



सीमा शुल्क प्रधान आयुक्त का कार्यालय,  
नवीन सीमा शुल्क भवन, नया कांडला - 370 210 (गुजरात)  
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,  
NEW CUSTOM HOUSE, NEW KANDLA - 370 210 (GUJARAT)

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A	फाइल संख्या/ File No.	S/10-14 TO 16/ADJ/ADC/MARUTI/2017-18
B	मूल आदेश सं./ Order-in-Original No.	KDL/ADC/UBR/12-13-14/2017-18
C	पारित कर्ता/ Passed by	SHRI U. B. RAKHE, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	26/09/2017
E	जारी करने की दिनांक/Date of issue	26/09/2017
F	एल. सी. डी. एम. सं. एवं दिनांक/ LCDM No. & Date	DENOVO PROCEEDING IN RESPECT OF O-I-A NO. KDL-CUSTM-000-APP-010-17-18 DATED 09.05.2017
G	नोटीसी/ पार्टी/ निर्यातक Noticee/Party/Exporter	M/S MARUTI SUZUKI INDIA LTD., PLOT NO. 1, PHASE-3, IMT MANESAR, GURGAON (HARYANA).

1. यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली, 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“सीमा शुल्क आयुक्त (अपील), कांडला

वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़

अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
7<sup>th</sup> Floor, Mridul Tower, Behind Times of India, Ashram Road  
Ahmedabad - 380 009”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के ऊपर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
  - (i) उक्त अपील की एक प्रति और  
A copy of the appeal, and
  - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), सीमा शुल्क और 1982 अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 10% भुगतान करना होगा।  
An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.



This case is taken up for adjudication in pursuance of Order-in-Appeal No. KDL-CUSTOM-000-APP-010-17-18 dated 09.05.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad in Appeal No. 46/2016 filed by M/s. Maruti Suzuki India Ltd., Gurgaon (Haryana).

### **BRIEF FACTS OF THE CASE**

M/s. Maruti Suzuki India Ltd. situated at Plot No. 1, Phase-3, Manesar, Gurgaon (Haryana) *{hereinafter referred to as the 'Noticee'}* cleared different type of coils classifying under Chapter 72 of the Custom Tariff Act, 1975.

1.2 During the course of audit by the Audit Officers of CRA, Ahmedabad, on test check of the Bills of Entry, filed for the different period by the Noticee certain paras were raised, which had converted into three LARs. Accordingly, Three Less Charge Demand Memos had been issued as per the details tabulated hereunder:-

S. No.	LAR No. & date	Para No.	Less Charge Demand Memo F. No. & Date	Amt. involved (Rs. in lacs)	No. of Bills of entry & Month
01.	48/2012-13 dated 24/12/2012	02	S/11-04/2012-13/Gr. IV dated 05/03/2013	19,20,570/-	10 (April, May & June '2012)
02.	136/2011-12 dated 07/02/2012	02	S/11-02/ Gr. IV/2011-12 dated 27/05/2013	2,34,173/-	02 (October-2011)
03.	162/2011-12 dated 16/04/2012	07	S/11-01/2012-13/Gr. IV dated 13/03/2013	1,75,765/-	56 (November-2011)

1.3 The issue involved in the above-stated LARs was that the Noticee had cleared different types of Coils classifying under Chapter 72 of the Custom Tariff Act, 1975 on various Bills of Entry during the different time period. On verification of such Bills of Entry, it was noticed that the importer had shown freight payment in Indian Rupees instead of US \$. Further, the NYK Line, New Delhi had issued freight certificates after taking the exchange rate less than the exchange rate on the date on which the Bills of Entry were presented under various Bills of Lading.

1.4 As per Section 14 (1) of the Customs Act, 1962, the value of imported goods and export goods shall be the transaction value of such goods provided that such transaction value in case of imported goods shall include, in addition to the price actually paid or payable for the goods when sold for export to India, any amount that the buyer is liable to for costs and services, including commissions and brokerage, assists, engineering design work, royalties and license fees, costs of transportation to the place of



importation, insurance and handling charges. Such prices shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46 or a Shipping Bill or Bill of Export, as the case may be, is presented under Section 50 of the Customs Act, 1962.

1.5 As per the aforesaid provisions the exchange rate is to be taken for calculation on the date on which the Bill of Entry was presented. Application of incorrect exchange rate on freight had resulted in the undervaluation of the goods. Accordingly, three Less Charge Demand notices, as per the aforesaid table, were issued to the Noticee, wherein the Noticee had been directed to pay the short-paid Customs duty amount alongwith applicable interest as provided under Customs Act, 1962.

