



## ***Aadrikaa Law Offices (ALO)- IDT Tax / Arbitration / Litigation***

**Date: 09.10.2025**

### **CESTAT Delhi- Statement Under Section 108 Not Admissible Without Compliance of Section 138B of Customs Act**



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The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, recently delivered a significant judgment in the case of *A R Fabrics Pvt. Ltd. vs. Principal Commissioner, Customs (Preventive)*. This decision, issued on October 1, 2025, sheds light on the admissibility of statements recorded under Section 108 of the Customs Act, 1962, and the procedural safeguards required under Section 138B of the Act. Here's a detailed breakdown of the case and its implications.

#### **Background of the Case**

The appeal arose from an order dated May 28, 2021, passed by the Commissioner of Customs (Appeals), which upheld an earlier order by the Joint Commissioner of Customs. The dispute revolved around the reassessment of the value of imported "polyester knitted fabric mixed" declared in two Bills of Entry dated October 3, 2019. The Joint Commissioner had rejected the declared value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and reassessed it under Rule 5 based on contemporary import data. This reassessment led to the recovery of differential customs duty, penalties, and confiscation of goods with an option to pay a redemption fine.

The Commissioner (Appeals) relied solely on the appellant's statement recorded under Section 108 of the Customs Act, where the appellant had admitted to undervaluation and waived their right to a show cause notice and personal hearing.

## Key Legal Issue

The central question before the Tribunal was whether the Commissioner (Appeals) could rely on the appellant's statement under Section 108 of the Customs Act without adhering to the procedural requirements of Section 138B.

## Tribunal's Observations

The Tribunal, comprising Hon'ble Justice, examined the interplay between Sections 108 and 138B of the Customs Act. It referred to its earlier decision in *Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST, Raipur* and observed:

1. **Admissibility of Statements:** Statements recorded under Section 108 of the Customs Act can only be admitted as evidence if the procedure under Section 138B is followed. This includes examining the person who made the statement as a witness before the adjudicating authority and allowing cross-examination.
2. **Mandatory Compliance:** The Tribunal emphasized that compliance with Section 138B is mandatory. Failure to follow this procedure renders the statement inadmissible as evidence.
3. **Rationale for Safeguards:** The Tribunal highlighted that statements recorded during inquiries often carry the risk of being made under coercion or compulsion. The procedural safeguards under Section 138B are designed to ensure fairness and justice.

## Tribunal's Decision

The Tribunal concluded that the Commissioner (Appeals) had erred in relying solely on the appellant's statement under Section 108 without adhering to the requirements of Section 138B. Since the statement was the sole basis for rejecting the declared value and reassessing it, the order dated May 28, 2021, was set aside. The appeal was allowed with consequential reliefs.

## Implications of the Judgment

This judgment reinforces the importance of procedural safeguards in customs proceedings. It underscores that:

1. **Fair Procedure is Paramount:** Authorities must strictly adhere to the procedural requirements under the Customs Act to ensure that decisions are fair and just.
2. **Statements Require Corroboration:** Statements recorded during inquiries cannot be the sole basis for decisions unless they are admitted as evidence following due process.
3. **Protection Against Coercion:** The judgment highlights the judiciary's role in protecting individuals from potential coercion during investigations.

## Conclusion

The decision in *AR Fabrics Pvt. Ltd.* is a reminder of the critical role procedural safeguards play in ensuring justice in customs and excise matters. It sets a precedent for future cases, emphasizing that adherence to statutory provisions is non-negotiable. This judgment not only upholds the principles of natural justice but also strengthens the credibility of the adjudication process under the Customs Act.

