

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. III

1. Customs Appeal No. 41655 of 2019

(Arising out of Order-in-Original No. 70307/2019 dated 29.07.2019 passed by Commissioner of Customs, Custom House, No. 60, Rajaji Salai, Chennai – 600 001)

M/s. Mukesh Kumar

Proprietor of M/s. Nakshatra International Food Co.,
No. 15, EVK, Sampath Road,
1st Floor, Vepery,
Chennai – 600 007.

...Appellant

Versus

Commissioner of Customs

Chennai II Commissionerate,
Custom House,
No. 60, Rajaji Salai,
Chennai – 600 001.

...Respondent

with

2. Customs Appeal No. 41657 of 2019 (Mr. Kamlesh Kumar)
3. Customs Appeal No. 41658 of 2019 (Mr. Naresh Kumar)
4. Customs Appeal No. 41676 of 2019 (Shri Impex)
5. Customs Appeal No. 41677 of 2019 (Mr. Raju Jayantilal Doshi)
6. Customs Appeal No. 41690 of 2019 (M/s. Bharath Raj Enterprises)
7. Customs Appeal No. 41711 of 2019 (Commissioner of Customs, Chennai II)
8. Customs Appeal No. 41712 of 2019 (Commissioner of Customs, Chennai II)
9. Customs Appeal No. 41713 of 2019 (Commissioner of Customs, Chennai II)
10. Customs Appeal No. 41714 of 2019 (Commissioner of Customs, Chennai II)
11. Customs Appeal No. 41715 of 2019 (Commissioner of Customs, Chennai II)
12. Customs Appeal No. 41716 of 2019 (Commissioner of Customs, Chennai II)
13. Customs Appeal No. 41717 of 2019 (Commissioner of Customs, Chennai II)
14. Customs Appeal No. 41718 of 2019 (Commissioner of Customs, Chennai II)
15. Customs Appeal No. 41719 of 2019 (Commissioner of Customs, Chennai II)
16. Customs Appeal No. 41720 of 2019 (Commissioner of Customs, Chennai II)
17. Customs Appeal No. 41721 of 2019 (Commissioner of Customs, Chennai II)
18. Customs Appeal No. 41723 of 2019 (Commissioner of Customs, Chennai II)
19. Customs Appeal No. 41725 of 2019 (Commissioner of Customs, Chennai II)
20. Customs Appeal No. 41726 of 2019 (Commissioner of Customs, Chennai II)
21. Customs Appeal No. 41727 of 2019 (Commissioner of Customs, Chennai II)
22. Customs Appeal No. 41728 of 2019 (Commissioner of Customs, Chennai II)
23. Customs Appeal No. 41729 of 2019 (Commissioner of Customs, Chennai II)
24. Customs Appeal No. 40087 of 2020 (M/s. Eskay Logistics)
25. Customs Appeal No. 40088 of 2020 (Mr. Mohanlal Liladhar Joshi)
26. Customs Appeal No. 40089 of 2020 (M/s. Concord Zoom)

APPEARANCE:

For the Assessee : Shri Ajay Kumar Gupta, Advocate for (Sl.Nos.1-3), & (7-10)
Shri G.B. Yadav, Advocate for (Sl.Nos.18,22-26)
Shri S. Krishnanandh, Advocate for (Sl.Nos.6 & 17)
None (Sl.Nos.4-5, 19-21)
None (Sl.Nos.11-16)

For the Revenue : Ms. O.M. Reena, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER Nos. 40223-40248 / 2026

DATE OF HEARING : 26.08.2025

DATE OF DECISION : 17.02.2026

Per Mr. VASA SESHAGIRI RAO

There are 26 Customs appeals against Order-in-Original No. 70307/2019 dated 29.07.2019 (herein after called as 'impugned order') - 9 are party appeals and 17 are departmental appeals. Out of the 9 party appeals, three appeals namely, C/41655/2019 filed by M/s. Nakshatra International Food Company (in short 'NIFCO') & Mukesh Kumar as proprietor of NIFCO, C/41657/2019 is filed by Kamlesh Kumar & C/ 41658/2019 is filed by Naresh Kumar. Appeal Nos. C/41676/2019 & C/41677/2019 (partner of M/s Shri Impex Raju Jayantilal Doshi) are related to M/s Shri Impex who are one of the importers/IEC Holders in this case. Remaining 4 appeals are filed by the CHAs- C/41690/2019 (Bharath Rajj enterprises); C/40087/2020 (Eskay Logistics);

C/40088/2020 (Mohanlal Liladhar Joshi); and C/40089/2020 (Concord Zoom).

2. Whereas the Revenue has filed 17 appeals from C/41711/2019 to C/41729/2019 on two grounds; That the adjudicating authority ought to have imposed redemption fine on importers u/s 125 in the light of Madras High Court's judgment in M/s Visteon Automotive Systems Vs Customs (CMA No. 2857 of 2011 & MP No 1 of 2011 dated 11.08.2017) and ought to have imposed penalties u/s 112(b) and 114AA on the CHAs of the importers, which is missed out in the Order-in-Original.

3. Brief facts are that M/s NIFCO have imported confectionery items such as jellies, puddings, wafers, toffees, candies, chocolates, biscuits, juices coffee etc. in retail packs/cartons and have allegedly mis-declared and under-invoiced import price & Retail Sales Price and have mis-classified three items and have also allegedly misused IE Codes of others in making imports in total 566 Bills of Entry between 2008 to 2013 through Chennai and Mumbai ports. Out of 566 Bills of Entry, 388 imports are made directly by NIFCO, and remaining 178 imports were made against four different IEC codes allegedly by NIFCO as tabulated below: -

Table-1

Name of the IEC	IE	No. of Bills of Entry			Bes
		Chennai Sea port (INMAA1)	Mumbai Port (INBOM1)	Mumbai JNPT (INNSA1)	
Nakshatra International	0403015162	339	1	48	388
Roop Lakshmi Impex, Chennai	0412013029	0	52	4	56
Shri Impex, Mumbai	0312055650	0	12	28	40
Rachel International Corporation, 2009	0409005401	0	9	32	41
Rachel International Corporation, 2011	0411009389	0	0	41	41
Total			73	105	178

4. 416 consignments are sourced from three main overseas suppliers viz., M/s. Cocon Food Industries SDN BHD, Malaysia (300 consignments), M/s. Petra Foods Limited, Singapore (81 consignments) and M/s. Maestro Swiss Chocolate SDN BHD, Malaysia (35 consignments). Remaining 150 consignments are imported from 24 suppliers, the details of which are tabulated below: -

S.No.	SUPPLIER	No. of BEs
1	TAYAS GIDA SAN. VE TIC. A.S.	30
2	WIN WIN FOOD INDUSTRIES SDN.	23
3	TIEN MING CONFECTIONERY	21
4	RI'. ASIA SAKTI WAHID FOODS	17
5	GLOBAL PREMIUM RESOURCES SDN	12
6	BIRLESIK DIS TICARET ANONIM	10
7	SUN MARK LTD	6
8	CICI PAZARLAMA TIC. LTD. STL	4
9	MEIJI SEIKA (SINGAPORE) PTE LTD,	4

10	SCI FOOD CORPORATION SDN BHD	4
11	COZZO FOOD INDUSTRIES SDN.	3
12	IHSAR DIS TICARET A.S	3
13	LEE BISCUITS [PTE] LTD,	1
14	ANTAT GIDA IC VE D1S TIC. LTD.	1
15	APOLLO FOOT) INDUSTRIES (M)	1
16	CHIA SHTNG FOOD INDUSTRIES	1
17	FRONTIER FOODS INDUSTRIES SDN	1
18	INTERSWEET DIS TICARET LTD. STI.	1
19	PT. PAD INTERNATIONAL	1
20	RICO FOOD INDUSTRIES SDN BHD	1
21	SIMSKE BISKUVI VEGIDA SAN	1
22	SOLENIKOLATA GIDA SAN. VE TIC.	1
23	SUGABEE SEKERLEME GIDA INS.	1
24	ULTRA HEALTH SDN BHD	1
	Total	150

5. As evidenced from the appeal records, during the investigations imported duty-paid goods valued at Rs.1,46,84,431/- lying in godowns of the NIFCO were seized. Several incriminating documents including electronic media in the form of two hard disks were also seized under Mahazar dated 15.10.2013 (sub-annexure -2 to Annexure A1 of SCN - @908 - Vol 4). Searches were also conducted at the premises of M/s. Ajantha KTK products, Chennai who was the local distributor for M/s. NIFCO and goods worth Rs.6,05,405/- were seized on 17.10.2013. Later, hard disks were analysed by M/s. Ascent Technologies and documents extracted from this electronic media include 10 proforma invoices related to Suppliers M/s. Petra Foods, Singapore. One such retrieved proforma invoice P/7081/13 dated

02.05.2013 was related to actual import invoice 197/c/13.10.2024 in live Bill of Entry No. 3531124 dated 14.10.2013 which was heavily relied upon by the investigating agency to prove allegation of under-invoicing of imported goods.

6. Further, statements of Kamlesh Kumar were recorded u/s 108 of the Customs Act, 1962 on 31.10.2013 & 05.11.2013, of Naresh Kumar on 07.11.2013 & 07.05.2014 and of Mukesh Kumar on 16.12.2013 & 08.05.2014. In terms of the above statements, under-invoicing was admitted by Kumar brothers and only 35% of the actual value was declared to Customs for the goods supplied by M/s Petra foods, Singapore and in case of other imports, the under invoicing was admitted to the extent of 50% of the actual cost. Later, Kamlesh Kumar retracted his statement recorded on 31.10.2013 on 01.11.2013 i.e. within 24 hours.

7. Scrutiny of documents revealed that Assessee NIFCO have also imported in the names of M/s. Roop Lakshmi (IEC 0412013029), M/s. Shri Impex (IEC 0312055650), M/s. Rachel (IEC 0409005401) and M/s. Rachel (IEC 0411009389). The whereabouts of three IEC holders namely M/s. Roop Lakshmi, M/s. Rachel (2009), M/s Rachel (2011)) could not be traced by the DRI. Partner of

Shri Impex, however, appeared before DRI and stated that they were importing on behalf of NIFCO. Statements of Customs Brokers related to these imports were also recorded u/s 108 of the Customs Act, 1962.

8. Further, DRI collected the price lists of various distributors /retailers such as M/s. Nuts N Spices, M/s. Spencer's to arrive at the actual RSP of the imported goods and based on the price lists obtained from such sources, RSP has been revised and enhanced. In some items revised RSP was worked as 2.42 times the landed cost of the goods on enhanced valuation of the goods.

9. After intervention of Hon'ble High Court at Madras in Writ Petitions bearing No 1388, 1390 & 1391/2013, the seized goods were released after adjusting the amount of 1 crore paid during investigations along with surety bond of 1.85 crores. However, it appears that the goods imported in Live Bill of Entry 3531124 dated 14.10.2023 could not be cleared as the conditions for provisional release of these goods could not be fulfilled by the Assessee NIFCO.

