CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 20032 of 2020

(Arising out of Order-in-Original No.BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.2019 passed by the Commissioner of Customs, Bengaluru)

Jyothi C Jain
Proprietor M/s. Samaavesh
No.168 Old No.9 Arasoji Rao Building
Near Minerva Circle, R.V. Road,
VV. Puram, Bengaluru-560 004. ....**Appellant(s)**

VERSUS

Commissioner of Customs,
Bangalore Customs, C.R. Building,
P.B.No.5400, Queens Road,
Bangalore-560 001. ....**Respondent(s)**

WITH

(i) Customs Appeal No. 20034 of 2020 (Samaavesh HUF Vs. Commissioner of Customs, Bangalore
(Arising out of Order-in-Original No.BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.2019 passed by the Commissioner of Customs, Bengaluru)

(ii) Customs Appeal No. 20033 of 2020 (M/s. Samskruthi Interiors Vs. Commissioner of Customs, Bangalore)
(Arising out of Order-in-Original No. BLR-CUSTM-CTY-COM-07-19-20 dated 17.10.2019passed by the Commissioner of Customs, Bengaluru)

(iii) Customs Appeal No. 20570 of 2018 (Shri Rakesh Vs. Commissioner of Customs, Bangalore)
(Arising out of Order-in-Appeal No. 45-47/2018 dated 17.10.2018 passed by the Commissioner of Customs (Appeals), Bengaluru)

(iv) Customs Appeal No. 20571 of 2018 (Ms. Jyothi Jain Vs. Commissioner of Customs, Bangalore)
(Arising out of Order-in-Appeal No. 45-47/2018 dated 17.10.2018 passed by the Commissioner of Customs (Appeals), Bengaluru)

(v) Customs Appeal No. 20572 of 2018 (J V Impex Vs. Commissioner of Customs, Bangalore
(Arising out of Order-in-Appeal No. 45-47/2018 dated 17.10.2018 passed by the Commissioner of Customs (Appeals), Bengaluru).

APPEARANCE:

Mr. Krishna Prathap Singh, Advocate for the Appellant.
Mr. M. Sreekanth, Asst. Commissioner (AR) for the Respondent.

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 21002-21007 /2026

Date of Hearing: 29.01.2026
Date of Decision: 28.07.2026

PER: P.A. AUGUSTIAN

The issue in the present appeals is regarding alleged undervaluation of goods imported by the Appellants, demand of duty along with interest and imposition of penalty.

2. In this regard 3(three) appeals, Appeal Nos. (**C/20570/2018, C/20571/2018 & C/20572/2018**) have been filed by Shri B. M. Rakesh, Ms. Jyothi Jain and M/s. J.V. Impex, respectively against the Orders-in-Appeal No. 45-47/2018 dated 17.01.2018 passed by the Commissioner (Appeals), against Orders-in-Original dated 17.01.2018 and 08.08.2017. Further, 3(three) appeals **(C/20032/2020, C/20033/2020 and C/20034/2020)** have been filed Ms. Jyothi C Jain, Proprietor of M/s Samaavesh, M/s.Samskruti Interiors through its Proprietor Mr. N. Abhishek Jain and Samaavesh (HUF), through its Karta Mr. Chenraj Jain, respectively against the Order-in-Original dated 17.10.2019.

3. Aggrieved by said impugned orders, above 6(six) appeals were filed before this Tribunal and this Tribunal as per the Final Order No. A/20261-20266/2022 dated 01.08.2022 held that since the request for cross examination was not allowed and considering that it is mandatory as per Section 138B of the Customs Act, 1962, the impugned orders were set aside and matter was remanded for cross examination of witnesses as requested by the Appellant. Aggrieved by said order,

Revenue filed appeals before the Hon'ble High Court of Karnataka and Hon'ble High Court in Customs Appeal No.02/2023 vide order dated 13.08.2023 set aside the aforesaid Final Order dated 01.08.2022 and remanded the appeals to the Tribunal for fresh consideration. Since the issues involved in the present appeal are common, all the 6(six) appeals are taken up together for hearing.

4. When the appeals came up for hearing, the Learned Counsel for the Appellants submits that the Appellant-Jyothi C Jain the proprietor of M/s. Samaavesh was engaged in trading of imported furniture, interior decoration and other hardware accessories. Alleging that the two firms M/s. J V Impex and M/s. Samskruti Interiors are proxy importers of the Appellant-Jyothi C Jain and had colluded with overseas supplier, fabricated and presented undervalued invoices for customs clearance in the name of 3 (three) firms for the period from 2014-2017, investigation was commenced. During investigation, Appellant-Jyothi C Jain was directed to deposit as amount of Rs. 1.50 Crore and thereafter show cause notice was issued. The matter was adjudicated and the Adjudication authority confirmed the proposals in the show cause notice. As regards the issue on merit, Learned Counsel submits that the entire case is built on the basis of retracted statements under Section 108 of the Customs Act, 1962, corroborated by evidence in the form of WhatsApp conversation, letter, email and invoice claiming that it is received from overseas supplier which are not admissible since such unauthenticated electronic evidence do not satisfy the provision under section 138B and 138C of the Customs Act, 1962.

5. As regards valuation, Learned Counsel submits that as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, declared Value can be rejected only if Rule 12 of Valuation Rule is applied. There was no enquiry to ascertain the genuineness of the document recovered and the investigation commenced without any reason to reject the declared value. Hence impugned order is not legally sustainable. Further, while computing the differential duty liability, the adjudication authority has adopted the

figures placed by the investigating agency in the Show Cause Notice and committed a gross error while matching the data as per invoices submitted by the appellant to Customs and alleged invoices retrieved by Department of Revenue Intelligence (DRI) from overseas suppliers which cannot be considered as admissible evidence to penalise the Appellants in the absence of non-compliance with the statutory provisions. Thus, the duty liability imposed on the Appellant-Jyothi C Jain is illegal and liable to be set aside.

