

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 54927 OF 2023

(Arising out of Order-in-Appeal No. CC-A-CUS-D-II-IMPORT-ICD-TKD-1220-1222/2022-23 dated 14.12.2022 passed by the Commissioner of Customs (Appeals), ICD-TKD, New Delhi)

Hemendra Rai

26-F, Sung Fung Court, Harbour Heights
1-3 Fook Yam Road, North Point
Hong Kong

.....Appellant

VERSUS

Commissioner of Customs (Import)

ICD, Tughlakabad
New Delhi

.....Respondent

WITH

CUSTOMS APPEAL NO. 54928 OF 2023

(Arising out of Order-in-Appeal No. CC-A-CUS-D-II-IMPORT-ICD-TKD-1220-1222/2022-23 dated 14.12.2022 passed by the Commissioner of Customs (Appeals), ICD-TKD, New Delhi)

Rajiv Shewaramani

26-F, Sung Fung Court, Harbour Heights
1-3 Fook Yam Road, North Point
Hong Kong

.....Appellant

VERSUS

Commissioner of Customs (Import)

ICD, Tughlakabad
New Delhi

.....Respondent

AND

CUSTOMS APPEAL NO. 55021 OF 2023

(Arising out of Order-in-Appeal No. CC-A-CUS-D-II-IMPORT-ICD-TKD-1220-1222/2022-23 dated 14.12.2022 passed by the Commissioner of Customs (Appeals), ICD-TKD, New Delhi)

Aditya Gupta

128-129, 1st Floor, Charmswood Plaza,
Eros Garden,
Faridabad – 121003
Haryana

.....Appellant

VERSUS

Commissioner of Customs (Import)

ICD, Tughlakabad
New Delhi

.....Respondent

APPEARANCE:

Mr. A.K. Seth, Mr. Chinmaya Seth, Ms. Khushboo Seth and Ms. Garima Thirani,
Advocates for the Appellant

Mr. Nikhil Mohan Goyal, Mr. Rajesh Singh, Mr. Shiv Shankar and Mr. M.K.
Shukla, Authorised Representatives of the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING : 05.08.2025
DATE OF DECISION : 20.01.2026

FINAL ORDER NO's. 50101-50103/2026

JUSTICE DILIP GUPTA:

All these three appeals seek quashing of the order dated December 12, 2022 passed by the Commissioner of Customs (Appeals)¹ by which the order dated March 18, 2019 passed by the Additional Commissioner has been upheld. The Commissioner (Appeals) observed that there was a specific finding of the Additional Commissioner that there was evidence of undervaluation in respect of the import of furniture in the form of parallel invoices. Thus, as the appellants were part and parcel of the entire fraud, they cannot escape penal action. The appeals have, accordingly, been dismissed for the said reasons. The Additional Commissioner had relied upon the statements made by the three appellants under section 108 of the Customs Act and on the printouts of emails submitted by Shri Rajiv Shewaramani on January 25, 2016.

2. The dispute is in respect of the Bills of Entry that were filed relating to furniture and furniture parts that were imported.

3. The appeals were heard on two issues relating to the applicability of section 138B and section 138C of the Customs Act.

Section 138B of the Customs Act

4. The Commissioner (Appeals) has relied upon statements made by the appellants under section 108 of the Customs Act to record a finding

1. the Commissioner (Appeals)

regarding mis-declaration and under-valuation of the goods, but these statements were retracted by the appellants in their replies.

5. Section 108 of the Customs Act deals with power to summon persons to give evidence and produce documents. It provides that any Gazetted Officer of customs shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under the Customs Act.

6. Section 138B of the Customs Act deals with relevancy of statements under certain circumstances and it is reproduced below:

"138B. Relevancy of statements under certain circumstances.

(1) A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

7. It would be seen that section 108 of the Customs Act enables the concerned Officers to summon any person whose attendance they

consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under this provision. It is these statements which are referred to in section 138B of the Customs Act. A bare perusal of sub-section (1) of section 138B makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of the Customs Act shall apply to any proceedings under the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.

8. In the case of **M/s Surya Wires Pvt. Ltd. vs Principal Commissioner, CGST, Raipur²**, a Division Bench of this Tribunal examined the provisions of section 108 and 138B of the Customs Act as also the provisions of section 9D and 14 of the Central Excise Act, 1944, which are similar to the provisions of section 108 and 138B of the Customs Act, and the observations are :

“**28.** It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.”