10. Finally, SCN was issued on 10.06.2014 under section 28 & 124 of the Customs Act, 1962 based on the

retrieved Proforma/parallel invoices and other documents and mainly statements of the importers and declared unit values of all the 566 Bills of Entry were rejected under Rule 12 of CVR, 2007 and were re-determined under Rule 3(1)/4/9 of the said Rules. RSP was also revised based on such market survey. SCN alleged wrong classification in respect of three items *viz*, Nata-de-coco juice, Coppo white Coffee, Quaker Oats, whereas adjudicating authority has confirmed the classification of two items *viz*, nata-de-coco juice, Coppo white Coffee, same as proposed in the SCN and has not given any finding in respect of Quaker Oats.

11. It appears, the main Assessee when asked for copies of seized documents, image disks, and other relied materials, were not provided and was also denied cross-examination by the Original Authority.

12. A Corrigendum dated 21.10.2019 to Order-in-Original dated 29.07.2019 had been issued wherein penalties were imposed on three CHAs M/s. Eskay Logistics, M/s. Mohanlal Liladhar Joshi & M/s Concord Zoom u/s 112(b) and 114AA of the Custom Act, 1962.

13. The Ld. Advocate Mr. Ajay Kumar Gupta, appeared on behalf of NIFCO and their proprietor Mukesh

Kumar and his two brothers viz. Kamlesh Kumar and Naresh Kumar who have reiterated the submissions made in the appeal and contended as follows: -

a. Customs duty cannot be demanded and confirmed jointly or severally on many persons and parties under the provisions of Customs Act, 1962. Case laws relied upon are: -

- i. Rimjhim Ispat Ltd. Vs. CCE, Kanpur 2013(293) ELT 124 (tri-Del)*
- ii. Golden Tobacco Ltd. Versus Commissioner of Central Excise, New Delhi 2014 (3) TMI 983 – CESTAT NREW DELHI*
- iii. Shreepal Silk and Sarees & Others Versus CC (Port-Export) Chennai, 2014 (5) TMI 367 – CESTAT CHENNAI*
- iv. The Thar Dry Port and Others Versus C.C. Jodhpur 2017 (8) TMI 53 – CESTAT NEW DELHI*
- v. Vision Inc Versus Commissioner of Customs (Export), Mumbai 2010 (10) TMI 1074 – CESTAT, MUMBAI*

b. NIDB data of the contemporary period of similar/identical imports was not considered and termed as unreliable and contaminated and without contemporaneous import data, Residual Rule 9 of valuation in CVR, 2007 cannot be applied.

c. Assessee were not provided with the documents/copy of the hard disks despite repeated requests and request for cross-examination of the forensic analyst and Investigating Officers was denied by the Original Authority without giving any valid reason. The following cases were relied upon: -

- i. T. Thiyagrajan Versus Commissioner of Customs (Import) 2011 (4) TMI 31 – MADRAS HIGH COURT*
- ii. Vikas Gumber Vs Commissioner of Customs 2015 (315) ELT (del)*

- iii. *Shri Kejal Mehta & Otehrs Versus Commissioner of Customs (import) Mumbai 2014 (10) TMI 966 - CESTAT MUMBAI*
- iv. *Manish LalitKumar Bavishi Versus Addl. Director General DRI 2008 (1) TMI 638 BOMBAY HIGH COURT*
- v. *Commissioner Vs Metro Tyres Ltd 2005 (181) ELT 176 (SC)*
- vi. *Shalimar Rubber Industries Vs Collector 2002 (146) ELT (SC)*
- vii. *Arya Abhushan Bhandar Vs Union of India 2004 (143) ELT 25 SC*
- viii. *Lakshman Exports Ltd Versus Collector 2002 (143) ELT (SC)*
- ix. *Basudev Gard 2013 (294) ELT 353 (del)*

d. Imports made under other IECs are independent of NIFCO. There are many imports made by these IEC holders of goods other than confectionary items. Lending of IEC code is not illegal. Further, Assessee M/s. NIFCO cannot be deemed as importer in terms of Section 2(26) r/w Section 46(4) of the Customs Act, 1962 and relied upon the following case laws: -

- i. *Hamid Fahim Ansari 2009 (241) ELT 168*
- ii. *Brij Mohan Sood Vs C.C. Kandla 2007 (217) ELT 570 (Tri. - Amhd.)*
- iii. *Vijay Bhav Vs. Commissioner of Customs, Mumbai 2010 (262) ELT 351 (Tri- Mumbai)*
- iv. *Shree Shilpa Industries Vs Commissioner of Customs, Raigad 2009 (248) ELT 166*
- v. *Chaudhary International Vs Collector - 2002 (145) ELT A253*
- vi. *Trivandrum Rubber Works Ltd 1999 (106) ELT 9 (SC)*
- vii. *VXL India Ltd 2006 (193) ELR 396 (Bom.)*

e. Statements once retracted and again obtained under duress u/s 108 of the Customs Act, 1962 cannot be relied upon unless backed up by documentary evidence and in support, reliance was placed on the following:

- i. *KI. Pavunny Versus ASSTT. COLLR. (HQ.), C. EX. Collectorate, Cochin 1997 (2) TMI 97- SUPREME COURT OF INDIA*

- ii. *Vinod Solanki Versus Union of India [2009 (233) ELT 157- SC]*
- iii. *Mohtesham Mohd. Ismail versus Spl. Director Enforcement Directorate 2007 ELT*

f. The Ld. Advocate submitted that it is settled position of law that proforma invoices cannot be the basis for customs valuation under CVR, 2007 placing reliance on the following:

- i. *M/S. Mittal Impex, Dinesh Kumar Verma and Others Versus Principal Commissioner of Customs- New Delhi (ICD TKD) 2024 (12) TMI 296 - CESTAT New Delhi*
- ii. *M/S. Sunny Sales Vs Commissioner of Customs (Port), Kolkata Versus Commissioner of Customs (Port), Kolkata [2024 (10) TMI 514 - CESTAT Kolkata]*
- iii. *M/S. Oswal Metal Works Versus Commissioner of Customs, Chennai Iii Commissionerate Chennai [2024 (10) TMI 408 - CESTAT Chennai]*
- iv. *Sara Electro Acoustics Pvt Ltd Vs Cc, New Delhi [2008 (9) TMI 353 - CESTAT NEW DELHI]*
- v. *Saraswati Knitwear's Pvt. Ltd Vs CC Amritsar [2017 (12) TMI 729 - CESTAT CHANDIGARH]*

g. He contended that the serial numbers of hard disks as provided in the Mahazar drawn on 15.10.2013, do not tally with the serial numbers of hard disks analysed by M/s Ascent Technologies as per the Mahazar drawn on 25.10.2013. Hard disks seized on 15.10.2013 were bearing the number, model and pin as given below: -

- i. SEAGATE: S/N SID24F6V & Model: ST500DM002,
PIN 9YN14C-302,FWCC4C
- ii. SEAGATE: S/N Z24L32SN; MODEL ST500DM002 PIN
1FD1K2-302, 12282

Whereas the hard disks analysed by M/s Ascent technologies as per Mahazar drawn on 25.10.2013 bearing the number, model and pin as given below: -

- i. SEAGATE: S/N SID24F6V & Model: ST500DM002,
PIN 9YN14C-302, FWCC4C
- ii. SEAGATE: S/N Z24K32SN; MODEL ST500DM002 PIN
1BD1K2-302, 12282

He submitted that for second hard disk there is a mismatch of serial number and PIN. He further stated that the electronic evidence relied upon by the Department is not in accordance with statutory requirements as laid under section 138C of the Customs Act, 1962. He placed reliance on the following case laws: -

- i. S.N. Agrotech Vs Commissioner of Customs, New Delhi [2018 (4) TMI 856 - CESTAT New Delhi]*
 - ii. Anvar P.V Vs P.K. Basheer and Others [2014 (9) TMI 1007 - SC]*
 - iii. M/S. Geetham Steels Pvt Ltd & Others Vs Commissioner of GST & Central Excise, Salem [2025 (3) TMI 1098 - CESTAT CHENNAI]*
- h. Two-step verification as contemplated under Rule 12 of the CVR, 2007 has not been followed & Rule 9 of Customs Valuation Rules, 2007 cannot be applied without placing reliance on contemporaneous data. Under Residual Method, redetermination of unit values cannot be done on fictional or arbitrary findings. He also drew attention to Interpretative Note 9 to Rule 9 of the said Rules and stated that the value of imported goods determined under the provisions of rule 9 should be to the greatest extent possible, based on previously

determined customs values and relied on the following case laws: -

- i. Century Metal Recycling Pvt Ltd and Another Vs Union of India [2019 (5) TMI 1152- SUPREME COURT]*
 - ii. Commissioner of Customs (Imports), Mumbai Vs Bayer Corp Science & Ors. [2015 (9) TMI 1261 – SC]*
 - iii. Bilal Match Works Vs Commissioner of Customs Tuticorin [2025 (3) TMI 977 – CESTAT CHENNAI]*
- i. Classification of items- Nata-de-coco fruit juice, Quaker Oats and Coppo White Coffee are disputed by the DRI in the SCN. Whereas the Original Authority in the impugned order has confirmed the customs classification for only Nata-de-coco fruit juice and Coppo White Coffee as proposed in the SCN based on some information available in 'public domain'. But the no credible literature or past data of similar imports has been relied upon to justify the change of classification. Further, the declared customs classification has been accepted by the proper officer of customs at the time of assessment. On merits, the Assessee submits that the declared customs classification is correct and need not be interfered without any evidence.
- j. The Ld. Advocate argued that tampering or alteration of RSP stickers on retail packs was not done by the importers. Their Distributors M/s Ajantha KTK Products, Chennai, changed MRP stickers, in further supply to retail stores. The imported goods were doubly examined by the proper officer of Customs and FSSAI

and the goods cannot be cleared from Customs without RSP stickers. CHAs have confirmed the same. Mumbai Customs SIIB had an alert on Confectionery items and imported food stuff cannot be cleared without affixing RSP stickers. Regarding the value declared in RSP, VAT returns of the period 2008 to 2013 were regularly filed and the copies of VAT returns along with bills are relied upon by NIFCO to prove that the imported goods were sold at RSP declared on the packages. The second sales were done at half the price to the declared RSP/MRP. as shown in the table below: -

Buyer	invoice no (Local)	Item	Sales price	MRP/RSP declared	As per Mahazar drawn
Ramdev	24448 21.01.2013 (page 856 Vol2)	Twister wafer roll	360	720 For Live(Bill (page 1089)	420 (Page 937 Vol 4
Vijay	24450/21.01.2013 (page 854 Vol 2)	Milky Snacks Choco 13 gm	432	720 B/E no 9821614 dt 18.04.2013	495/- (page 904 -Vol4)/ also see Page 937

Case laws relied upon are: -

- i. *M/s. Acer India (Pvt.) Ltd. Versus Commissioner of Customs (Audit), Chennai [2024 (5) TMI 478 - CESTAT CHENNAI]*
- ii. *Bluemax Impex (India) Private Ltd. And Others Versus Commissioner of Customs (Seaport-Import), Chennai [2016 (1) TMI 553 - CESTAT CHENNAI]*
- iii. *Neulife Nutrition Systems Versus Commr. Of Cus. (Import), Nhava Sheva - CESTAT Mumbai Final Order A/85392/2024 Dated 08.04.2024*

Further, the market inquiry conducted by the DRI is nothing, but a few excel sheets without any authenticity and without

corresponding copies of the sales or VAT returns. Lastly, a formula of revising RSP by 2.42 times of the enhanced landed value is not acceptable without any real sales bills or credible evidence.

