CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 52572 of 2018

[Arising out of Order-in-Original No. 17/NKU (20) AOG (Adj.)/DRI/N.Delhi/2017-18 dated 26.03.2018 passed by the Directorate of Revenue Intelligence (Adjudication), New Delhi]

Shri Gagan Vohra **...Appellant**
Proprietor of M/s. Kusum Overseas
FA-335A. Mansarovar Garden.
New Delhi - 110015

VERSUS

Commissioner of Central Excise, Customs
And Service Tax – DGCEI, Adjudication Cell,
New Delhi **...Respondent**
DGCEI (Adj. Cell), West Block 8,
Wing No.6, 2nd Floor,
R.K. Puram, New Delhi - 110066

APPEARANCE:
Shri Manish Khurana, Advocate for the Appellant
Shri Shrimali Sadashiv, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 24.04.2026
DATE OF DECISION: **24.08.2026**

FINAL ORDER NO. 51404/2026

DR. RACHNA GUPTA

An information was received that the M/s Kusum Overseas was engaged in the business of import of significant volume of food items from several countries through ICD Tughlakabad, New Delhi that the appellant had been mis-declaring the value and the RSP of their imported products. Acting upon the said information, the business premises and warehouse of M/s Kusum Overseas and residential premises of Shri Gagan Vohra, Prop. of M/s Kusum Overseas were searched on 05.05.2016 which led to recovery of one Laptop of Dell make and some incriminating documents vide

Panchnama dated 05.05.2016 prepared on the spot. The detained goods found lying at the office-cum-godown premises were quantified/inventoried and got seized under panchnama dated 23.05.2016 were handed over to to Shri Gagan Vohra, Prop., however vide Superdaginama dated 23.05.2016.

1.1 Statement of Shri Gagan Vohra was recorded under Section 108 of the Customs Act, 1962 where he stated that he resided in the above mentioned address along with his wife, mother and two children; that he had under-invoiced the goods and had also mis-declared the MRP at the time of import and for which he was ashamed; that he was willing to pay the differential duty; that the total duty evasion on account of mis-declaration of value and MRP was around 70-80%. As per his mutual agreement the supplier raised the low value invoices for his imports; that he remitted the differential balance amount to the supplier as per his direction.

1.2 Statement of Shri K.S. Sasi, Manager, M/s Professional Impex Pvt. Ltd. of appellant was recorded also got recorded under Section 108 of the Customs Act, who stated that the importer used to furnish MRP declaration on their Letter head for each and every consignments which were also submitted to Customs at the time of clearances. They both further accepted that documents & MRP declaration with respect to M/s Kusum Overseas were submitted at the time of import before filling of Bills of Entry for clearance of imported food products in the name of appellant company.

1.3 Statement of Shri Bal Kishan G-Card holder of M/s Professional Impex under the same provision was also recorded who stated that goods were examined in his presence; that the MRP stickers had been affixed on the goods which were examined in his presence; that he had nothing to comment on the goods recovered from the godown of the importer and which were without MRP/RSP stickers/details on the packages. The laptop which was resumed from appellant's residential premises was subjected to forensic examination in appellant's presence along with retrieval of print outs of the documents related to the ongoing investigation in appellant's presence only with their counter signature thereupon. Those documents were number 1-64 as detailed in Para 9 of the Show Cause Notice (SCN). It appeared that actual price paid payable is elucidated by the documents recovered from the e-mails of Shri Gagan Vohra as certified by his voluntary admission. It also appeared that the actual value and MRP/RSP of the imported foods items imported by the appellant should have formed part of the assessable value for the purpose of calculation of the CVD portion of Customs duty as the same is directly relatable to the imported goods. The importer had voluntary submitted the six demand drafts towards the differential duty of Rs. 30,00,000/-.

1.4 In view of the above, goods were alleged liable to be rejected in terms of Rule 12 of the Customs Valuation Rules, 2007. Subsequently following Rule 3 to Rule 9 of Value Determination Rules that the show cause notice no. 21/2016 dated 04.11.2016 was served upon appellants proposing:

(i) Rejection of the declared assessable value of goods imported to be re-determined as Rs. 16,82,41,741/- in terms of the Customs

Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;

(ii) The differential duty amounting to Rs. 49,74,457/- was proposed to be demanded and recovered from appellant with interest at appropriate rates.

(iii) Imported goods seized at the Godown of appellant were proposed to be confiscated under Section 111(m) of the Customs Act, 1962.

