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CESTAT Kolkata Sets Aside Customs Duty Demands and Penalties in Plywood Undervaluation Dispute

This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

In a significant ruling, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Eastern Zonal Bench, Kolkata, has delivered a judgment that provides relief to several plywood importers accused of undervaluation and misclassification of imported goods. The case involved M/s. Vivek Ply & Veneers Pvt. Ltd., M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd., and M/s. Radheysham Co., who challenged the findings of the Directorate of Revenue Intelligence (DRI) and the Principal Commissioner of Customs (Port), Kolkata. The Tribunal's decision has set a precedent for the admissibility of evidence and the procedural requirements in customs valuation disputes.

Background of the Case

The appellants were accused of undervaluing imported plywood from China, leading to alleged evasion of customs duties. The investigation by the DRI relied heavily on 19 proforma invoices recovered from the mobile phone of Director of M/s. Vivek Ply & Veneers Pvt. Ltd. These invoices were used to claim that the appellants had misdeclared the value and description of their imports. The Principal Commissioner of Customs confirmed differential duty demands, imposed penalties, and ordered confiscation of goods.

Key Issues Raised by the Appellants

1. **Admissibility of Proforma Invoices:** The appellants argued that proforma invoices are mere quotations and cannot be used as conclusive evidence of undervaluation. They cited several judicial precedents, including decisions by the Supreme Court and various Tribunals, which held that proforma invoices lack evidentiary value in customs disputes.
2. **Procedural Violations:** The appellants contended that the requirements under Section 138C of the Customs Act, 1962, for admitting electronic evidence were not followed. They also highlighted the denial of cross-examination of Mr. Vivek Toshniwal, whose statements formed the basis of the allegations.
3. **Arbitrary Valuation:** The appellants pointed out that the adjudicating authority arbitrarily adopted a valuation of USD 935 per cubic meter for the imported goods without any supporting evidence or reference to contemporaneous imports.
4. **Misclassification Allegations:** The appellants argued that the description of their goods as "ordinary plywood" was accurate and that no discrepancies were found during testing or examination of the goods.

Tribunal's Observations and Findings

1. **Proforma Invoices Lack Evidentiary Value:** The Tribunal held that proforma invoices are tentative documents and cannot be relied upon to reject transaction values. It cited multiple precedents, including the case of *Oswal Metal Works v. Commissioner of Customs*, to support this view.
2. **Non-Compliance with Section 138C:** The Tribunal noted that the mandatory requirements for admitting electronic evidence under Section 138C were not satisfied. As a result, the proforma invoices recovered from Mr. Toshniwal's mobile phone were deemed inadmissible.
3. **Arbitrary Valuation Rejected:** The Tribunal found that the adjudicating authority had arbitrarily adopted a valuation without any basis or evidence. It emphasized that customs valuation must rely on contemporaneous imports of identical goods, as per Section 14(1) of the Customs Act.
4. **Misclassification Allegations Unsubstantiated:** The Tribunal observed that no testing or evidence was presented to prove misclassification. It held that the description of goods as "ordinary plywood" was accurate and could not be questioned.
5. **Denial of Cross-Examination:** The Tribunal criticized the denial of cross-examination of Mr. Toshniwal, stating that it vitiated the proceedings. It reiterated the legal principle that statements recorded during investigation can only be relied upon if tested during adjudication.

Final Order

The Tribunal set aside the differential duty demands, penalties, and confiscation orders against all appellants. It also directed the refund of Rs. 1,00,00,000/- deposited by M/s. Vivek Ply & Veneers Pvt. Ltd. during the investigation, along with applicable interest.

Implications of the Ruling

This judgment underscores the importance of adhering to procedural requirements and relying on credible evidence in customs disputes. It also highlights the limitations of using proforma invoices and untested statements as the basis for allegations. The ruling is expected to have far-reaching implications for similar cases involving customs valuation and classification.

Conclusion

The Tribunal's decision is a victory for the appellants and a reminder of the need for fairness and transparency in adjudication processes. It reinforces the principle that suspicion cannot replace proof and that procedural safeguards must be respected to ensure justice. This landmark ruling will undoubtedly serve as a guiding precedent for future cases in customs law.

Source: CESTAT Kolkata

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IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 75844 of 2025

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/25/2024 dated 26.12.2024 [issued on 30.12.2024] passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Vivek Ply & Veneers Private Limited **: Appellant**
86A, South Topsia Road, Haute Street Building,
Unit No. 608, 6th Floor,
Kolkata – 700 046

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 75399 of 2025

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/25/2024 dated 26.12.2024 [issued on 30.12.2024] passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Ellena Impex OPC Private Limited **: Appellant**
40B, Chittaranjan Avenue,
Kolkata – 700 012

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

WITH

Customs Appeal No. 75400 of 2025

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/25/2024 dated 26.12.2024 [issued on 30.12.2024] passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Sun Ply Private Limited **: Appellant**
40B, Chittaranjan Avenue,
Kolkata – 700 012

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Customs Appeal No. 75402 of 2025

(Arising out of Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/25/2024 dated 26.12.2024 [issued on 30.12.2024] passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Radheysham Co. **: Appellant**
40B, Chittaranjan Avenue,
Kolkata – 700 012

VERSUS

Principal Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Dr. Samir Chakraborty, Senior Advocate,
Shri Abhijit Biswas, Advocate,
[In respect of Customs Appeal No. 75844 of 2025]

Shri S. Jaikumar, Senior Advocate,
Shri Rinku Panbude, Consultant,
[In respect of Customs Appeal Nos. 75399, 75400 and 75402 of 2025]

For the Appellant(s)

Shri Subrata Debnath, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77500-77503 / 2025

DATE(S) OF HEARING: 12.08.2025 / 18.09.2025

DATE OF DECISION: 26.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The captioned appeals have been filed by the above-mentioned appellants against the Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/ 25/2024 dated 26.12.2024, issued on 30.12.2024, passed by the Ld. Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001, adjudicating the Show Cause Notice dated 13.05.2024 issued by the DRI.

Appeal No. C/75844/2025:

[filed by M/s. Vivek Ply & Veneers Pvt. Ltd.]

2. Customs Appeal No. 75844 of 2025 has been filed by M/s. Vivek Ply & Veneers Private Limited [hereinafter referred to as "VPVPL"] against the Order in Original No. KOL/CUS/COMMISSIONER/PORT/ADJN /25/2024 dated 26.12.2024, issued on 30.12.2024, wherein the Ld. Principal Commissioner of Customs (Port), Kolkata has rejected the declared value of the imported consignments of ordinary plywood imported by the appellant/VPVPL under 16 Bills of Entry.

2.1. During the disputed period i.e., 18th March, 2021 to 30th April, 2022, VPVPL has imported ordinary plywood from the Peoples Republic of China through Kolkata Port. Upon arrival of the imported consignments, respective Bills of Entry were filed by VPVPL for home consumption, which were duly assessed and allowed to be cleared by the jurisdictional Customs authorities upon payment of appropriate duties of customs.

2.2. On the basis of intelligence, officers of the Directorate of Revenue Intelligence (DRI) conducted search at the premises of VPVPL. During the course of the investigation, statements were recorded *inter alia* from the Director of VPVPL, namely, Shri Vivek Toshniwal. Certain quantities of imported plywood available at the godown of the appellant-VPVPL at Barasat, West Bengal were also seized on the ground that the same were allegedly liable for confiscation as having been imported by way of undervaluation. Accordingly, it was alleged that appropriate customs duties had not been paid on the said imported consignments.

2.3. On completion of the investigation, a Show Cause Notice dated 13.05.2024 was issued, inter alia, proposing to reject the assessable value of Rs.1,20,00,492/- as declared by VPVPL in respect of the goods imported under the said 16 Bills of Entry under Rule 12 of the Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962 and to re-determine the assessable value of the goods at Rs.4,97,04,103/- under Rule 9 of the Valuation Rules; accordingly, differential customs duty of Rs.1,05,84,536/- was demanded on the re-determined assessable values under Section 28(4) of the Act, along with interest thereon. The goods imported under the said 16 Bills of Entry were also proposed to be confiscated under Section 111(m) of the Act. An amount of Rs.1,00,00,000/- deposited by VPVPL was proposed to be appropriated against the aforesaid differential customs duty demand. A proposition was also made in the above Notice to impose penalty on the said appellant/VPVPL under Section 114A of the Act.

2.4. During adjudication, the Ld. Principal Commissioner of Customs (Port), Kolkata, vide the impugned order, has confirmed the demand of customs duty amounting to Rs.1,05,84,536/-, along with interest and penalty, and appropriated the amount of Rs.1,00,00,000/- paid by VPVPL against the differential duty demand confirmed against them. The impugned order also confiscated the goods imported under the said 16 Bills of Entry. He also imposed penalties on Shri Vivek Toshniwal, Director of VPVPL.

2.5. Aggrieved by the confirmation of the demand of customs duty, along with interest and penalty, Customs Appeal bearing No. 75844 of 2025 has been filed by M/s. Vivek Ply & Veneers Private Limited (VPVPL). Shri Vivek Toshniwal, Director of the company, filed his appeal against the penalties imposed on him. However, the same has been dismissed at the Diary stage itself for non-fulfilment of the pre-deposit condition, vide Defect Misc. Order No. 58 dated 11.09.2025.

Appeal No(s). C/75399, 75400 & 75402/2025:

[filed by M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co.]

3. Customs Appeal Nos. 75399, 75400 and 75402 of 2025 have been filed by M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co. respectively challenging the demands confirmed against them in the Order-in-Original No. KOL/CUS/COMMISSIONER/PORT/ADJN/25/2024 dated 26.12.2024, issued on 30.12.2024.

3.1. The facts of these cases are that the said appellants were importing plywood from foreign suppliers located in China and claiming concessional Basic Customs Duty based on the Country-Of-Origin certificates.