14. Th Ld. Advocate Mr. S. Krishnanand, appeared for Customs Broker, M/s. Bharat Rajj Enterprises, Chennai in Appeals Nos. C/41690/2019 & C/41721/2019 and stated that penalty imposed on 112(b) and 114AA of the Customs Act, 1962 is not tenable as the goods were examined and cleared by proper officer of the customs. Further pasting of stickers is allowed in customs area before the clearance of goods.

- a. He submitted that Section 114AA was specifically added to address and penalize the deliberate use of false or incorrect documents where goods were not physically exported but an export obligation was made, and it was never intended for imports. Even otherwise, the CHA did not make any false declaration knowingly or intentionally before Customs and provisions of section 114AA would not apply.
- b. Departmental appeal No C/41721/2019 is infructuous as assessee has already been fastened with penalties in the main Order-in-Original.

15. The Ld. Advocate Mr. Gaya Baksh Yadav appeared on behalf of M/s. Concord Zoom, M/s. Eskay logistics and M/s. Liladhar Joshi and stated the following: -

- a. He questioned the legality of Corrigendum dated 21.10.2019 issued to the impugned Order dated 29.07.2019 which imposed the penalties u/s 112(b) and 114AA on Concord Zoom, Eskay logistics and Liladhar Joshi.
- b. The Ld. Advocate argued that it is wrong to state that CHAs did not know the IEC Holders as the CHAs had met the IEC holders in person in each case as is evident in their statements recorded u/s 108 of the Customs Act, 1962. There is no finding in the SCN or in the impugned order regarding non-compliance of the KYCs. There was no action initiated against the CHAs under the CHALR/CBLR independently by the Department in all these cases.
- c. He submitted that there was SIIB alert on confectionery, and such items and goods were examined and the MRP stickers were affixed in each carton and the same is evident in their statements.
- d. There is no illegality if these IEC Holders were backed, supported or financed by NIFCO and relied upon the case of Hamid Fahim Ansari [2009 (168) ELT (241) HC] BOMBAY] wherein it is held that there is no legal bar

under the Customs laws that an IEC holder cannot import on behalf of financier if there is no illegality in such imports.

16. *Per Contra*, the Ld. Authorized Representative, Ms. O.M. Reena has represented for the Revenue and firstly argued that it is a case of gross under-invoicing as well as mis-declaration of MRP/RSP. In her written submissions,

- a. She contended that proforma invoices are recovered from the hard disk drives for the imports made by M/s Nakshatra Food Co. from M/s. Petra foods, Singapore which same Proforma invoice number was found mentioned as purchase Order No. in the invoices submitted before the Customs *vide* B/E and the goods which are physically examined for the live Bill of Entry 3531124 matched with the Proforma Invoice details than the actual invoice submitted before the Customs. So, the same value is adopted as transaction value as per Rule 3(1) of CVR, 2007 for the 10 B/E. For the remaining three B/Es, imported from the same supplier for the same goods, value was arrived as per Rule 4 of the CVR, 2007 of identical goods.
- b. NIDB data on identical goods/similar goods not made available as the SCN states that similar under-valuation was done by other importers namely M/s. Shahi Foods,

M/s. Kumar Impex, M/s. Cosmo Fine Foods etc., as found during the investigation by DRI CZU. Since the undervaluation appears to be a PAN India phenomenon, CZU-DRI alerted all formations over the country, for necessary action. It is also stated in the SCN that with this backdrop, placing reliance on NIDB data is irrelevant and hence they proceeded to arrive at the value as per Rule 9 of CVR, 2007, for the remaining 68 B/Es based on the statement of Kumar Brothers that they resorted to declaration of only 30% of the actual/original value before Customs and continued the same over a period of time. The parallel invoice recovered from other importers also corroborate the new worked out value.

- c. Similarly for the other products from other suppliers there is sudden increase of value declaration before Customs (twice the unit value for Magic crunch) by M/s Nakshatra Intl. Co before the Customs from Feb. 2012 to June 2012. Similar is the case for the remaining 445 B/Es in which, the Rule 9 value is arrived based on parallel invoices and proportionate working on 50% under valuation as agreed in their statements made by the Kumar Bros.
- d. Reason for the denial of cross-examination by AA is given *vide* Para 96 of OIO which stated that DRI

officials had done their work in official capacity and the assessee had already taken a stand by repudiating the contents of the statements.

- e. IEC of others are misused by Shri Mukesh Kumar as in the case of three IEC holders – M/s. Roop Lakshmi, M/s. Rachel (2009), M/s. Rachel (2011) on verification of their address, none was found. Whereas Shri Raju Jayantilal Joshi of M/s. Shri Impex has accepted that he had lent the IEC to Kumar Brothers for a consideration.
- f. Nakshatra International Good Co is the beneficiary Importer as evidenced from the statements of CHA firms namely C.R. Shukla of M/s. International Shipping Agency, M/s. Dinesh Devasiga of M/s Concorde Zoom and Shri T. Ravikumar, partner of M/s. Bharat Rajj enterprises *etc.*, that the import documents are received from Shri Mukesh Kumar of M/s Nakshatra Int Foods for all other IECs and the goods are delivered as per his advice.
- g. Retracted statements are not the only ones to establish the undervaluation but corroborative evidences in the form of physical examination of the goods for the live B/E 3531124 dated 14.10.2023 matching with the recovered Proforma Invoice no. (recovered from e-mails) was found mentioned as purchase order no in the invoice submitted before customs. Statement of

CHA firms and the statement of the main distributor M/s. Ajanta KTK Products prove undervaluation made by Shri Mukesh Kumar of M/s. NIFCO. Further proforma invoices, even not agreed, but assumed, not to be a final invoice/commercial invoice, it cannot be negotiated for a price reduction of twice the amount quoted in the proforma invoice from USD 36,125 C & F to the invoice value submitted before Customs @USD10350 C &F, as evidenced in the SCN.

- h. Statements of Shri Mukesh Kumar, Naresh Kumar and Kamlesh Kumar accepting under valuation to the extent of 30% on supplies from M/s Petra Foods, Malaysia and undervaluation to the extent of 50% from various other supplies of different confectionaries from Malaysia is also corroborated with matching parallel invoice values of same/similar products recovered from other importers namely Shai Foods, M/s Kumar Impex etc., during investigation by the DRI
- i. On the issue of classification of Nata-de-coco, she has submitted that it is prepared by fermentation of coconut water and since it is a drink with mixture of fruit juice/pulp, it appears to be rightly classifiable under CTH2202 and liable for BCD@13%. Copper Whie Coffee is nothing but instant coffee and hence rightly classifiable under 2101 and attracts CVD @8% and

lastly, Quaker oats is not merely rolled or flaked cereals, they are manufactured involving transformation of plain oats to instant oats through swelling, steam cooking to make them absorb moisture and ready to eat upon minimal heating, thus, classifiable under CTI1904 and liable for CVD @4/5%.

- j. No MRP was found pasted on Retail packs at the time of imports. The seizure Mahazars at the three godowns of M/s NIFCO revealed that the imported goods are not pasted with MRP stickers on the carton and also on retail packages. The seizure Mahazar at the premises of the main distributor namely M/s Ajantha KTK products revealed that the goods are pasted with higher MRP than the one declared by NIFCO before the Customs in the B/Es. Also, the statement of Shri Trinath Kumar of M/s. Ajanta KTK Products confirms that during receipt of goods no MRP was pasted on Retail Packages. Further, the statement of the CHA firms also corroborates that at the time of import only front few rows would be pasted with MRP stickers. Examination of Live B/E also revealed that no MRP is pasted on the impugned goods and unit MRP value declared in the B/E is less than the actual MRP.

k. There is no violation of principles of natural justice as alleged. DRI allowed the assessee to take copies and called them to office, but none appeared.

17. Heard both sides and we have considered rival submissions and evidences as available in appeal records including case laws relied upon.

18. There are 26 appeals against the impugned Order – 9 are party appeals and 17 are appeals filed by the Revenue. Out of 9 party appeals, only 7 appeals were represented before this Bench. In two unrepresented appeals C/41676/2019 (Shri Impex) and C/41677/2019 (Raju Jayanti Doshi), there is no response to the Notices of hearing. Of the 17 Departmental appeals, 4 appeals in the case of Nakshatra International Food Co. (NIFCO) (C/41711/2019), C/41712/2019 in the case of Mukesh Kumar, C/41713/2019 in the case of Naresh Kumar and C/41714/2019, are represented by their advocate, Mr. Ajay Kumar Gupta. 4 appeals filed by the CHAs- C/41690/2019 (Bharath Rajj Enterprises); C/40087/2020 (Eskay Logistics); C/40088/2020 (Mohanlal Liladhar Joshi); and C/40089/2020 (Concord Zoom) and their appeals were also represented by their advocates. Shri Krishnanand & Shri G B Yadav. 9 Departmental appeals at C/42715/2019 (Ajantha KTK Products), C/41716/2019 (Roop

Lakshmi Impex), C/41417/2019 (Subham Jain), C/41718/2019(Mahipal), C/41719/2019 (Rachel International Corporation), C/41720/2019 (Ramesh Roopchand Jain), C/41725/2019 (Shri Impex), C/41726/2019 (Raju Jayanthilal Doshi) and C/41727/2019 (Rachel International Corporation) were not represented by anyone and no communication was received from their end despite numerous notices for hearing. As such, we proceed to dispose of all these appeals arising out of the common impugned order involving identical facts and issues.