6. As regards the reliance of the adjudication authority on the statement recorded under section 108 of the Customs Act 1962, Learned Counsel submits that the statement cannot be taken as admissible evidence without undergoing the rigours placed under Section 138B of the Customs Act 1962 i.e. cross-examination. It is an admitted fact that Appellant-Jyothi C Jain had made a request for cross-examination of the persons whose statements were relied in the issue of show cause notice (SCN) to allege illegality in import, however it is denied without any valid reason. In such cases, cross-examination is mandatory to safeguard the law as prescribed under Section 138B of the Customs Act, 1962 and if not granted, no reliance can be placed on such statements. In this regard, Learned counsel drew our attention to following decisions:-

1. **G-Tech Industries Vs. Union of India 2016 (339) E.L.T. 209 (P&H)** wherein it was held that, *"Adjudicating authority cannot straightaway rely on a statement unless rigor of Section 9D(1)(b) is met with".* Section 9D(1)(b) of the Central Excise Act, 1944 is pari-materia with Section 138 of the Customs Act, 1962 as held in Elora Tobacco Co Ltd., Vs. CCE, Indore 2017 (347) E.L.T. 614 (Tri-Del).

2. **Arya Abhushan Bhandar Vs. Union of India 2002 (143) E.L.T. 25 (S.C.)** wherein the Hon'ble Apex Court held that, *"non-production of panchas, breach right of natural justice*".

3. **CiabroAlemao Vs. CC, Goa-2018 (362) E.L.T. 465 (Bom)** wherein the Hon'ble Bombay High Court held that "*Section 138B of the Customs Act, is applicable in prosecution and departmental adjudication".*

7. As regards the finding in the impugned order related to cross-examination, Learned Counsel submits that, after considering the issue in detail, this Tribunal, as per the Final Order No. A/20261-20266/2022 dated 01.08.2022 remanded the matter for cross-examination as sought by the appellant. However, when the Revenue filed an appeal before the Hon'ble High Court, the impugned order is set aside and the matter is remanded to the Tribunal for reconsidering the issue. In this regard, Learned Counsel submits that since the Hon'ble High Court has not expressed any opinion on the appeal filed by the Revenue, it is only a remand in the matter for fresh consideration by this Tribunal, and the finding and observations of the Hon'ble High Court are '*obiter dicta*' in nature.

8. As regards data retrieved from cell phone, Learned Counsel submits that, the specific contention of the appellant before the adjudication authority was that the data was retrieved by Directorate of Revenue Intelligence (DRI) after expiry of 11(eleven) days from the date of seizure without any certification from any competent authority or proper officer of the DRI. DRI is mandated to generate a 'Hash Value' certificate to prove genuineness of the digital evidence to admit it as electronic evidence. As regards the information retrieved from the electronic media, Learned Counsel submits that same cannot be considered as admissible evidence considering non-compliance of the statutory provisions under Section 138C of the Customs Act, 1962. Further the investigative authority failed to adduce any undertaking or certificate to verify and authenticate the author of those alleged documents. Such a statutory provision is incorporated to ensure that the findings are as per the emphatic judicial pronouncement to ensure procedural safeguard and observance of principles of natural justice.

9. As regards the veracity of the invoices relied by the DRI claiming as supplied by the supplier, Learned Counsel submits that, there is no authenticity for such invoices since the invoices are only photocopies which are neither certified by the issuing person or countersigned by Customs of respective exporting countries. Learned Counsel further submits that, as per the existing practice, when such investigation is conducted, such documents are routed through COIN offices posted at Indian embassy. Further, the exporting country is supposed to authenticate or verify the authenticity of the document or in the absence of any proper certification, reliance on such a document to invoke the penal provision is prima facie unsustainable and against statutory principle. In this regard, Learned Counsel relied on the following decisions:-

1. **S.N. Agrotech Vs. Commissioner of Customs, New Delhi 2018 (361) E.L.T. 761(Tri-Del)** wherein it was held that *"printouts taken from computer during investigation can only be admitted subject to satisfaction of sub-section (2) of Section 138C of the Customs Act, 1962".*

2. **CC, Mumbai Vs. Bussa Overseas Properties Ltd., 2007 (216) E.L.T. 659 (S.C.)** wherein it was held that, *"undervaluation cannot be established when the department is relying on unsigned xeroxed copies of documents".*

3. **Rajendra Sanghvi Vs. CC, Mumbai 2001 (130) E.L.T. 638 (Tri-Mum)** wherein it was held that "*Photocopy of a document said to be foreign supplier's declaration of value to Hong Kong Customs but not bearing any number and stamp of Customs and giving no indication of being a document filed before any Government authority. Not acceptable in evidence. Charge of under-valuation based solely on this document not proved*".

4. **Collector of Customs, Bombay Vs. East Punjab Traders 1997 (89) E.L.T. 11 (S.C.),** wherein the Hon'ble Apex court held

that presumption as to documents cannot be raised when the documents does not have any attestation.

10. Learned Counsel further submits that, during investigation, though the search was conducted in the premises of Mr. B.M Jagesh and whose statement was also recorded by DRI, but even after admission of his involvement in the alleged illegality, he was not made as a co-noticee. However, without recording any statement from the Customs Clearing Agent Mr. Girish and one of the co-appellant Mr. Chenraj Jain, they were made as accused in the alleged illegality.

11. As regards confirmation of differential duty against Appellant-Jyothi C Jain, Learned Counsel submits that, imports are made by different legal entities having separate Import Export Code (IEC), separate VAT registration, separate bank account and respective business independence. However, by considering the Appellant- Jyothi C Jain as a proxy importer, entire demand was loaded on Appellant-Jyothi C Jain, alleging undervaluation by treating the other two importers as proxy. Such findings have no legal support and cannot be considered as sustainable in law. Each holder of IECs are separate legal entities and it is based on the statutory declaration and returns as applicable to other. Any misuse of IEC is governed by the provisions of Foreign Trade Act and Adjudication authority is DGFT and in the absence of any proceedings initiated by DGFT, who is the regulatory authority to ensure proper use of IEC, there is no provision under Customs Act to proceed against the importers regarding misuse of IEC.