9. In **Ambika International vs. Union of India**³ decided on 17.06.2016, the Punjab and Haryana High Court examined the provisions of section 9D of the Central Excise Act. The show cause notices that had been issued primarily relied upon statements made under section 14 of the Central Excise Act. It was sought to be contended by the Writ Petitioners that the demand had been confirmed in flagrant violation of the mandatory provisions of section 9D of the Central Excise Act. The High Court held that if none of the circumstances contemplated by clause (a) of section 9D(1) exist, then clause (b) of section 9D(1) comes into operation and this provides for two steps to be followed. The first is that the person who made the statement has to be examined as a witness before the adjudicating authority. In the second stage, the adjudicating authority has to form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice. The judgment further holds that in adjudication proceedings, the stage of relevance of a statement recorded before Officers would arise only after the statement is admitted in evidence by the adjudicating authority in accordance with the procedure contemplated in section 9D(1)(b) of the Central Excise Act. The judgment also highlights the reason why such an elaborative procedure has been provided in section 9D(1) of the Central Excise Act. It notes that a statement recorded during inquiry/investigation by an Officer of the department has a possibility of having been recorded under coercion or compulsion and it is in order to neutralize this possibility that the statement of the witness has to be recorded before the adjudicating authority. The relevant portions of the judgment are reproduced below:

3. **2018 (361) E.L.T. 90 (P&H)**

"15. A plain reading of sub-section (1) of Section 9D of the Act makes it clear that clauses (a) and (b) of the said sub-section set out the circumstances in which a statement, made and signed by a person before the Central Excise Officer of a gazetted rank, during the course of inquiry or proceeding under the Act, shall be relevant, for the purpose of proving the truth of the facts contained therein.

16. Section 9D of the Act came in from detailed consideration and examination, by the Delhi High Court, in J.K. Cigarettes Ltd. v. CCE, 2009 (242) E.L.T. 189 (Del.). Para 12 of the said decision clearly holds that by virtue of sub-section (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well.

22. If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1) comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.

- (i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and
- (ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

23. There is no justification for jettisoning this procedure, statutorily prescribed by plenary parliamentary legislation for admitting, into evidence, a statement recorded before the gazetted Central Excise Officer, which does not suffer from the handicaps contemplated by clause (a) of Section 9D(1) of the Act. The use of the word "shall" in Section 9D(1), makes it clear that, the provisions contemplated in the sub-section are mandatory. Indeed, as they pertain to conferment

of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

24. **The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/ investigation, by the gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion.** It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. **It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudication authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.**

25. **Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1).** The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. **In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1).** In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the

case, the statement should be admitted in the interests of justice.

26. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross-examination, and cross-examination has to precede re-examination.

27. **It is only, therefore, -**

(i) **after the person whose statement has already been recorded before a gazetted Central Excise Officer is examined as a witness before the adjudicating authority, and**

(ii) **the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,**

that the question of offering the witness to the assessee, for cross-examination, can arise.

28. **Clearly, if this procedure, which is statutorily prescribed by plenary parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof."**

(emphasis supplied)

10. In **Hi Tech Abrasives Ltd. vs. Commissioner of C. Ex. & Cus., Raipur**⁴ decided on 04.07.2018, the Chhattisgarh High Court also examined the provisions of section 9D of the Central Excise Act. The allegation against the appellants was regarding clandestine removal of goods without payment of duty and for this purpose reliance was placed on the statement of the Director of the Company who is said to have admitted clandestine removal of goods. The contention of the appellants

4. **2018 (362) E.L.T. 961 (Chhattisgarh)**

before the High Court was that the statement of the Director could be admitted in evidence only in accordance with the provisions of section 9D of the Central Excise Act. After examining the provisions of sub-sections (1) and (2) of section 9D of the Central Excise Act, and after placing reliance on the judgment of the Punjab and Haryana High Court in **Ambika International**, the Chhattisgarh High Court held:

"9.3 A conjoint reading of the provisions therefore reveals that a statement made and signed by a person before the Investigation Officer during the course of any inquiry or proceedings under the Act shall be relevant for the purposes of proving the truth of the facts which it contains in case other than those covered in clause (a), only when the person who made the statement is examined as witness in the case before the court (in the present case, Adjudicating Authority) and the court (Adjudicating Authority) forms an opinion that having regard to the circumstances of the case, the statement should be admitted in the evidence, in the interest of justice.