**Source: CESTAT Delhi**

### Disclaimer

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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**CUSTOMS APPEAL NO. 51115 OF 2022**

(Arising out of Order-In-Appeal No. D-II/Prev./NCH/207/2021-22 dated 28.05.2021 passed by the Commissioner of Customs (Appeals), New Delhi)

**A R Fabrics Pvt. Ltd.**

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**Appellant**

B-13/4, Second Floor, Krishna Nagar,  
Near Ghondli Chowk,  
East Delhi- 110051

Versus

**Principal Commissioner, Customs** .....

**Respondent**

**(Preventive)**

New Customs House, Near IGI Airport,  
New Delhi

**APPEARANCE:**

Shri Prem Ranjan, advocate for the appellant

Shri Girijesh Kumar, authorised representative of the department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

**Date of Hearing/Decision: October 01, 2025**

**FINAL ORDER NO. 51515/2025**

**JUSTICE DILIP GUPTA:**

A R Fabrics Pvt. Ltd.<sup>1</sup> has sought the quashing of the order dated 28.05.2021 passed by the Commissioner of Customs (Appeals)<sup>2</sup>. This order upholds the order dated 30.10.2019 passed by the Joint Commissioner of Customs and rejects the appeal filed by the appellant.

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1. the appellant

2. the Commissioner (Appeals)

2. The Joint Commissioner, by the order dated 30.10.2019, rejected the assessable value of 'polyester knitted fabric mixed' declared in the two Bills of Entry dated 03.10.2019 in terms of rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007<sup>3</sup> and reassessed the same under rule 5 of the 2007 Valuation Rules. The Joint Commissioner also ordered for recovery of the differential customs duty with penalty. The goods have also been confiscated with an option to pay redemption fine.

3. A perusal of the order passed by the Joint Commissioner would indicate that it is based on the statement made by the appellant on 24.10.2019 under section 108 of the Customs Act wherein it is stated that he had requested for re-assessment of the goods @ 2.3 USD per metre and had also agreed to pay the differential duty. The order also notes that the appellant during the course of the statement made under section 108 of the Customs Act had also stated that he did not want any show cause notice to be issued or personal hearing to be provided to him and that the matter may be decided on merits.

4. The Joint Commissioner, therefore, proceeded to decide the issue by rejecting the declared value of the imported goods and re-determining it under rule 5 of the 2007 Valuation Rules on the basis of contemporary import data of similar goods.

5. The Commissioner (Appeals), in the impugned order dated 28.05.2021, has based his decision only on the statement said to have been made by the appellant under section 108 of the Customs Act.

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**3. the 2007 Valuation Rules**

6. In this connection, it would be appropriate to reproduce the relevant portions of the order below:

“5.2. On going through the impugned OIO, I find that the Appellant waived off his right of Show Cause Notice (SCN) and personal hearing in writing vide his voluntary statement dated 24.10.2019 and he admitted that the impugned goods are undervalued. **He agreed to pay duty on enhanced value along with the penalty and redemption fine. He further stated that he was ready to pay differential duty on the value arrived @ \$ US 2.3 per meter.** The Director categorically admitted that he fully agreed with the method of reassessing the value of goods. As such the Appellant has accepted the re-determined value voluntarily after being satisfied with method of redetermination. **It is now not open to him to go back on his statement and claim that redetermination was not legal. In this regard, I rely upon case of M/s Sodagar Knitwear [2018(362) ELT 819(T.Delhi)] which has been affirmed by Hon’ble Supreme Court [2018(362) ELT a 213 (SC)].**

5.3 **The Appellant not only accepted his mistake but also agreed to pay differential duty voluntarily in his voluntary statement. This statement has not been retracted till date. Thus this statement is valid piece of evidence.”**

**(emphasis supplied)**

7. The issue that arises for consideration is whether the Commissioner (Appeals) could have relied upon the statement made under section 108 of the Customs Act if the procedure contemplated under section 138B of the Customs Act had not been complied with.

8. This issue was examined by a Division Bench of the Tribunal **M/s. Surya Wires Pvt. Ltd. vs. Principal Commissioner, CGST,**

**Raipur**<sup>4</sup>. 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 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**

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

**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."**

**(emphasis supplied)**

10. In view of the aforesaid decision of the Tribunal in **Surya Wires**, the statement of the appellant under section 108 of the Customs Act cannot be considered as relevant. This statement is the sole basis on which the Commissioner (Appeals) has not only rejected the value of the imported goods but has re-determined it under rule 5 of the 2007 Valuation Rules.

11. It is, therefore, not possible to sustain the order dated 28.05.2021 passed by the Commissioner (Appeals). It is, accordingly set aside and the appeal is allowed with consequential relief(s), if any.

(Order dictated in the open court)

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

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