12. The concept of a beneficial import is a deeming provision which was introduced only in 2017 and could not be imposed for the imports made prior to 31.03.2017. By imposing the liability on the Appellant-Jyothi C Jain as beneficial owner on the import made by other two legal entities, it is neither proposed in the Show Cause Notice(SCN) nor it is applicable in the present case since the imports are made prior to 31.03.2017. Learned Counsel further submits that appropriation of the amount paid by the Appellant out of the total recovery made during investigation from the Appellant-Jyothi C Jain clearly prove that the DRI

treated all the firms as separate entity during the investigation. Further it is an admitted fact that the payment towards the overseas suppliers against each import was routed through the respective Bank accounts of 3(three) IEC holders for that reason also, the impugned order is illegal and unsustainable. In this regard, learned counsel drew our attention to following decisions:-

1. **Nalin Z. Mehta Vs. CC, Ahmedabad 2014 (303) E.L.T. 267 (Tri-Mum)** wherein the Hon'ble Tribunal held that "*Person cannot be held as an importer if Bill of Entry is not filed by him*".

2. **Bimal Kumar Mehra Vs. CC, Import, Mumbai 2011 (270) E.L.T. 280 (Tri-Mum)** wherein it was held that *"Person filing Bills of Entry. He is importer of goods and liable to pay duty. It is immaterial that he is mere front man of real importer, who had taken all necessary steps for import, financed bank guarantee, handled and cleared the goods duty-free".*

13. As regards the finding given by the adjudication authority that the amount paid by the appellant is voluntary admission of the illegality and appropriation of the same towards the liability of other importers, Learned Counsel submits that, during course of investigation itself the appellant had informed that this statement was recorded under threat of arrest and coercion. Law is settled that no recovery of tax can be made from a taxpayer without quantification of demand by proper authority and that too can be done only after issue of demand notice. There is no provision empowering the investigating officer to forcefully recover any amount from appellant or any assessee by threatening them of untoward consequences during investigation or during the course of search and seizure. Fact being so, the impugned order confirming appropriation of the amount is prima facie unsustainable and also violation of the Constitution which mandates that no tax shall be levied or collected except by authority of law.

14. Learned Counsel further submits that to corroborate the invoices illegally collected by the DRI during investigation, reliance is also placed

on e-mails allegedly exchanged by DRI with foreign suppliers. However, said mails were also electronic records governed by Section 138C of the Customs Act, 1962. There is no certificate under Section 138C either during adjudication or thereafter. In the absence of a mandatory certificate, such emails are also inadmissible in law as conclusively held by Hon'ble Supreme Court in the matter of **Anwar P.V. Vs. P.K. Bashir** reported in [**2014 (10) SCC 473]**, where it is held that electronic records without statutory certificate cannot be admitted in evidence. Further there is no evidence on record to substantiate the allegation regarding payment of differential duty through third parties.

15. In this regard, Learned counsel drew our attention to following decisions:-

1. **CC, (Prev) West Bengal Vs. Rajesh Polyfilm 2006 (202) E.L.T.416 (Cal)** held that *"initial burden on the department to discharge the burden of proof".*

(ii) **Tele Brands (India) Private Ltd., Vs. CC, (Import) Mumbai - 2016 (336) E.L.T. 97 (Tri. - Mumbai)** wherein it was held that "*Undervaluation cannot be established unless remittance is proved".*

16. Learned Counsel summaries that the e-mails allegedly originated from foreign suppliers were not retrieved from the computer system of the appellant and in the absence of any certificate by sender, system administrator or service provider they have not admissible evidence. As per the law laid down by the Hon'ble Supreme Court in the matter of **Tommaso Bruno Vs. State of Uttar Pradesh reported in [2015, 7 SCC 178],** it has to be considered as unauthenticated electronic evidence. Such unauthenticated printouts of emails are not primary evidence, do not satisfy Section 138C and cannot be treated as admissible evidence. The origin, accuracy and authenticity of such emails, therefore, remain unproved.

17. Learned Counsel also submits that once the e-mails are excluded and tainted, Section 108 statements are to be disregarded. The remaining evidence is mere circumstantial, inferential and insufficient to establish the alleged offence.

18. As regards confiscation of goods and redemption fine imposed as per the impugned order, Learned Counsel submits that law is settled that in the event of non-availability of goods for confiscation, confiscation of the goods and redemption of goods on redemption fine is unsustainable. The issue was settled by Hon'ble Supreme Court in the matter of **CC Vs. M/s Finacy Creation Inc -[(2010 (255) E.L.T A120 (SC)].** Thus, the impugned order confirming confiscation of the goods and imposition of redemption fine are unsustainable.

19. As regards penalty imposed on the appellants, Learned Counsel submits that the adjudication authority failed to appreciate that to invoke the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the primary requirement of rejecting the declared value under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is not satisfied and thus the redetermination of assessable value is against statutory provisions established by law and penalty cannot be fastened on the appellant due to such procedure violations. Learned Counsel further submits that the adjudication authority has considered the document retrieved during investigation as admissible evidence on the ground that the Appellant-Jyothi C Jain was present during the proceedings of opening the seized document for forensic imaging and no objections were made by the appellant while showing all the documents during the recording of statement. Thus, it is presumed that the objections are not sustainable. In this regard, Learned Counsel submits that mere silence of the appellant during the course of investigation cannot be taken advantage by the investigating agency to override the statutory provisions as contemplated in section 68B of the Evidence Act, 1872 which is integrated into Section 138C of the Customs Act, 1962. The unhostile ambience, atmosphere during recording statement of a victim or

Appellant-Jyothi C Jain cannot be taken as advantage to override the statutory provisions.

20. Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that on 12.09.2017, searches were conducted at the residence of Appellant-Jyothi C Jain and Mr. B.M. Rakesh and Office of M/s. Vridhi Interiors and various corroborative evidence were retrieved. The invoices showing actual value of overseas suppliers and electronic devices were seized under Panchnama and on comparison of the invoices with the documents submitted by M/s. Samaavesh (HUF) to the Customs, it was found that the imported goods were highly under-valued. The investigating agency requested the foreign suppliers to provide Commercial Invoices, Packing Lists, Bill of Lading, Export Documentation, payment details, and correspondence and communication in respect of goods imported by Samaavesh (HUF)

21. As regards appeal of other appellant, learned AR submits that Mr. Chenraj Jain, Karta of M/s. Samaavesh (HUF) allowed proxy import of above stated goods in the name of his firm for Ms. Jyothi C. Jain. He has neither negotiated nor finalised the deals for import of goods in the name of his firm. All the above stated goods imported by Ms. Jyothi C. Jain were cleared on the basis of manipulated and fabricated documents. They subscribed to declarations certifying the truth of such manipulated and fabricated documents under the respective Bills of Entry knowing or having reason to believe that the same were not true. In this case, he had lent his Import Export Code (IEC) for import of the goods made in the name of his IEC. He lent the said IEC to Applent-Jyothi C. Jain knowing fully that the same would be utilized for import of under-valued goods. He was willing to participate in the duty evasion and Revenue fraud. All the activities with respect to proxy import in the name of M/s. Samaavesh (HUF) including negotiation with overseas supplier and appointment of CHA, were undertaken by Ms. Jyoti C. Jain. Further to facilitate clearance of the goods in the name of his IEC, he made and signed declaration knowing fully well that such documents

were manipulated and fabricated. The above facts were deposed by Ms. Jyoti C. Jain in her statements. As per the impugned order, the Appellant-Jyothi C Jain is the *de facto* importer and is responsible for undervaluation.

22. As regards the evidentiary value of statement recorded from Appellant-Jyothi C Jain, Learned AR submits that statements were recorded from 19.09.2017 onwards, there was no retraction or respondence regarding statement being taken under duress or cohesion. The first retraction in the form of written submission came only after fifteen months. Further as regards nature of payment of Rs. 1.5 crores during the investigation, Learned AR submits that the payments are made between 12.09.2017 to 21.09.2017 and there was no objection raised by the Appellant that the payment are made due to coercion by DRI. Further as regards the finding that the Appellant-Jyothi C Jain is the beneficial importer and misuse of Import Export Code (IEC), as per the letter dated 04.04.2018 issued by Shri. Chendra Jain and Shri. Abhishek Jain, they have admitted that their IEC was used by Appellant-Jyothi C Jain. The retraction of the statement is only on 23.02.2019 that is nearly after 10(ten) months and same cannot be considered as not admissible evidence. Thus, in relation to the imported goods, Mr. Chenraj Jain has done commission of such acts which appear to have allowed proxy importer to import goods by suppressing the actual value in the names of their respective firm which are liable to confiscation under Section 111 (d) and Section 111(m) of the Customs Act, 1962. Further submits that there is forensic examination conducted and admissibility of such documents after forensic examination have evidentiary value.

23. As regards denial of cross examination, Learned AR submits that as per the finding in the impugned order and evidence on record, it is an admitted fact that the Appellants had made admission regarding their involvement, and it is supported by statements of Shri. Chendra Jain and Shri. Abhishek Jain. Considering such statement, Adjudication Authority held that cross examination is not required. In this regard,

Learned AR submits that in such quasi-judicial proceedings, the Department need not prove with mathematical precision.

24. Learned AR also draws our attention to the statement recorded from Appellant-Jyothi C. Jain on 19.09.2017 and submits that as per the statement on 15.03.2018, Appellant-Jyothi C. Jain has admitted that she had adopted undervaluation while the goods are imported in the name of three entities and Appellant reiterated her statement on 19.09.2017. It is also admitted that the difference between actual invoice and understated invoice were handed over to the representatives of the overseas supplier in India. Further during the investigation, statement was recorded on 21.08.2018 and admitted the conversation in the WhatsApp and proved the issuances of understated invoices were extracted from the mobile phone.

25. As regards the statement of Ms. Vertika Samar recorded on 29.09.2017, Appellant- Jyothi C. Jain has admitted two invoices for the same order by M/s. Line Kit SP and M/s. Ital Creation NS Di Kaur Harmeek. Learned AR also drew our attention to the comparison of all the original invoices recovered during investigation and corresponding declared invoices submitted to the customs for clearance of imported goods. Further drew our attention to the comparison of values shown in the export declarations filed at ports by exporters, provided by overseas suppliers and by the shipping lines and also the actual invoices received from the overseas suppliers vis-à-vis the value shown in the corresponding declared invoices submitted to Customs for clearance of the goods imported by M/s. Samaavesh as given in the impugned order. Also drew our attention to the impugned order where the methodology adopted during the course of undervaluation and evasion of customs is furnished. As regards the admissibility of the evidence adduced by the investigating agency, Learned AR submits that DRI recovered incriminating WhatsApp communications from Ms. Jyothi C. Jain's mobile phone during the search. These conversations showed that Ms. Jyothi was remitting payment for consignments through TT (telegraphic transfers) from a company located in a third country (Dubai

etc.), and that overseas suppliers were providing under-valued invoices for Customs declaration on her request. Further drew our attention to Letters /Emails from Overseas Suppliers obtained from overseas suppliers (e.g., M/s. Ital Program Plus SRL, Italy), which indicated the existence of actual invoices distinct from those submitted to Customs. One supplier stated the document number requested was an "internal invoice." These were relied upon as corroboration that two sets of invoices were prepared. Further third party remittances, payments of the differential amount (actual invoice value minus declared invoice value) were shown to have been made through third parties outside India on behalf of M/s. Samaavesh. This formed part of the documentary basis for establishing undervaluation.

26. As regards the evidentiary value of electronic WhatsApp evidence, Learned AR submits that Section 138C is a self-contained code for Customs proceedings and explicitly override Section 65B of the Evidence Act. Once the main accused confirm authenticity of digital records, the content of those messages were never rebutted and considering that it is admissible evidence. DRI is not a forensic body, and no Government Examiner of Questioned Document (**GEQD)** examination is done. Further as regarding documents supplied from overseas supplier obtained without forensic certification as submitted, Learned AR submits that Section 138C create a deeming provision. Document seized or received from outside India in the course of investigation are presumed authentic unless the contradictory is proved. The Appellant has not placed a single counter document from any supplier refuting the allegation in the show cause notice or finding in the impugned order.

