

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

Customs Appeal Nos. 40267 and 40269 of 2024

(Arising out of Order in Original No. 104247 & 104248/2023 dated 29.12.2023
passed by the Commissioner of Customs, Chennai – IV)

M/s. Ruby Overseas

New No. 141, Old No. 68
Govindappa Naicken Street
Chennai – 600 001.

Appellant

Vs.

Commissioner of Customs

Chennai IV Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

With

Customs Appeal No. 40268 and 40270 of 2024

(Arising out of Order in Original No. 104247 & 104248/2023 dated 29.12.2023
passed by the Commissioner of Customs, Chennai – IV)

Shri Naushad Yunus, Partner

M/s. Ruby Overseas
New No. 141, Old No. 68
Govindappa Naicken Street
Chennai – 600 001.

Appellant

Vs.

Commissioner of Customs

Chennai IV Commissionerate
Customs House, 60, Rajaji Salai
Chennai – 600 001.

Respondent

APPEARANCE:

Shri A.K. Jayaraj, Advocate and
Shri J. Subash, Advocate for the Appellants
Smt. O.M. Reena, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 41154 - 41157/2025

Date of Hearing: 21.08.2025
Date of Decision: 17.10.2025

Per M. Ajit Kumar,

All these four appeals arise out of a common Order in Original No. 104247 and 104248/2023 dated 29.12.2023 passed by the Commissioner of Customs, Chennai – IV Commissionerate (impugned order).

2. Brief facts of the case are that as per the investigation conducted by the DRI, Ahmedabad Zonal Unit, the appellant M/s. Ruby Overseas imported betel nuts falling under CTH 080290 of Indonesian origin through Chennai Port and had allegedly mis-declared the country of origin of the goods (**COO**), by routing it through Bangladesh to avail the duty benefit under Notification No. 105/1999 as amended which pertains to SAARC Preferential Trade Arrangement (**SAPTA**). The goods were also allegedly grossly undervalued to evade duty. The betel nuts were allegedly first brought to Mongla EPZ (Bangladesh) based firms viz Bangladesh Agro Growers and Producers Ltd. Tara Exim, Arecanut Growers and Processors Ltd. Jahan Processing Export Ltd. etc. who simply re-exported the betel nuts without carrying out any process thereon to the appellant. Such Bangladesh based firms were allegedly obtaining COO certificates from appropriate authorities in Bangladesh by misrepresenting the facts. The remittance of declared value was allegedly sent to the Bangladesh based firms through normal banking channels and the differential amount was remitted directly to Indonesian supplier through illegal channels. The India based importers/indenters were normally interacting with Shri Narendra Lodaya in connection with quality, quantity, value, shipment schedule etc. in respect of such betel nut through email correspondences. The evidences containing actual country of origin of betel nut, its actual

value, actual invoice/ sales contract/ proforma invoices, remittance of differential amount through illegal channels were exchanged between Shri Narendra Lodaya and the Indian importers/ indenters through email correspondences. Search and seizure operations were conducted at the appellant's premises and the at the premises of the Partner of the appellant Shri Naushad Yunus and certain documents were seized from the business premises of the appellant. Statements were recorded from the partner of the appellant firm. Based on the investigations, Show Cause Notice (**SCN**) dated 26.8.2016 was issued to the appellant-firm proposing to reject and redetermine the declared value in respect of betel nuts weighing 2199.923 MTs imported vide 26 bills of entry (**BOE**), while denying the benefit provided under Notification No. 105/1999 dated 10.08.1999. It further proposed to confiscate the goods and impose penalties. Another SCN dated 19.08.2016, was issued containing similar allegations for another 10 BOE's. Separate penalties were proposed on the partner of the appellant-firm. The Ld. Adjudicating Authority (**A.A.**) confirmed the proposals contained in both the Show Cause Notices vide the impugned Order-in-Original (**OIO**). Hence the appellants have filed the present appeals before this Tribunal.

3. The learned Counsel Shri A.K. Jayaraj and Shri J. Subash appeared for the appellants and Ld. Authorized Representative Smt. O.M. Reena appeared for the respondent.