(iv) An amount of Rs. 30,00,000/- (Rupees Thirty Lakhs only) deposited during the investigation was proposed to be appropriated and adjusted towards the duty and interest demanded as above.

(v) Penalty under Section 114A of the Customs Act, 1962 was also proposed. This proposal has been confirmed vide order-in-original bearing no. 17/2017-18 dated 26.03.2018. Being aggrieved the appellant is before this tribunal.

2. We have heard Shri Manish Khurana, learned Advocate for the appellant and Shri Srimali Sadashiv, learned Authorized Representative for the department.

3. Ld. Counsel for the appellant that the impunged order is contrary to the statutory scheme of valuation under section 14 of the Customs Act, 1962 read with Customs (Determination of Value of Imported Goods) Rules, 2007. There has occurred violation of principal of natural justice also for the reason that the relied upon documents were not provided to the appellant in time. Later also, with the intervention of this tribunal by interim order dated

03.07.2019 though the copies were provided but the documents were illegible and incomplete. These documents were forming the very basis of the allegation hence due to non-supply thereof the appellant could not tender effective reply. Thus was deprived of meaningful opportunity. It is submitted that the order under challenge thus lacks the principles of fair hearing and is liable to be set aside on this ground only.

3.1 While submitting on merits, Ld. Counsel for the appellant mentioned that the declared assessable value was wrongly rejected and has wrongly been redetermined under Rule 9 of the Customs (Determination of Value of Imported Goods) Rules, 207. Out of the redetermined differential customs duty of Rs. 49,74,457/-, Rs. 30,00,000/- was got deposited under coercion and harassment. The same has wrongly been held to be the voluntary deposit / admission of alleged liability. The appellant has already filed an affidavit dated 16.01.2019 to this effect. Ld. Counsel has also relied upon the decision of this tribunal, Ahmedabad Bench, in the case of It is further submitted that the department has wrongly treated the statements recorded at the stage of investigation, as substantiveevidence despite that reliance upon the such statements is statutorily condition by Section 138B of the Customs Act, 1962. Decision of this tribunal in the case of **Videocon DiiH Limited vs ADG (Adjudication), DRI New Delhi in Customs Appeal No. 51007 of 2020 dated 23.09.2025.** Decision in the case of **Simplex Industries and Chemicals Limited vs. Commissioner of Customs, CESTAT, New Delhi in Customs Appeal No. 50071 of 2025** is relied upon.

3.2 It is further submitted that the rejection of transaction value and re determination of value is contrary to Section 14 of the Act and the Valuation Rules. Transaction value is the primary basis of valuation, and can be rejected only in accordance with Rule 12 on the basis of a reasonable doubt about the truth or accuracy of the declared value, after giving the importer an opportunity to justify the declared value. Decision of Hon'ble Supreme Court in the matter of **Eicher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai (2001) 1 SCC 315,** wherein it is explained that the declared transaction value must be accepted unless statutory conditions for rejection are satisfied, and that valuation cannot be enhanced on mere suspicion or administrative notions of what the price ought to be. The Hon'ble Supreme Court in the matter of **Commissioner of Customs, Calcutta v. South India Television (P) Ltd. (2007) 6 SCC 373,** has reiterated that the burden to prove undervaluation lies on the department and that valuation cannot be enhanced on assumptions or on the basis of market prices.

3.3 The case of the Department, even as projected, is not founded on any contemporaneous import data of identical or similar goods brought on record through Bills of Entry, invoices, or verifiable NIDB outputs with full particulars. No contemporaneous data from NIDB was resorted to, disclosed, or tested, despite the Appellant specifically disputing the alleged enhancement methodology. Hence, the declared transaction value cannot be rejected on conjecture, suspicion, or unverified internal worksheets. The show cause notice proposes to jump to the residual valuation rule by asserting that value could not be determined under Rules 4 to 8. Such approach is contrary to the statutory hierarchy.

3.4 Further, the show cause notice invokes Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011 and alleges non declaration of maximum retail price on the imported packages. Even assuming such allegation, any consequential determination of retail sale price or additional duty must follow the statutory framework and must be supported by disclosed working for each item and bill of entry. With these submissions, the order under challenge is prayed to be set aside and the appeal is prayed to be allowed.

4. While rebutting these submissions, Ld. DR has submitted that investigations established that the importer under-invoiced goods and declared lower MRPs to suppress assessable value. The differential duty of Rs. 49,74,457/- was computed upon reassessment, supported by the importer’s own chart and supplier invoices.