27. As regards the beneficial importer and the averment that the finding is beyond the scope of show cause notice, Learned AR submits that the allegation in the Show Cause Notice and finding in the impugned order are consistent. Both are based on proxy importation and IEC lending and appellants declaration. The impugned order applied the same fact to the same charge and not beyond the show cause

notice. Formal proxy front company cannot hide behind formal registration. As regards the allegations that the provisions of Section 12 of the Customs Valuation Rules are not established. Learned AR submits that once Appellant lent IEC credential knowing that they used for undervaluation to import, signing Bill of Entry declaration on fabricated invoice without verifying values or knowing or having reason to believe the documents are false. This satisfy *mens-rea* under Section 112 and penalties are rightly imposed by Adjudication authority. Learned AR also relied on the following decisions;

i. **Inflow Technologies Pvt Ltd Vs. Commissioner of Customs 2013 (8) TMI 693 Chennai-**

ii. **Shri Himashu Gupta Vs. Commissioner of Customs- 2026 (1) TMI 1579-Delhi High Court**

iii. **Anand Impex Vs Commissioner of Customs (Prev)-CESTAT New Delhi - Final Order No. 50699/2026 Dated 10.04.2026**

iv. **Vinod Solanki Versus Union of India-2009 (13) S.T.R. 337 (S.C.) (Delayed Retraction)**

v. **Collector Of Customs, Madras and Others Vs D. Bhoormull-1983 (13) E.L.T. 1546 (S.C.)**

vi. **M/s. Xiaomi Technology India Pvt. Ltd Vs. Commissioner of Customs, Chennai 2025 (11) TMI 1120**

vii. **The Principal Commissioner of Customs Versus Kishan Manjibhai Gadhesariya 2022 (4) TMI 316.**

28. As regards voluntariness of the statements – coercion, allegation that all statements were recorded under threat of detention and fear of arrest and that Rs.1.50 crore was deposited under duress, not voluntarily, Learned Authorized Representative (AR) drew our attention to the finding in the impugned order and submits that first statement taken on 19.9.2017; second (corroborating) taken after 6 months on 15.3.2018. Voluntary payment of Rs.1.50 Crore before any statement was drawn. No arrest was ever made. Concept of threat /coercion

'never existed'. Learned AR further submits that the gap of nearly 14 months between statements, with consistent content, destroys the coercion narrative. If genuinely coerced on 12.9.2017, payment preceded statements; it cannot be 'extracted' from someone not yet given any statement. As regards the submission that Mr. Chenraj Jain's declaration on 04.04.2018 was under coercion, Learned Authorized Representative (AR) drew our attention to the finding in the impugned order and submits Shri. Chenraj Jain was never summoned by DRI. Declaration given 6(six) months after investigation started cannot be 'out of threat' and cannot be considered as a 'Blatant attempt to escape monetary consequences'. Learned AR further submits that the letter /declaration was given voluntarily on legal advice. As regards Cross-examination of pancha, Learned AR drew our attention to the finding in the impugned order and submits that Ms. Jyothi Jain was present during forensic imaging and made no objection. Cross-examination of panchas is 'a mere attempt to digress adjudication proceedings and procrastinate imminent action'. Learned AR further submits that Appellant No.1 herself confirmed authenticity of documents in statement under section 108. Cross-examination of panchas serves no purpose when main accused authenticated documents. Cross examination is not mandatory as held in plethora of cases.

29. As regards authenticity of documents and forensic examination, allegation of learned counsel is that electronic /WhatsApp evidence not examined as required under Section 65B of Evidence Act/Section 138C of the Customs Act, 1962. In this regard, Learned AR submits that DRI is not a forensic body; no GEQD examination done. Learned AR further submits that 138C Customs Act, 1962, overrides all other laws regarding admissibility of microfilms, facsimile copies and computer printouts. Learned AR submits that since section 138C is a self-contained code for Customs proceedings and explicitly overrides section 65B, Evidence Act when main accused confirmed authenticity of digital records. The contents of those messages was never rebutted. Learned AR also submits that documents obtained by DRI directly from overseas suppliers under section 108 / official capacity. section 139 of Customs

Act raises statutory presumption of authenticity of seized /received documents. Section 139 creates a deeming provision. Documents seized outside India in or received during course of investigation are presumed authentic unless the contrary is proved. As regards differences between proforma and actual invoices and argument that invoice mismatch does not establish fabrication, Learned AR submits that proforma invoice is a tentative quotation; actual invoice generated after terms finalized. Import invoices submitted to Customs are at variance with supplier-furnished invoices. Appellant’s never went back to suppliers to obtain clarification and could have got clean chit from their suppliers who have joined DRI in the accusation. Learned AR further submits that out of 32 Bills of Entry covering more than 100 invoices, discrepancies were limited. In conspiracy cases, evidence must be assessed on preponderance of probability. DRI obtained originals directly from suppliers the suppliers themselves corroborate the under-valuation.

30. As regards scope of show cause notice and the submissions that the impugned order travelled beyond show cause notice(SCN), Learned AR submits that SCN alleged: (i) Appellant was proxy importer for Jyothi C Jain; (ii) he lent IEC for monetary consideration; (iii) he signed fabricated Bill of Entry declarations. Appellant's own declaration admitting he was 'not involved' is treated as corroborating the SCN allegation. Learned AR further submits that SCN allegations and Order-in-Original findings are consistent: both allege proxy importation and IEC lending. Appellant's declaration that HUF was entirely run by Jyothi C Jain filed voluntarily is itself evidence of the SCN allegation. The Order-in-Original applied the same facts to the same charge, not a new charge. Customs Act defines importer inclusively covers 'any beneficial owner or any person holding himself out to be the importer.' Jyothi Jain is the beneficial owner. Chenraj Jain and Abhishek Jain are the proxy importers as alleged in SCN. Thus, differential duty rightly demanded from M/s Samaavesh represented by Ms. Jyothi C Jain and proxy front-companies cannot hide behind formal registration.

31. As regarding imposition of penalty under Section 112, Learned AR submits that 'Active collusion and willful misrepresentation of material facts relevant for assessment of duty admitted by Ms. Jyothi Jain in her statement.' Co-noticees are liable under Section 112 for their commissions /omissions. section 114A applies as duty evaded by suppression of material facts with intent. As regards the submission that Transaction value was not formally 'rejected' under Rule 12 of Customs Valuation Rules, 2007 before redetermination, Learned AR submits that Appellant's firms did not declare the Transaction Value and they declared a falsified value. There is a fundamental difference between a wrong value being declared (where Rule 12 applies) and no value being declared at all (where the investigating officer proceeds from first principles). Here, the declared figure was not a 'transaction value'.

