appellant and Ld. Special Counsel Shri S. Subramaniam appeared for the respondent.

3.1 The Ld. Counsel for the appellant traced the history of related party valuation done by Customs in their case. He stated that SVB had carried out extensive investigation and passed an Order-in-Original No. 852/2003 dated 31.07.2003 holding that the suppliers and the Importer are related parties and the invoice value in respect of 352 components imported from related parties was ordered to be loaded. Consequent to appellate proceedings, the DC, SVB, Custom House, Chennai had issued a Review Order-in-Original No. 7505/2008 dated 31.03.2008 and inter-alia held that the declared invoice value had to

be accepted as transaction value and this review OIO is operative from 31.03.2008 to 30.03.2011. Subsequently citing various other issues no renewal order came to be passed citing certain pending adjudication matters. They were however directed to pay Extra Duty Deposit (EDD) for the subsequent imports. They have submitted 24 Representations / Applications to Customs officials and pleaded for renewal of SVB Order dated 31.03.2008 at the earliest. Subsequently a letter dated 20.02.2023 was received from Deputy Commissioner of Customs, Gr.5B, Custom House, Chennai along with an IR No.11 / 2023 dated 14.02.2023. Further two Show Cause Notice (**SCN**) dated 31.05.2023 and 22.08.2023 came to be received by them on the matter. The Appellant on 29.09.2023 submitted a letter to the department, requesting that the IR may be withdrawn since no personal hearing was given before finalising the IR and that the matter requires further investigation. The Ld. Advocate submits that a letter dated 23.10.2023 was received from the Custom House, Chennai stating that there is no provision for re-examination of the Investigation Report. Aggrieved by the said letter, they filed an Appeal dated 03.11.2023 before the Commissioner of Customs (Appeals-II), as the above decisions was felt to be arbitrary, unreasonable, illegal, incorrect, unjust, unacceptable and unsustainable in the eye of law and to quash and set aside the same. The Appeal filed by them was rejected by the Commissioner (Appeals-II), on the following grounds

38. "Under the new directive under Circular No. 05/2016 dated 09.02.2016, SVBs no longer issue appealable orders. Instead, they undertake thorough inquiries and present investigative findings through an IR approved by the Principal Commissioner of Customs-Preventive, Chennai. It's crucial to note that this Investigation Report, while comprehensive, does not constitute independent quasi-judicial proceedings nor is it subject to appeal. Consequently, the authority

*vested in the IR approved by the Principal Commissioner transcends the jurisdiction of the Commissioner of Customs (Appeals). Following the completion of the investigation, the IR is forwarded to the Assessment Group/Adjudicating Authority. This body is responsible for meticulously examining the Investigation report's findings and determining any conceivable impact on the declared transaction value. They undertake this task through the issuance of a Show Cause Notice followed by an Adjudication Order. Importantly, the Adjudication Order represents a conclusive decision and is subject to appeal. Hence, **I find that the present IR is not appealable order before the Commissioner of Customs (Appeals).***

39. From the above findings, I reject the appeal filed by the appellant.” (emphasis added)

The Ld. Counsel stated that aggrieved by the rejection they filed the present appeal on the following grounds.

- 1) The letter dated 23.10.2023 and IR dated 14.02.2023 of the Additional Commissioner had communicated the 'decision' of the Principal Commissioner of Customs
- 2) The 1st and 2 nd renewal of the SVB order was done in terms of Circular No. 11/2001-Cus dated 23rd February 2001. The 3rd renewal of SVB Order dated 31.03.2008 was due on 01.04.2011. Therefore Circular No. 5 / 2016 – Customs dated 09.02.2016, which deals with “Procedure for investigation of related party import cases and other cases by the Special Valuation Branches” is not applicable to their request for renewal of SVB Order.
- 3) Non-consideration of the material facts on record and the applicable provisions of law vitiates the validity of the IR.
- 4) There is no logic or reason or grounds to reject the transaction value since all documents were submitted including the Income Tax Assessment reports and CA Certificates.