19. There are various issues for our determination such as, demand of duty from Kumar brothers jointly or severally and demand of duty from Kumar Brothers and 4 other IEC holders jointly or severally; redetermination of transaction value under Customs Valuation Rules, 2007; non-affixing of RSP stickers and rejection and redetermination of RSP under RSP Rules; admissibility of electronic evidence and statements in terms of section 138C, relevancy and admissibility of statements recorded u/s 108 in terms of 138B of the Customs Act, 1962; proforma invoices *vis-à-vis* parallel invoices for the purpose of rejection of declared values; classification of two items under dispute; the legality of Corrigendum; invocation of extended period of limitation; Revenue appeals on redemption fine u/s

125 and Penalties u/s 112(b) and 114AA on the Custom Brokers and on other assesseees. The above issues which arise for our determination are taken up as under: -

A. Whether demand of customs duties jointly or severally is legal or not?

20.1 For the imports made by NIFCO, the customs duty has been confirmed 'jointly or severally' on all three brothers Mukesh Kumar, proprietor of NIFCO and his two brothers – Kamlesh Kumar and Naresh Kumar even though NIFCO is a proprietor firm. An Import Export Code (IEC) is a mandatory requirement for importing goods into India under the Foreign Trade (Development and Regulation) (FTDR) Act, 1992. Section 7 of the Act explicitly states that no person can import or export goods without obtaining an IEC unless specifically exempted. In this case, 388 Bills of Entry were filed by NIFCO with Mukesh Kumar as Proprietor who has given declaration to the truth of the contents in the Bills of Entry under section 46(4) of the Customs Act, 1962. Therefore, the only person who can be legally declared as importer is Mukesh Kumar as proprietor of M/s NIFCO. NIFCO is a proprietorship and not a partnership firm.

20.2 In this connection, we refer to a decision of the coordinate bench of this Tribunal in *Commissioner of Customs, Chennai Versus Unik Traders*, [2025 (8) TMI 340 -

CESTAT CHENNAI] wherein it has been made clear that demanding duty jointly or severally does not arise unless it can be shown that the goods have been imported jointly as under: -

"8. As per section 12 of the Customs Act 1962, the charge of customs duty is on the goods imported or exported. A bill of entry for home consumption has to be filed under section 46 by the importer of goods. The expression "importer" is defined in section 2(26) in relation to any goods at any time between their importation and the time when they are cleared for home consumption. As per section 47 it is the importer who shall pay the import duty. It therefore does not matter if the importer or exporter entrusts this responsibility to somebody else, the liability in law rests with the importer or exporter. Hence duty can be demanded only from a person liable to pay the duty as per law. As per the settled legal position, the question of demanding duty jointly or severally does not arise unless it can be shown that the goods have been imported jointly."

20.3 Further, the decisions rendered in the cases of *Krishna Kumar Gupta 2016 (338) ELT 432 (Tri-Ahmed)*, *Tejas Arvind Bhai Desai - 2016 (338) ELT A140 (Guj)*, *Hotel Bissau Palace & Others Versus Commissioner of Customs (Export) Nhava Sheva - 2017 (6) TMI 1010 - CESTAT MUMBAI* also affirm that any demand of duty cannot be confirmed against various persons on jointly and severally basis. Therefore, we hold that the demand of duty from M/s. NIFCO proprietor Mukesh Kumar, and his two brothers jointly or severally is bad in law. Customs duty can only be demanded from Mukesh Kumar, sole proprietor of NIFCO.

20.4 For the imports made by allegedly misusing the other 4 IE Codes, the customs duty has been demanded and confirmed jointly or severally on all three brothers collectively as Kumar Brothers and each of the 4 IEC holders - Roop Lakshmi Impex, Shri impex, Rachel International Corporation Chennai (2009) & Rachel international Corporation (2011). Revenue has alleged that NIFCO have misused these 4 IECs and NIFCO is the actual beneficial importer and demand of duty has been made jointly or severally. Revenue has drawn this conclusion based on statements of their Customs brokers and other logistics service providers. For all imports the point of contact was reportedly Mukesh Kumar, the proprietor of NIFCO and all payments towards customs duties and other charges were all borne by Mukesh Kumar. But, we find that Assessee's Advocate has countered by stating that all IEC Holders are in existence. Shri Raju Jayanthilal Joshi of M/s. Shri Impex has even deposed before the DRI and given voluntary statement dated 11.04.2014 and has admitted having lent his IEC to Mukesh Kumar for monetary consideration. Statements of the Customs Brokers M/s. Eskay Logistics, Mumbai, M/s. Mohanlal Liladhar Joshi, Mumbai, & M/s. Concord Zoom, Mumbai, before the investigating agency indicate that these CHAs had met the IEC holders while transacting business with them. Shri John Kennedy, proprietor of M/s Eskay

Logistics in the voluntary statement dated 02.05.2014 has answered to a specific question to his relationship with M/s Rachel International (IEC 0409005401) and stated that he had business relationship since 2009 and had met one Ramesh Jain, proprietor of Rachel (IEC 0409005401) along with Mukesh Kumar, proprietor of NIFCO. Similarly, voluntary statement of Dinesh Devadiga, authorized signatory of M/s Concorde Zoom also confirmed to have met the proprietor, Shri Mahipal of Rachel (0411009389) along with Mukesh Kumar of NIFCO. Learned Advocate for the main assessee also referred to the Mahazar drawn on 14.03.2014 from the address/place of M/s. Roop Lakshmi Impex, Chennai wherein the landlord of the place confirmed the firm by the name M/s Roop Lakshmi Impex operated from the said premises. Rachel International Corporation had been a frequent importer and had been importing various assorted items from time to time and copies of various such Bills of Entry have been provided as documentary evidence as part of appeal record. The Ld. Advocate submitted that the existence of 4 IEC holders cannot be questioned. It is not a case of dummy IECs as there is evidence on record to establish that all the IECs were genuine and respective CHAs had met IEC holders in person.

20.5 The Ld. Advocates for CHAs also stated that all the imports in these 4 IECs took place in Mumbai Ports and not in Chennai ports. NIFCO also used to import at Mumbai during the same time. There is no allegation against CHAs on non-compliance with KYCs required under CHALR/CBLR, 2018. We have also been informed by their counsels that no action was contemplated / taken against the CHAs under the CHALR/CBLR, 2018. Further, in each Bill of Entry, the declaration of truthfulness of contents under section 46(4) was given by each IEC holder. As per section 2(26) of the Customs Act, 1962, an importer is 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be an importer'. All the documents including Bill of lading are reportedly in the name of these IEC holders and the SCN and impugned order also holds them as importers as duty has been demanded from them, although jointly or severally. Shri Impex, Mumbai one of the IEC Holders, has filed appeal No. C/41676/2019 and therefore, his existence cannot be doubted. Concept of 'beneficial owner' was introduced in the Customs Act, 1962 *vide* Finance Act, 2017 w.e.f. 31.03.2017, i.e. much later than the present imports between 2008 to 2013. Therefore, the imports made under 4 IEC holders cannot be clubbed with NIFCO. There is no

provision under the Customs Act, 1962 which prohibits the use of IEC of third party who is holding valid IEC Number. The Ld. Advocate for CHAs Mr. G.B. Yadav has referred to the case of *Hamid Fahim Ansari Vs. CC (Import), Nhava Sheva, 2009 (241) E.L.T. 168 (Bom.)* wherein it was held as: -

"5. In other words, imports have been done in the name of the petitioner but for some other person. In so far as respondents/Customs Authorities is concerned, they have not pointed out to us any provision under the Customs Act or any Rule or Regulation framed thereunder by which the person having valid IEC Number and having paid the custom duty is prevented from importing goods. At the highest, if the petitioner has obtained IEC number by misrepresenting the Ministry of Commerce and Industry and Director General of Foreign Trade, it is for that body to take action.

6. In these circumstances, in our opinion, petitioner having paid the custom duty is entitled to release of the goods. We, therefore, direct respondents to release the goods within 48 hours from today."

20.6 We have gone through the rival contentions on this issue. In this regard, we refer to a very recent decision in *Marina enterprises Versus Commissioner of Customs Indore - 2025(1) TMI 1021 - CESTAT NEW DELHI* wherein the principal bench has observed that 'Merely because someone else is the owner of the goods or the beneficial owner, the importer does not cease to be the importer. Nothing in the definition of the importer under section 2(26) excludes the IEC holder who imported the goods from the definition of 'importer' simply because the owner of the goods or the beneficial owner of the goods was different or

because some other person holds himself to be the owner. All these persons get included in the definition of importer. Therefore, the importer has to face the full consequences of any import regardless of the fact that he was not the owner of the goods and he had imported them at the behest of someone else'. We also find force in the relied upon judgment of the Hon'ble High Court of Judicature at Bombay in the case of *VXL India Ltd. Versus Commissioner of Customs, Bombay - 2005(3) TMI 149 - HIGH COURT OF JUDICATURE AT BOMBAY* wherein it is categorically stated that 'it is the importer of goods who is liable to pay duty on the goods that he has imported. Customs duty is a duty on import. Hence, obviously, no one else normally be required to pay that duty'. Therefore, customs duty cannot be demanded from M/s NIFCO and his brothers jointly or severally along with these IEC holders for imports made in the names of these IEC Holders. In short, NIFCO is accountable to the extent of imports made against their IEC in 388 Bills of Entry, and the rest of the 4 IEC Holders for imports detailed in Table 1 above.

B. Whether re-determining the transaction values is in accordance with Section 14 of the Customs Act, 1962 r/w CVR, 2007?

21.1 This being the case of undervaluation, the adjudicating authority has applied Rule 3(1)/4/9 of the CVR,

2007 after rejecting the transaction values under Rule 12 of the CVR, 2007.

21.2 Whereas the Ld. Advocate for NIFCO has questioned the procedure followed by the adjudicating authority in terms of Rule 12 of the CVR, 2007 relying upon the decision rendered by the Hon'ble Supreme Court of India in the case of *Century Metal Recycling Pvt. Ltd. and Another Vs. Union of India [2019 (5) TMI 1152- SUPREME COURT]* which has summarized the requirements under Rule 12 as under: -

"15. The requirements of Rule 12, therefore, can be summarised as under:

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules."

From the above, it is clear that as per sub-Rule (2) of Rule 12, the proper officer when required must intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared. The said mandate of sub-Rule (2) of Rule 12 cannot be ignored or waived. Formation of opinion regarding reasonable doubt as to the truth or accuracy of the valuation and communication of the said grounds to the importer is mandatory and any attempt to by-pass or circumvent the statutory mandate is unacceptable. The main Assessee has stated that he was never communicated in writing the grounds of rejection.

21.3 In *Bilal Match works Vs Commissioner of Customs, Tuticorin [2025(3) TMI 977 - CESTAT CHENNAI]*, this Bench relying on the Century Metal Works judgment of the Hon'ble Supreme Court of India has stated there is a two-step verification and examination required to be carried out while rejecting the transaction value under Rule 12 observing as follows: -

"4.1 At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules and the value needs to be determined in terms of Rules 4 to 9 of the CVR 2007. Rule 12 of CVR, 2007 empowers the department to reject the transaction value declared by the importer. It does not

provide a method of determination of value but provides the procedure or mechanism in cases where declared value has been rejected. Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1)."

We find that Original Authority has not complied with the two-step verification and examination procedure. Therefore, rejection of transaction values in terms of sub-Rule 2 of Rule 12 of the CVR, 2007, is itself not legally sustainable.

21.4 In most of the imports, Rule 9 has been invoked to redetermine the transaction value. Ld. advocate has stated that the department has disowned their NIDB data and without data of contemporaneous imports, Rule 9 cannot be invoked as 'previously determined values' is a precondition for this Rule to be made applicable. He has also pointed out that Rule 4 and Rule 9 of the CVR, 2007 cannot be applied without relying on data of contemporaneous imports.