32. Heard both sides, perused the documents and the additional submissions made by both sides.

33. Even though the counsel for the Appellant submitted that the matter is remanded by the Hon'ble High Court without expressing any opinion on the appeal filed by the Revenue, it is only a remand in the matter for fresh consideration by this Tribunal and the finding and observations of the Hon'ble High Court are '*obiter dicta*' in nature, we find that the remand was made by the Hon'ble High Court of Karnataka as per the judgment dated 13.08.2025 in Appeal **No. C/2/2023** with the following direction:-

> *"10. In light of the above judgment, it is only where the statement of a witness has been recorded and such statement is proposed to be relied upon against the assessee that, upon a request made by the assessee, the adjudicating authority is bound to afford an opportunity of cross-examination. In the present case, the Tribunal has erred in issuing a direction for cross-examination without recording any finding as to whether statements of the witnesses were recorded and relied upon against the assessees. The direction to permit cross-examination*

is, therefore, without any foundation and is unsustainable. Furthermore, since the Tribunal remanded the matter to the adjudicating authority for de novo consideration limited to cross-examination of the pancha witnesses, it has failed to examine the other issues raised by the respondent-assessees".

33.1 Hence the direction of the Hon'ble High Court of Karnataka is binding on this Tribunal and cannot be considered as *obiter dicta* in nature.

34. On merit we find that the issues in the present appeals are basically regarding admissibility of the evidence gathered during investigation; whether such document /evidence is sufficient to sustain the allegation of under valuation and whether alleged differential duty can be demanded from Appellant-Jyothi C Jain as proxy importer since the definition of beneficial importer is incorporated in Customs Act only in 2017 after the import of the impugned goods and whether allegation of undervaluation is sustainable considering the provisions of Customs Valuation Rules.

35. As regarding compliance of the Rule 12 of the Customs Valuation Rules, we find that said rule contemplates that where the department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Mere doubt not sufficient to reject the declared value and to resort to valuation rules to determine the value. In the present case, allegation regarding undervaluation was initiated on the ground that as per the DRI intelligence report, there were reasonable doubt regarding the declared value and only on such presumption, the Rule 12 of the Customs Valuation Rules is invoked. The finding is given on the invoice copy allegedly recovered during investigation from the premises of one of the appellant. There is no evidence on record to substantiate that the investigating officer had any evidence on record to allege under valuation and entire allegations are made based on the documents /evidence recovered during the investigation. Thus, Rule 12

of the Customs Valuation Rules is not complied. As regarding valuation of goods, we find that though the goods imported by the appellants are general in nature, there is no attempt made by DRI to find out the value of the contemporaneous import as mandated under the Provisions of Valuation Rules. Law is settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. If the law requires that something be done in a particular manner, it must be done in that manner and if not done in that manner has no existence in the eye of the law at all.

36. As regards admissibility of the evidence relied by Adjudication authority, we find that entire allegation is made based on the statement of Appellant-Jyothi C Jain and data retrieved from different sources including data retrieved from the cell phone, invoice claimed as supplied by the supplier during investigation which is also retrieved from the system and by alleging that it is originated from the foreign supplier and also on the ground that there was third party remittance of differential amount on behalf of the importer. However, there no evidence to that effect and Adjudication Authority corroborated the said finding also on the ground that document seized or received from outside India during the course of investigation are presumed authentic unless the contradictory is proved.

37. As regards admissibility of document and compliance of Section 138C, we find that such a statutory provision is incorporated to ensure that the findings are as per the emphatic judicial pronouncement to ensure procedural safeguard and observance of principles of natural justice. Further we find that the data was retrieved by DRI after expiry of 11(eleven) days from the date of seizure without any certification from any competent authority or proper officer of the DRI and when it was subject to Forensic examination, DRI is mandated to generate a 'hash value' certificate to prove genuineness of the digital evidence and to admit it as electronic evidence.

38. As regards evidence retrieved from the electronic devices, Section 138C(4) reads thus:

"138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.-

(1) xxx XXX XXX

(2) XXX XXX XXX

(3) xxx XXX XXX

(4) In any proceedings under this Act and the Rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,-

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in Sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this Sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it."

39. Sub-section 4 of Section 138C makes it abundantly clear that if any statement is to be read into evidence and when such documents are computer printouts, then a certificate has to be obtained in accordance with (a), (b) and (c) of Sub-section 4, referred to above.

40. We find that the issue regarding evidentiary value of data retrieved from electronic media was considered by Hon'ble Supreme Court in the matter of **M/s. Anvar P. V Vs. P. K. Basheer and others – (2014) 10 SCC 473** and held that:-

> *"22. The evidence relating to electronic record, as noted herein before, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.*
>
> *23. The appellant admittedly has not produced any certificate in terms of Section 65B in respect of the CDs, Exhibits-P4, P8, P9, P10, P12, P13, P15, P20 and P22. Therefore, the same cannot be admitted in evidence".*

41. As regarding reliance of the learned AR on the judgment of Hon'ble Supreme Court in the matter of **Addl. Director General Adjudication, Directorate of Revenue Intelligence Vs. Suresh Kumar Co. Impex Pvt. Ltd. and Ors. vide Civil Appeal Nos.11339-11342 of 2018 dated 20.08.2025,** we find that after following the

above judgment of **M/s. Anvar P. V (supra),** Hon'ble Supreme Court considered the issue regarding admissibility of the evidence and the effect of non-compliance of 138C(4) of the Customs Act 1962 in Customs adjudication proceedings including demand of duty confirmed by relying on electronic evidence related to Section 108, 138B and 138C(4) of Customs Act, 1962. As per the judgment during arguments. Ld. AR for Revenue relied upon the decision of the Tribunal in the case of **M/s. Laxmi Enterprises 2018 (361) E.L.T. 1054 (Tri. - Del.)**, in which the Tribunal upheld the charge of under-valuation and demand for differential duty. In the said decision, Tribunal overruled the objection of the Appellant in connection with Section 138C, by holding that the documents printed out from lap-top will be admissible as evidence in view of the fact that the truth of such documents stand admitted by the proprietor in his statement. However, Hon'ble Supreme court held that "We have gone through the said decision of the Tribunal and we note that the judgment of the Hon'ble Supreme Court in the case of **Anvar P.V. (supra)** has not been cited and was never brought to the notice of the Bench. Consequently, we are of the view that the decision in the case of Laxmi Enterprises is not applicable to the facts of the present case". Further during course of the hearing of those appeals, the learned Counsel appearing for the Revenue provided with a compilation consisting of documents in the form of Record of Proceedings dated 06.07.2015, 21.07.2015 and 21.04.2016 respectively. Relevant para of the judgment is reproduced below:-