- 5) The decision dated 23.10.2023 is taken contrary to the recommendations of the Commissioner of Customs-II, Custom House, Chennai.
- 6) The impugned decision dated 23.10.23 is not only contrary to the principles of natural justice but also against fundamentals of administrative jurisprudence and to secure the interests of justice.

The Ld. Counsel Shri M. Manickam prayed;

- 1) To quash and set aside the decision dated 23.10.2023 of the Additional Commissioner of Customs reiterating the contents of IR No.11/2023 dated 14.02.2023.
- 2) To pass any other order, as may be deemed fit and proper, in the facts and circumstances of the case, as well as the provisions of law in force, so as to secure the interests of justice.

3.2 The Ld. Special Counsel Shri S. Subramaniam appearing on behalf of the respondent stated that the appellant's attempt to create an artificial distinction between Circular 04/2016 and 05/2016 misapprehends the interrelationship and hierarchical structure of the circulars meant to ensure uniformity. Paragraph 6 of Circular 04/2016 explicitly mandates that "instructions contained in circular no. 5/2016 dated 9th February 2016 shall be followed" for completing pending SVB investigations. The IR No. 11/2023 dated 14.02.2023, functions as an investigative document rather than an appealable order under Section 128 of the Customs Act. The appeal on this ground should therefore be rejected. The appellant's second ground of appeal, that their case falls exclusively under Circular No. 4/2016-Customs and not under Circular No. 5/2016-Customs, is fundamentally flawed and based on a selective reading of the regulatory framework. Paragraph 6 of Circular 4/2016

explicitly mandates that "in so far as the procedure for completing pending SVB investigations, instructions contained in circular no. 5/2016 dated 9th February 2016 shall be followed." The intent behind the 2016 reforms was to create a uniform, efficient system for handling all SVB cases. Therefore, Ground No. 2 of the appeal deserves rejection. The appellant's third contention holding letter dated SVB, as an appealable "decision" under Section 128 of the Customs Act is legally untenable. The IR is essentially a fact-finding document that forms the foundation for subsequent adjudication proceedings. It does not, by its very nature and purpose, create any immediate legal rights or obligations that could be subject to appeal. The appellant's argument regarding violation of natural justice principles is particularly unfounded given the extensive opportunities provided throughout the investigation process. The Constitutional arguments invoking Article 19(1)(g) and Article 265 are premature and misconceived. Constitutional remedies remain available against actual assessment orders, not against fact-finding reports. The appellant's right to carry on business remains unaffected by mere investigation findings. The present appeal is therefore premature and not maintainable in law. The appellant's fourth ground of appeal, which contends that the decisions dated 23.10.2023 and 14.02.2023 are contrary to Section 14 of the Customs Act and Customs Valuation Rules, warrants rejection. Firstly, the communication dated 23.10.2023 and the IR dated 14.02.2023 represent different stages of the customs valuation process and serve distinct purposes. The IR contains findings of fact, while the subsequent communication merely forwards these findings for

appropriate action. The appellant conveniently overlooks that Section 14(1) explicitly states that acceptance of transaction value is "subject to such other conditions as may be specified in the rules made in this behalf." The appellant's reliance on the case of **Eicher Tractors v. Commissioner of Customs** (2001 SCC 315) is not correct. While the Supreme Court did emphasize the conditions for rejection of transaction value, it nowhere suggested that the mere submission of documents precludes proper investigation of declared values. The appellant's prayer for automatic acceptance of declared values without proper verification would defeat the very purpose of the customs valuation framework. Therefore, Ground 4 of the appeal deserves to be rejected. The appellant's fifth ground of appeal, centered on the alleged contradiction between departmental actions and the Customs (Finalization of Provisional Assessment) Regulations, 2018. The issuance of Show Cause Notices by Deputy Commissioner of Customs under Sections 18(2) and 28 of the Customs Act represents legitimate exercise of statutory authority rather than departmental contradiction as alleged. The department's actions fully comply with both the letter and spirit of customs law, and the appeal deserves to be rejected. The appellant's sixth ground of appeal, is regarding alleged violations of principles of natural justice, on what the appellant terms as "evolved principles of administrative jurisprudence." The IR issued by the Special Valuation Branch represents a preliminary fact-finding exercise rather than a final determinative process affecting rights. The department's actions demonstrate full compliance with both procedural fairness requirements and administrative efficiency considerations. The

investigation process provides multiple safeguards for the appellant's interests while fulfilling necessary regulatory functions. Therefore, this ground of appeal merits decisive rejection. The Ld. Special Counsel Shri S. Subramaniam prayed that:

- (1) The appeal may be dismissed as not maintainable;
- (2) The appellant may be directed to pursue appropriate remedies in assessment proceedings.