3.2. Intelligence gathered by officers of Directorate of Revenue Intelligence (DRI), Kolkata indicated that some importers of plywood from China are evading customs duty by way of gross undervaluation of the goods. On the basis of a specific intelligence, officers of DRI searched the residence of Mr. Banshidhar

Agarwal, who is one of the Directors in M/s. Sun Ply Pvt. Ltd. and M/s. Ellena Impex OPC Pvt. Ltd. and also the Proprietor of M/s. Radheysham Co., the appellants herein, on 18.05,2022. Upon search, few electronic gadgets including laptops, pen drives and mobile phones were seized under a Panchanama. Simultaneously, the office of the appellant-companies were also searched on the same day. Their godowns were also searched, during the course of which 5,242 pieces of plywood, found lying in the godown of M/s. Sun Ply Pvt. Ltd. situated at D-Shed, Remount Road, Kantapukur, Khidirpur, Kolkata – 700 023, were seized under a Mahazar.

3.3. Further, a live consignment imported by M/s. Sun Ply Pvt. Ltd. under Bill-of-Entry No. 8684073, dtd.14.05.2022 in Container No. PCIU9532508 (40') was also seized at Phoenix Logistics Pvt Ltd, CFS, A-1/46/1, Paharpur Road, Rabindra Nagar, Kolkata on 19.05.2022.

3.4. Parallel search proceedings were also initiated against M/s. Vivek Ply and Veneers Private Limited and at the residence premises of Mr. Vivek Toshniwal, Director of M/s. Vivek Ply and Veneers Pvt. Ltd., as well as their various office premises, on 18.05.2022 [as noted hereinabove in respect of Customs Appeal No. 75844 of 2025].

3.5. During the course of investigation, various statements were recorded from Mr. Vivek Toshniwal, Mr. Banshidhar Agarwal and various other persons associated with the case.

3.6. On completion of the investigation, the DRI issued a Show Cause Notice bearing No. KOL/CUS/COMMR/PORT/GR-2/08/2024 dated 13.05.2024, *inter alia* alleging undervaluation of the goods in question. The Notice proposed to redetermine the assessable value, *inter alia*, by rejecting the transaction values declared by the appellants and thus demanded differential customs duties from the appellants herein, by invoking the extended period of limitation under Section 28(4) of the Customs Act, and on the same reasons, it was also proposed to impose various penalties on the appellants, amongst others, under the said Act.

3.7. The said Show Cause Notice was adjudicated vide the impugned order, whereby the duties proposed, *inter alia* against the appellants in the said Notice, were confirmed, along with the imposition of various penalties thereon, as tabulated below:

Particulars	**Sun Ply**		**Ellena Impex**		**Radheysham**	
	Company	Banshidhar (Director)	Company	Banshidhar (Director)	Proprietorship	Banshidhar (as Individual)
Duty - past consignment	2,21,69,257	-	94,69,394	-	2,74,70,487	-
Penalty u/s114A	2,21,69,257	-	94,69,394	-	2,74,70,487	-
Duty - live consignment	7,59,541	-	-	-	-	-
Penalty u/s112(a)	75,954	22,92,880	-	9,46,939	-	27,27,049

Penalty u/s112(b)	-	22,92,880	-	9,46,939	-	27,27,049
Penalty u/s114AA	-	49,18,11,785	-	23,97,79,180	-	63,27,25,675
Total	**4,51,74,009**	**49,63,97,545**	**1,89,38,788**	**24,16,73,058**	**5,49,40,974**	**63,81,79,773**
Redemption fine (10%) - past consignment	95,15,650	-	47,95,584	-	1,26,54,514	-
Redemption fine (10%) – live consignment	3,20,586	-	-	-	-	-

3.8. Aggrieved by the confirmation of customs duties and imposition of penalties in the impugned order, Customs Appeal Nos. 75399, 75400 and 75402 of 2025 have been filed by M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co. respectively before this Tribunal.

3.9. Two appeals were also filed by Shri Banshidhar Agarwal, as Director of M/s. Sun Ply Pvt. Ltd. and Director of M/s. Ellena Impex OPC Pvt. Ltd. However, noting that the requisite pre-deposit was not made in these appeals, after ascertaining from the counsel that he is not in a position to fulfil the pre-deposit conditions in these appeals, the same were dismissed at the Diary stage itself vide Defect Misc. Order Nos. 59-60 dated 11.09.2025.

4. Dr. Samir Chakraborty, Ld. Senior Advocate, and Shri Abhijit Biswas, Ld. Advocate, appeared on behalf of M/s. Vivek Ply & Veneers Pvt. Ltd. (VPVPL) [Appeal No. C/75844/2025] and made various submissions during the course of arguments, which can be broadly summarized as under: -

A. Rejection of the declared value of the said imported goods not in accordance with the Valuation Rules and hence subsequent proceedings thereunder including the impugned order is illegal, invalid and bad

(i) The impugned order purports to reject the declared value of the said goods imported under 16 bills of entry in terms of Rule 12 of the Valuation Rules read with Section 14 of the Act. The declaration given by the appellant/VPVPL has been alleged as fraudulent and that the invoices produced before the Customs authorities were allegedly manipulated and accordingly the values of plywood declared in the said bills of entry are liable to be rejected in terms of Rule 12 of the Valuation Rules read with Section 14 of the Act. It has been further alleged that the said goods are liable to be valued under Rule 9 (residual method) of the Valuation Rules and on the basis of data available in India. These allegations have been accepted in the impugned order and converted into findings, without dealing with the specific contentions of VPVPL against the same. On this erroneous basis, the declared values have been rejected and purported redetermined value thereof have been arrived at. Such rejection and re-determination of the declared value of the said goods have been in complete non-

compliance with the mandatory relevant provision of the Valuation Rules.

(ii) Rule 12(1) of the Valuation Rules provides that if the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods he is required to ask the importer of such goods to furnish further information. If the proper officer has reasonable doubt about the correctness of the value as declared, then Rule 12(2) requires "<u>the proper officer</u>" to intimate the appellant/VPVPL "in writing" the grounds for doubting the truth or accuracy of the value declared, he has to provide reasonable opportunity to VPVPL of being heard before adjudicating a final decision under sub-rule 12(1). In this case, prior to issuance of the show cause notice this requirement of Rule 12(2) has not been satisfied. Thus, the condition precedent for rejecting the declared transaction values of the said goods have not been satisfied. Hence the assessable value / transaction value declared by the appellant in respect of the said goods imported under 16 bills of entry at the time of importation, were correct, legal and valid and consequently there has been no short payment of any differential customs duty payable in respect of the said goods. Therefore, the demand of differential customs duty confirmed in the impugned order is not sustainable. In this regard reliance is placed upon the decisions of the Hon'ble Supreme Court in *CCE & ST Vs. Sanjivani Non-Ferrous Trading Private Ltd. 2019 (365) ELT 3 (SC) and Century Metal Recycling Pvt. Ltd. Vs. Union of India, 2019 (367) ELT 3*

(SC) [3-Member Bench]. In both these decisions, the impugned adjudication order was set aside on this ground alone.

B.Without prejudice, in redetermining the assessable value of the said goods the requirements of Rule 9 of the Valuation Rules have in fact not been followed and consequently the redetermined value is contrary to law, untenable and unsustainable.

(i) There is no evidence disclosed that the arbitrary and imaginary redetermined value alleged in the show cause notice and confirmed in the impugned order satisfies the mandatory requirement as required under Rule 9(1) of the Valuation Rules. There is no evidence on record which establishes that the said goods or like goods have been imported into India satisfying the clauses set out in the Proviso to Rule 9(1), as well as the provisions of Section 14 of the Act. There is no material disclosed in the show cause notice or the impugned order that the purported price/value arrived at in the impugned order/show cause notice of the said goods do not exceed the price of goods referred to in the said Proviso. In the absence of satisfaction of such mandatory requirement of Rule 9(1) of the Valuation Rules (and hence Section 14 of the Act), the re-determination of assessable value is contrary to law, untenable and unsustainable.

(ii) Rule 9(2) of the Valuation Rules, *inter alia,* provides that no value shall be determined

under the provisions of the said rule on the basis of selling price in India of such goods produced in India. In the instant case, there is nothing on record to demonstrate that the requirements of Rule 9(2) of the Valuation Rules have been complied with. On the contrary, it is evident from the show cause notice and the impugned order that inspite of specific prohibition imposed under Rule 9(2)(vii) "arbitrary" and/or "fictitious values" have been taken for arriving at the redetermined assessable value of the said goods.

(iii) It is evident from the fact that in the valuation per cubic metre of the said goods imported by VPVPL, the show cause notice and the impugned order have valued at USD 935 per cubic metre for all the consignments brought from China. This is a patently arbitrary and fictitious figure. In support of such value there is no legally tenable evidence on record disclosed. It can be seen that the 19 copies of proforma invoices disclose average rate of USD 781 per cubic metre. However, this average value as per the proforma invoice also was not adopted to calculate the differential duty.

(iv) From the proforma invoices relied upon it would be seen that each of them refer to several types/grades of plywood and their respective sizes and prices declared. However, each of the 16 bills of entry of the goods imported by this appellant referred to only a single type of goods i.e. "ordinary plywood", which the department contested not to be the correct description. The impugned order, therefore, followed the show cause notice in arbitrarily, picking and choosing

one of the several items in the proforma invoices and substituting the same, again in an undisclosed manner. No basis has been disclosed in either the show cause notice or in the impugned order in support of this arbitrary action by the Commissioner. This also establishes the patent illegality of the purported redetermined assessable values of the said goods.

(v) It is, thus, evident that, even assuming though denying that proforma invoices prices contained the actual value of the imported goods or their correct description even as per the same it is established that the redetermined assessable value of the said goods is arbitrary and fictitious and therefore in clear violation of the mandate of Rule 9(2) of the Valuation Rules and hence untenable and unsustainable.