"*19. The Record of Proceeding dated 06.07.2015 reads thus:*

In connection with the investigations in respect of imports made by M/s. Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO) A-17, Sonu Tower, IInd Floor, Dr. Mukherjee Nagar Commercial Complex, Delhi 110 009, the officers of Directorate of Revenue Intelligence (Hqrs.), 7th floor, I.P. Bhawan, I.P. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No. 1092, Bhalswa Village, Near Azadpur Bypass, Delhi 110 033, had resumed certain *documents, Lenovo Make desktop and one laptops from the abovementioned office-cum-godown premises.*

2. In today's proceeding, it was proposed to take the printouts of documents from the external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18, which was copied under Records of Proceeding dated 19.06.2015 and 23.06.2015. Shri Sanjay Gupta, Senior Accountant of M/s. SKCO and Shri Sushil Kumar, Assistant Accountant of M/s. SKCO presented themselves at DRI (Hqrs.) office to witness the proceedings. One Envelope was produced before Shri Sanjay Gupta and Shri Sushil Kumar which was sealed with a paper slip containing dated signature of Shri Sanjay Gupta, Forensic Expert and DRI Officer. The paper seals on the said envelops was checked by Shri Sanjay Gupta and Shri Sushil Kumar, which was found intact.

3. Shri Sanjay Gupta removed the paper seal of the said envelope and took out one external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18. The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain printouts were taken from the said hard disk. The printouts were serially numbered from 1 to 103. Shri Sanjay Gupta and Shri Sushil Kumar put their dated signatures on all the said pages (s. No. 1 to 103) as a token of their authenticity and their presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WD Elements, bearing S/N WXE1A255RF18 was put in an envelope and the said envelope was sealed with a paper slip bearing dated signatures of Shri Sanjay Gupta, Shri Sushil Kumar and the DRI Officer.

5. The proceedings started at 1200 hrs on 06.07.2015 and concluded at 2010 hrs on same day i.e. 06.07.2015. Shri Sanjay Gupta and Shri Sushil Kumar on being enquired by the DRI officers informed that they are fully agree to the contents of

Records of Proceedings dated 06.07.2015 and that the contents were recorded as per the actual Proceedings.

41. The record of Proceeding dated 21.07.2015 reads thus:

In connection with the investigations in respect of imports made by M/s. Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO A-17. Sonu Tower. IInd Floor. Dr. Mukherjee Nagar Commercial Complex. Delhi 110 009. the officers of Directorate of Revenue Intelligence (Hqrs.). 7th floor. I.P. Bhawan. I.P. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No. 1092. Bhalswa Village. Near Azadpur Bypass. Delhi 110 033 had resumed certain documents. Lenovo Make desktop and one laptops from the abovementioned office-cum-godown premises and resumed two laptops (one Sony make and one Asus make). one I-pad and one I-Phone from the residential premises vide Panchnama dated 16.06.2015 drawn at residential premises at B-111/303. 19. Rajpur Road. Delhi 110 054. Another laptop of Sony make was submitted in DRI office by Shri Nikhil Asrani, Director of M/s. Suresh Kumar & Co. (Impex) Pvt. Ltd. On 16.06.2015.

2. In today's proceeding. It was proposed to take the printouts of e-mail/documents from the external Hard Disk of make WD Elements, bearing S/N WX4 1A45DUD6E, which was copied under Records of Proceeding dated 29.06.2015. Shri Nikhil Asrani, Director of M/s. SKCO presented himself at DRI (Hars.) office to witness the proceedings. One envelope was produced before Shri Nikhil Asrani which was sealed with a paper slip containing dated signature of Shri Sanjay Gupta and DRI Officer. The paper seals on the said envelops was checked by Shri Nikhil Asrani, which was found intact.

3. Shri Nikhil Asrani removed the paper seal of the said envelope and took out one external Hard Disk of make WD Elements, bearing S/N WX41 A45DUD6E. The said external hard disk was *connected to a computer installed in DRI (Hqrs.) office and certain e mail data was extracted in Microsoft Outlook and certain printouts were taken from the said data. The printouts were serially numbered from 1 to 237. Shri Nikhil Asrani put his dated signatures on all the said pages (s. No. I to 237) as a token of their authenticity and his presence during the course of printing of these documents from the said external hard disk.*

4. Thereafter, the said external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E was put in an envelope and the said envelope was sealed with a paper slip bearing dated signatures of Shri Nikhil Asrani and the DRI Officer.

5. The proceedings started at 1640 hrs on 21.07.2015 and concluded at 2040 hrs on same day i.e. 21.07.2015. Shri Nikhil Asrani on being enquired by the DRI officers informed that he fully agrees to the contents of Records of Proceedings dated 21.07.2015 And that the contents were recorded as per the actual proceedings.