1.6 The Noticee during the personal hearing, *inter alia*, reiterated that there is calculation error in the Less Charge Demand Memo for Rs.19,20,570/- issued vide F. No. S/11-04/2012-13/Gr.IV dated 05.03.2013. The duty amount shown in the said memo is the difference in the freight amount and not the duty amount so suggested by the department. The matter was referred to the concerned Assessment Group (IV) to ascertain the correctness of the duty, as contended by the Noticee. The Deputy Commissioner (GR-IV), vide letter F. No. S/11-04/2012-13/Gr. IV dated 10/08/2016 has submitted the re-calculation sheet in respect of the Customs duty amounting to Rs. 4,32,154/- in respect of Less Charge Demand Memo F. No. S/11-02/Gr.IV/2011-12 dated 27.05.2013.

1.7 After following due process of law, the then adjudicating authority passed the following order vide OIO No. KDL/ADC/PMR/42 to 44/2016-17 dated 21.08.2016 as under:-

(i) I confirm the demand of duty proposed in the following notices issued to M/s. Maruti Suzuki Ltd., Plot No. 1, Phase-3, Manesar, Haryana, under Section 28 of the Custom Act, 1962:-

S/11-04/2012-13/Gr. IV dated 05/03/2013	4,32,154/-
S/11-02/ Gr. IV/2011-12 dated 27/05/2013	2,34,173/-
S/11-01/2012-13/Gr. IV dated 13/03/2013	1,75,765/-



(ii) I order to recover interest on above confirmed less charge demands from the Noticee under section 28AA of the Custom Act, 1962 at applicable rate of duty.

1.8 Being aggrieved with the said Order-in-Original, the Noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner (Appeals), vide Order-in-Appeal No. KDL-CUSTM-000-APP-010-17-18 dated 09/05/2017, pronounced order as under:-

**“10. In view of the fact that the agreements were not taken on record during adjudication, I find that it has become imperative for the adjudicating authority to reexamine the facts and evidences in light of the relevant Agreements before deciding the case. In view of the relevant facts and evidences of the case as discussed above, I find that remitting of the case has become *sine qua non* to meet the ends of justice. Regarding the issue of power to remand, I rely upon the case of *Prem Steels P. Ltd. - 2012-TIOL-1317-CESTAT-DEL* and the case of *Hawkins Cookers Ltd. - 2012 (284) E.L.T. 677 (Tri. - Del)*, which have also relied upon the case of *Medico Cookers Ltd. - 2012 (284) E.L.T. 677 (Tri. - Del)*, which have also relied upon the case of *Medico Labs - 2004(173) ELT 117 (Guj.)*, wherein it has been held that Commissioner (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f. 11.05.2001.**

**11. I remit the matter pertaining to present appeal to the proper officer, who shall examine available facts, documents, submission by the appellant & provisions of law and then pass order in this case afresh after following principles of natural justice and adhering to the legal provisions. While passing this order, no opinion / views have been expressed on the merits of the dispute or on the submissions by the appellant in this regard, which shall be independently considered by the adjudicating authority.”**

#### **WRITTEN SUBMISSION AND PERSONAL HEARING**

2. Personal hearing in the matter was fixed on 11.07.2017, 04.08.2017 and 07.08.2017. Shri Ravjyot Ghuman, Advocate and Authorized Representative of the noticee appeared for hearing on 07.08.2017 and reiterated the arguments made in their detailed defence reply vide their letter dated 02.06.2017 and submitted that in accordance to the contract,



purchase order dated 25.05.2010 and agreement, the freight element was to be charged in the Indian Rupees which was correctly indicated in the Bill of Entry and correct duty was paid thereon. He further submitted that as the duty was correctly paid at the time of assessment, no short duty was payable and requested to drop the proceedings as initiated in all the three Less Charge Demand Notices.

2.1 The Noticee has submitted their representation dated 02.06.2017 through their legal firm M/s. SBR Legal, wherein they submitted as under:

2.1.1 The Appeal had been filed on inter alia the following grounds:-

A. That the Original Order had been passed on an erroneous assumption that the liability for freight payments cannot arise in Indian Rupees and can only arise in US Dollars.