(vi) There is no material on record and none has been disclosed as to whether and how the requirements of clauses (i), (ii), (iii) and (iv) of Rule 9(2) have been satisfied. It is thus conclusively evident that the purported redetermined value of the said goods is in gross violation of Rule 9 of the Valuation Rules.

(vii) It is settled law, as evidenced from the above judgments of the Hon'ble Supreme Court that valuation under the Act of imported goods has to be based on value of contemporaneous imports of identical goods as per Section 14(1) of the Act and that the burden of proof in this respect is on the Revenue. Neither the show cause notice nor the said order relies on any data available on the National Import Database

(NIDB) for sustaining the allegation/finding of undervaluation of the stated consignments. It is also silent as to why it was not deemed necessary to reveal comparative data of identical or similar goods imported into India during the said period, though such information was readily available to the authorities concerned. This has also vitiated the impugned order and has rendered the same untenable and unsustainable.

(viii) It is an established precedent that undervaluation of imported goods must be proved by contemporary evidence, and that the transaction value of the same as declared by the assessee should be normally accepted. In the instant case however, barring some inconsistent and vague statements, there is no other relevant and reliable corroborative evidence put forward by the respondent authorities in support of the misconceived findings in the impugned order.

(ix) It is settled by the Apex Court that suspicion, however grave, does not and cannot take the place of proof and no case of undervaluation or misdeclaration can be alleged on the basis of such suspicion, as has been done in the instant case.

(x) In support of the aforesaid, reliance is placed upon the decisions of the Hon'ble Supreme Court in *Commissioner of Customs Vs. South India Television (P) Ltd. 2007 (214) ELT 3 (SC)* and *Commissioner of Customs (Imports) Vs. Ganpati Overseas (223) 11 CENTAX 101 (SC).*

C. Contrary to the erroneous allegation/finding there has been no confession by the VPVPL's director, Mr. Vivek Toshniwal and in any event it is settled law that sole un-corroborated alleged confessional statement cannot be relied upon for establishing undervaluation of goods.

(i) In support for undervaluation of the imported goods, the impugned order has relied upon the statement of its director, Shri Vivek Toshniwal, that extra amount of money was paid for the said goods by the VPVPL to the exporter Chinese company through their unnamed person who allegedly visited the appellant/VPVPL for collection of the said differential amount. However, not a single piece of evidence has been brought in by the investigation in support of this allegation. It is the submission of the appellant that the statement was obtained under coercion during the custody of the Director with DRI. Such a statement obtained under coercion cannot be relied upon, as held by the Hon'ble Supreme Court in Commissioner of Customs (Imports) Vs Ganpati Overseas (supra), para 28. The appellant submits that there is no corroboration from any other person or document which support this baseless allegation. As such this misconceived finding has no evidentiary value.

(ii) It is trite law that sole uncorroborated confessional statement cannot be relied upon for establishing undervaluation of goods by the concerned assessee. There has to be corroborating evidence available on record. Reliance is placed on the decision in *Union of*

India Vs. Jasmine Jayantilal Thadeshwar [2020 (372) ELT 817 (Bom)]

(iii) Further, as held by the Hon'ble High Courts (affirmed by the Hon'ble Supreme Court) and this Hon'ble Tribunal such statements are relevant and admissible only when examined by the adjudicating authority under Section 138B of the Act. There has been no such examination in the instant case. Hence, none of the purported statements relied upon against VPVPL and its director, Vivek Toshniwal in the impugned order have any evidentiary value and cannot be relied upon. In this respect reliance is placed upon the following decisions:

- *Gobinda Das Vs. Commissioner of Cus (Prev), (2023) 7 Centax 201 (T-Cal),*
- *Basudev Garg Vs. Commissioner of Customs, 2013 (294) ELT 353 (Del),*
- *Hi-Tech Abrasives Ltd. Vs. Commissioner of C.Ex & Cus. 2018 (362) ELT 961 (Chhattissgarh)*
- *Super Forgings & Steel Ltd. Vs. Commissioner of Central Excise, (2024) 17, Centax 34 (Tri-Cal),*

D. It is settled principle that Proforma Invoice do not reflect the prices of imported goods

(i) The commercial invoices and other supporting documents covering importation of the said goods, depict the correct description as well as the correct price of the said goods. There is no material on record disclosed by the investigation for rejection of the transaction value declared. Therefore, the differential duty demand on the

basis of redetermined transaction value is illegal, invalid and unsustainable.

(ii) It is a settled principle of law that proforma invoices do not reflect the price of imported goods. They are only tender or offer and thus prices are open to negotiation. They cannot form the value of imported goods under Section 14 of the Act or the Valuation Rules. This is a settled principle of law. In this regard reliance is placed upon inter alia, the following decisions:

- *Swastik Stockists & Traders Pvt. Ltd. Vs. Commissioner of Customs, 2025 (8) TMI 1235-CESTAT-KOLKATA [and Oswal Metal Works Vs. Commissioner of Customs 2024 (10) TMI 408-CESTAT-CHENNAI referred therein]*
- *Commr of Cus (Preventive) Vs. Tanmay International, 2018 (363) ELT 181 (T),*
- *G. K. Mercantile Pvt. Ltd. Vs. Commissioner of Customs 2004 (170) ELT 550 (T).*

(iii) Further the said proforma invoices recovered from the mobile phone of VPVPL's director are unattested copies. It is settled law that no presumption can be raised under Section 139 of the Act in respect of such unauthenticated documents. They are inadmissible and based thereon transaction value cannot be enhanced.

(iv) Although they cannot be equated with computer print outs and are not listed in either Section 138C or Section 139 of the Act as specified documents, the requirements of Section 138C(2) of the Act must be satisfied to rely upon those documents as admissible evidence in any proceedings. The mandotory requirements are

not satisfied in this case, the said proforma invoices cannot be relied upon to confirm differential duty against VPVPL. In this regard reliance is placed upon the decision of this Hon'ble Bench in *Shri Ranaji Ganguly Vs. Commissioner of Customs (Port) Final Order No. 75319/2025 dated 05.02.2025 passed in Customs Appeal No. 78278 of 2018* and the decision relied upon therein in the case of *Junaid Kedia Vs. Commissioner of Customs [(2024) 16 Centax 503(T)],* affirmed by Hon'ble Supreme Court in *Commissioner of Customs Vs. Junaid Kedia [2024 (385) ELT 529 (SC)]*

(v) In any event the 19 proforma invoices involved covered only 5 consignments of the said goods imported in the year 2022. Therefore, as per settled law they cannot be used for determining or redetermining assessable value of goods imported prior thereto. Hence under no circumstances can the said proforma invoices and the prices declared therein form the basis of rejection of the value declared by the appellant of the goods imported under the remaining 11 bills of entry.

(vi) The alleged misdescription of the said goods by VPVPL made out in the impugned order is also based on no material evidence whatsoever. The description of the goods mentioned in the proforma invoices describe the goods differently from that declared in the commercial invoices and other shipping documents produced by VPVPL. Thus, they do not refer to the goods imported by the VPVPL. They were offered for particular varieties plywood which, on consideration, VPVPL did not deem fit to import.

Thus, the appellant submits that the description of the goods and the prices declared thereof cannot be adopted for determining the duty payable on the goods imported by appellant.

E. Allegation / finding of additional payment for the imported goods patently erroneous and misconceived

(i) In the instant case the finding in the impugned order that VPVPL had paid to the overseas supplier additional amount of money towards payment of the subject imported goods, over and above the value declared to the Customs authorities, is based on no evidence whatsoever and is a conclusion of the Commissioner based on mere surmises and conjectures. There is not a single piece of evidence disclosed in the impugned on any additional payment having been made by the appellant/VPVPL to the foreign supplier of the subject imported goods.

F. There has been no contravention by VPVPL of any provision of the Act or the Rules and Regulations framed thereunder and redetermination of valuation of said goods and hence, purported duty demand and appropriation of amount deposited by VPVPL during the course of investigation contrary to law, untenable and unsustainable.

(i) In the absence of any contravention of the Act or any short-payment of duty, there can also be no basis for recovering any differential duty on

the importation of the said goods. Thus, the appellant submits that the amounts wrongly appropriated towards such alleged short-payment ought to be refunded to the appellant with interest thereon, as applicable.

(ii) In the instant case VPVPL was compelled to deposit a sum of Rs. 1,00,00,000/- on May 30, 2022. As per decision of the 9-Member Constitution Bench of the Hon'ble Supreme Court in the case of *Mafatlal Industries Limited Vs. Union of India 1997 (89) ELT 247 (SC),* such payment made during the course of the investigation / adjudication proceedings have to be held as paid under protest. In paragraph 146, of the judgement the Hon'ble Supreme Court, inter alia, has observed as follows:-

> *"146. ....*
> *..*
> *Alternatively, it may be stated that duty paid in cases, which finally ended in orders or decrees or judgments of courts must be deemed to have been paid under protest ...."*

(iii) Thus, the appellant submits that the sum of Rs. 1,00,00,000/- deposited by VPVPL should be considered as payment made under protest during the course of investigation and is liable to be refunded along with interest.

G. No differential duty being payable by the appellant, the demand for interest and penalty imposed upon the appellant are illegal, invalid and bad

(i) In view of no duty being payable by VPVPL, Section 28AA of the Act also has no application and therefore no interest is also payable.

(ii) In view of the aforesaid, the conditions for imposing penalty under Sections 114A of the Act cannot also be said to have been satisfied in the instant case. No penalty is thus, imposable upon VPVPL in terms of Section 114A of the Act.

H. Confiscation of the said goods and imposition of redemption fine contrary to law, untenable and unsustainable

(i) The impugned order holds that the wrongfully seized goods are liable to be confiscated under Section 111(m) of the Act on the ground that the said goods imported under the 16 bills of entry were mis-declared in description and value. The appellant submits that the said goods have not been imported improperly. Thus, the condition precedent laid down in Section 111(m) of the Act for confiscation of the said goods has not been satisfied. Since there has been no misdeclaration or undervaluation in respect of the said goods imported during the said period by VPVPL, there remained no scope for confiscation in terms of Section 111(m) of the Act.