3.1 The Ld. Counsel Shri A.K. Jayaraj submitted that:

i. The goods under import originated from Bangladesh is beyond dispute. The Chamber of Commerce and Industry certificates testify that the goods were produced/ processed in Bangladesh and shipped

from the Port of Mongla to Chennai. The import documents and the certificate of origin also re-confirm the same.

ii. The certificate issued by Export Promotion Bureau under the SAPTA indicates that the goods were processed at the Export Processing Zone, and the fulfillment of origin criteria. It further shows the non-originating materials; processed carried out; market value of originating materials; FOB value of exported goods; value addition attributable to the processes and whether consignment meets rules of origin under SAPTA.

iii. The email correspondences and materials gathered from Shri Narendra Lodaya are not admissible evidence in the eye of law, since they are not certified in terms of sec. 138C(2) of the Customs Act, 1962 which is *pari materia* to sec. 65B of the Evidence Act.

iv. The statements attributable to Mr Narendra Lodaya and Tapan Pal are also not admissible as evidence, since the said persons did not turn up for cross-examination, which was requested by the appellant. Therefore, such statements do not have evidentiary value, as they are untested and are uncorroborated testimony of co-accused.

v. Recourse of the respondent to Rule 5 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 is misconceived and not legal since there are no clearcut evidence supporting the price sought to be adopted, other than uncorroborated statements. Further electronic evidence relied upon have not been certified in terms of section 138C(2) of the Customs Act, 1962 and are hence inadmissible.

The Ld. advocate prayed that, due to the complete lack of evidence the impugned order be set aside and the appeals allowed.

3.2 Ld. A.R. Smt. O.M. Reena submitted on behalf of revenue that:

- i) The investigation revealed that Indonesian-origin betel nuts were routed through Bangladesh. Their value was understated, and facts were misrepresented to obtain Certificates of Origin (**COO**). This finding is based primarily on Relied Upon Documents (**RUD**) 1 to 13 of the Show Cause Notice (SCN), including statements from Mr. Naushud Yunus (Partner at Ruby Overseas), Mr. Narendra Lodaya, email correspondences with Bangladesh Agro growers, communications between Mr. Lodaya and the Indonesian supplier, emails from Shri Lodaya to Shri Tapan Paul regarding related investigations, proforma invoices, TT transfer documents, and other records.
- ii) The investigation did not declare the COO certificate invalid or set it aside. However, the concession was not granted because the minimum value addition requirement, according to the actual transaction value determined by the investigation, was not met. The A.R. submitted that materials, parts, or produce from a non-contracting state (Indonesia) should not exceed 70% of the FOB value of goods produced or obtained, and value addition in the contracting state (Bangladesh) must be 30% or more. Had the appellant/noticee declared the correct value for betel nuts imported from Indonesia (ranging from USD 915/MT to USD 1675/MT), the post-value addition amount (30%) would have been USD 1189.5 to USD 2177.5/MT. However, the declared import value into India from Bangladesh was only USD 680/MT to USD 770/MT, which did not satisfy the minimum value addition condition.
- iii) As the COO was obtained based on misrepresented facts, and the minimum value addition requirement was not fulfilled as shown by

the investigation, the COO did not meet the criteria for concessional duty benefits under SAPTA, in terms of Customs Notification No. 105/1999.

iv) The investigation identified parallel invoices, email correspondences, proforma invoices, and financial transfers, leading to a reason to doubt the value declared. The same was hence sought to be rejected under Rule 12 of the Customs Valuation Rules 2007 and being re-determined under Rule 5 of CVR 2007, by referencing transactions involving similar-quality Indonesian-origin betel nuts routed through Bangladesh.

v) Assertions made by the appellant concerning non-compliance with Section 138(b) and Section 138C of the Customs Act, 1962, are unfounded. All documentary evidence was retrieved by Mr. Narendra Lodaya himself, and all statements were confirmed as accurate by those concerned. The provisions of section 138B(1)(a) of the Customs Act, 1962, was followed.

vi) The Ld. A.A. allowed cross-examination of Shri Narendra Lodaya and Shri Tapan Paul by the appellant. However, both did not appear for cross-examination. The former stated that he could not travel, and the latter stated that he had not given any voluntary statements against any party. Requests to cross-examine the Assistant Commissioner and Shri Ameen Lujee were denied because no statements were recorded from them.

vii) Finally, the timeline set out in Section 28(9) of the Customs Act, 1962, was observed. Delays primarily resulted from writ petitions filed by the appellant before the High Court, which remained pending until a common order was issued on 09/03/2023.

