## CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
**MUMBAI**

WEST ZONAL BENCH - COURT NO. 1

### CUSTOMS APPEAL NO. 86835 OF 2016

(Arising out of Order-in-Appeal No. MUM-CUSTM-SMP-20/2016-17 dated 29.04.2016 passed by the Commissioner of Customs (Appeals), Mumbai-I)

**M/s Spectrum Polymers Ltd.** **.....Appellant**
13, Mahindra Market,
Gurgaon, Haryana – 122 201

**Versus**

**Commissioner of Customs (Import), Mumbai-I** **.....Respondent**
New Customs House, Ballard Estate,
Mumbai – 400 001

**APPEARANCE:**

Shri Akhilesh Kangsia a/w Ms. Apoorva Parihar, Advocates for the appellant

Shri Dinesh Nanal, Authorized Representative for the Respondent

**CORAM:** **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**DATE OF HEARING: 16.04.2026**
**DATE OF DECISION: 16.04.2026**

**FINAL ORDER NO. 85560/2026**

**JUSTICE DILIP GUPTA:**

M/s Spectrum Polymers Ltd.[1] has filed this appeal to assail the order dated 29.04.2016 passed by the Commissioner of Customs (Appeals) by which the order dated 13.09.2012 passed by the Additional Commissioner of Customs has been upheld.

2. The relevant portions of the order passed by the Commissioner (Appeals) are reproduced below:

> "5. I have carefully gone through the facts of the case, grounds of appeal and the submissions made by the appellant at the time of hearing and find that the appellant had imported 21 consignments of chemical "Ethylene Vinyl Acetate (EVA), out of which 18

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**1 the appellant**

consignments were already cleared by the appellant and three live consignments were seized by DRI. **The department had come to the conclusion that the appellant undervalued the goods for clearance. In this regard, the department had relied on the statements of the proprietor of the appellant Shri Sabal Kumar Jain, Shri Navin Goel Director of the high seas seller and statements of the other importers wherein it was confessed by them that the unit price of the impugned goods was higher at the prevalent period. It is a admitted fact that the appellant himself inter-alia admitted in his statement that the value declared by him@ US$1700 PMT was not a true value of the goods imported under the said bills of entry;** that the true value of the goods at the time of import was US$ 2400PMT, that he had undervalued the said goods. **Further, I also find that the statement of co-noticee cannot be ignored as being essential evidence for having reliance in the case of** S.N. OJHA Versus COMMISSIONER OF CUSTOMS [2016 (331) E.L.T. 33 (Del.)]

**In the instant case, the appellant as well as the high seas seller have given the confessional statement that the price PMT of EVA was undervalued in all the 21 imports Further Shri Navin Bhagatrarn Goel, Director of high seas seller and original importer of the impugned goods** in his statement recorded under section 108 of the Customs Act stated that on remittance of differential amount between the declared value and that of the actual transaction value, the entire differential amount was arranged by the respective high seas buyer and the adjustment with the overseas supplier was done directly through their directors Mr. Wen Hu Yang and Ms. Yin Tzu Wang. This fact has been recorded by the lower authority under para 18 of the impugned order dated 24.09.2012. I find this crucial fact has not been contested by the appellant.

I further find that an affidavit was executed by the appellant stating that DRI officials coerced me to write the statement as per their dictation failing which I was threatened to be physically assaulted and arrested

> coupled with service consequences". The said affidavit was executed and notarized on 15.06.2009 which is after more than 6 months from the date of statements recorded by the department and appears to be after thought to cover up the issue. Moreover, the statements of the other importers were recorded in the similar lines which are indicative that the declared price of EVA by the appellant was less than that the actual price of the impugned goods at the country of export.
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> 6. I find that the lower authority has relied on the contemporaneous import done by the other sole importer M/s. Sparkling Traders Pvt. Ltd. and the prevalent prices of the impugned goods published in ICIS Journal which was also accepted by the various importers at the time of recording statements. I therefore find that the lower authority had rightly invoked section 111 (d) & 111(m) of the Customs Act, 1962 and the penal action under section 114 A ibid."
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> **(emphasis supplied)**

3. The learned counsel for the appellant submitted that a perusal of the order passed by the Commissioner (Appeals) shows that it was passed only on the statements of the appellant, high seas seller, and other importers that were recorded under section 108 of the Customs Act, 1962[2], which statements could not have been relied upon unless the procedure contemplated under section 138B of the Customs Act was followed. Learned counsel for the appellant, therefore, submitted that the impugned order that upholds the order of the adjudicating authority, which had rejected the transaction value under rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007[3], cannot be sustained.

4. Learned authorized representative appearing for the department, however, vehemently submitted that the order passed by the

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**2 the Customs Act**
**3 the Customs Valuation Rules, 2007**

Commissioner (Appeals) is a detailed order, which has taken into consideration all the relevant facts and circumstances of the case and, therefore, does not call for any interference in this appeal.

5. The submissions advanced by the learned counsel for the appellant and the learned authorized representative of the department have been considered.

6. A perusal of the order passed by the Commissioner (Appeals) leaves no manner of doubt that the transaction value has been rejected solely on the basis of the statements made by the appellant, the high seas seller, and other importers under section 108 of the Customs Act.

7. The question, therefore, that arises for consideration is whether reliance placed by the learned Commissioner (Appeals) on such statements recorded under section 108 of the Customs Act, can be considered as relevant when the procedure contemplated under section 138B of the Customs Act had not been followed.

8. This issue was examined by Courts and Tribunals in various judgments. It would be pertinent to refer to the decision of the Tribunal in **M/s. Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[4] which has considered various judgments. The Tribunal examined the provisions of sections 108 and 138B of the Customs Act as also the provisions of sections 14 and 9D of the Central Excise Act, 1944 and observed as follows:

> "21. It would be seen section 14 of the Central Excise Act and section 108 of the Customs Act enable 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 these provisions. It is these statements

4 **Excise Appeal No. 51148 of 2020 decided on 01.04.2025**

which are referred to either in section 9D of the Central Excise Act or in section 138B of the Customs Act. **A bare perusal of sub-section (1) of these two sections 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 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or 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.**"

**(emphasis supplied)**

9. After examining various judgments of the High Courts and the Tribunal, the Tribunal observed as follows:

> "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.**"
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> **(emphasis supplied)**

10. It is, therefore, clear from the aforesaid decision of the Tribunal in **Surya Wires** that a statement recorded during the course of any enquiry under section 108 of the Customs Act 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 by the adjudicating authority which having regard to the circumstances of the case has to consider whether the statement should be admitted as evidence. It also follows that then an opportunity has to be given for cross-examination. It is also clear from the aforesaid decision that if the said procedure is not followed then no reliance can be placed on the statement recorded under section 108 of the Customs Act.

11. The procedure contemplated under section 138B of the Customs Act had not been followed in the present case.

12. The order passed by the Commissioner (Appeals) cannot, therefore, be sustained and is set aside. The appeal is, accordingly, allowed with consequential relief, if any.

(Order Dictated and Pronounced in open court on)

**(JUSTICE DILIP GUPTA)**
**PRESIDENT**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

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