4. We have heard the absorbing and spirited submissions made by the rival parties and have gone through the appeal memorandum along with voluminous documents and the judgments cited. Though both the parties have addressed us at length on various matters, we do not find it necessary to go into all those issues as some are extraneous to the dispute regarding the maintainability of an appeal before the Commissioner (Appeal) against a letter received from the department enclosing SVB's Investigation Report.

5. The power of the Government to issue instructions has been recognised by a **Constitution Bench** of the Hon'ble Supreme court in **Sant Ram Vs State of Rajasthan**, [AIR 1967 SC1910]. The Hon'ble Court held that while statutory rules cannot be amended by Executive instructions but "if the rules are silent" on any particular point, Government can fill up the gaps by issuing executive instructions, in conformity with the existing rules. The Circular per se is not under challenge. It deals with the subject; 'Procedure for investigation of related party import cases and other cases by the Special Valuation Branches'. We find that the appellant is aggrieved by IR No.11/2023 dated 14.02.2023, which was drawn up following the procedure under Boards Circular No. 05/2016 dated 09.02.2016. The appeal against the

said IR was rejected by the Commissioner (Appeals), holding that the said report is not an appealable order.

6. We find that the right to appeal is not a constitutional right but a statutory one. It is also not an ingredient of natural justice. The Hon'ble Supreme Court in its judgment rendered in **Vijay Prakash D Mehta Vs Collector of Customs** [1989 (39) E.L.T. 178 (S.C.)], held as under;

"Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions of the grant."

7. That the right to appeal is enshrined in the Customs Act 1962, is not under doubt nor is it challenged. However, what needs to be examined are the conditions circumscribing the grant of the right. Section 128 of the Customs Act 1962, states as under;

128. Appeals to Commissioner (Appeals) - (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner (Appeals) may appeal to the Commissioner (Appeals). (emphasis added)

It is well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The section hence merits examination. The major ingredients are as under;

An appeal can be filed before the Commissioner (Appeal)

- (a) by 'any person'
- (b) who is 'aggrieved'
- (c) 'by any decision or order'
- (d) passed under the Customs Act, 1962
- (e) by an officer of customs lower in rank than a Commissioner (Appeals)

8. Thus while the provisions of appeal are open to 'any person', they are circumscribed by certain restrictions mentioned in the section. Firstly the person appealing should be the one 'aggrieved' and not on

behalf of someone else. A **Constitution Bench** judgment of the Hon'ble Supreme Court, consisting of 5 judges, in the case of **Adi Pherozshah Gandhi Vs H.M Seervai, Advocate General of Maharashtra** [(1970) 2 SCC 484 / AIR 1971 SUPREME COURT 385], while examining the term 'person aggrieved' held that;

"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. . . . We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right to appear and make his submissions, he should without more have a right of appeal from an order rejecting his contentions or submissions. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there."

Again in **Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.** [1997 (91) E.L.T 502 (S.C)], the Apex Court stated;

Innumerable statutes both in England and in India give the right of appeal to 'a person aggrieved' by an order made and the provisions of such statutes have to be construed in each case to find out whether the person preferring an appeal falls within that expression. As was observed in **Robinson v. Currey** (1881) 7 QBD 465, (1881-85) All ER Rep Ext 1770 the words 'person aggrieved' are 'ordinary English words which are to have the ordinary meaning put upon them'. According to **Halsbury's Laws of England** (Third Edition, Vol. 25), page 293, footnote 'h':

'... the expression is nowhere defined and must be construed by reference to the context of the enactment in which it appears and all the circumstances.'