B. The Original Order erroneously noted that an "incorrect exchange rate" was applied on freight and further observed that it resulted in undervaluation of the goods.

C. The Original Order failed to appreciate that the debit notes for freight charges raised on MSIL were already in Indian Rupees and as such the question of applying any exchange rate, leave alone an incorrect exchange rate, did not arise at all.

D. The Original Order erroneously noted that an exchange rate had to be applied on the freight charges in the present matter. The Original Order failed to appreciate that MSIL had incurred liability for making freight payments, and made freight payments, in Indian Rupees which had already been ascertained even before the goods entered Indian Territory.

E. The Original Order incorrectly noted that the shipping line has issued freight certificate after taking exchange rate(s) less than the rate that was applicable on the date on which the Bills of Entries had been presented. The Original Order failed to note the many other instances brought to the knowledge of the Learned Additional Commissioner, wherein the freight certificate issued by the shipping line used conversion factor(s) higher than the exchange rate prevalent on the date of presentation of Bills of Entry.

F. The Original Order, failed to appreciate that as per the debit notes raised by the shipping company and also as per the agreements entered into between the shipping company and MSIL, the liability of payment arose only in Indian Rupees and not in US Dollars.



Further the quantum of the liability was ascertained when the shipment entered the first port of call (outside the territory of India) and was not dependant on the exchange rate of any currency whatsoever thereafter.

2.1.2 On 25 May 2011, MSIL entered into a freight contract (hereinafter referred to as "**Agreement I**") with NYK-Hinode Line Ltd. (hereinafter referred to as '**NYK**') for transportation of Steel Coils for period 01 April 2011 to 31 March 2012. Further, on 25 May 2012, MSIL again entered into a freight contract (hereinafter referred to as "**Agreement II**") with NYK for transportation of Steel Coils for period 01 April 2012 to 31 March 2013. Agreement – I and Agreement II are hereinafter collectively referred to as the "**Agreements**". A copy of the Agreements (along with the referred quotations issued by NYK) is attached herewith as **Enclosure - IX**.

2.1.3 The Commissioner of Customs (Appeal), Ahmedabad, was made aware of the fact that the Agreements had been discussed and produced at the time of personal hearing in the proceedings leading to the Original Order. It was contended before the Commissioner (Appeals) that non-recording of the facts of the Agreements, which were critical/ relevant to the case, amounted to refusal to admit evidence which is critical/ relevant to the present case. It is pertinent to mention that the perusal of the Agreements is necessary and critical for the proper adjudication of the present issue as the liability of MSIL for making freight payments emanates from these Agreements.

2.1.4 In light of the submissions made on our behalf and after detailed perusal of the documents placed before it, the Appellate Authority was kind enough to remit the matter back to the concerned officer observing that remitting of the case had become *sine qua non* to meet the ends of justice. It has further directed the concerned officer to examine available facts, documents, provisions of law and the submissions made on behalf of MSIL and then pass a fresh order in the case, after following the principles of natural justice and adhering to legal provisions.

2.1.5 It is submitted that the Original Order erroneously proceeded on the assumption that exchange rates less than the exchange rate as on the date of presentation of the bill of entries were taken to calculate assessable value. It is submitted that this erroneous assumption was drawn in ignorance of the Agreements merely because freight payments mentioned in the invoice were shown both in Indian Rupees and in US Dollars.



2.1.6 As per the Agreements, NYK transported Steel Coils to MSIL in accordance with the terms and conditions of the Agreements. **As per the Agreements, the freight bills would be issued in Indian Rupees and MSIL's liability to pay would also accrue only in Indian Rupees.** Any and all amounts would be converted by NYK to Indian Rupees as per the agreed formula in the Agreements at the date that the ship reaches the first port of call. As such, MSIL's liability under the Agreements would only be in Indian Rupees determined at the time the ship enters the first port of call (which would always be outside India in cases of import). In other words, once the ship enters the first port of call, the amount of money payable by MSIL is ascertained and determined in Indian Rupees and MSIL is not required to pay any amount other than the ascertained amount in Indian Rupees.

As the first port of call is outside Indian Territory (since the goods are imported) the liability of MSIL to make payments in Indian Rupees arises even before the shipment enters Indian Territory. As a necessary corollary, there is no question of applying any exchange rate once the liability under the Agreements has been determined and ascertained outside Indian Territory, at the first port of call, since MSIL no longer takes the risk of fluctuation in the currency exchange rates once MSIL's liability has been ascertained in Indian Rupees. Thus NYK raises debit notes/invoices on MSIL in Indian Rupees and MSIL accordingly pays in Indian Rupees since MSIL's liability itself arises only in Indian Rupees.