21.5 Whereas in this case, the Department has disowned their own NIDB data by declaring it as contaminated on account of suspected pan-India undervaluation. The reliance of the main assessee on the decisions in the case of *Sara Electro Acoustics Pvt Ltd Versus*

Commissioner of Customs New Delhi – 2008(9) TMI 353 – CESTAT NEW DELHI and Saraswati Knitwears Pvt Ltd & Others Versus CC, Amritsar – 2017 (12) TMI 729 – CESTAT Chandigarh are also relevant to this case, in that the enhancement of values based on Proforma invoices was held as completely unsustainable in the absence of any evidence of contemporaneous imports. We find that the Department, has disowned their own NIDB data of contemporaneous imports assuming as contaminated with under-invoiced imports. Rule 9 of the CVR, 2007 cautions about determination of values based on fictional values or arbitrary values. Interpretative Note to Rule 9 under Rule 13 of the CVR, 2007, makes it clear that the Rule 9 requires 'previously determined values' as under: -

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

We find that in *Bilal Match Works (supra)* Chennai Tribunal has categorically held that 'there are two conditions in this rule, first, value shall be determined using reasonable means consistent to the Valuation Rules and data available in India, secondly value so determined should not exceed the price of such/like goods sold in course of international trade'. So, on

this account also the rejection of declared transaction value under Rule 12 and then determination of transactional value under Rule 9 of the CVR, 2007 is not in accordance with the said Rules.

We also find force in the submissions of the assesseees that there is no evidence of additional flowback of consideration related to the impugned imports. The main assessee in his reply to Show Cause Notice had provided a list of suppliers who export similar and identical products into India and requested for comparing unit prices of their imports but the adjudicating authority did not consider the submissions of NIFCO in the impugned order because as NIDB data was not considered relevant in this case. The non-reliance and disowning the data of contemporaneous imports by the Department makes this entire exercise of redetermination of transaction value under Rule 4 & Rule 9, as legally unsustainable.

21.6 In respect of 10 Bills of Entry, the department has invoked Rule 3(1) of CVR, 2007 r/w Rule 9 by treating retrieved proforma invoices as parallel import invoices and accordingly transactional values have been re-determined. The main assessee has contested and stated that the proforma invoices are unsigned papers of no intrinsic value and are not parallel invoices.; that proforma invoices are

dated 02.05.2013 (except two – dated 04.02.2013) whereas the actual imports took place after 4-6 months after negotiations, that product description also does not match; that there is advance payment in the actual invoice in the form of Telegraphic Transfer.

21.7 Furthermore, the advocate has argued that proforma invoices are always negotiable and are merely a promise and not a contract unless these are converted into proper Import/commercial invoices. He has contended that it is a settled position of law that Proforma Invoice is nothing more than a tentative statement of the seller offer for sale of the goods at the price mentioned therein. Until the buyer accepts the offers and actually transacts, it is merely a quotation and hence cannot be the basis of actual transaction value in terms of Section 14 of the Customs Act, 1962 read with Customs (Determination of valuation of Imported Goods) Rules, 2007. In support of this contention, he has relied upon the case law in *M/s. Oswal Metal Works Versus Commissioner of Customs, Chennai III Commissionerate, Chennai [2024 (10) TMI – CESTAT CHENNAI]* wherein it is held that the acceptability of the transaction value has been directly linked to the corresponding remittance made to the overseas supplier and that 'transaction value is a function of price, however, there

was no evidence to show that there is a flow back or that the importer in the impugned matter has paid any amount over and above the declared transaction value'. In this case too, there is no evidence placed on record to show the payment made to the overseas supplier over and above the declared import value. Therefore, the values of proforma invoice values cannot be deemed as transactional values and this would mean Proforma Invoice would remain merely an offer and not an enforceable promise in the form of negotiated Import Invoice. Therefore, re-determination of transaction value with respect to ten Bills of Entry under Rule 3(1) of the CVR, 2007 is not sustainable.

21.8 In the case of *M/s. Mittal Impex & Others Vs. Principal Commissioner ICD TKD CESTAT NEW DELHI – 2024 (12) TMI 296*, principal bench has held that Performa invoice cannot be the sole document to prove alleged undervaluation, there must be similar or identical imports of contemporary period to support the allegation of under-invoicing. The relevant paras are reproduced below: -

"8.7 Further, we observe that mere suspicion on invoice produced cannot be the ground to reject transaction value. We rely upon the decision of Hon'ble Supreme Court also in the case of Commissioner of Customs, Calcutta Vs. South India Television (P) Ltd. reported as 2007 (214) ELT 3 (SC) has held as follows:

"what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to

give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under-valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

Customs law is clear on the evidentiary value of the proforma invoices, and thus, the issue is no more *res integra*. We refer to the decision of this Tribunal in *Commissioner of Customs, Chennai Vs. Sahara Enterprises*

[2006 (206) ELT (Tri. Chennai)] wherein it is held that a proforma invoice is a quotation or offer and hence does not constitute a valid basis for enhancement of value of the imported goods. Proforma invoice alone is not sufficient to be used for valuation purpose unless it is supported by some contemporaneous imports of the same or proximate values. Overall, the entire exercise of redetermination of transaction values in all 566 Bills of Entry in terms of Rule 3(1)/4/9 read with Rule 12 of the CVR, 2007 is not in accordance with the CVR, 2007 read with section 14 of the Customs Act, 1962. We find that in all the Bills of Entry except for 10 Bills of Entry involving proforma invoices covering imports from M/s. Petra Foods, Singapore, the basis of redetermination of value is the statements of the main assessee and his brothers u/s 108 of the Customs Act, 1962 as the main assessee have admitted that they had declared 50% values in respect of supplies of imports from suppliers other than M/s. Petra Foods, Singapore. We would further examine the admissibility and relevancy of the statements recorded in terms of section 138B and admissibility of the electronic evidence in terms of 138C of the Customs Act, 1962 before such statements become admissible evidence and credible basis for valuation purposes.

C. Issues related to RSP, non-affixing and tampering of stickers thereof: -

22.1 Confectionery items, chocolates, jellies and juices imported in retail pack/cartons in the impugned case require MRP/RSP stickers under the Legal Metrology Act, 2009 and these goods are also covered under the Third Schedule of the Central Excise Act, 1944 and attract duty of excise under section 4A of the Central Excise Act, 1944. There are three allegations on RSP viz., non-pasting of RSP stickers on the imported goods: affixing higher rate of RSP stickers after clearance of goods and declaring less MRP/RSP than actual at the time of imports. We will take one by one.

22.2 On the issue of allegation of non-affixing of MRP/RSP stickers on imported goods, the case of the department is that many cartons were found without RSP stickers in the office/godowns of NIFCO. Goods in the live Bill of Entry were also found without stickers except for a few cartons placed in the front side of the container. Assessee on the other hand, has stated that, the goods were pasted with MRP/RSP stickers before clearance from customs area and the tampering of stickers was not done by them, but by their distributor M/s. Ajantha KTK Products, Chennai, after the clearance of goods. Attention is drawn to the relevant portion of the Mahazar drawn on 17.10.2013 at the premises of M/s. Ajantha KTK Products, wherein Shri KK Thrinath Kumar,

proprietor has confirmed that all the goods bear MRP stickers in NIFCO godowns: -

'They are getting a discount of about 50% to 60% on the MRP prices printed on the products; that all the imported goods bear the MRP stickers during delivery from the NIFCO office/godown at EVK Sampath Salai, Chennai as detailed in the Annexure to this Mahazar except for Cocon and CoChelle variants of chocolates and jelly varieties, the MRP stickers are made /printed and affixed by him at Ajantha KTK Products as per the request of the retail customers'.

22.3 Further, all these goods being food items, require mandatory and statutory compliance of labelling standards under the Foods Safety and Standard Act of India, 2005 (FSSAI) before allowing clearance for domestic consumption. All the Bills of Entry have been subjected to examination for sample drawal and verification by FSSAI. The main assessee has further, relied on the statements of CHAs which revealed that for imports at Mumbai, there was an alert from SIIB, and all confectionery goods were examined before clearance. The main assessee has also referred to the statements of the CHAs, and every CHA has stated that goods were cleared only after affixing the MRP/RSP stickers. As per the statement of Shri John Kennedy Nadar of M/s. Eskay Logistics, there was an alert of SIIB in Mumbai ports on confectionary imports. MRP stickers were affixed before clearance form Customs. Statement of Shri T Ravi Kumar of M/s. Bharat Rajj Enterprises also confirms the presence of MRP stickers. In a reply to specific

question on MRP stickers, he has stated that except for Magic Crunch (one type of confectionery item) rest of goods would come with MRP stickers and for Magic crunch stickers would be pasted before clearance. Statement of Shri Dinesh Devadiga also confirms the availability of the MRP stickers before the clearance of goods. As per the Statement of Shri Chandrasekhar Radhekrishna Shukla of M/s International Shipping Agency, wherever MRP stickers were affixed on the cartons, the labour and sticker charges were paid by Shri Mukesh. Further, during the relevant time, pasting & affixing of stickers was allowed in the Customs area before clearance of the goods for home consumption, if these are not affixed in the source country.

22.4 Further, the Ld. Advocate has submitted that during the period 2008 to 2013, there was double verification of availability of stickers, and all consignments must have been inspected/examined one by customs officer and second by FSSAI authorities before the clearance for home consumption. In this case, there are 566 Bills of Entries, cleared from three major ports of India and it could not be feasible or possible to assume or presume that all imported goods were cleared from the Customs Areas without affixing RSP stickers.

22.5 We find that it was contended that RSP Price Lists seized during the search on NIFCO office/godown on 15.10.2013. tallied with RSPs declared in the Bills of Entries. In the Live Bill of Entry 3531124 dated 14.10.2013, the MRP for Wafer Biscuit Roll was declared as Rs.720/- and in seized RSP list, the RSP shown was same as Rs.720/- for the same item. These RSP price lists are also comparable with the sales Bills attached with the statutory VAT returns of the successive years filed by the Assessee. As per the sales Bills, assessee used to sell goods such as the wafer Biscuit roll to their distributors such as RK Trading Corporation, Arihant Trading, Ajantha KTK Products at sales price Rs. 360/- to Rs. 420/- as against the declared MRP Rs.720/-, thereby giving a discount of 50% approximately for the distributor and retailer margin which is normal in their trade. M/s. Ajantha KTK Products (@page 1281 - Vol 4) has accepted that they were getting 50% to 60% discount on the MRP. From the facts submitted by the Assessee, it was contended that declared MRP prices in the Bills of Entry were same as the RSP Price List maintained by the assessee and subsequent sales to distributors were 50% to 60% less than the MRP prices.