Based on the submissions made and the findings in the impugned Order, the Ld. A.R. prayed for the dismissal of the appeal and confirmation of the OIO.

4. We have carefully gone through the appeal and connected records. We have also heard the rival parties. We find that the appellant has disputed the following findings in the impugned order:

- (a) rejection of the country of origin
- (b) rejection of declared value
- (c) denial of benefit of Notification No. 105/1999, due to non-fulfilment of criteria for claiming SAPTA benefits, since minimum value addition in the contracting state (i.e, Bangladesh) should be 30% or more.
- (d) demand of differential duty
- (e) demand of interest on the differential duty
- (f) confiscation of the goods (despite no such goods available for confiscation) and
- (g) imposition of penalties under sec. 114A/114AA

5. We find that the dispute hinges on three critical factors.

A) Validity of the COO certificate including criteria for concessional duty benefits under SAPTA. [Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1995].

B) Evidentiary value of the records obtained from the computer as per section 138C of the Customs Act 1962 and 65B of the Evidence Act.

C) Evidentiary value of statements due to non-cross examination of Shri Narendra Lodaya and Shri Tapan Paul

6. **Validity of the COO certificate and criteria for concessional duty benefits under SAPTA**

6.1 We find that the issue regarding the Validity of the COO certificate was examined at para 67.29 of the OIO. The said para is reproduced below.

“The investigation throughout has not raised doubt on the authenticity of the country of origin certificate issued by Bangladesh. The allegation was that the certificates were procured fraudulently by misrepresenting the facts before the authorities of Bangladesh only to route the betel nuts of Indonesia origin via Bangladesh and to import into India, so that to avail the SAPTA notification benefit. Hence there is enough reasoning available as part of the investigation findings to discard the claim of COO on the subject import case. Accordingly, the ratio of the CESTAT, Mumbai, Western Bench vide Common Final Order No. A/86251 to 86265/2023 dated 29.8.2023 is not applicable in the present case. Hence the noticee’s contention on verification with respect to the genuineness of the certificates before adjudication is not warranted.”

6.2 Section 5 of the Customs Tariff Act, 1975 deals with the levy of concessional duty rates under trade agreements. Section 5(1) authorises the Central Government to issue notifications for making rules to determine whether an article is produced or manufactured in a particular foreign country. Such notifications pertain to the determination of the origin of goods according to the Preferential Trade Agreements entered into. A tariff notification is subsequently issued under sub-section 1 of Section 25 of the Customs Act, 1962, specifying preferential rates for basic customs duty on relevant goods. At the time of import, a COO certificate from the competent authority in the exporting country must be submitted to the proper officer in the importing country. Upon verification and confirmation of the

certificate's contents, the Customs officer applies the preferential duty rate for those goods.

6.3 We find that the Certificate of Origin is a document that serves as a legal declaration which certifies that goods fulfil the origin requirements in accordance with the Rules of Origin (**ROO**) prescribed under the respective FTA, so that they can benefit from the preferential tariff treatment as per this Agreement. Substantive conditions concerning Rules of Origin are compiled in the COO Certificate and states the Regional Value Content (RVC) + change of Tariff sub-heading (CTSH). The said Certificate is valid for only one importing operation concerning one or more goods. The issue of Origin Certificates and its control is the responsibility of a Government office in each Party. For the issue of an Origin Certificate, the final producer or exporter of the good shall present the corresponding commercial invoice and a request containing a sworn declaration by the final producer certifying that the goods fulfil the origin criteria as well as the necessary documents supporting such a declaration to the designated authority in the exporting country. The description of the good in the sworn origin declaration, which certifies the fulfilment of the origin requirements, shall correspond to the respective tariff classification, as well as with the description of the good in the commercial invoice and in the Certificate of Origin. The beneficiary (exporting) countries shall co-operate with the importing Party (Government of India), in order to specify the origin of inputs in the Certificate of Origin after carrying necessary verification of the declaration made by the exporter and also assist the importing Party (Government of India), in post-importation verification, should a request for the same be made. The Customs

Authorities of the importing Party may, in the cases of reasonable doubt, request the relevant Government Authorities of the exporting Party any additional information necessary for the verification of the authenticity of a certificate, as well as the veracity of the information contained therein. This shall not preclude the application of the respective national legislation relating to breach of customs law. In the cases in which the information requested is not provided within the deadline or is insufficient to clarify any doubt concerning the origin of the good, the competent authorities of the importing Contracting Party may initiate an investigation on the matter within the period mentioned in the Agreement, from the date of the request for the information.