2.1.7 MSIL always paid the duty on the actual freight amount irrespective of the exchange rate (since it was already ascertained in Indian Rupees and did not require to be converted). An example to show how MSIL's liability to pay the freight amount was incurred in Indian Rupees (and independent of any notified exchange rate), which also shows the *bona-fide* of MSIL's contention, is that MSIL has shown in its replies to the Memos that MSIL paid duty on the actual freight amount even when the shipping company, NYK, had applied conversion factors higher than the Exchange Rate Notifications issued by the Customs Department for the relevant period. This clearly shows that MSIL is not intent on evading any duty whatsoever and has always been a conscious tax abiding entity. On the contrary, the liability of MSIL for the freight amount was always incurred in Indian Rupees and MSIL was bound by its Agreements (and paid duty on higher conversion factors) even in instances where it would



have been beneficial for MSIL to avail the exchange rate notified by the Customs Department.

### **DISCUSSION AND FINDING**

3. I have carefully gone through the entire case records, written submissions dated 02.06.2017 and Order-in-Appeal No. KDL-CUSTOM-000-APP-010-17-18 dated 09/05/2017 passed by the Commissioner of Customs (Appeals), Ahmedabad. The Appellate Authority has remanded back the case to the proper officer to examine the case in view of available facts, documents, submission by the appellant & provisions of law and accordingly pass order afresh after following principles of natural justice and adhering to the legal provisions.

3.1 The issue to be decided in the instant case is whether the Noticee has short paid the customs duty on the basis of freight certificate issued by the shipping line, wherein the shipping line has issued the certificate after taking the exchange rate less than that on the date on which the Bills of Entry were presented.

3.2 Before proceeding to decide the case, I refer to the relevant provision of the valuation of the goods for the purpose of payment of custom duty, which is provided under section 14 of the Custom Act, 1962. The provision of section 14 ibid reads as under:

**“SECTION 14. Valuation of goods.** - (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

**Provided** that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf :

**Provided** further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section :



**Provided** also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

**Explanation.** — For the purposes of this section —

(a) “rate of exchange” means the rate of exchange —

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) “foreign currency” and “Indian currency” have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

3.3 On plain reading of above provision, it is clear that for the purposes of the Customs Tariff Act, 1975 the value of the imported goods is the transaction value of such goods, that is, the price actually paid or payable for the goods for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. Further, the aforesaid provision states that for determining value of goods, amounts in foreign currency should be converted to Indian currency by applying the exchange rate determined by the Board and as in force on the date of filing of bill of entry.

3.4 I have gone through the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The relevant rules are produced below:

*Rule 3. Determination of the method of valuation. — (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) .....

*Rule 10. Cost and services. —*

(1) .....

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include -

(a) the cost of transport of the imported goods to the place of importation;

(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and

(c) the cost of insurance :



3.5 The aforesaid Rule 3 states that the value of imported goods is the transaction value adjusted in accordance with the provisions of rule 10 *ibid*. The Rule 10 *ibid* provides that for determining value of imported goods, the components of freight, loading/ unloading, handling charges and the cost of insurance paid in respect of the subject goods is to be included in the FOB value to arrive at the transaction value.

3.6 In the instant case, the Noticee has filed various Bills of Entry. On perusal of the Annexures appended to the notices (*supra*), it transpires that the exchange rate applied by the Shipping line, while issuing the freight certificate to the Noticee was lower than the exchange rate applicable on the date of filling of bills of entry, as provided under section 14 *ibid*.

3.7 I find that the noticee entered into a freight contract with NYK-Hinode Line Ltd on 25 May 2011 for transportation of Steel Coils for period 01 April 2011 to 31 March 2012. Further, on 25 May 2012, the noticee again entered into a freight contract with the same party for transportation of Steel Coils for period 01 April 2012 to 31 March 2013 wherein it is mentioned that the freight bill be issued in the Indian Rupees.