22.6 Insofar as non-availability of MRP/RSP stickers in the goods of Live Bill of Entry is concerned, it is curable

remedy as the importer is allowed to affix stickers within customs area before the clearance of goods. It is premature to allege that MRP stickers were not available on the goods during DRI examination as the goods were very much in customs area. In any case, Live Bill of Entry could not be processed for clearance as the assessee could not meet the conditions laid down by the department for provisional release, therefore the allegation would not survive.

22.7 Regarding allegation of affixing higher MRP stickers by importer- assessee after clearance from home consumption, the case of the department is that both Mukesh Kumar and Thrinath Kumar of Ajantha KTK Products have admitted tampering and pasting enhanced RSP stickers resulting in revenue loss. Whereas, the Assessee-importers have contended that MRP stickers were tampered or altered by their distributor without the knowledge of the principal importer-supplier and the activity of pasting/tampering or altering or obliterating MRP stickers was done by the distributors at their premises, it amounts to manufacturing in terms of section 2(f)(iii) of the Central Excise Act, 1944 as the imported goods are listed in the Third Schedule to the Central Excise Tariff and recovery of any duty should be in accordance with the machinery provisions of the Central Excise Act, 1944 and not under the Customs Act, 1962. The

confectionery items, biscuits, jellies and chocolates are required to be assessed to RSP based excise duties in terms of Notification No. 13/2002-CE(NT) Dated 01.03.2002. In support of this contention, the main Assessee has relied on the case of *M/s. Neulife Nutrition Systems Vs Commissioner of Central Excise Pune -II [2018 (4) TMI 27 - CESTAT MUMBAI]* wherein it is held that 'any revision thereafter would necessarily require the affixing of fresh labels which would amount to manufacture and therefore, subject to duties of central excise as leviable under Central excise Act, 1944 with its own machinery provisions for recovery of any duty that would arise in consequence'. The appropriate action of duty recovery ought to have been initiated on M/s. Ajantha KTK products under the provisions of Central Excise Act, 1944.

We refer to the case of *M/s. Quantum Hi-Tech Merchandising Pvt. Ltd. Versus Commissioner of Customs, New Delhi [2024 (11) TMI 844 - CESTAT NEW DELHI]*, wherein the Principal Bench has held that if the MRP stickers are altered after the clearance of goods and without the knowledge of the importer and with no flow of money coming back for distributors or retailers, the demand of customs duty arising out of enhanced revised MRP cannot be demanded from the importer by observing as follows: -

"10. Rule 5 of Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules 2008 has been relied upon by the department while confirming the impugned

demand. We observe that the said rule is vis-a-vis a manufacturer who alters or tempers the retail sale price declared on the package of the goods after their removal from the place of manufacture resulting in increase of price and in such situation the said increase price shall be taken as retail sale price of the goods removed. However, since the appellant herein is the importer as different from the manufacturer, the said rule is held to have wrongly been invoked. The apparent and admitted fact on record remains is that the MRP sticker found present on the product examined at import shed was true as per the declaration in the import documents. The alteration was found at a later stage when the goods were already reached the domestic market to the retailers through the distributor of the appellant. The only basis that origin of both types of MRP stickers i.e. from two different retailers is same has wrongly been held to be evidence against appellant to have altered those stickers. Thus, we hold that there is no evidence whatsoever on record that the alleged alteration in the MRP was done by the appellant or with the consent and/or knowledge of the appellant. As already brought to notice that there is no evidence for any flow back of money to the appellant. The onus was upon the department to prove that any money has come back to the appellant. On the contrary, the proprietors of the retailers have denied sending any money back to the appellant. We hold that demand has been confirmed on the basis of presumptions and surmises. We rely upon decision of this Tribunal in the case of Videocon International Ltd. Vs. Commissioner of C. Ex. Aurangabad reported as 2004 (167) ELT 33 (Tri.-Mumbai)."

Accordingly, post-import tampering or obliterating RSP stickers and pasting enhanced RSPs and the resultant revenue recovery arising out of such manufacturing in terms section 2(f) of the Central Excise Act is covered under the machinery provisions of Central Excise laws in this case.

22.8 The Ld. Adjudicating Authority has held that the MRP/RSPs of respective goods declared at the time of imports were far too less than the actuals and the same were redetermined in terms of Rule 4(b) of the Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules,

2008. As per the SCN and the impugned order, actual MRP Lists were gathered from prominent retail stores / distributors. In few cases where the MRPs of some products were not available, the same were re-determined at 2.42 times the actual declared transaction value. Whereas the main Assessee submits that the MRP Lists collected by DRI are a few unauthenticated excel spread sheets claimed to be obtained from some retailers, that there was not even one sample sale invoice or copies of such invoices placed on record and that there was no finding whether the retailers were selling those goods which were imported by assessee in this case. It is the Assessee' contention that they had placed on record all the VAT returns of the corresponding period along with actual transacted invoices.

22.9 After carefully considering rival contentions and considering non-sustainability of alleged under-invoicing, as discussed above, we do not find any merit in allegation of declaring lesser MRP/RSP. There is no legal backing of any formula of multiplying landed cost by 2.42 times to re-determine the MRP/RSP as applied in this case.

D. ADMISSIBILITY OF ELECTRONIC EVIDENCE:

23.1 As per the appeal records, Annexure A7 of the Show Cause Notice comprises of the electronic evidence in

the form of 104 pages of printouts, said to have been extracted from two hard disks and e-mails. The Ld. Counsel for the main Assessee has pointed out to the discrepancy in serial numbers between the hard disks which were seized from assessee's premises and the hard disks which were given to one M/s. Ascent Technologies for forensic analysis in Chennai DRI office. The following hard disks were seized as per Mahazar drawn on 15.10.2013 at assessee's premises (@page 908 – Vol 4):

1. SEAGATE: S/N SID24F6V & Model: ST500DM002, PIN 9YN14C-302,FWCC4C

2. SEAGATE: S/N Z24L32SN; MODEL ST500DM002 PIN 1FD1K2-302, 12282

As per the Mahazar drawn at the office of DRI, Chennai on 25.10.2013 (@962 – Vol 4) the hard disks given to M/s Ascent Technologies bear the following numbers:

1. SEAGATE: S/N SID24F6V & Model: ST500DM002, PIN 9YN14C-302, FWCC4C

2. SEAGATE: S/N Z24K32SN; MODEL ST500DM002 PIN 1BD1K2-302, 12282

The Ld. Advocate for the main assessee has underlined in his submission that there is mismatch of Serial Number (S/N) and PIN with respect to Disk number 2.

23.2 Further, he questions the authenticity of relied upon printouts including the printouts of 10 proforma invoices as these do not bear the signatures of any of the persons of M/s. Ascent Technologies and DRI officers. As per the Mahazar drawn on 25.10.2015 M/s. Ascent Technologies agency did not take printouts except for generating forensic reports. E-mail printouts appear to have been taken on 11.07.2013 as each of the printouts show this date in the extreme left side but signature of the officer who has taken prints is missing. It is his contention that their protestations on the authenticity of the electronic evidence went unheeded and the cross-examination of the computer expert and others was denied by the Adjudicating Authority. He has emphasis on the absence of mandatory and statutory certification in terms of section 138C of the Customs Act, 1962

23.3 We find that the central pillar of Department's case is the reliance placed on computer printouts stated to have been taken from seized electronic media. Issue of under-invoicing of imports is centered around the retrieved documents mainly on 10 proforma invoices from electronic media. This being the case, the investigating agency ought to have diligently complied with the provisions of section 138C of the Customs Act, 1962.

23.4 Section 138C(4) mandates a certificate identifying the electronic device, describing the manner in which such electronic record was produced, and certifying its authenticity by a responsible official. These safeguards are substantive protections against manipulation and fabrication of electronic evidence. In *Popular Paints and Chemicals v. Commissioner of Central Excise and Customs, Raipur* [Excise Appeal No. 52738 of 2016, decided on 06.08.2018] it has been clearly held that computer printouts can be admitted in evidence only if produced in accordance with the statutory safeguards governing electronic evidence. The Tribunal observed as under: -

"Electronic records being more susceptible to tampering, alteration, transposition, excision etc., without such safeguards, the whole adjudication based on proof of electronic records can lead to travesty of justice. The provisions of Section 65B of the Evidence Act and Section 36B of the Central Excise Act are pari materia."

23.5 We find that the issue regarding the admissibility of electronic evidence in the absence of statutory certification is no longer *res integra*, in view of the binding precedent laid down by the Tribunal Chennai in *Geetham Steels Pvt. Ltd. v. CCE*, reported in 2025 (3) TMI 1098 (CESTAT Chennai), as well as by several other consistent decisions. This Tribunal has categorically held that computer printouts or electronic data retrieved from pen drives or other secondary devices

cannot be relied upon unless the mandatory requirements of Section 36B, particularly the certificate under Section 36B(4), are strictly complied with.

23.6 The Ld. Counsel for the main Assessee has cited the case of *S.N. Agrotech & Others VS C.C. New Delhi - 2018(4) TMI 856*, in respect of customs proceedings. The issue involved in that case was mainly confined for determination, as to whether the transaction values declared by the importers are correct or not. This Tribunal's Principal Bench has examined the legality of electronic evidence in terms of section 138C of the Customs Act, 1962 and has held as follows: -

'11.the evidence in the form of computer print-outs etc. recovered during the course of investigation can be admitted as in the present proceedings only subject to the satisfaction of the sub-section (2) of Section 138C. This refers to the certificate from a responsible person in relation to the operation of the relevant lap-top/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer print-outs from the seized lap-tops and other electronic devices have not been accompanied by a certificate as required by the Section 138 C (2) as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of under-valuation and mis-declaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices seized from the residential premises of Shri Nikhil Asrani, Director in respect of which the requirement of Section 138C (2) has not been satisfied. On this ground, the impugned order suffers from un-curable error and hence, is liable to be set aside.'

In a very recent decision of the co-ordinate Bench in *M/s. Sino Import & Export Pvt Ltd. and Shri Amarish Versus Commissioner of Customs Chennai II Imports - 2025(12) TMI 835 - CESTAT CHENNAI*, on the issue of compliance of adherence to Section 138C is re-emphasised as under: -

"14.This Tribunal, in a catena of decisions, relying on Apex Court decisions have repeatedly emphasised the requirement to adhere to the provisions of Section 138C for the acceptability of the document being relied upon. In a recent decision of the Principal Bench in M/s. Composite Impex and Shri Rajiv Dhuper Versus Principal Commissioner of Customs, (Import), New Delhi, reported in 2025 (5) TMI 1538 -CESTAT NEW DELHI, placing reliance Apex Court decisions as well as earlier decisions of the Tribunal, it was held that the printout taken from a secondary evidence (namely the pen drive in that case) could not have been considered as evidence in the absence of a certificate under section 138C of the Customs Act. A coordinate bench of this Tribunal in the decision authored by one of us M. Ajit Kumar, Member (Technical), reported as M/s. Media Graphics v Commissioner of Customs, Chennai, 2024 (8) TMI 728-CESTAT CHENNAI, has held that a certificate under Section 138C(4) is a sine qua non for admissibility of such evidence under the Customs Act, 1962. Similar decisions abound and we desist from listing them to avoid prolixity."