6.4 As per the OIO the investigation throughout has not raised doubt on the authenticity of the COO certificate issued by Bangladesh. It is not held to be a forged document. However, the Ld. Adjudicating authority after coming to the above conclusion further holds that the allegation was that the certificates were procured fraudulently by misrepresenting the facts before the authorities of Bangladesh only to route the betel nuts of Indonesia origin via Bangladesh and to import into India, so that to avail the SAPTA notification benefit. This could have best been verified with the Bangladesh Authorities. While it is true that "Fraud" as is well known vitiates every solemn act, [See: **Ram Chandra Singh Vs Savitri Devi And Ors** - AIRONLINE 2003 SC 537; Madras High Court in **Sagamma @ Sythoon Beevi Vs The Settlement Officer** - W.P.No.7857 of 2010 & M.P.No.2 of 2010, Dated 14.08.2019], and hence a certificate obtained by fraud is a nullity and non-est in the eye of the law, still it is first necessary to prove that fraud was committed by the appellant in procuring the COO certificate.

In such a case the proper course would have been to request the relevant Government Authorities of the exporting Party for any additional information necessary for the verification of the authenticity of a certificate, as well as the veracity of the information contained therein. [See: **Hyundai Motors India Ltd Vs Commissioner of Customs, Chennai**, Final Order No. 41308 to 41310/2024, dated: 21.10.2024].

6.5 However, in this case and as recorded in the impugned OIO, it was the importer who made a request to the Director (International Customs Division) CBIC for verification of the SAPTA certificates by letter dated 07.01.2018. No action has however been taken on it by the department. At least the impugned order does not make any such claim of verification being done. Hence the department cannot blow hot and cold at the same time making allegations but doing nothing to have it verified from the partner state as provided in the Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1995 (**Rules**).

6.6 The Ld. A.A. has stated that the investigation had found out that the actual value of the betel nut of various grade and quality imported into India from Indonesia were in the range of USD 915 to USD 1675 PMT. These were sent to Bangladesh and then exported to India with a declared value in the Range of USD 680 to USD 770 PMT. There has been no collaboration of the same by any evidence admissible in law and the OIO merely repeats the assumptions in the SCN as proof and are purely conjecturers and surmises. With the COO certificate not being discredited the allegations cannot be sustained. We are supported in our views by the Order of the Principal Bench of this

Tribunal in **S.S. Overseas Vs The Principal Commissioner of Customs, New Delhi** [Final Order No. 50050/2025, dated: 14.01.2025].

6.7 A five Judge Bench of the Hon'ble Supreme Court in **E. P. Royappa Vs. State Of Tamil Nadu & Anr** [AIR 1974 SUPREME COURT 555] held that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. That is lacking in this case. Moreover, as held by the Apex Court in **ANGADI CHANDRANNA Vs SHANKAR & ORS.** [2025 INSC 5321, CIVIL APPEAL NO. 5401 OF 2025, Dated: 22.04.2025]

"It is well established that the contents in a document would prevail over any contrary oral evidence."

In this case the document is the COO which certifies that goods fulfil the origin requirements in accordance with the ROO prescribed under the respective FTA and is prescribed in terms of the SAPTA and cannot be lightly discarded.

6.8 A Coordinate Bench of this Tribunal had in a similar matter of valuation in **M/s. BDB Exports Pvt. Ltd., Shri Nirmal Kumar Bhura Versus Commissioner of Customs (Prev.), West Bengal, Kolkata** [2016 (9) TMI 1087 - CESTAT KOLKATA / 2017 (347) E.L.T. 662 (Tri. - Kolkata)], examined the eligibility for exemption under Notification No.105/99-CUS dated 10.08.1999 when read with SAPTA Rules, which is also the notification benefit being claimed by the appellant. The Tribunal held:

"4. Heard both sides and perused the records of the case. The issue involved in the present appeal is whether the main appellant is

eligible to avail partial exemption under Notification **No.105/99-CUS dated 10.08.1999 when read with SAPTA Rules**. As per the first Proviso to this Notification, the Assistant Commissioner/ Deputy Commissioner/ Joint Commissioner has to be satisfied that imported goods are in accordance with the Customs Tariff (Determination of Origin of Goods under the Agreement on SAARC Preferential Trading Arrangement) Rules, 1955- [SAPTA Rules]. As per Rule 4 of the SAPTA Rules read with its Schedule even products processed in the member countries are eligible for concessions under SAPTA Rules when the base goods are not produced/manufactured in the contracting countries. The only requirement under these Rules is that a certification of origin has to be produced for availing concessions as issued by the designated authority of Govt. of exporting contracting state and notified to the other contracting states in accordance with the certification procedures mentioned in the form annexed to SAPTA Rules. Required certificates of origin with respect to imported goods were furnished by the appellant where percentage of value addition as per SAPTA Rules was also indicated. Adjudicating authority has not accepted the value addition indicated in the certificate of origin but has gone with the investigation indigenously to allege that value addition cannot be to the extent claimed by the Appellant and also that activities undertaken by the supplier of cloves does not amount to processing of cloves. **It is observed from various provisions of SAPTA Rules and Notification No.105/99-Cus dated 10.08.1999 that there is no discretion or power with the Customs authorities to reject the certificate of origin given by the concerned contracting state.** Para 9 of the same Schedule does give power to the contracting states to review/modify the said Rules.

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5.2 In view of the above case law of Gauhati High Court department cannot sit as on Adjudicator over the certificate of origin given by the designated authority under SAPTA Rules. Only an appropriate authority of Bangladesh could have certified as to what could be the value addition, after satisfying about the nature of processing activities done by the supplier and the extent of expenses incurred by such supplier in carrying out the activities of cleaning, handling, storage, sorting, packing etc.

6. In view of the above observations and the settled proposition of law certificates of origin issued by the designated authority under SAPTA cannot be rejected which is the only requirement for the satisfaction of the Customs department under Notification No.105/99-Cus dated 10.08.1999. Once on merit the case goes in favour of the main appellant, there is no question of confiscation of imported goods and imposition of penalties upon the appellants.”
(emphasis added)

We find that there has been a failure on the part of the respondent-revenue to resort to the detailed verification procedure for SAPTA certificates, even after a specific request by the appellant for the same.

Hence the COO certificate has to be honoured and impugned order trying to discredit the value addition etc. is defective to this extent.

7. **Evidentiary value of the records obtained from the computer/electronic devices as per section 138C of the Customs Act 1962.**

7.1 The appellants have stated that, during the course of inquiry against some other importers as listed at para 15 of the OIO, DRI has retrieved certain electronic documents taken from one Narendra Lodaya and Tapan Paul, which cannot be used against them as the matter did not relate to them and the stated recovery was made without certification as mandated under section 138C of the Customs Act. The documents are the basis of the valuation of the goods and hence the whole demand must fail.

7.2 We find that the issue relating to the evidentiary value of the records obtained from the computer as per section 138C of the Customs Act 1962 and 65B of the Evidence Act. **M/s. Media Graphics Vs Commissioner of Customs, Chennai** [Final Order Nos. 40925 to 40927/2024, Dated: 23.07.2024], was examined by a Co-ordinate Bench of this Tribunal at Chennai. The Tribunal speaking through one of us [Shri M Ajit Kumar, Member (Technical)], held:

“9. We also find that the OIO in this regard depends on evidence gathered from electronic devices, data of which has been retrieved under a panchanama. The appellant has stated that print outs obtained from mobile phones and hard disks have not been certified as required under section 138 of CA 1962 and hence such documents are not admissible in evidence. In this connection they have placed reliance on the judgment of the Apex Court in the case of **Anvar P.V Vs P.K. Basheer** [(2014) 10 SCC 473] and CESTAT, in the case of **Junaïd Kudia** [2024 (16) Centax 503 (Tri-Bom)] along with **S.N. Agrotech and others** [2018 (4) TMI 856 CESTAT, New Delhi].

10. We find that in **Anvar P.V.** (supra), a three Judge Bench of the Hon'ble Apex Court, held that any documentary evidence sought to be produced from an electronic record under the provisions of the Evidence Act 1872, (Evidence Act) can be proved only in accordance

with the procedure prescribed under Section 65B therein. The judgment held that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record. Oral evidence in the place of such certificate will not suffice as Section 65B(4) is a mandatory requirement of the law. The judgment is of relevance to this case as section 138C of the CA 1962 is *pari materia* to the said section 65B of the Evidence Act. Hence a written certificate under section 138C(4) is a *sine qua non* for admissibility of such electronic evidence under the CA 1962 also.

11. Consequent to the judgment in **Anvar P.V.** (supra), some confusion arose over the scope and ambit of Section 65B of the Evidence Act as different views were taken in a few subsequent decisions of Constitutional Courts namely, the Hon'ble Apex Court judgments in **Shafii Mohammad Vs State of Himachal Pradesh** [(2018) 2 SCC 801] and **Tomaso Bruno Vs State of Uttar Pradesh** [(2015) 7 SCC 178] and the Hon'ble Madras High Court judgment in **K. Ramajyam Vs Inspector of Police** [(2016) CrL LJ 1542]. The discordance was placed for a resolution before a three-judge bench of the Hon'ble Supreme Court, in **Arjun Panditrao Khotkar Vs Kailash Kishanrao Goratyal**, [AIR 2020 SC 4908 / AIRONLINE 2020 SC 641]. The Hon'ble Court, after examining the said judgments clarified the binding legal position. The Hon'ble Court upheld the **Anvar P.V.** judgment (supra) while overruling the **Shafii Mohammed's** judgement (supra) and made it clear that the certificate must be mandatorily provided as a condition under Sec 65B(4) for admissibility of electronic evidence. The Court also overruled its earlier decision in **Tomaso Bruno** (supra) wherein it was held that sections 65A and 65B of the Indian Evidence Act are only procedural provisions, since they are not a complete code on the subject and hence a certificate is not required under Sec. 65B. It also disagreed with the **Ramajyam** judgment (supra) of the Hon'ble Madras High Court, wherein it was held that in lieu of the certificate under section 65B, evidence *aliunde* (elsewhere) can be given by the person who was in possession of the device.

12. WE find that Section 138C of the CA 1962 provides for the admissibility of micro films, facsimile copies of documents and computer print-outs as evidence in a proceedings under the Act without further proof of production of the original. The section differentiates between the original information (primary evidence) contained in the "computer" itself and copies made there from (secondary evidence). The section would not come into play when original documents are being produced in evidence. The admissibility of evidence relating to print outs of electronic records as per the record of the witnesses (mahazar / panchanama) drawn during the search and recovery, of electronic evidence, as per the provisions of of 100 or section 101 of the CA 1962 or of a statement incorporating details of the electronic evidence found, under section 108 of the CA 1962, shall have to yield to section 138C of CA 1962 which is a special provision relating to the admissibility of such documents. This is because **Generalia specialibus non derogant**, a special section will always prevail over the general sections of the Act. Consequently, the evidence in the form of computer print-outs etc. can be admitted, as in the present proceedings, only subject to fulfilling the conditions under section 138C as evidenced by the certificate issued by a responsible person under sub-section (4) of the said section. We find that, the lack of such a certificate is fatal to

revenues case and the portion of the order relying on such evidence is liable to be set aside.”

7.3 We hence hold that documents/records obtained from computers/electronic devices without the certificate issued by a responsible person as per section 138C(4) of the Customs Act 1962 will not be admissible as evidence.

8. Evidentiary value of statements due to non-cross examination of S/Shri Narendra Lodaya and Tapan Paul.

70.1 The appellants have stated that Narendra Lodya and Tapan Paul's statements cannot be relied on in the current proceedings as they have not been subjected to cross-examination, despite being summoned they did not participate. The material, including their statements, should be excluded from the proceedings, as they have not been tested

8.1 The Ld. A.A. in the impugned order has recorded that cross examination of Mr. Narendra Lodaya and Mr. Tapan Paul were permitted but they did not appear, however section 138B of the Customs Act makes it clear that in proceedings before an Administrator as in the case of a proceeding in a case of law, a statement made and signed by a person is material and it has to be admitted as evidence in the interest of justice.