3.8 In the case in hand, there was a difference in the exchange rate shown in the freight certificates issued by the shipping line and the exchange rate prevailed at the material time, when the bills of entry were filed under section 46 *ibid*. Here I find that application of rate of exchange is required for conversion of foreign currency to Indian Rupees. On that basis Assessable Value is determined in Indian Rupees and then applicable Customs Duty is calculated in Indian Rupees on such Assessable Value. Therefore, the provision relating to application of exchange rates provides mechanism to determine foreign currency value to Indian currency value. The present case is related to payment of freight which is required to be incorporated in the invoice value, while computing Assessable Value. The agreements of freight produced by the noticee show that the payment of freight was payable in Indian Rupees. Further, I find from the documents submitted by the noticee that the invoices were also raised by NYK Line (India) Ltd. in Indian Rupees and payments were also made by the noticee to them in Indian Rupees. The amount of freight actually paid by the noticee in Indian Rupees is evident from the documents submitted by them. I find that the said amounts of freight have been declared in respective Bills of Entry in Indian Rupees. Therefore, in the instant case, the question of application of exchange rate for conversion of freight amount from foreign currency to



Indian Rupees does not arise. In view of these facts, the Noticee's contention that they have paid the customs duty on actual basis is sustainable.

3.9 It is observed from the copies of debit notes issued by M/s. NYK Line (India) Ltd. and produced by the noticee, that amounts of freight were converted from US Dollar to Indian Rupees by applying exchange rates other than notified under Section 14 of the Customs Act, 1962. However, I find that the agreements were made for payment of freight in Indian Rupees and as per the documents produced by the noticee, the freight payments were accordingly made in Indian Rupees only. Therefore, whatever exchange rates have been applied by M/s. NYK Line (India) Ltd., the actual amount of transaction is required for determining actual value for the purpose of the Customs Act, 1962. In the instant case, the noticee has made payments of freights in Indian Rupees and has also declared the same amount of freight in Indian Rupees in respective Bills of Entry. Therefore, contention of the noticee is sustainable.

3.10 The reliance is placed on the Supreme Court judgment as reported in the case of Ispat Industries Ltd. Vs. Commissioner of Customs, Mumbai in the 2006 (202) E/L/T/ 561 (S.C.) wherein the Hon'ble Supreme Court directed that the actual freight charges paid will only be added to the assessable valuation in computing the Customs Duty. In another case law as reported in 2012 (283) E.L.T. 161 (S.C.) in the case of Commissioner of Central Excise Vs. Fiat India Ltd. also Hon'ble Supreme Court made the similar direction on freight charges.

3.11 Apart from above, I find that the Less Charge Demands were issued on the basis of CRA Objections. However, the said audit Para has been contested by the Department and consequently the audit Para was closed by CRA as communicated vide their letters F. No. सी.आर.ए./ले.प.रि-162/2011-12/जा.सं.-774 दिनांक 15.10.2015, सी.आर.ए./ले.प.रि-48/2012-13/जा.सं.-913 दिनांक 26.11.2015 & सी.आर.ए./ले.प.रि-136/2011-12/जा.सं.-763 दिनांक 13.10.2015. This shows that in the instant case the office of the Principal Director of Audit (Central), Ahmedabad has also agreed that correct amount of customs duty was paid. In view of these facts, the proceedings of demand against the

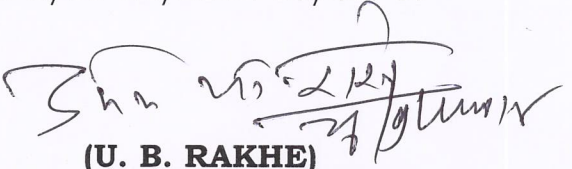


Noticee, under three Less Charge Demand Memos as mentioned *supra* under section 14 *ibid* read with section 28 *ibid* deserve to be dropped.

4. In view of the aforesaid, I pass the following order:

**ORDER**

I hereby drop the proceedings initiated in the Less Charge Demand Memos issued from F. No. S/11-04/2012-13/Gr. IV dated 05/03/2013, S/11-02/ Gr. IV/2011-12 dated 27/05/2013 & S/11-01/2012-13/Gr. IV dated 13/03/2013.

  
(U. B. RAKHE)

**ADDITIONAL COMMISSIONER**

**To**

M/s. Maruti Suzuki India Ltd., Plot No. 1, Phase-3, Manesar, Gurgaon (Haryana)- 122 051.

**Copy to:-**

1. The Assistant Commissioner of Customs (RRA), Custom House, Kandla.
2. The Deputy Commissioner, Gr. IV, Custom House, Kandla.
3. The Assistant Commissioner (Recovery Cell), Custom House, Kandla.
- ✓ 4. Guard file.