In *M/s. Composite Impex and Shri Rajiv Dhuper Versus Principal Commissioner of Customs, (Import), New Delhi*, the Principal Bench has also held that 'if the data is not stored in the computer but officers take out a printout from the hard disk drive by connecting it to the computer, then a certificate under section 36B of the Central Excise Act is mandatory'. In the present case, printouts were taken from hard disks and without a certificate in terms of Section 138C, the relied upon printouts of e-mails cannot be treated as valid and legal documents. Accordingly, we hold that the

electronic printouts relied upon by the Department cannot be treated as substantive evidence and cannot legally sustain the charge of under-invoicing and misdeclaration of the imported food stuff.

E. Compliance to Section 138B: -

24.1 We note that the very first statement which was recorded in this case was that of Kamlesh Kumar u/s 108 of the Customs Act, 1962, brother of Mukesh Kumar on 31.10.2013, but it was retracted on 01.11.2013. However, Kamesh Kumar was again asked to depose before the DRI on 05.11.2013 and one more statement was recorded on the same day. Ld. Counsel for these assessees has stated that this retraction of statement was also brought out in the affidavits filed before the Hon'ble Madras High Court in W.P. No. 1388 of 2014, W.P No. 1399 of 2014 & W.P No. 1399 of 2014 while seeking release of seized goods.

It has been informed that their requests for providing image copies of the seized hard disks and other such documents were not met by the DRI as the appeal records indicate that the assessee have written to DRI on 20.11.2013 and 20.06.2014, 29.09.2016 & 15.02.2019 for supply of seized documents including hard disks. Further, the grievance of the assessee is that their request for cross-examination before the original authority was also denied. The assessee

contended that they have repeatedly questioned the authenticity of the printouts as the process of retrieval of documents was done behind their back. This is a case of alleged under-invoicing and the main basis of rejecting the declared values is the statements of the main assessees. Therefore, the admissibility and relevancy of statements ought to have been considered in terms of the provisions of section 138B of the Customs Act, 1962.

24.2 In this case, apart from 10 proforma invoices in relation to 10 Bills of Entry, the department has solely relied on the statements of Mukesh Kumar, Kamlesh Kumar and Naresh Kumar recorded u/s 108 to re-determine the transaction value in respect of remaining 556 Bills of Entry. In their statements they have admitted that in case of M/s Petra Foods, Singapore supply, they have declared 35% of the true value to the customs and in all others, they have declared 50% of the value. There is no recovery of any other documentary evidence with respect to 556 Bills of Entry, other than the statements of the assessees. The admissibility of documents and evidentiary value of the statements in terms of section 138B of the Customs Act, 1962 is, thus, very central and critical to this case. As per the said section, person who has made the statement, is required to be examined as a witness before the Adjudicating Authority to

ascertain the voluntary nature of the statements and if required, to provide the opportunity to cross-examine relied upon sources and persons by the prosecution. In this case, no such procedure has been followed and the statements have been relied upon by the adjudicating authority without examination in-chief. This bench in Geetham Steels (supra) has analysed in detail the test of 'relevancy' and 'admissibility' of a statement in terms of section 9D of the Central Excise Act and has concluded as follows: -

"66. In sum, the following emanate from the aforesaid discussions and judgements :

A. The statement given under Section 14 of the Central Excise Act, 1944 (or under Section 108 of the Customs Act, 1962) in response to a summons by a gazetted customs/excise officer, is not hit by Section 25 of the Indian Evidence Act, 1872, because a customs/excise officer is not a "police officer".

B. At this stage, it is merely a recorded statement—not yet admissible or relevant. It becomes relevant under the circumstances stated in S. 9D of the CE Act 1944/S.138B of the Customs Act.

C. The fact that a statement is made and recorded, and is said to be relevant as per IEA/BSA, does not mean it is proved.

D. For the S.14/S.108 statement to be admissible under general circumstances there must be an examination in chief and a subsequent cross examination that would bring it into the evidentiary pool for consideration. It needs to be examined whether the statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the adjudicating authority is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the adjudicating authority on examination of the evidence finds that it is true, it can be relied upon in determination of the issue in dispute in the circumstances of the case.

E. However, if the condition of sub-section (a) of S.9D(1)/S.138B(1) do not exist, then it is incumbent upon the adjudicating authority to invariably examine in chief the deponent of the statement given under Section

14/Section 108 in order to determine whether or not sub-section (b) of S.9D(1)/S.138B(1) would be attracted. That is to say, implicit in this procedure is the necessary requirement for the Court to depose all the deponents who have given statement under Section 14/Section 108, save as those that are unavailable in the scenarios given in 9D(1)(a), for the purposes of evaluating whether the statements are voluntary, whether they depose to having made the recitals in the statement recorded under Section 14/Section 108 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 decision whether or not 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 not, as more elaborately elucidated supra. Needless to say, such examination in chief has to be conducted by the adjudicating authority in the presence of the assesse/representative of the assessee. This is in accordance with the decision of the Honourable High Court of Punjab and Haryana in Jindal Drugs Pvt Ltd v. UOI, 2016 (340) ELT 67 (P & H)

F. When the adjudicating authority is examining the witness, it should be noted that minor contradictions, inconsistencies or embellishments of venial or trivial nature which do not affect the kernel of the Department's case should not be taken to be a ground to reject the statement deposed before the Gazetted officer in its entirety. It is only when such contradictions/inconsistencies cast a serious doubt about the truthfulness or creditworthiness of the witness so as to render the evidence unacceptable, that the adjudicating authority may not be in a position to place reliance on such evidence. Serious contradictions and inconsistencies which materially affect the case of the Department have to be understood in clear contradistinction to mere minor discrepancies in the statement of the witness.

G. Cross-examination is thus not an absolute right and if the conditions of sub-sections (a) or (b) of S.9D(1)/S 138B(1) exist, then the statement becomes relevant and can be made admissible without cross examination in the circumstances more elaborately elucidated supra.

H. As laid down by the Hon'ble High Court in J & K Cigarettes v. CCE, 2009 (242) ELT 189 (Del), while invoking Section 9D of the Act, the concerned adjudicating authority is to form an opinion on the basis of material on record that a particular ground, as stipulated in the said Section, exists and is established; such an opinion has to be supported with reasons; and before arriving at this opinion, the authority would give opportunity to the affected party to make submissions on the available material on the basis of which the authority intends to

arrive at the said opinion as it is always open to the affected party to challenge the invocation of provisions of Section 9D of the Act in a particular case by filing statutory appeal, which provides for judicial review."

24.3 Further, in a very recent judgment in the case of *Additional Director General Adjudication, Directorate of Revenue Intelligence Versus Suresh Kumar And co. Impex Pvt. Ltd. & Ors [2025 (9) TMI 76 - Supreme Court]*, the Apex Court has made clear that the evidentiary value of the section 108 statement would have to be considered in accordance and compliance with the requirements of section 138B of the Customs Act, 1962 as stated below: -

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

In absence of chief examination, and denial of cross-examination by the Original Authority, we hold that that the adjudicating authority has not adhered to the statutory prescription as stipulated under section 138B of the Customs Act, 1962, thus rendering the reliance on statements as legally untenable.

F. Customs Classification: -

25.1 In the Show Cause Notice, it is alleged that the importers have mis-classified items such as Nata-de-coco

fruit juice, Quaker oats and Coppo White Coffee. We find that the Original Authority in the impugned order has reconfirmed the proposed customs classification with respect to only two items viz, Nata-de-coco fruit juice and Coppo White Coffee. There is, however, no finding in the impugned order on customs classification of the third item – Quaker Oats. Since the Original Authority has not discussed in the impugned order on alleged wrong classification of Quaker Oats and there is no departmental appeal on this issue, we confine our discussion to only two items Nata-de-coco fruit juice and Coppo White Coffee.

25.2 For the goods declared as 'nata-de-coco juice' the declared customs classification was CTH 20098990 whereas in the impugned order, CTH 22029020 has been confirmed as correct classification. The Customs chapter Heading 2009 covers Fruit Juices (including grape must) and vegetable juices, unfermented and not containing added sugar or other sweetening matter. Whereas Chapter Heading 2202 cover the goods such as beverages, spirits and vinegar and reads "waters including mineral water, and aerated water containing added sugar or other sweetening matter or flavored and other non-alcoholic beverages and not including fruit or vegetable juices of Heading 2009.

25.3 The Ld. Original Authority has stated that the onus of explaining the correctness of customs classification lies with Kumar Brothers as they have not furnished the nature of ingredients and have merely stated that the classification as proposed in the Show Cause Notice is not correct. As per the Department, Nata-de-coco juice is an unfermented juice as per information available in public domain so the proposed classification under CTH 22029020 has been upheld as correct. We find that SCN claims information on the composition of nata-de-coco from "public domain", but the basis of revisiting the classification was not explained neither in the SCN nor the impugned order. In the absence of product catalogue, process of manufacturing, ingredients used *etc.*, determination of product's classification depending on the information available in public domain is not legally supported. Further, it is repeatedly held that the burden of proof of determining customs classification lies with the department and not with the importer. Moreover, most of the Bills of Entry were also assessed prior to the introduction of self-assessment in 2011 requiring examination of the goods in this case as the disputed period covered in these appeals pertained to 2008 to 2013.

As the goods being edible items, these require clearance from FSSAI authorities and it is mandatory to draw the

samples to examine whether these are fit for human consumption, shelf life etc. In the case of *Bombay Fluid Systems Components Pvt Ltd Vs Commissioner of Customs (CESTAT Mumbai)*, it is held that 'in case of change in classification of goods, the department has to produce proper evidence and discharge the burden of proof'. In *Reliance Industries Ltd & Others Versus Commissioner of Customs [2024 (10) TMI 1555 - CESTAT AHMEDABAD]*, it is reiterated that onus is on tax authorities to lay evidence on their behalf and observed as under: -

"It is a trite law that burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them and it is further the taxing authority to lay evidence in their behalf, this view is supported by Hon'ble Supreme Court Judgment in the of State of Madhya Pradesh vs. Marico Industries ltd reported in 2016 (338) ELT 335 (SC)."

Therefore, at this stage, because of lack of credible and reliable materials, we cannot interfere with the declared customs classification.

25.4 In the case of Coppo White Coffee, the declared customs classification is CTH 09030000 whereas as per investigation it ought to be CTH 2101 1110. The Ld. Original Authority has reconfirmed the proposed Customs Classification as the assessee did not provide the clarification. There is no other finding in the impugned order. As stated earlier, onus of determining the correct classification is with the proper officer of customs. Therefore,

in the absence of any reliable data i.e., product's catalogue ingredients, manufacturing process etc., and source literature on the product imported, we would not be able to discard the declared customs classification.