Attempts have however from time to time been made to define the expression in various cases. In **Sidebotham, Re, ex p Sidebotham** (1880) 14 Ch D 458, (1874-80) All ER Rep 588 (Ch D at p. 465) it was observed by James, L.J:

'But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.' (emphasis added)

In the instant case, the appellant has not been able to demonstrate that the IR is a quasi-judicial decision or order issued under the statute and that they are an arraigned party having a 'legal grievance', that they satisfy the criteria stated in the above judgment, inasmuch as the IR has wrongly deprived them of something, or wrongly refused them something, or wrongfully affected their title to something. Hence they cannot be stated to be a 'person aggrieved' by the IR and not just by an apprehension of any of the consequences that may ensue. The issue of allegedly not granting them a personal hearing shall be dealt with later in the order.

9. The words 'by any decision or order' are not defined in the Customs Act 1962. It can however be stated to refer to a 'legal' decision or order taken by a quasi-judicial authority acting under the Statute. A similar issue came before the Apex Court in **NATIONAL SECURITIES DEPOSITORY LTD. Vs SECURITIES AND EXCHANGE BOARD OF INDIA** [2017 (348) E.L.T. 601 (S.C.)], as to whether an administrative circular that is issued by SEBI under Section 11(1) of the Securities Exchange Board of India Act, 1992, can be the subject matter of appeal under Section 15T of the said Act. The Hon'ble Court held;

*12. This celebrated passage has been referred to time and again in the Supreme Court's judgments. Thus in **Province of Bombay v. Kshaldas S. Advani** [1950) SCR 621], it was held :*

“(i) That, if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by any party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, and in the absence of anything in the statute to the contrary it is the duty of the authority to act

judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.”

13. This statement of the law has been followed in ***Shivji Nathubhai v. Union of India & Ors.*** [(1960) 2 SCR 775], where the question which faced the Supreme Court was whether the Central Government’s power under Rule 54 of the Mineral Concession Rules, 1949, to review administrative orders could be stated to be in a quasi-judicial capacity. After setting out Lord Justice Atkin’s passage in Advani’s case (*supra*), this *Court held that three requisites were necessary in order that the act of an administrative body be characterized as quasi-judicial :*

- (i) There must be legal authority;*
- (ii) This authority must be to determine questions affecting the rights of subjects; and*
- (iii) There must be a duty to act judicially.*

10. The issue that the IR is not prepared by an officer of Customs lower in rank than a Commissioner is not disputed before us. However, applying the test of the three requisite conditions mentioned in **Shivji Nathubhai** (*supra*), characterizing a quasi-judicial authority, we find that the officer who has prepared the IR was doing so in his administrative capacity as per a circular issued by the Board. He was not required to act judicially and make any final determination of questions affecting the rights of the appellant, as per the Customs Act, 1962. The officer was not invested with power to determine questions of law or fact but was only required to gather facts and evidence and prepare a report which may include his subjective and non-binding conclusions in the form of an opinion and submit it to the proper officer.

The proper officer then examines the IR and takes a final view on it and if such view is in variance to the stand taken by the importer, that a lis arises. This then brings into play the tenants of natural justice in the action to follow, not otherwise. Hence in this case, while there was a requirement for the officer to act judiciously there was no requirement for him to act judicially while preparing the IR. In **Jaswant Sugar Mills Ltd., Meerut vs Lakshmichand And Others** [1963 AIR 677, 1963 SCR SUPL. (1) 242], relied upon by the appellant, a 5 Judge Bench of the Apex Court examined the criteria for deciding whether a decision is administrative or judicial in nature. It held;

“Question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the superior courts to issue writs of certiorari is invoked. Often the line of distinction between decisions judicial and administrative is thin : but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact : it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial : it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially.”

We find that there was nothing in the Statute that requires the officer to act judicially while preparing the IR. The said report was prepared as per a circular issued by the Board and was fact-finding in nature. Hence this plea fails.