9. We find that the relevance of cross-examination of a person whose statement is relied upon as evidence has been examined by a Coordinate Bench of this Tribunal at Chennai in a detailed order, in **M/s. Geetham Steels Pvt Ltd. Vs Commissioner of GST & Central Excise, Salem** [FINAL ORDER No.40260-40274/2025, Dated: 21.02.2025]. The Bench speaking through one of us [Shri Ajayan T.V., Member (Judicial)] held:

“61. However, we are unable to subscribe to the view that cross-examination of the witness is a necessary pre-requisite in all circumstances. Wherever, the scenario under Section 9D(1)(a) arises, it goes without saying that there would not arise a question of the deponent being made available for cross-examination. Similarly, when the adjudicating authority, on examination of the witness under Section 9D(1)(b) forms an opinion in the facts and circumstances that the witness has resiled from his earlier statement and is to be considered hostile, and that the adjudicating authority deems it necessary to rely on the earlier statement of the witness, then again there does not arise a further necessity to make the witness available for cross-examination to the assessee. **However, if the witness is deposing against the assessee, then it would be necessary for the adjudicating authority to offer the said witness to the assessee/assessee's representative for cross examination if the assessee so desires and requests for cross-examination, as otherwise it would be prejudicial to the assessee.** Thus, it can be seen that cross-examination of the witness deposing before the adjudicating authority is not an imperative in all circumstances and **only when the deposition is to the detriment of the assessee, that the witness is to be offered for cross-examination, if the assessee so desires and requests for cross -examination.**”

We find that this is a case where the appellant has made a specific request for cross examination of the above mentioned persons. Although it is stated that the said persons were called for the cross-examination but did not appear, the efforts made to ensure that they appear is not stated. The issue regarding the relevancy and proof value of such statements would also require the Ld. A.A. to have examined the request with due attention and record his detailed reason for not acceding/ not being able to accede to the appellant's request. It should have been recorded whether the persons were incapable of giving evidence for any reason or were kept out of the way by the adverse party, or their presence could not be obtained without an amount of delay and expense which, under the circumstances of the case, the Ld. A. A., considered unreasonable. The requirement for cross examination should be seen as a meaningful jurisdictional prerequisite, rather than a mere formality. A bland statement of the persons not appearing for the cross-examination would not suffice to invoke section 138B, in a

case where the appellants are to be visited by substantial demand for duty and face severe penalties equal to the duty allegedly evaded. Hence, on balance, we are of the opinion that the statements of Mr. Narendra Lodaya and Mr. Tapan Paul cannot be relied upon in the proceedings.

10. Having examined the evidence available in this case and finding their admissibility to be wanting, we can now examine the issues raised in the appeal namely, the rejection of the declared value and also the denial of benefit under Notification No. 105/1999. The subsequent demand of differential duty and interest. Imposition of penalties and the non-confiscation of goods that were not available.

10.1 We have discussed above that the rejection of the COO which also includes the Regional Value Content adopted, was not proper. The document was not subjected to scrutiny in terms of the Agreement and the Rules by the Ld. A. A., for their authenticity with the Bangladesh authorities. Hence the COO cannot be discarded as having been fraudulently obtained and the exemption from payment of duty as per Notification No. 105/1999 dated 10.08.1999 cannot be denied. Further it is the duty of the Proper Officer to assess the goods after examining the probative value of the documents on which reliance is placed. The entire invoices and documents relied upon were retrieved from electronic devices as detailed at para 16 of the impugned OIO and in the Tables at pages 13 and 14 of the impugned OIO. These have been done without following the requisite procedure under section 138C of the Customs Act 1962. Similarly, the statements obtained from Mr. Narendra Lodaya and Mr. Tapan Paul, are found inadmissible in the peculiar facts of this case. These then remove the main basis for the

re-valuation of the goods. The revised value adopted in the OIO hence cannot be sustained. All these lacunae in the main evidence adduced in the OIO, reduces their probative value in reaching a conclusion even when the standard of proof is preponderance of probability. For the said reasons Revenue has not been able to discharge its burden and prove the allegations made. Once the case fails on merits, examining the issue of imposition of penalties and the non-confiscation of goods that were not available, delay in adjudication etc does not arise.

11. In the light of the discussions above the impugned order merits to be set aside and is so ordered. The appellants are eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 17.10.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)

Rex