G. Legality of Corrigendum & Revenue Appeals on Imposition of Redemption Fine and Penalties: -

26.1 A corrigendum to Order-in-Original dated 29.07.2019 was issued on 21.10.2019 i.e. within three months from the date of the Original Order. Through corrigendum, the Ld. Adjudicating Authority has imposed penalties on M/s. Eskay Logistics, M/s. Mohanlal Liladhar Joshi & M/s. Concord Zoom (all CHAs) u/s 112(b) & 114AA of the Customs Act, 1962. Proposal of penalties was already mentioned in the discussion part of the impugned order @ Para 137 of the impugned Original Order, but the Adjudicating Authority missed out quantification of the same in the Order portion and through this corrigendum, the same has been rectified.

In general, Scope of issuing corrigendum after passing the Adjudication Order by the same Authority is limited only to rectification of typographical or arithmetical errors.

26.2 In Board Circular No. 502/68/99 -CX dated 16.12.1999, it was conveyed that Law Ministry opined that

'Commissioner of Customs is no doubt a quasi-judicial body required to work within the provisions of law. Neither the powers of review nor correction to the order is available under the Customs Act to the Commissioner of Customs to exercise such powers. He becomes functus officio after signing the adjudication order and, therefore, he cannot lay his hands again on the order. The corrigendum is tantamount to review of the decision which is not provided under Law, and therefore, we are of the view that this impugned order is not legally sustainable notwithstanding Section 21 of the General Clauses Act'. In the Master Circular 1053/02/2017 - CX, it is clearly stated that adjudicating authority does not have powers to review his own order and carry out corrections and the relevant part of the said circular is extracted below: -

"15. Corrigendum to an adjudication order: A corrigendum to an adjudication order can only be issued by the adjudicating authority himself and not by any subordinate authority, after careful examination of details obviating the need to issue any corrigendum to correct minor clerical mistakes which do not alter the adjudication order per se. Therefore, adjudicating order should normally be issued. It may be noted that after issuing an adjudication order, the adjudicating authority becomes functus officio, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case. As a concept, functus officio is bound with the doctrine of res judicata, which prevents the reopening of a matter before the same court or authority. It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order."

26.3 Further, in *M/s. Gera Development Pvt Ltd V Commissioner of Customs, JNPT 2023 (95) TMI - CESTAT*

MUMBAI, has maintained the same stand by observing the following: -

"6. Now coming to the legality of the order subsequently passed through an addendum/corrigendum appropriating the amount paid by the Appellant towards Antidumping duty etc., it can be said that the said order is passed without authority of the law since it is a settled principle of law, as has been affirmed by the Hon'ble Supreme Court in the case of State Bank of India & Ors. Vs. S.N. Goyal judgment dated 02.05.2008 and Hari Singh Mann Vs. Harbhajan Singh Bajwa & Ors. judgment dated 01.11.2000 and in many other decisions, that the court becomes functus officio the moment an official order disposing of case is signed and such an order cannot be altered except to the extent of correcting a clerical or grammatical error while a Quasi-Judicial Authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. We are, therefore, of the view that such invalid order passed subsequent to the order signed, pronounced and communicated has to be set aside and we do so."

Corrigendum is, thus, not legally tenable as rectification is beyond correction of typographical, grammatical or arithmetical errors as penalties were sought to be imposed on the CHAs. In any case, Revenue has filed appeals seeking penalties on M/s. Eskay Logistics, M/s. Mohanlal Liladhar Joshi & M/s. Concord Zoom (all CHAs) u/s 112(b) & 114AA of the Customs Act, 1962. So, the interest of the Revenue is protected through these Departmental appeals. We find that corrigendum was issued within three months from the date of the impugned order in this case.

26.4 In the Revenue appeals, C/41711/19, C/41712/19, C/41713/19, C/41714/19, C/41716/19, to C/41720/19, and C/41725/19 to C/41727/19, one of the

grounds is that the Adjudicating Authority ought to have imposed redemption fine in the context of the Hon'ble Madras High Court judgment in the case of M/s. Visteon Automotive Systems Vs Commissioner of Customs (CMA No. 2857 of 2011 & MP No. 1 of 2011 dated 11.08.2017). We find that the Original Authority has discussed and distinguished this judgment in the impugned order and has rightly held that in the absence of and due to non-availability of goods for confiscation, redemption fine cannot be imposed u/s 125 of the Customs Act, 1962. In *Commissioner v. Finesse Creation Inc.* reported in 2010 (255) E.L.T. A120 (SC), Hon'ble SC has dismissed the Departmental Appeal and has upheld the decision of the Hon'ble Bombay High Court by holding that: -

'5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter'.

Goods under question are not prohibited or restricted goods.

At this juncture, we also take note of the consistent view taken by several benches of this Tribunal and Constitutional Courts, the decision of the Hon'ble Supreme Court in the

case of *Weston Components Ltd. Vs. Commissioner of Customs* [2000 (115) ELT 278 (S.C.)]; larger Bench decision in the case of *Shiv Kripa Ispat Pvt. Ltd. Vs Commissioner of C. EX. & CUS., NASIK* [2009 (235) E.L.T. 623 (Tri. - LB)]. We note that the issue of confiscating the goods would not arise if there were no goods available for confiscation. Hence while the goods may be liable for confiscation, they cannot be confiscated due to their physical unavailability or not being under a legal obligation to be produced. Hence, we find no reason to deviate from the above legal position. In view of the above, we don't find any merit in revenue appeals and dismiss these accordingly. There is no physical presence of goods except for Live Bill of Entry which was never cleared and therefore, the proposals for confiscation and imposition of redemption fine requires to be dropped. No interference is called for in the impugned order on this ground.

26.5 Penalties have been imposed u/s 112 and 114AA of the Customs Act, 1962 on Customs Brokers M/s. International Shipping Agency and M/s. Bharat Rajj Enterprises in the impugned order. However, penalties on other CHAs – M/s. Eskay Logistics, M/s. Concorde Zoom and M/s. Mohanlal Joshi were missed out by the Adjudicating Authority and through these appeals the Department seeks imposition of penalties. It is alleged that the CHAs knew the

Kumar brothers were filing Bills of Entry in the name of other IEC Holders, and they were also aware that MRP/RSP stickers were not pasted on the retail packs and since they have abetted the offence, they are liable to be penalized under Section 112(b) of the Customs Act, 1962. But, as discussed, the impugned adjudication order does not stand the scrutiny of law in terms of section 138C and 138B of the Customs Act, 1962. There is no sustainable ground for re-determining the declared transaction values. Under these circumstances, as the facts in these appeals evidence, invocation of extended period, demands of differential duties either on account of enhancement of declared transaction values or revision of RSPs and imposition of penalties on the importer/s can not be sustained and so, are liable to be set aside.

26.6 Similarly, the penalties on CHAs of the importers-assesseees would also not be tenable unless there is evidence to establish that there is active involvement of the CHAs in the alleged offence of misdeclaration of values by the importers. Penalty under section 112 can be invoked against CHAs and others only if there is wilful intent and *mens rea* in causing 'improper importation of the goods' making them liable for confiscation.

Expressions “does or omits to do”, “or abets the doing or omission of such act”, “which he knows or has reason to believe are liable to confiscation under Section 111” used in Section 112 would mean active intent and conscious knowledge. We find that the CHAs were acting based on documents given to them by the IEC Holders. Further, all these Bills of Entry would have been examined by the Customs officers, and FSSAI in accordance with the mandated procedure for assessment and clearance of food stuff. Another allegation on CHAs is that they were well aware of the fact that Shri Mukesh Kumar of NIFCO was coordinating all the imports made under all 5 IE codes and Mukesh Kumar used to pay customs duty and other charges and the goods after clearances would go to NIFCO, we find that in all the imports there is no adverse finding on KYC documents or and in making a true and correct declaration under section 46(4) of the Customs Act, 1962 by the respective IEC holders. The Ld. Counsel for the assessees has relied upon the case law of *Hamid Fahim Ansari Vs. CC (Import), Nhava Sheva, 2009 (241) E.L.T. 168 (Bom.)* and we find force in the contention of the assesses that there is no illegality if these IEC Holders were backed, supported or financed by NIFCO as long as imports are proper. Therefore, we do not find any ground for imposing penalty on CHAs under Section 112(b) of the Customs Act, 1962.

26.7 Likewise, penalty under Section 114AA of the Customs Act, 1962 is fastened on account of use of false and incorrect material i.e., if any person “knowingly or intentionally” used false material or documents or statement. In this case, we do not find any such false declaration or statement or documents submitted by the CHA. As per the submissions of the Ld. Advocate Mr. G.B. Yadav no proceedings were initiated against the CHAs under the CBLR, 2018. A perusal of the said provisions clearly reveal that the penalty under the said provisions can be imposed wherever there is an element of mens rea or prior knowledge, which is a *sine qua non* for imposition of the penalty. Facts of the case in hand do not reveal any such element of *mens rea* or conscious knowledge qua Customs Brokers. There is no active role attributed to the Assessee (CHAs), which justifies the imposition of the penalty either under Section 112 (b) and Section 114AA of the Act. The case of the department is solely on the basis of statements recorded u/s 108 of the Customs Act, 1962 and such statements, as noticed above, cannot be considered as relevant due to non-compliance of the procedure contemplated under section 138B & 138C of the Customs Act. As such, the Departmental appeals are not maintainable and so, ordered to be set aside.

27. Further, we find that the Revenue has filed the appeal C/41721/19, being aggrieved by the order in respect of M/s. Bharath Raj Enterprises. We find that there is no allegation in the grounds of appeal to the effect that the learned Adjudicating Authority has erred in giving findings in respect of M/s. Bharath Raj Enterprises, nor is there any specific prayer in respect of M/s. Bharath Raj Enterprises, therefore appeal C/41721/19 is infructuous and so, ordered to be dismissed.

28. We also find that the Revenue has filed the appeal C/41715/19, aggrieved by the order in respect of M/s. Ajantha KTK Products. We find that at Para 125, the adjudicating authority records that the M/s. Ajantha K T K Products has not furnished any reply and have not attended the personal hearing. Penalty under Section 112(b) has been imposed on the said party. We find that there is no allegation in the grounds of appeal alleging that the Ld. Adjudicating Authority has erred in giving findings in respect of M/s. Ajantha K T K Products, nor is there any specific prayer in respect of M/s. Ajantha K T K Products. In view of the above, the appeal C/41715/19 is liable to be dismissed. However, as stated above, the role of Ajantha KTK Products is related to post-import tampering and obliterating the RSP/Stockers and such offences are liable for action only under the provisions

of central excise laws, or by legal metrology Department therefore penalty u/s 112(b) of the Customs Act, 1962 is not legally tenable.

29. In view of our findings as above, the impugned Order-in-Original No. 70307/2019 dated 29.07.2019 passed by the Commissioner of Customs is not sustainable and so ordered to be set aside in toto. So, the appeals filed by the Assessee-Importers and CHAs i.e., all parties are allowed with consequential relief(s), if any, as per the law. Whereas the Departmental appeals filed are disposed / dismissed as detailed *supra*.

(Order pronounced in open court on 17.02.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)