(ii) Further, except for the illegally seized 24188 pieces of plywood from the VPVPL's godown at 25, Regent's Garment & Apparels Park Ltd. in North 24 Parganas on May 18, 2022, none of the plywood imported under the subject bills of entry were assessed and cleared under any bond or bank guarantee or under any condition relating to import or clearance thereof. No quantity of the said goods are also admittedly available for confiscation. The said goods were cleared upon final assessment and payment of duty. In the premises, as per settled law, the said goods cannot be confiscated under any of the clauses of Section 111 of the Act. Consequently no redemption fine under Section 125 of the Act can be demanded in respect thereof.

(iii) In this regard reliance is placed upon inter alia the following decisions:-

- *Swastik Stockists & Trading Pvt. Ltd. Vs. Commissioner of Customs (Supra),*
- *Commissioner of Customs (Import) Vs. Finesse Creation Inc. 2009 (248) ELT 122 (Bom)- affirmed in Commissioner Vs. Finesse Creation Inc. 2010 (255) ELT A120 (SC).*

4.1. In view of the above stated submissions, the Ld. Counsel appearing on behalf of VPVPL prayed that their appeal be allowed and the impugned order be set aside, with consequential relief to them.

5. Shri. S. Jaikumar, Ld. Advocate and Shri Rinku Panbude, Ld. Consultant appeared on behalf of the other appellants viz. M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co. [Customs Appeal Nos. 75399, 75400 and 75402 of 2025]and assailed the impugned Order-in-Original on the following grounds: -

(i) The confirmation of differential duties in the impugned order were solely on the basis of 19 proforma invoices alleged to have been recovered from the mobile phone of Mr. Vivek Toshniwal, Director of M/s. Vivek Ply & Veneers Pvt. Ltd., who happens to be their business competitor.

(ii) The said proforma invoices have no connection, whatsoever, with the appellants. Neither the appellant's name is appearing as the consignee in those proforma invoices nor they had any transaction with the consignor, namely, M/s Linyi Haoxing, China. Thus, the said pro forma invoices have no evidentiary value against the said appellants.

(iii) The appellants submits that, during the entire period of demand, they have not made a single transaction with the said supplier, namely, Linyi Haoxing Economic and Trade Co. Ltd., China, which remains an undisputed fact. Thus, the Ld. counsels submitted that, relying on the proforma invoices, which has no nexus to the appellant, in any manner whatsoever, and redetermining the import value and consequently demanding differential duty is beyond any prescription of law and reason.

(iv) The counsels further submitted that, it is a well settled legal principle that proforma invoices cannot be a basis for alleging any undervaluation, even if such proforma invoices would directly correspond to the importer, as held in the case of *Oswal Metal Works [2024 (10) TMI – CESTAT, Chennai].*

(v) Relying on the above, it was submitted that, when the proforma invoices are held unreliable even when it directly relate to the importer, in the instant case, the department has crossed all legal borders to allege undervaluation and confirm differential duty against appellants based on their competitor's proforma invoices, where there is no nexus to the appellants.

(vi) The counsels also submitted that, despite the search by the DRI, there are no incriminating documents or evidences against the appellants which goes to prove their case.

5.1. The Ld. Counsel appearing on behalf of these appellants have made further submissions, which inter alia are as follows: -

(i) The adjudicating authority has relied upon the statement of Mr. Vivek Toshniwal, who has mentioned the name of the appellant and their involvement in the syndicate, to confirm the demands against the appellants. It is the submission of the appellants that it was not a surprise that Mr. Vivek Toshniwal have tried to implicate them in the alleged offence, being their competitor.

(ii) Further, the adjudicating authority has denied their request for the cross examination of

Mr.Vivek Toshniwal, stating that the request is devoid of any proper reason and delaying tactics. In this connection, the counsel also submitted that it is a well settled legal principle that, the statements given during the course of investigation can be relied upon only if they were examined during the adjudicating proceedings; thus, denial of cross examination would vitiate any reliance placed on such untested statements. In this connection, the Ld. Counsel has placed reliance on the decision in the case of *M/s. Geetham Steels Pvt Ltd Vs. Commissioner of GST & Central Excise Salem [2025(3) TMI 1098 - CESTAT Chennai].*Thus, in view of these submissions, it is the contention of the appellants that the purported proforma invoices issued in the name of another company, by an unconnected supplier, cannot be relied upon to substantiate the allegations against the appellants.

(iii) With respect to the finding recorded by the adjudicating authority in the impugned order, that the goods imported by the appellants are 'almost same' and there are lots of similarities with those imported by Mr. Vivek Toshniwal, it was submitted by the Ld. Counsel for the appellants that the distance between "almost same" and "same" is too long and cannot be bridged by a passing remark but has to be substantiated with evidence. With respect to the allegation of misrepresentation of description / misclassification of the imported goods against the appellants, the Ld. Counsel referred to the mahazar drawn by the officers, wherein,

samples were drawn for testing, which did not culminate into any discrepancy.

(iv) On the aspect of invocation of larger period, it was submitted by the appellants that the ld. adjudicating authority has brushed aside the submissions of the appellants on the Show Cause Notice being barred by limitation, by merely mentioning that all the bills of entry were well within five years from the date of issuance of Show Cause Notice, without substantiating as to how the extended period could have been invoked in the instant case.

(v) The ld. adjudicating authority has imposed humongous penalties on the appellants, without an iota of substantiation. Penalties have been imposed both against proprietor as well as the proprietorship firm in the case of M/s. Radheysham Co., which is impermissible, as held by the Hon'ble Apex Court in the case of *Ashok Transport Agency Vs. Awadhesh Kumar and Anr. [1998(5) SCC 567]* and the single appeal filed in the name of the said proprietary firm would suffice and no separate appeal in the name of the individual proprietor is required. Reliance has also been placed on the decision in *Vinod Kumar Gupta v. Commissioner of C.Ex. [2013 (287) E.L.T. 54 (P&H)]*

5.2. In view of the above submissions, the Ld. Counsel appearing for M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co. have prayed for setting aside the differential customs duties confirmed against them vide the impugned order; a prayer was also made for setting aside all the penalties imposed on them.

5.3. In respect of the appellant M/s. Radheysham Co., it is prayed that no separate penalty be imposed on its proprietor, namely, Mr. Banshidhar Agarwal, as penalty has already been imposed on the Proprietorship Company, M/s. Radheysham Co.

6. The Ld. Authorized Representative appearing on behalf of the Department / respondent supported the demands confirmed in the impugned Order-in-Original and contended that there is mis-declaration on the part of the appellants with respect to the description of imported goods. It is also the Revenue's contention that undervaluation of the imported goods has been established by means of proforma invoice(s) of similar goods recovered and various statements recorded during the course of investigation. Accordingly, he prayed for upholding the demands of duty along with interest and penalties confirmed in the impugned order.

7. Heard both sides and perused the documentary evidence available on record.

8. Vivek Ply & Veneers Pvt. Ltd. (VPVPL)

8.1. We observe that during the period from 18th March, 2021 to 30th April, 2022, the appellant namely, VPVPL, imported ordinary plywood from the Peoples Republic of China. Upon arrival of the imported consignments, the respective Bills of Entry filed by the appellant/VPVPL were duly assessed and allowed to be cleared by the jurisdictional Customs authorities upon payment of appropriate duties of customs. No question was raised regarding value of the goods declared by the appellant-VPVPL in the said Bills of Entry.

8.2. On 18.05.2022, officers of DRI conducted searches at the premises associated with VPVPL and other companies such as M/s. Sun Ply Pvt. Ltd. and M/s. Ellena Impex OPC Pvt. Ltd. and also the Proprietor of M/s. Radheysham Co. During the course of such searches, the officers recovered 19 Proforma Invoices, which were in the name of the appellant - VPVPL. On the basis of the values available in the proforma invoices, it has been alleged that the appellants herein have undervalued the goods imported by them. Accordingly, the Notice was issued proposing to reject the transaction value declared in all the 19 Bills of Entry filed by the appellant namely, VPVPL.

8.3. On perusal of the copies of the Proforma Invoices, we observe that the said Proforma Invoices recovered from the mobile phone of VPVPL's director are unattested copies. It is settled law that no presumption can be raised under Section 139 of the Act in respect of such unauthenticated documents. We find that each of the proforma invoices contains several types/grades of plywood and their respective sizes and their prices declared therein. However, from the perusal of the Bills of entry, we observe that the goods imported by the appellant namely, VPVPL, are a single type of goods i.e. "ordinary plywood". Even though the Department has contested the description of the goods declared by the appellant / VPVPL in the said Bills of entry, we find that the description of the goods imported were not the same as that of the description available in the proforma invoices. It is on record that the VPVPL has imported only one type of plywood with the description "ordinary plywood". No question has been raised regarding the description of the goods in the bills of entry at the time of import.

Also, no samples were drawn to test the goods and to substantiate the mis-declaration, if any. Thus, we hold that the description of the goods namely, "ordinary plywood" cannot be questioned now.

8.4. Regarding the admissibility of the said proforma invoices as evidence, we find that the requirements of Section 138C(2) of the Customs Act have not been satisfied in this case to rely upon those documents as admissible evidence in this proceedings. Although these documents cannot be equated with computer print-outs and are not listed in either Section 138C or Section 139 of the Act as specified documents, we observe that satisfying the requirements of Section 138C(2) is mandatory to admit any document recovered from an electronic device as evidence. The As the mandatory requirements under Section 138C have not been satisfied in this case, we hold that the said proforma invoices cannot be relied upon to confirm differential duty against VPVPL. In this regard, we place our reliance upon the decision of this Bench in the case of *Shri Ranaji Ganguly Vs. Commissioner of Customs (Port) Final Order No. 75319/2025 dated 05.02.2025 passed in Customs Appeal No. 78278 of 2018* and the decision relied upon therein in the case of *Junaid Kedia Vs. Commissioner of Customs [(2024) 16 Centax 503(T)],* affirmed by Hon'ble Supreme Court in *Commissioner of Customs Vs. Junaid Kedia [2024 (385) ELT 529 (SC)].*

8.5. In any event, we observe that the 19 proforma invoices involved covered only 5 consignments of the said goods imported in the year 2022. Therefore, as per settled law, we find that they cannot be used for determining or redetermining assessable value of goods imported much prior to that period. Thus, we hold that the said proforma invoices and the prices

declared therein cannot be the basis for rejection of the value declared by the appellant in respect of the goods imported under the remaining 11 bills of entry.