4.1 Ld. DR further submitted that the appellant has made a voluntary confession admitting undervaluation. The same stands corroborated by appellant’s Customs House Agent (CHA) further there has been the digital data in the form of supplier invoices from Singapore and Thailand showing higher actual prices for the imported goods. Hence the declared values have rightly been rejected under 12 of Customs (Determination of Value of Imported Goods) Rules, 2007. Since the declared values were not reflecting actual price (Section 14). MRP based duty under Section 4A Central

Excise Act 1944 & Section3(2), Customs Tariff Act 1975 is correctly reassessed using Notification 49/2008-CE(N.T.) dated 24.12.2008 (abatement). Hence Rule 9 of Customs (Determination of Value of Imported Goods) Rules, 207 has rightly been invoked while re-assessing the values. Ld. DR has relied upon the following decision: -

i. **CC, Madras v. D. Bhurmal (1983) 13 ELT 1546 SC.**
ii. **K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. – Chennai)**

With these submissions, the appeal is prayed to be dismissed.

5. Having heard the rival contentions and perusing the appeal records, it is observed and held as follows:

5.1 Too much Reliance, on behalf of appellant, has been placed on section 138 B of the Customs Act,1962 alleging violation of Principles of Natural Justice. Reliance on the statements recorded under section 108 of the Customs Act,1962 has been heavily objected, along with the denial of the opportunity of cross examination to the appellant. Section 138B of the Customs Act,1962 talks about relevancy of these statements recorded during investigation. As per the said section:

> *(1) Is statement made, and signed by a person before any gazette officer of customs during the course of any inquiry or proceeding under this act shall be relevant for the purpose of proving, any prosecution foreign offense under this act, truth of the facts which is 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 presents 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 the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice*

5.2 Bare reading of the above section manifest that under certain circumstances, as stipulated there in, statement made, and signed by the person before any officer of a gazette rank during the course of inquiry or proceedings under this act can be treated as relevant and taken into consideration if court considers it to be unreasonable to wait for such statement. We observe that though the right of cross examination in any quasi judicial proceeding is a valuable right given to the accused, as these proceedings may have adverse consequences to the accused, at the same time, under certain circumstances this right of cross examination can also be taken away as was held by Hon'ble Supreme Court in the case of **Swadeshi Polytech Limited Vs. Collector reported as 2000 (122) E.L.T. 641 SC** which followed the earlier decision of Supreme Court in the case of **J.K. Cigarettes Ltd. Vs. CCE reported as 2009 (242) ELT 189 (Del.)**

5.3 In the present case, the only statements recorded during investigation was of the appelllant itself, the proprietor thereof, and the agents of the appellants i.e. the manager of appellant's CHA Firm and the G-Card holder thereof. None of them can be compelled to depose against themselves due to the constitutional guarantee under Article 21 of the Constitution of India. In circumstance, the denial to cross examine the accused/defaulter cannot be held to be violation of the Principles of Natural Justice. In India's enforcement landscape, few legal provisions are as powerful as Section 108 of the Customs Act, 1962. It allows Customs officers to summon any person for inquiry, treats those proceedings as "judicial proceedings" equivalent to testimony before a court and permits the statements to be used as substantive evidence in a trial.

A confession made to a police officer is inadmissible in court. A confession made to a customs officer, if deemed voluntary, is admissible. That distinction—settled by a line of Constitution Bench judgements going back to **Ramesh Chandra Mehta v State of West Bengaland Illias v Collector of Customs in the late 1960s**—means that a confession recorded by a Customs officer carries full evidentiary weight as substantive evidence, provided it is found to be voluntary.

This precedent has long troubled civil liberty lawyers. The Bombay High Court gave voice to those concerns most pointedly in Paragraph 11 of The **Assistant Collector of Customs v Hasanali Rumi (2019)**, where Justice K.R. Shriram, upholding an acquittal, asked: If courts were to simply accept Section 108 statements as "gospel truth", why would there be a need to hold a trial at all?

The accused in that case—crew members of a vessel carrying smuggled gold had been in Customs custody for three days before being produced before a Magistrate. They retracted those statements, alleging duress. Justice Shriram found the detention itself to be unconstitutional, and held that it was reasonable to infer coercion.