9.4 The legislative scheme, therefore, is to ensure that the statement of any person which has been recorded during search and seizure operations would become relevant only when such person is examined by the adjudicating authority followed by the opinion of the adjudicating authority then the statement should be admitted. The said provision in the statute book seems to have been made to serve the statutory purpose of ensuring that the assessee are not subjected to demand, penalty interest on the basis of certain admissions recorded during investigation which may have been obtained under the police power of the Investigating authorities by coercion or undue influence.

9.5 *** The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory.** Therefore, unless the substantive provisions contained in Section

9D are complied with, the statement recorded during search and seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. **Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers.** Indeed, without examination of the person as required under Section 9D and opinion formed as mandated under the law, the statement recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. **We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice.** In taking this view, we find support from the decision in the case of *Ambica International v. UOI* rendered by the High Court of Punjab and Haryana.”

(emphasis supplied)

11. In **Additional Director General (Adjudication) vs. Its My Name Pvt. Ltd.**⁵ decided on 01.06.2020, the Delhi High Court examined the provisions of sections 108 and 138B of the Customs Act. The department placed reliance upon the statements recorded under section 108 of the Customs Act. The Delhi High Court held that the procedure contemplated under section 138B(1)(b) has to be followed before the statements recorded under section 108 of the Customs Act can be considered as relevant. The relevant paragraphs of the judgment of the Delhi High Court are reproduced below:

"76. **We are not persuaded to change our view, on the basis of the various statements, recorded under Section 108 of the Act, on which the Learned ASG sought to rely. Statements, under Section 108 of the Act, we may note, though admissible in evidence, acquire relevance only when they are, in fact, admitted in evidence, by the adjudicating authority and, if the affected assessee so chooses, tested by cross-examination. We may, in this context, reproduce, for ready reference, Section 138B of the Act, thus:*******

A Division Bench of this Court has, speaking through A.K. Sikri, J. (as he then was) held, in J & K Cigarettes Ltd. v. Collector of Central Excise [2009 (242) E.L.T. 189 (Del.)] that, by virtue of sub-section (2), Section 138B(1) of the Act would apply, with as much force, to adjudication proceedings, as to criminal proceedings.

We express our respectful concurrence with the above elucidation of the law which, in our view, directly flows from Section 138B(1) of the Act - or, for that matter, Section 9D of the Central Excise Act, 1944.

77. The framers of the law having, thus, subjected statements, recorded under Section 108 of the Act, to

5. **2021 (375) E.L.T. 545 (Del.)**

such a searching and detailed procedure, before they are treated as relevant in adjudication proceedings, we are of the firm view that such statements, which are yet to suffer such processual filtering, cannot be used, straightaway, to oppose a request for provisional release of seized goods. **The reliance, in the appeal before us, on various statements recorded during the course of investigation in the present case cannot, therefore, in our view, invalidate the decision, of the Learned Tribunal, to allow provisional release of the seized 25400.06 grams of gold jewellery, covered by Bill of Entry No. 107190, dated 20th April, 2019."**

(emphasis supplied)

12. In **Drolia Electrosteel** decided on 30.10.2023, a Division Bench of the Tribunal examined the provisions of section 9D of the Central Excise Act and after placing reliance upon the decision of the Punjab and Haryana High Court in **Jindal Drugs**, observed that if the mandatory provisions of section 9D(1)(b) of the Central Excise Act are not followed, the statements cannot be used as evidence in proceedings under Central Excise Act. The relevant portions of the decision of the Tribunal are reproduced below:

"14. Evidently, the statements will be relevant under certain circumstances and these are given in clauses (a) and (b) of subsection (1). There is no assertion by either side that the circumstances indicated in (a) existed in the case. **It leaves us with (b) which requires the court or the adjudicating authority to first examine the person who made the statement and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence. Of course, the party adversely affected by the statement will have to be given an opportunity to cross examine the person who made the statement but that comes only after the statement is, in the first place, after examination by the adjudicating authority, admitted in evidence.** This has not been done in

respect of any of the 35 statements. Therefore, all the statements are not relevant to the proceedings.