8.6. From the impugned order, we observe that the officers have arbitrarily picked one of the several items in the proforma invoices and adopted that value for the goods imported by the appellant/VPVPL. We find that the ld. adjudicating authority has not disclosed the basis on which such value has been adopted. Further, it is seen that the 19 copies of proforma invoices disclose average rate of USD 781 per cubic metre. From the impugned order, it is observed that the value of USD 935 per cubic metre has been adopted for all the consignments brought from China. We find that this is a patently arbitrary and fictitious figure. In support of adoption of such value, there is no legally tenable evidence disclosed in the impugned order. Thus, we find that even though the impugned order proposes to re-determine the declared value on the basis of the value available in the proforma invoices, the ld. adjudicating authority has not adopted the said value available in the proforma invoices for the purpose of determining the differential customs duty. He has arbitrarily adopted some value without any basis. Thus, we reject the value adopted by the ld. adjudicating authority as the same is not supported by any evidence. We also hold that the unauthenticated proforma invoices recovered from the Director of VPVPL namely, Shri Vivek Toshniwal are inadmissible documents and the transaction value declared by the appellant-VPVPL cannot be rejected and enhanced on the basis of such unauthenticated documents.

8.7. In this context, it is pertinent to mention that the proforma invoices in question are in the nature of quotations and do not constitute a valid basis for alleging undervaluation. This view is supported by the decision rendered by the Tribunal at Chennai in the case of ***M/s. Oswal Metal Works v. Commissioner of Customs, Chennai-III [2024 (10) TMI 408 - CESTAT Chennai]*** *(Final Order No. 41262 of 2024 dated 08.10.2024 in Customs Appeal No. 40881 of 2015).* In the present case, even if it is assumed that proforma invoices contained the actual value of the imported goods or their correct description, the same cannot be a reason to reject the transaction value declared by the appellant-VPVPL. It must be established that the appellant-VPVPL have actually paid the value declared in the proforma invoices. We observe that there is no such evidence of payment of extra money as per the proforma invoices available on record. Accordingly, we hold that the redetermination of the assessable value of the said goods in this case is arbitrary and in clear violation of the mandate of Rule 9(2) of the Valuation Rules and hence, untenable and unsustainable.

8.8. We observe that there is no material on record and none have been disclosed as to whether and how the requirements of clauses (i), (ii), (iii) and (iv) of Rule 9(2) have been satisfied. Thus, it is evident that the purported redetermined value of the said goods is in gross violation of Rule 9 of the Valuation Rules. It is a settled law that the valuation under the Customs Act in respect of imported goods has to be done on the basis of the value of contemporaneous imports of identical goods as per Section 14(1) of the Act and the burden of proof in this respect is on the Revenue. In the present case, we observe that neither the show

cause notice nor the impugned order relies on any data available on the National Import Database (NIDB) for sustaining the allegation/finding of undervaluation of the stated consignments. Thus, we are of the opinion that the Ld. adjudicating authority ought to have accepted the declared transaction value of the subject impugned consignments in terms of Rule 3 of the Customs Valuation Rules and there is no basis for rejecting the same.

8.9. In view of the above findings, we hold that the transaction value declared by the appellant-VPVPL cannot be rejected. Accordingly, we hold that the differential customs duty confirmed in the impugned order on the basis of the redetermined assessable value is not sustainable and hence we set aside the same. As the demand itself is not sustainable, the question of demanding interest or imposing penalty on the appellant-VPVPL does not arise and hence we set aside the same.

8.10. As regards the order of confiscation of the seized goods in the case of VPVPL, we observe that these goods have been imported vide separate Bills of Entry and cleared on payment of appropriate duties of customs. No objections had been raised by the Revenue at the time of importation. As it is clear that there is no mis-declaration or undervaluation established in respect of the goods cleared under the said 16 Bills-of-Entry pertaining to VPVPL, we hold that the order of confiscation vide the impugned order for the goods cleared in respect of the said Bills of Entry is not sustainable. Consequently, we set aside the order of confiscation of the goods in the impugned order in respect of the said Bills of Entry. Accordingly, the redemption fine imposed in respect of the said goods also stands set aside.

8.11. The appellant has submitted that during the course of investigation they were compelled to deposit an amount of Rs.1,00,00,000/- towards their alleged differential customs duty liability. In the absence of any contravention of the Act or any short payment of duty, it has been argued that there can be no basis for recovering any differential duty on the importation of the said goods and accordingly, the appellant-VPVPL have prayed for refund of the amount deposited by them during investigation along with interest at the applicable rate, by treating it as an amount paid 'under protest'.

8.11.1. In this regard, we observe that there is no differential customs duty payable by the appellant. During the course of investigation, the appellant-VPVPL was compelled to deposit a sum of Rs. 1,00,00,000/-, which they deposited on May 30, 2022. In this context, we find it relevant to refer to the decision of the 9-Member Constitution Bench of the Hon'ble Supreme Court in the case of *Mafatlal Industries Limited Vs. Union of India [1997 (89) E.L.T. 247 (S.C.)],* wherein it has been held that such payments made during the course of the investigation / adjudication proceedings have to be treated as payments made under protest. In paragraph 146 of the above judgement, the Hon'ble Supreme Court, inter alia, has observed as follows:-

> *"146. .... Alternatively, it may be stated that duty paid in cases, which finally ended in orders or decrees or judgments of courts must be deemed to have been paid under protest ...."*

8.11.2. Thus, by relying on the decision of the Hon'ble Apex Court cited supra, we hold that the sum of Rs. 1,00,00,000/- deposited by VPVPL should be considered as payment made under protest during the course of investigation and is liable to be refunded along with interest at the applicable rate.

9. M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co.

9.1. We observe that Mr. Banshidhar Agarwal operates three firms, namely: -

(I) Sun Ply Pvt. Ltd.[as a Director]

(II) Ellena Impex OPC Pvt. Ltd. [as a Director] and

(III) Radheysham Co. [Proprietorship].

All three entities import plywood from foreign supplier for trading in India.

9.2. M/s. Vivek Ply and Veneers Pvt. Ltd. [hereinafter referred as 'Vivek Ply'] and M/s. Raaida Exim Pvt. Ltd. [hereinafter referred as 'Raaida Exim'] are separate entities which are not connected with Mr. Banshidhar Agarwal and his associated entities. They also import plywood from foreign suppliers.

9.3. In this case, the DRI authorities investigated the imports made by all above entities and disputed that the above appellants have suppressed the value of the goods imported by them, allegedly leading to evasion of import duty. On the basis of various documents recovered and statements recorded during investigation, the officers of DRI alleged that the

appellants have undervalued the goods imported by them and thereby evaded duties of customs. The details of imports made by the above said entities are as below:

Supplier	Importer	
	Vivek Ply	**Raaida Exim**
Supplier 1	Linyi Haoxing Economic and Trade Co. Ltd.	Linyi Haoxing Economic and Trade Co. Ltd.
Supplier 2	Linyi Chili Import & Export Co.	Linyi Chili Import & Export Co.
Supplier 3	Linyi Qimeng Import & Export Co.	-

Supplier	Importer		
	Sun Ply	**Radheysham Co.**	**Ellena Impex**
Supplier 4	Yiyuan Great Hawk Wood Co. Ltd.	Yiyuan Great Hawk Wood Co. Ltd.	Yiyuan Great Hawk Wood Co. Ltd.
Supplier 5	Lianyungang Yuantai International Trade Co. Ltd.	Lianyungang Yuantai International Trade Co. Ltd.	Lianyungang Yuantai International Trade Co. Ltd.

9.4. From the details furnished in the table above, we observe that the said firms, namely, Vivek Ply and Raaida Exim, have inter alia imported goods from the supplier, Linyi Haoxing Economic and Trade Co. Ltd, China. The appellant-firms, namely, M/s. Sun Ply Pvt. Ltd., M/s. Ellena Impex OPC Pvt. Ltd. and M/s. Radheysham Co., have not made any import of plywood from the said supplier viz. Linyi Haoxing Economic and Trade Co. Ltd, China. In the instant case, the officers of DRI have alleged undervaluation of the goods namely, Ordinary Plywood, imported by the appellants on the basis of 19 proforma invoices issued by 'Linyi Haoxing Economic and Trade Co. Ltd., China' to M/s. Vivek Ply. It is also a fact that the officers of DRI recovered the said pro forma invoices from the mobile phone of Mr. Vivek Toshniwal, Director of Vivek Ply. On the basis of the said proforma invoices and statements recorded during the course of investigation from various persons including Mr. Vivek Toshniwal, the Department is contending that the imports made by Mr. Banshidhar Agarwal and his associated entities are also undervalued. For ready reference, sample copies of a few of such invoices are reproduced below:

- Proforma Invoice Pl NO: HX-IN-052

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LINYI HAOXING ECONOMIC AND TRADE CO., LTD.