42. The Record of Proceeding dated 21.04.2016 reads thus:

In connection with the investigations in respect of imports made by M/s. Suresh Kumar & Co. (Impex) Pvt. Ltd. (SKCO) A-17, Sonu Tower, IInd Floor, Dr. Mukherjee Nagar Commercial Complex, Delhi 110 009, the officers of Directorate of Revenue Intelligence (Hqrs.), 7th floor, IP. Bhawan, IP. Estate, New Delhi (herein after referred to as the DRI) vide Panchnama dated 16.06.2015 drawn at office-cum-godown Building No. 1092, Bhalswa Village, Near Azadpur Bypass, Delhi 110 033, had resumed certain documents, Lenovo Make desktop and one laptops from the abovementioned office-cum-godown premises and resumed two laptops (one Sony make and one Asus make), one I-pad and one I-Phone from the residential premises vide Panchnama dated 16. 06.2015 drawn at residential premises at B III/303, 19, Rajpur Road, Delhi 110 054. Another laptop of Sony make was submitted in DRI office by Shri

Nikhil Asrani, Director of M/s. Suresh Kumar & Co. (Impex) Pvt. Ltd. on 16.06.2015.

2. In today's proceeding, it was proposed to take the printouts of e mail I documents from the external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E, which was copied under Records of Proceeding dated 29.06.2015. Shri Aseem Asrani, Director of M/s. SKCO presented himself at DRI (Hars.) office to witness the proceedings. One envelope was produced before Shri Aseem Asrani which was sealed with a paper slip containing dated signature of Shri Nikhil Asrani and DRI Officer. The paper seals on the said envelops was checked by Shri Aseem Asrani, which was found intact.

3. Shri Aseem Asrani removed the paper seal of the said envelope and took out one external Hard Disk of make WD Elements, bearing S/N WX41A45DUD6E The said external hard disk was connected to a computer installed in DRI (Hqrs.) office and certain e mail data was extracted in Microsoft Outlook and certain printouts were taken from the said data. The printouts were serially numbered from 1 to 97. Shri Aseem Asrani put his dated signatures on all the said pages (s. No. 1 to 97) as a token of their authenticity and his presence during the course of printing of these documents from the said external hard disk.

4. Thereafter, the said external Hard Disk of make WO Elements, bearing S/N WX41A45DUD6E was put in an envelope and the said envelope was sealed with a paper slip bearing dated signatures of Shri Aseem Asrani and the DRI Officer.

5. The proceedings started at 1500 hrs on 21.04.2016 and concluded at 1705 hrs on same day i.e. 21.04.2016. Shri Aseem Asrani on being enquired by the DRI officers informed that he fully agrees to the contents of Records of Proceedings dated 21.04.2016 and that the contents were recorded as per the actual proceedings".

42. Thus after considering meticulous compliance of the procedure as explained above and Sections 65A and 658 of the Indian Evidence Act, Hon'ble Supreme Court Held that; *"35. Section 65B(4) of the Indian Evidence Act is pari materia to Section 138C(4) of the Act, 1962*." Thereafter Hon'ble Court called upon to consider in what manner Section 65B(4) should be construed as mandatory and in what manner it should be understood to have been duly complied in its letter and spirit and thereafter held that:-

> *"43. Keeping the aforesaid in mind, we are of the view and, more particularly, considering the Record of Proceedings duly signed by the Respondents, including the various statements of the Respondents recorded Under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962.*
>
> *44. When we say due compliance, the same should not mean that a particular certificate stricto sensu in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded Under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C(4) of the Act, 1962.*
>
> *45. It is pertinent to note at this stage that at no point of time the statements recorded Under Section 108 of the Act, 1962 came to be retracted."*

43. In the present case, we find that while retrieving the data from the electronic media including retrieval of invoice obtained from system, data retrieved from WhatsApp and emails, no such attempts was made and when search was conducted on 12.09.2017, only Mahazar was drawn and electronic devices including laptop, iPhone, documents related to imports catalogue and pricelist was seized. There is no mention regarding record of proceedings adopted at the time of seizure of the electronic goods. Further inspite of seizure of document under panchanama /mahazar on 12.09.2017, forensic test of the electronic

instrument and data was examined only on 23.09.2017 and hash value of the data was not recorded. Thus, in the absence of compliance of the procedure as contemplated under Section 138C(4) of the Act, 1962, the information retrieved from electronic media including retrieval of invoice obtained from system, data retrieved from WhatsApp and emails cannot be considered as having admissible evidence on the ground that Section 138C is a self-contained code for customs proceedings and explicitly overrides section 65B of Evidence Act as submitted by learned AR.

44. As regarding invoice also, we find that as per the judgment of the Hon'ble Supreme Court in the matter of **Bussa Overseas Properties Ltd. (supra),** undervaluation cannot be established when the department is relying on unsigned xeroxed copies of documents. Further we find that the Hon'ble Supreme Court in the matter of **East Punjab Traders (supra)**, held that presumption as to documents cannot be raised when the documents does not have any attestation. Thus, when origin, accuracy and authenticity of the evidence relied by Adjudication Authority are not proved beyond doubt, same cannot be considered as admissible evidence in Adjudication proceedings under Customs Act, 1962 to confirm huge amount of differential duty with penal liability on the ground that such assessment can be done on preponderance of probability. Thus, in the absence of any admissible evidence regarding undervaluation, impugned order confirming differential duty and imposing penalty on appellants are unsustainable.

45. As regards confirmation of differential duty Appellant-Jyothi C Jain by considering her as proxy importer, we find that each importers were holding separate IEC's, VAT registration, bank accounts and filed bill of entries. Thus, they are separate legal entities and as held by the Tribunal in the matter of **Bhimal Kumar Mehra (supra),** person filing bill of entry is the importer of goods and liable to pay duty even if he is mere front man of real importer, who had taken all necessary steps for import, financed bank guarantee, handled and cleared the good duty-free. Thus impugned orders confirming the differential duty of other importers on Ms. Jyoti C Jain, Proprietor, M/s. Samaavesh, under the

provisions of Section 28(4) read with Section 28(8) of the Customs Act, 1962, along with interest under the provisions of Section 28AA of the Customs Act, 1962 is unsustainable.

46. As regards confiscation of goods and redemption fine imposed by Adjudication Authority, we find that even if allegation of undervaluation is sustainable, since the goods are not available for confiscation, considering the ratio of the judgment of Hon'ble Supreme in the matter of **M/s. Finacy Creation Inc. (supra)**, impugned order confiscating the goods and imposing redemption fine are also unsustainable.

47. In view of the above discussion the impugned orders are liable to be set aside. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, in accordance with law.

(Order was pronounced in Open Court on 28.07.2026)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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