11. The appellant has stated that they had requested for the IR to be withdrawn since no personal hearing was given before finalising the IR, which was contrary to the principles of natural justice and that the matter requires further investigation. Hence, they had prayed to quash and set aside the decision dated 23.10.2023 of the Additional Commissioner of Customs reiterating the contents of IR No.11/2023 dated 14.02.2023. We note that the general rule in legal proceedings is that "he who asserts must prove". This principle finds echo in Section 101 of the Evidence Act - 1872, as was prevalent during the relevant time, 'Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.'

12. We have already found that the IR is administrative and fact finding in nature as it does not purport to decide the lis or contest between the contending parties by a statutory authority. A person who joins the inquiry and who assists or is questioned or submits documents and other proof in a dispute that is of assistance in reaching a conclusion on the matter being inquired into, cannot have a grievance that he was not given a personal hearing before finalizing the report. In **P.D. Agrawal vs State Bank Of India & Ors on 28 April, 2006** [AIR 2006 SUPREME COURT 2064 / 2006 (8) SCC 776], the Hon'ble Supreme Court has revisited the concept of 'natural justice' and after examining a large number of judgments, held as under;

The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in State Bank of Patiala & Ors. vs. S.K. Sharma [(1996) 3 SCC 364] and Rajendra Singh vs. State of M.P. [(1996) 5 SCC 460], the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To

*the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. **It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula.** [See *Viveka Nand Sethi vs. Chairman, J. & K. Bank Ltd. & Ors.* (2005) 5 SCC 337 and *State of U.P. vs. Neeraj Awasthi & Ors.* JT 2006 (1) SC 19. See also *Mohd. Sartaj vs. State of U.P.* (2006) 1 SCALE 265.] In *Union of India & Anr. vs. Tulsi Ram Patel* [(1985) Supp.2 SCR 131 : (1985) 3 SCC 398], whereupon again Mr. Rao placed strong reliance, this Court did not lay down a law in absolute terms that violation of principle of natural justice would be read into the equality clause contained in Article 14 of the Constitution of India. The said decision was rendered having regard to the fact that by taking recourse to the second proviso appended to Article 311 of Constitution of India, no disciplinary proceeding was to be initiated at all and an order of dismissal could be passed only on the basis of subjective satisfaction of the authority empowered to dismiss or remove a person or to reduce him in rank wherefor reason was to be recorded by it in writing that it was not reasonably practicable to hold a disciplinary proceeding. The facets of the principle of natural justice was considered in some details in *State Bank of Patiala & Ors. vs. S.K. Sharma* [(1996) 3 SCC 364], wherein this Court categorically held:*

*"Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. **Justice means justice between both the parties.** The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."*

It was opined that in an appropriate case, the said right could also be waived, stating:

*"If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. **If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for.** In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases."*

It was further held:

"Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But, in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query." (emphasis added)

We find that there was no statutory right for a hearing at the stage of preparation of IR and hence the appellant has not been wrongly deprived of the right. No proof has been given to the contra. We hence do not find any substance in the pleading.

13. We find that the appellant has also not demonstrated any real prejudice caused to them by the investigation report. Merely being disappointed or dissatisfied is not enough. Further the IR is the product of a consultative process between the department and the appellant as the facts are known only to the appellant. It is a compilation of evidence gathered, and subjective conclusions reached by the investigators. The appellant had ample opportunity to put forward his views orally and in writing. We were also informed that after the issue of the IR, certain subsequent events took place and the Customs Department, in furtherance of the process, has also issued two SCN's to the appellant on the issue of valuation of related party import cases relying on the IR.

These notices have not been challenged. They are a part of the dispute resolution mechanism. They involve a quasi-judicial procedure with inbuilt safeguards of natural justice and procedural fairness. The appellant has a fair chance to represent his case including assailing the investigation report, which is not binding on the Original Authority while deciding the lis and if he is still aggrieved by the final decision, the appellant can take up the matter in further appeal as provided in the statute. Hence the appellant has not made out a case for quashing the impugned order and we uphold the same.

14. We find that the impugned order holding that the IR is not an appealable order is legal and proper. The appeal is hence rejected and disposed of accordingly.

(Order pronounced in open court on 08.01.2025)

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

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

Rex