ZHIMADUN OFFICE, LINYI ECONOMIC DEVELOPMENT ZONE, SHANDONG, CHINA

TEL.: 0086-539-8130798 FAX: 0086-539-8130559

PROFORMA INVOICE

PI NO.:HX-IN-052

Importer: VIVEK PLY&VENEERS PVT LTD DATE: 2022-04-30

89,N.S.ROAD, 2ND FLOOR, KOLKATA 700001(W.B.)INDIA

PORT OF LOADING: QINGDAO ,CHINA

DESTINATION PORT: CALCUTTA, INDIA

PAYMENT TERMS: 100%TT IN ADVANCE

COMMODITY	SIZE & QUANTITY	UNIT PRICE FOR QINGDAO	TOTAL USD
STRAIGHT LINE 4'X8'X1.4MM,	1000PCS	USD2.55/PC	USD2550.00
SIX FLOWER FACE, 4'X8'X1.4MM	2500PCS	USD2.80/PC	USD7000.00
BLACK BURL, 4'X8'x1.4MM	1800PCS	USD2.90/PC	USD5220.00
RECON TEAK 4'X8'x1.7MM	2500PCS	USD3.65/PC	USD9125.00
BURMA CROWN 4'X8'x1.4MM	1500PCS	USD3.22/PC	USD4830.00
NATURAL TEAK 4'X8'X1.7MM,	2000PCS	USD5.20/PC	USD10400.00
Total:	11300PCS		USD39125.00

BENEFICIARY ACCOUNT NUMBER: 101417 36595194

SWIFT CODE: CHASSGSGXXX OR CHASSGSG

BENEFICIARY COUNTRY/REGION: SINGAPORE

BENEFICIARY NAME: LINYI HAOXING ECONOMIC AND TRADE CO., LTD.

BENEFICIARY ADDRESS: 8 SHENTON WAY, #45-01, AXA TOWER, SINGAPORE 068811

BENEFICIARY BANK: JPMORGAN CHASE BANK N.A., SINGAPORE BRANCH

BENEFICIARY BANK ADDRESS: 168 ROBINSON ROAD, CAPITAL TOWER 17-00, SINGAPORE 068912

BANK CODE: 7153

BRANCH CODE: 001

BUYER

SELLER

Seen

Vivek Toshniwal

18/05/22

- Proforma Invoice Pl NO: HX-IN-049

LINYI HAOXING ECONOMIC AND TRADE CO., LTD.

ZHMADUN OFFICE, LINYI ECONOMIC DEVELOPMENT ZONE, SHANDONG,CHINA
TEL: 0086-539-8130798 FAX: 0086-539-8130559

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PROFORMA INVOICE

PI NO.:HX-IN-049

Importer: VIVEK PLY&VENEERS PVT LTD DATE: 2022-02-11

89,N.S.ROAD, 2ND FLOOR, KOLKATA 700001(W.B.)INDIA
PORT OF LOADING: QINGDAO ,CHINA
DESTINATION PORT: CALCUTTA, INDIA
PAYMENT TERMS: 100%TT IN ADVANCE

COMMODITY	SIZE & QUANTITY	UNIT PRICE	TOTAL USD
STRAIGHT LINE 4'X8'X2.4MM,	1000PCS	USD3.75./PC	USD3750.00
SIX FLOWER FACE, 4'X8'X2.4MM	300PCS	USD4.08PC	USD1224.00
BLACK BURL, 4'X8'x2.4MM	500PCS	USD4.15/PC	USD2075.00
RECON TEAK 4'X8'x2.4MM	500PCS	USD4.42/PC	USD2210.00
ARROW TEAK 4'X8'X2.4MM,	500PCS	USD4.35/PC	USD2175.00
RECON CROWN TEAK 4'X8'X2.4MM	2000PCS	USD4.68/PC	USD9360.00
PLYWOOD, TEAK FACE, A GRADE, STRAIGHT LINE, (WITH LINE & WITHOUT LINE MIXED) ECULYPTUS CORE, HARDWOOD BACK, 4'X8'X3.0MM	2200PCS	USD6.00/PC	USD13200.00
Total:			USD33994.00

BENEFICIARY ACCOUNT NUMBER: 101417 36595194
SWIFT CODE: CHASSGSGXXX OR CHASSGSG
BENEFICIARY COUNTRY/REGION: SINGAPORE
BENEFICIARY NAME: LINYI HAOXING ECONOMIC AND TRADE CO., LTD.
BENEFICIARY ADDRESS: 8 SHENTON WAY, #45-01, AXA TOWER, SINGAPORE 068811
BENEFICIARY BANK: JPMORGAN CHASE BANK N.A., SINGAPORE BRANCH
BENEFICIARY BANK ADDRESS: 168 ROBINSON ROAD, CAPITAL TOWER 17-00, SINGAPORE 068912
BANK CODE: 7153

Seen
Vivek Toshniwal
/05/22

- Proforma Invoice PI NO: HX-IN-044

LINYI HAOXING ECONOMIC AND TRADE CO., LTD.

ZHIMADIAN OFFICE, LINYI ECONOMIC DEVELOPMENT ZONE, SHANDONG,CHINA
TEL: 0086-539-8130798 FAX: 0086-539-8130559

PROFORMA INVOICE

PI NO.:HX-IN-044

Importer: VIVEK PLY&VENEERS PVT LTD DATE: 2021-7-12

28, B.T Road, Kolkata 700058
PORT OF LOADING: QINGDAO ,CHINA
DESTINATION PORT: CALCUTTA, INDIA
PAYMENT TERMS: 100% TT IN ADVANCE

COMMODITY	SIZE & QUANTITY	UNIT PRICE FOB QINGDAO	TOTAL USD
PLYWOOD, TEAK FACE, A+ GRADE, STRAIGHT LINE ,WITH LIGHT LINE ECUPLYTUS CORE+KERUING BACK, 4'X8'X3.3MM	1282PCS	USD9.28/PC	USD11896.96
PLYWOOD, TEAK FACE, A+ GRADE, STRAIGHT LINE ,WITH LINE ECUPLYTUS CORE+KERUING BACK, 4'X8'X3.3MM	1377PCS	USD9.28/PC	USD12778.56
PLYWOOD, BUTTERFLY GRAIN, MIXED FLOWER, ECUPLYTUS CORE+KERUING BACK, 4'X8'X3.3MM	2033 PCS	USD9.59/PC	USD19496.47
PLYWOOD, TEAK FACE, A GRADE, STRAIGHT LINE(WITH LINE) ECULYPTUS CORE+PLB BACK 4'X8'X2.8MM	237PCS	USD6.87/PC	USD1628.19
			USD45800.18

BENEFICIARY ACCOUNT NUMBER: 101417 36595194
SWIFT CODE: CHASSGSGXXX OR CHASSGSG
BENEFICIARY COUNTRY/REGION: SINGAPORE
BENEFICIARY NAME: LINYI HAOXING ECONOMIC AND TRADE CO., LTD.
BENEFICIARY ADDRESS: 8 SHENTON WAY, #45-01, AXA TOWER, SINGAPORE 068811
BENEFICIARY BANK: JPMORGAN CHASE BANK N.A., SINGAPORE BRANCH
BENEFICIARY BANK ADDRESS: 168 ROBINSON ROAD, CAPITAL TOWER 17-00, SINGAPORE 068912

Seen
Vivek Poshniwal

9.5. From the perusal of the said invoices and the submissions made by the appellants, we observe that, the foundation of the allegations made in these proceedings are stemming from the said 19 proforma invoices retrieved from a mobile phone belonging Mr. Vivek Toshniwal, Director of M/s. Vivek Ply, another importer of plywood. We have perused the said 19 proforma invoices, wherein, the same are from one M/s Linyi Haoxing China and consigned to M/s Vivek Ply. It is also an undisputed fact coming out from the relied upon documents (RUDs) that the said appellants have not imported a single consignment from M/s. Linyi Haoxing China during the entire period of transaction. We have also seen that the description mentioned in those proforma invoices are totally different from bills of entry pertaining to the appellants during the entire period of dispute.

9.5.1. Thus, we have no hesitation to conclude that the alleged 19 proforma invoices have nothing to do with these appellants.

9.6. Further, we also find it pertinent to note that the Department has not been able to establish any logical nexus between the said proforma invoices and the appellants' transactions. In this regard, we take note of the fact that the proforma invoices in question are in the nature of quotations and do not constitute a valid basis for alleging undervaluation. This view is supported by the decision rendered by the Tribunal at Chennai in the case of ***M/s. Oswal Metal Works v. Commissioner of Customs, Chennai-III [2024 (10) TMI 408-CESTAT Chennai]****(Final Order No. 41262 of 2024 dated 08.10.2024 in Customs Appeal No. 40881 of 2015),* wherein it has been held as under: -

"6. Having rejected the declared value based on quotations received from M/s. Shanghi Light Industries Equipment, the Ld. Original Authority went on determine the value by adopting the prices in the quotation as he found them to be reasonable and having being accepted by M/s Evergreen Enterprises.