The issue of Section 108 confessions returned to the Supreme Court this week. On 23 February, the Court closed **Amad Noormamad Bakali v State of Gujarat,** Hon'ble Supreme Court reiterates that confession to Customs officer is admissible as evidence. The Supreme Court reaffirmed one of the most contested principles in Indian evidence law. Placing reliance on **K.I. Pavunny v Assistant Collector (HQ), Central Excise Collectorate, Cochin (1997)**, the Court held that statements recorded by customs officers are admissible as substantive evidence provided they are made voluntarily, and do not attract the bar under Sections 24, 25, or 30 of the Indian Evidence Act. The basis for this distinction is that Customs officers are not police officers and therefore the Evidence Act's bar on police confessions does not apply to them. This verdict arrives at a moment when Section 108 is under renewed judicial scrutiny. Last year, in **Radhika Agarwal v Union of India, W.P.(Crl.) No.336 of 2018** & Connected matters a three-judge Bench addressed a batch of 279 petitions challenging the arrest and interrogation powers of Customs and GST officers.

The Court upheld those powers but insisted on procedural safeguards such as recorded reasons for arrest, adherence to constitutional guarantees and protection against coercive pre-adjudicatory action. Crucially, it reaffirmed that Customs officers are not police officers, meaning Section 108 statements retain their full evidentiary weight.

In **Poolpandi v Superintendent, Central Excise 1992 SCR (3) 247** the Supreme Court rejected the argument that questioning a person in a Customs office—without the presence of a lawyer or friends—violates Article 21. The Court held that such interrogation does not, by itself, infringe the right to life and personal liberty.

5.4 In view of the discussion about the statutory provision as above, we hold that the deposition under these statements that importer substantially under invoiced to imports from Singapore and Thailand despite the transaction values were higher and that the MRP of the goods imported from U.K. were mis-declared. The importer also acknowledge vide these statements that there is no evidence which show that why the prices of an item was different on different occasion; a well admissible. The deposition amounts to admission of allegations in question and admissions need no further proof in terms of Section 52 of Indian Evidence Act.

5.5 The another circumstance of the present case is that there is documentary evidence collected during search of the appellant premises vide Panchnama dated 05.05.2016 signed by the appellant. It was the electronic document/soft data of the original invoices which got retrieved from appellant's own laptop, maintained by himself, in his own presence. The same was got forensically examined that too in the presence of appellant-importer himself. Thus the electronic document is held to be the primary evidence. Hon'ble Supreme Court subsequently, in the case of **Arjun panditrao khotkar v/s Kailash kishanrao Goratyal (2020) 7 SCC 1**, has interpreted Section 65B(4) for determining the following issues:

(i) Whether a certificate under Section 65B(4) must be produced even when an original record of the electronic evidence is available, or does it have to be given only when a secondary record of the electronic evidence is produced?

(ii) Whether compliance with Section 65B(4) is mandatory even in a situation when it is not possible to obtain the certificate from the competent entity?

The Hon'ble court noted that Section 65B(1) differentiates between the 'original' electronic record, which is contained in the computer in which the information is first stored – and the secondary copies that are made from the primary electronic record. In that case it was held that the original electronic record would be the computer of the Election Commission in which the video footage is first stored. The CDs where the content of the video recording is copied shall constitute the secondary copies of the electronic record. It was held that a certificate under Section 65B(4) shall have to be obtained only when the secondary copies of the electronic record are produced before the Court. It was also observed that section 65B (1) differentiates between the primary electronic record i.e. the device where the information was first stored and the secondary copies that are made from that primary electronic record. The Hon'ble Court held that the requirement of a certificate under section 65B (4) must be satisfied when a secondary copy of a primary electronic record is produced before the court. The requirement of a certificate under section 65B (4) is not required to be satisfied in case if an original electronic record is produced.

5.6 Now coming to the plea about wrong rejection and non-sequentially redetermination of the value of goods as raised by the appellant, it is observed that the Panchnamas prepared at the time of seizing the goods and receiving the electronic documents showing alleged mis-declaration the department had invoked Rule 12 of the Customs Valuations Rules for rejecting the value. The adjudicating authority below in Para 4.3 and 4.4 of the impugned order has given the sufficient explanation about the act and conduct of the appellant and the evidence on record to prove the allegations against the appellant. In light of above discussion, we do not find any infirmity in those findings. It is held that the transaction value declared by the appellant has rightly been rejected and has been re-determined following Rules 4-9 of the said Valuation Rules, sequentially.

6. In totality of the entire discussion, we hereby uphold the impugned Order-in-Original. Consequent thereto, the appeal is hereby dismissed.

[Order pronounced in the open court on **24.08.2026**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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