15. **It has been held in a catena of judgments including Jindal Drugs Pvt. Ltd. versus Union Of India [2016 (340) E.L.T. 67 (P&H)] that section 9D is a mandatory provision and if the procedure prescribed therein is not followed, statements cannot be used as evidence in the proceedings under Central Excise Act. *******

16. Therefore, the 35 statements relied upon in the SCN are not relevant and hence also not admissible.”

(emphasis supplied)

13. Learned authorized representative appearing for the department has, however, placed reliance upon the decision of this Tribunal in **Shri T.N. Malhotra, Managing Director vs Pr. Commissioner of Customs, New Delhi⁶**. In this decision, the Bench examined the provisions of section 108 of the Customs Act, but it appears that the provisions of section 138B of the Customs Act were not brought to the notice of the Division Bench. As a result, the Bench examined whether the statements made were voluntary or under pressure. It is for this reason that the Bench relied upon the statements.

14. In view of the aforesaid discussions, it has to be held that the statements of persons recorded under section 108 of the Customs Act could not have been relied upon by the Principal Commissioner for rejecting the transaction value and re-determining the same.

Section 138C of the Customs Act

15. The issue relating to section 138C of the Customs Act needs to be now examined. This section is reproduced below :

6. **Customs Appeal No. 50024 of 2022 (DB) decided on June 04, 2024**

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

(1) Notwithstanding anything contained in any other law for the time being in force,-

- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
- (b) a facsimile copy of a document; or
- (c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer print out"), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer print out shall be the following, namely:-

- (a) the computer print out containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- (b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether-

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(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.

(5) For the purposes of this section,-

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation- For the purposes of this section,-

- (a) "computer" means any device that receives, stores, and processes data, applying stipulated processes to the information and supplying results of these processes; and
- (b) any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process."

16. A specific ground had been taken before the Commissioner (Appeals) by the appellants that since the provisions of section 138C of the Customs Act had not been complied with, the printouts of the e-mail could not be considered. It was also contended that the statements made under section 108 of the Customs Act had been retracted.

17. The finding of under-valuation has been recorded on the bases of statements made under section 108 of the Customs Act, wherein the printouts are said to have been acknowledged by Gautam Gupta while tendering his statement on December 27, 2016. It has also been held that

both Rajiv Shewaramani and Hemendra Rai categorically stated in their statements tendered under section 108 of the Customs Act that they had two arrangements with the invoices. There is no finding recorded by the Commissioner (Appeals) on the submission made by the appellants that since the procedure contemplated under section 138C of the Customs Act had not been followed, no reliance could be placed on the printout of the e-mail.

18. The Supreme Court in **Additional Director General, Adjudication, Directorate of Revenue Intelligence vs Suresh Kumar and Co. Impex Pvt. Ltd. & Ors.**⁷ has held :

"**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. When we say due compliance, the same should not mean that a particular certificate *stricto senso* 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.

44. 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.

45. Even while giving reply to the show cause notice, the contents of such statements recorded under Section 108 of the Act, 1962 were not disputed. This, of course, would be relevant only insofar as determining whether there has been due compliance of Section 138C(4) of the Act, 1962 is concerned. The evidentiary value of such Section 108 statements in any other proceedings, if any would have to be considered in accordance with law, including the compliance of Section 138B of the Act, 1962."

7. Civil Appeal Nos. 11339-11342 of 2018 decided on August 20, 2025

19. In the present case, there is nothing on the record to show that Panchnama was drawn regarding the printouts of the email. The statements made under section 108 of the Customs Act were also retracted by the appellants. Thus, compliance of section 138C of the Customs Act had not been satisfied.

20. In this view of the matter, it is not possible to sustain the order dated December 14, 2022 passed by the Commissioner (Appeals) that upholds the order dated March 18, 2019 passed by the Additional Commissioner rejecting the declared value of the goods under rule 12 of the 2007 Valuation Rules and re-determining it under rule 3. Nor is it possible to sustain the imposition of penalties upon the appellants.

21. The impugned order dated December 14, 2022, insofar as it concerns these three appeals, is set aside and all the three appeals are allowed.

(Order Pronounced on **20.01.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)