7. We find that it has been held by a Division Bench of this Tribunal in Commissioner of Customs, Chennai Vs Sahara Enterprises [2006 (206) E.L.T. 548 (Tri.-Chennai)] that a proforma invoice is in the nature of a quotation or offer and hence does not constitute valid basis for enhancement of value of the imported goods. It held as under;

> *"3. After careful consideration of the submissions, we find that, admittedly, value of the goods was enhanced by the original authority on the basis of proforma invoice issued in December 2001 by the supplier of the goods, to another party. The subject import was made in July 2002. There is a gap of more than six months between the two. Even otherwise, as rightly noted by the Commissioner (Appeals), a proforma invoice is in the nature of a quotation or offer and hence does not constitute valid basis for enhancement of value of the imported goods. This finding of the lower appellate authority is squarely supported by the Tribunal's decision in the case of Mahavir Spinning Mills Ltd. reported in 1996 (84) ELT A147 and the Hon'ble Supreme Court's judgment in Civil appeal No. 5263/92 in the case of M/s Sai Impex - (S.C.). In the circumstances, we do not think that it is necessary to look into the issue whether it was open to the lower appellate authority to admit additional evidence. Valuation done by the original authority on the basis of quotation was not on any legally sustainable basis. Learned Commissioner (Appeals) has set things right. The impugned order does not call for interference. The appeal stands dismissed."*

9.7. A Proforma invoice is a mere tentative document and it may undergo change. Hence, it holds no evidentiary value in the proceedings related to undervaluation. In this connection, we rely upon the decision of ***M/s. GK Merchantile Pvt. Ltd. v. Commissioner of Customs, New Delhi [2004 (170) E.L.T. 550 (Tri. - Del.)]*** wherein it has been held as under:

> *"5. We are not able to uphold the findings in the impugned orders either on the question of valuation or on the question of eligibility to exemption. It is well settled that a proforma invoice does not represent any actual transaction. It is only an offer price. An offer price cannot be the basis for rejecting a transaction value, particularly, when there is no material available on record to cast any doubt on its representative character i.e. it is the price at which the transaction actually took place. In the present case, lower authorities have erroneously reached a finding that proforma invoice represented contemporaneous import price. The appellant's claim for the exemption is directly covered by the aforesaid decision of this Tribunal in the case of Sha Harakchand Dharmaji v. CC, Madras [1996 (88) E.L.T. 764 (Tribunal)] that there is no requirement under the notification that the goods must be imported by actual users. That there is no requirement to produce proof of actual use of imported materials in the use of Leather Industry, is clear from the notification itself. The proviso to notification states that items mentioned under Heading B would require the importer to furnish an undertaking to the Asstt. Collector of Customs to the effect that the said imported goods shall be used for the purpose specified in the notification, that the party will keep an account of use of the imported goods, etc. The insoles in question falls under category A of the notification. There is no condition stipulated in the proviso for such items. May be, the notification treats insoles or midsoles and sheets therefor as material usable only for the Leather Industry. Whatever be the case, the lower authorities were in error in holding that the goods in question could be used in other footwear of other materials, particularly when they had not collected any material which indicated such use. Therefore, the finding regarding denial of exemption was also entirely unwarranted and unjustified."*

9.7.1. A similar view has also been expressed by the Tribunal in ***M/s. Mahavir Spinning Mills v. Collector of Customs [1992 (61) E.L.T. 730 (Tribunal)].*** The relevant paragraph of the said order reads thus: -

> *"5. The question, therefore, is whether proforma invoice price could be taken as the basis for determining the assessable value. Under Section 14 it is the price at which the goods are ordinarily sold in the course of international trade where the buyer and the seller are not interested in the business of each other and the price is the sole consideration for sale that is relevant for determining the assessable value. The Department has not adduced any evidence of contemporary sales at higher prices. No evidence of clandestine remittance of foreign exchange. No evidence of mutality of interest between the seller and the buyer. In these circumstances there is no reason why the invoice price should not be accepted. The reasoning of the Collector is that the proforma invoice indicated higher price. The proforma invoice is in the nature of an offer and the Collector also gave a finding that it is in the nature of an offer and the appellants have been contending that they negotiated with the supplier and got the price reduced. The reasoning of the Collector is that the price was reduced because of the special relationship between the importer and the foreign supplier who looking into their long term interest agreed to supply the goods at a rate lower than the quotation/proforma invoice price, and therefore the invoice price is influenced by the special relationship. There is a fallacy in the reasoning of the Collector. Negotiations are a part of ordinary commercial dealings and on account of that it does not become extra-commercial consideration. Therefore, the order of the Collector cannot be substantiated in the absence of contemporary imports at higher prices. The judgment of the Supreme Court relied upon by Shri Satish Kumar is not relevant as in the said case the importers themselves relied upon a quotation in support of their price. We, therefore, allow the appeal and set aside the order of the Collector."*

9.8. From the decisions cited supra, we observe that Tribunals have consistently held that a proforma invoice cannot be a conclusive proof of undervaluation. Thus, we reject the evidence in the form of the proforma invoices submitted by the Revenue to substantiate the allegation of undervaluation against the said appellants herein.

10. In the present case, we also find that the said 19 proforma invoices have been recovered from the mobile phone of Mr. Vivek Toshniwal, Director of M/s. Vivek Ply & Veneers Pvt. Ltd. The above appellants have submitted that the legal requirement as mandated under section 138C of the Customs Act, 1962 has not been followed to rely upon the said documents recovered from the mobile phone. In this regard, we observe that the Department has not adduced any evidence to substantiate their claim that the said 19 proforma invoices were recovered from the mobile phone of Mr. Vivek Toshniwal. Thus, we find merit in the submission of the appellants that the said proforma invoices, said to be recovered from the mobile phone of Mr. Vivek Toshniwal, are not admissible evidence against the said appellants. Accordingly, we hold that the purported proforma invoices issued in the name of another company, by an unconnected supplier, cannot be relied upon as evidence to confirm the demands against the above appellants.

11. We also find that the ld. adjudicating authority, in the impugned order, has relied upon the statements recorded from Mr. Vivek Toshniwal, who has mentioned the name of these appellants and their involvement in the syndicate, to confirm the demands against the appellants. We observe that there is no surprise in the implication of these appellants by Mr.

Vivek Toshniwal, as he is a competitor to them. In such circumstances, the appellants wanted to cross examine Mr. Vivek Toshniwal, as the entire case has been built upon by the Department on the basis of his statements and the documents said to be recovered from him. However, we find that the ld. adjudicating authority has denied their request for cross examination of Mr. Vivek Toshniwal, stating that the said request was devoid of any proper reason and delaying tactics. We find the reasons given by the ld. adjudicating authority for denial of the opportunity of cross examination to the appellants to be unconvincing. It is a settled legal principle that statements given during the course of investigation can be relied upon only if they have been examined during the adjudicating proceedings. Thus, we are of the view that denial of cross examination vitiates the entire proceedings, which have been built on the basis of such untested statements. A similar issue has been examined by the Tribunal, Chennai in the decision rendered in the case of ***M/s. Geetham Steels Pvt Ltd Vs. Commissioner of GST & Central Excise Salem [2025(3) TMI 1098 - CESTAT Chennai],*** wherein it has been observed as follows: -

> *"57. If we notice the provisions of Section 9D, what flows from it is that 9D(1) stipulates when a statement given under section 14 would be relevant for the purpose of proving, "in any prosecution for an offence", the truth of the facts which it contains and provides for various scenarios in the sub-sections thereto at (a) and (b). It is only when the Department first adduces evidence in the proceedings before the adjudicating authority, of the existence of the aforementioned scenarios in section 9D(1)(a) that the deponent's statement is taken as a substantive piece of evidence, without the deponent deposing thereto before the adjudicating authority. That would still not obviate the requirement of the Gazetted officer before whom the statement was given, deposing the factum of such*

statement having been recorded from the deponent-which is the method or manner of proving the recording of the statement, which statement under section 14 is already considered relevant for the purpose of proving the truth of the fact it contains-that is to say, the said deposition of the Gazetted Officer stating that the deponent had indeed given the statement before him, would be the manner of admitting or mode of proof of the admissible substantive evidence.

58. Again, 9D(1)(b) provides for the deponent's statement given before the Gazetted Officer to be admitted as substantive evidence, when the person who made the statement is examined as a witness in the case before the adjudicating authority and the adjudicating authority is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice. This sub section (b) of Section 9D(1) takes care of a situation where the witness who is deposing before the adjudicating authority turns hostile and on an evaluation of the circumstances of the case the adjudicating authority decides to discard the version given by the witness before it and instead place reliance on the earlier statement given before the Gazetted Officer. As elucidated supra, this also applies in a case where the witness deposing stands by his earlier statement and is thereafter offered for cross-examination to the opposite side and in case of minor inconsistencies/no inconsistency, if the adjudicating authority is of the opinion, having regard to the circumstances of the case that the statement should be admitted in evidence in the interests of justice, the adjudicating authority can do so as per this Section 9D(1)(b).

59. However, implicit in this procedure stipulated in 9D(1)(b) is the necessary requirement for the adjudicating authority to depose all the deponents who have given statement under Section 14, save as those that are unavailable in the scenarios given in 9D(1)(a), for the purposes of evaluating whether the statements are voluntary, to attest that he had deposed the contents of the statement and then take a considered decision whether the truth of the facts contained in the statement stand proved or disproved in the facts and circumstances of the case. In other words, it is only after such examination in chief, that the adjudicating authority can arrive at a

considered decision, whether to declare the witness appearing before it as a hostile witness and then to decide in the facts and circumstances whether to rely on the earlier statement; or if upon finding major inconsistencies between his earlier deposition and in the contradictions brought about in cross-examination, to not rely on the earlier statement; or if it is only minor discrepancies as that which does not majorly disturb the essential truth of his deposition, to rely upon it, if in the circumstances of the case, the adjudicating deems it fit in the interest of justice.

60. Therefore, we are of the view that Section 9D(2) not only legislatively mandates the adjudicating authority to apply the provisions of S.9D(1), depending on the facts and circumstances of the case, to the extent possible , but also when read along with Section 9D(1)(b), leads to the inexorable conclusion that the adjudicating authority necessarily has to conduct an examination in chief of the deponent of the statement so as to determine not only the voluntary nature as well as truthfulness of the facts the statement given under Section 14 before the Gazetted Officer contains, but also to determine whether or not the witness is hostile, and to decide whether or not to place reliance on the statement as per the mandate of Section 9(1)(b) in the circumstances of the case, as has been elaborated supra. This interpretation is also in consonance with the decision of the Honourable Apex Court in K I Pavunny's case as stated supra, wherein the Apex Court emphasised that in the case of a retracted confession the court should examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise and if the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. Such an interpretation is also in line with the decision of the jurisdictional Madras High Court cited supra and given the pari materia provisions of the Customs Act, 1962, we are of the view that the said interpretation would hold good under the pari materia provisions of Customs Act as well."

11.1. It is also a fact that the said statements of Mr. Vivek Toshniwal have not been tested as per the mandate of Section 138B of the Customs Act, 1962, which is in *pari materia* with Section 9D of the Central Excise Act, 1944. We find that the Ld. adjudicating authority has not given any finding on this aspect raised by the appellants before relying on the said statements in the present proceedings, for confirmation of the demands by way of the impugned order.

11.2. In this regard, we find it relevant to refer to the decision of the Hon'ble High Court in the case of *Hi Tech Abrasives Ltd. v. Commissioner of C.Ex. & Cus., Raipur [2018 (362) E.L.T. 961 (Chattisgarh)],* wherein the Hon'ble High Court has observed that unless the substantive provisions contained in Section 9D of the Act are complied with, a statement recorded during search and seizure operations cannot be treated as a relevant piece of evidence, the same being mandatory and not merely directory. The relevant paragraph of the aforesaid judgement is as under: -

> *"9.5 Undoubtedly, the proceedings are quasi criminal in nature because it results in imposition of not only of duty but also of penalty and in many cases, it may also lead to prosecution. 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."

11.3. Thus, by relying on the decisions cited supra, we hold that the demands confirmed in the impugned order, on the basis of the statements recorded from Mr. Vivek Toshniwal, without following the legal mandate as required under Section 138B of the Customs act, 1962, which is in *pari materia* with Section 9D of the Central Excise Act, 1944, are not sustainable.

12. With respect to the allegation of mis-declaration of description/misclassification as raised by the Ld. Authorized Representative of the Revenue during the course of arguments, we find that the officers of DRI took samples of the plywood imported by appellant during the search made at Phoenix Logistic P. Ltd., CFS, Kolkata on 19.05.2022. However, there was no testing done on samples of the appellant's goods so as to compare the same with that of Vivek Ply or to question the nature/characteristics of goods. Further, we observe that there is no difference in description or quantity of goods as per the Panchnama. Thus, it is seen that there is nothing on record to prove that the goods were wrongly described by these appellants, as alleged by the Department. As the Department has failed to produce any test report, bills of entry, etc., so as to contest the description of goods, we hold that the allegation of mis-classification made in the impugned order is not sustainable.

13. In view of the above findings, we hold that the allegations of mis-classification and undervaluation of the goods imported by the above said appellants are not sustainable. Accordingly, we set aside the demands of differential customs duty, along with interest, confirmed in the impugned order against the appellants herein mentioned at paragraph 9 (supra).

14. In respect of the order confiscation of the seized goods in these cases, we observe that these goods have been imported vide separate Bills of Entry and cleared on payment of appropriate duties of customs. No objections had been raised by the Revenue at the time of importation. As there is no mis-declaration or undervaluation in respect of the goods cleared under the 9 Bills-of-Entry in the case of M/s. Ellena Impex OPC Pvt. Ltd., 29 Bills-of-Entry along with Bill-of-Entry

No. 8684073 dated 14.05.2022 (which is a live consignment) in the case of M/s. Sun Ply Pvt. Ltd. and 28 Bills-of-Entry in the case of M/s. Radheysham & Co., we hold that the order of confiscation vide the impugned order for the goods cleared in respect of the above said Bills of Entry is not sustainable. Consequently, we set aside the order of confiscation of the goods in the impugned order in respect of the said Bills of Entry. Accordingly, the redemption fines imposed in respect of the said goods also stand set aside.

15. Regarding the imposition of various penalties on the said appellants herein, viz., M/s. Ellena Impex OPC Pvt. Ltd., M/s. Sun Ply Pvt. Ltd. and M/s. Radheysham Co., we find that no objection was raised by the assessing officers on the classification or valuation of the goods declared by the appellants, at the time of clearance, except the one live consignment which was intercepted by DRI. Even in respect of that consignment, the allegation of mis-classification or undervaluation has not been established. Thus, we find that suppression of facts, with the intent to evade customs duties, has not been established against these appellants in the present case. Thus, it is evident that the ingredients required for imposing the various penalties on the appellants herein do not exists in this case. Consequently, we hold that the various penalties imposed on all the appellants herein are not sustainable and hence the same are set aside.

16. Regarding the penalty imposed on Mr. Banshidhar Agarwal, who is the Proprietor of the appellant-company viz. M/s. Radheysham Co., a proprietorship / proprietary firm, the Ld. Counsel for the said firm has submitted that no separate appeal has been filed by Mr. Banshidhar Agarwal as an individual. Having

regard to the fact that as per Explanation to Rule 6A of the CESTAT Procedure Rules, each person is required to file separate appeal, he submits that, a proprietary firm and its proprietor are a single legal entity and do not have any separate existence. Hence, it is the submission of the Ld. Counsel for the said appellant that the single appeal filed in the name of proprietary firm would suffice and no separate appeal in the name of the individual proprietor is required. In support of his contentions, the Ld. Counsel placed reliance on the decision in the cases of *Ashok Transport Agency vs. Awadhesh Kumar and Another [(1998) 5 SCC 567]* and *Vinod Kumar Gupta v. Commissioner of Central Excise [2013 (287) E.L.T. 54 (P&H)]* wherein it has been held that a proprietary firm and its proprietor are one and the same and that proprietary concern is merely the business name in which the proprietor carries on the business. Thus, the Ld. Counsel for the said appellant prayed for quashing the penalty imposed on Mr. Banshidhar Agarwal, in his capacity as the proprietor of Radheysham Co as separate penalty has also been imposed on the Proprietorship firm.

16.1. For the sake of ready reference, the relevant part of the impugned order, confirming the demands and imposing the penalties in respect of the appellant-firm, M/s. Radheysham Co., is extracted below: -

> *"40.5. In respect of imports made by M/s Radheysham Co. (Noticee No.5):*
>
> *a) Upon M/s Radheysham Co. (Noticee No. 5):*
>
> *i. I reject the Assessable Value of Rs 2,89,22,992/- declared in the 28 Bills of Entry as detailed in the SCN filed by Noticee No. 5 under Rule 12 of the CVR, 2007 read with Section 14 of the Customs Act, 1962 and re-determine the same at Rs. 12,65,45,135/- under Rule 9 of the CVR, 2007;*

ii. I hold the goods imported under the said 28 Bills of Entry having re-determined Assessable Value of Rs. 12,65,45,135/- liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose a redemption fine of Rs. 1,26,54,514/- as the goods are already clear.

iii. I confirm the differential Customs duties of Rs. 2,74,70,487/- on the re-determined Assessable Value of Rs. 12,65,45,135/- from Noticee No. 5 under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the said Act;

iv. I impose penalty of Rs. 2,74,70,487/- upon Noticee No. 5 under Section 114A of the Customs Act, 1962 for the reasons mentioned above;

b) Upon Shri Banshidhar Agarwal (Noticee No. 7) and Shri Ravichandra Mishra (Noticee No. 8):

I impose penalty of Rs. 27,47,049/- upon each of them under Section 112 (a) of Customs Act, 1962.

I impose penalty of Rs. 27,47,049/- upon each of them under Section 112 (b) of Customs Act, 1962.

I impose penalty of Rs. 63,27,25,675/- under Section 114AA of the Customs Act, 1962 for the reasons mentioned above.”

16.2. From the above, we find that a penalty of Rs.2,74,70,487/- has been imposed on the Proprietorship Firm, namely, M/s. Radheysham Co., under the Section 114A of the Customs Act, 1962 but no separate penalty has been imposed on its Proprietor, namely, Mr. Banshidhar Agarwal, under Section 114A of the Customs Act, 1962. Thus, although we agree with submission of the Ld. Counsel for the appellant-firm, M/s. Radheysham Co., that separate penalties cannot be imposed on both the Proprietorship Firm and its Proprietor, in the present case, we find that separate penalties have not been imposed in the impugned order on the Proprietorship Firm, namely, M/s. Radheysham Co. and its Proprietor

namely, Mr. Banshidhar Agarwal under Section 114A of the Customs Act, 1962.

16.3. We observe that the Ld. Counsel placed reliance on the decision of the Hon'ble High Court of Punjab & Haryana in the case of *Vinod Kumar Gupta v. Commissioner of Central Excise [2013 (287) E.L.T. 54 (P&H)]* wherein the Hon'ble High Court has held that a proprietary firm and its proprietor are one and the same and that proprietary concern is merely the business name in which the proprietor carries on the business. On perusal of the said order, we observe that the proprietor in that case had filed a separate appeal and argued his case against imposition of the separate penalty on him. However, in the present case, we find that no separate appeal has been filed by Mr. Banshidhar Agarwal, against the penalty imposed on him. Thus, we are of the view that the above decision cited by the appellant is distinguishable on facts and hence not applicable to the facts of the case on hand.

16.4. We take note of the fact that penalties have been imposed on Mr. Banshidhar Agarwal under Sections 112(a), 112(b) and 114AA of the Customs Act, 1962. However, it is observed that appeal, if any, filed by Mr. Banshidhar Agarwal against the said penalties imposed on him, is not before us for consideration. Thus, we are of the view that Mr. Banshidhar Agarwal has to file a separate appeal to contest the penalties imposed on him under the Sections 112(a), 112(b) and 114AA of the Customs Act, 1962 before this Tribunal. As the appeal, if any, filed by Mr. Banshidhar Agarwal is not before us, we are of the view that we cannot interfere with the penalties imposed on Mr. Banshidhar Agarwal as emanating from the impugned order.

17. In view of the above findings, we pass the following order:

(i) We set aside the demands of differential customs duties confirmed in the impugned order *qua* against the appellants herein.

(ii) We set aside the order of confiscation in respect of the goods imported under the Bills of Entry in question in these appeals.

(iii) We set aside the penalties imposed in the impugned order *qua* on the appellants herein.

(iv) We hold that the sum of Rs. 1,00,00,000/- deposited by VPVPL should be considered as payment made under protest during the course of investigation and it is liable to be refunded along with interest to VPVPL, at the applicable rate.

18. The appeals filed by the appellants are disposed of on the above terms.

(Order pronounced in the open court on **26.09.2025**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd