

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

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 58496 of 2013

(Arising out of Order-in-Original No. 09/2013 dated 31.03.2013 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi)

M/s Committed Logistics Pvt. Ltd.

....Appellant

Vikas Chaudhary, M/s Committed Logistics Pvt. Ltd.
A-13, Okhla industrial Area, Phase-I
New Delhi- 20

Versus

Commissioner of Customs,

....Respondent

ICD, Tughalkabad
New Delhi

AND

CUSTOMS APPEAL No. 58497 of 2013

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Vikas Chaudhary

....Appellant

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Versus

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ICD, Tughalkabad
New Delhi

APPEARANCE:

Shri Prashant Shrivastava, advocate for the appellant

Shri Mukesh Kumar Shukla, authorised representative of the department

CORAM :

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

Date of Hearing : 06.01.2026

Date of Decision : 12.02.2026

FINAL ORDER NO's. 50261-50262/2026

JUSTICE DILIP GUPTA :

Customs Appeal No. 58496 of 2013 has filed by M/s
Committed Logistics Pvt. Ltd.¹ to assail that portion of the order

1. the appellant

dated 31.03.2013 passed by the Commissioner ICD, TKD, New Delhi² that imposes a penalty of Rs. 25 lakhs on the appellant under section 112(a)(i) of the Customs Act, 1962³ on account of acts of omission and commission to the extent of providing delivery orders in respect of 26 containers to a person who was not the person to whom cargo was destined. It has been held that the appellant was the nominated delivery agent of M/s Glory Express Logistics Co. Ltd. of China which on inquiries was found to be non-existent.

2. **Customs Appeal No. 58497 of 2013** has been filed by Vikas Chaudhary, who is the Director of the appellant, for assailing that portion of the order dated 31.03.2013 passed by the Commissioner that imposes a penalty of Rs. 25 lakhs on Vikas Chaudhary under section 112(a)(i) of the Customs Act on account of acts of omission and commission to the extent of providing delivery orders in respect of 26 containers to a person who was not the person to whom the cargo was destined. It has been held that the appellant was the nominated delivery agent of M/s Glory Express Logistics Co. Ltd. of China which on inquiries was found to be non-existent.

3. It would be useful to first examine the relevant portion of the show cause notice that relates to the allegations made against the appellant and paragraph numbers 78 and 79 of the show cause notice are reproduced below:

"78. Shri Vikas Chaudhary of M/s Committed Logistics in his statements admitted that he was providing delivery orders to Shri Lokesh Garg in his various fictitious firms on behalf of his foreign agents for whom he was appointed as nominated agent in India. Shri Vikas

2. the Commissioner
3. the Customs Act

Chaudhary without taking sufficient documents and without knowing the real identity of the person to whom he was giving delivery orders and thus abetted in the smuggling of goods of foreign origin by Shri Lokesh Garg and others as discussed above. **Further, Shri Vikas Chaudhary in his statement was recorded under Section 108 of the Customs Act, 1962 promised to give the details of payments received from his counterpart to establish that his company was working as nominated delivery agents for such foreign agents.** He neither produced details of payments/reimbursement from his Chinese counterparts nor produced any documentary evidence which justifies that he was bonafide nominated agent to issue delivery orders. **Thus, his nexus/ abetment in the act of smuggling by Sh. Lokesh Garg cannot be ruled out and as such he/ his company is liable to penal action 112 of the Customs Act, 1962.**

79. Further Sh. Vikas Chaudhary gave names of the following firms for whom he was the nominated delivery agent, for booking delivery orders:-

- (a) M/s Glory Express Logistics (Guangzhou) Co. Ltd., (Guangzhou, China),
- (b) M/s Shenzhen Shining Ocean International Logistics Co. Ltd. (Shenzhen, China),
- (c) M/s Vinpac Multitrans (China) Ltd., (Shenzhen, China)
- (d) M/s DMU Logistics Co., Ltd. (Shenzhen, China) and
- (e) M/s Dalian First Trade Co. Ltd. Zhongshan, Dalian

Overseas enquires conducted have revealed that the firms at Sr. No. (a) does not exist at the given address."

(emphasis supplied)

4. A perusal of the aforesaid show cause notice indicates that the allegations against the appellant and Vikas Chaudhary are based on the statement of Vikas Chaudhary made under section 108 of the

Customs Act. From the statements made by Vikas Chaudhary, it has been noted that his nexus/abetment in the act of smuggling by Lokesh Garg cannot be ruled out.

5. The Commissioner has dealt with the matter of the appellant and Vikas Chaudhary in paragraph number 168 of the order and the relevant portion of the order is reproduced below:

"168.

d. *** I find from the statement of Shri Vikas Chaudhary dated 22.07.2010 that he was providing delivery orders to Shri Lokesh Garg in his various fictitious firms on behalf of his foreign agents for whom he was appointed as nominated agent in India. From the statement it is also evident that Shri Vikas Chaudhary gave delivery orders without taking sufficient documents and without knowing the real identity of the person to whom he was giving delivery orders and thus abetted in the smuggling of goods of foreign origin by Shri Lokesh Garg and others.**

e. Further, Shri Vikas Chaudhary on 24.08.2010 interalia stated that they did not have any agreement (written or otherwise) with Sh. Lokesh Garg or his companies, that they used to receive nomination from Chinese agent/counterpart and at the time of delivery Sh. Lokesh Garg or his staff used to give documents such as Bill of Lading or surrender message duly endorsed to them on the basis of which they used to get the delivery order from the concerned shipping lines and then handover the Delivery Orders to either Sh. Lokesh Garg or his staff; that regarding local charges i.e. DTHC (Destination Terminal Handling Charges we used to pay the concerned shipping lines and later received the payments from Sh. Lokesh Garg either by cheque or demand draft;

f. In his subsequent statement dated 26.10.2010, Shri Vikas Chowdhary stated

that on being asked about the remittance made by Chinese agents in r/o Delivery Orders issued for the imports made in r/o eight companies owned/handled by Sh. Lokesh Garg, he stated that no remittances has been received by their company so far being a small amount; that normally they received the payment for such nominated business where they had provided the service of handling the Delivery Orders only; that in such cases they settle the account once their handling charges become substantial; that he has been shown the copy of mails sent by Sh. Pramod to Lokesh Garg submitted by them vide their letter dt. 15.09.2010, that he confirms that the same were sent by Sh. Pramod to Sh. Lokesh Garg as Sh. Lokesh Garg instructed his office to provide the updation/ whereabouts of the consignments in r/o eight companies to him directly through mail and he had also provided his email address to his office. On being shown mail dt. 19.12.2009 in r/o consignee M/s D.P. Enterprises sent by Pramod to Sh Lokesh Garg which shows "please find attached revised B/L copy" and on being asked to explain this he stated that revised copy of B/L No. APLU 053113400 has been sent by their Chinese agent M/s Great Eastern Logistics and this revised copy of B/L was forwarded to Sh. Lokesh Garg by his employee Sh. Pramod through mail.

g. I have also seen the statement of Shri Pramod recorded on 08.12.2010 under section 108 of the Customs Act 1962 wherein he interalia stated that he has seen the print outs of e-mails downloaded from their email IP and submitted to this office vide latter dated 15.09.2010 written by Shri Vikas Choudhry, Director of his company; that he confirms that these printouts were downloaded from his email address pramodacommittedlogistics.org; that these emails printout pertain to updation of the movement of Containers shipped by M/s Sherwood International and M/s Tavistock Trading China; that the details of movement of the Containers and the location of the Containers

through shipping lines websites/tracking systems was collected and the same was sent to Shri Lokesh Garg. On being asked as to why he was sending all the mails to Lokesh Garg in respect of all the Containers shipped by above two company, he stated that he gets the instructions from his office to update about the movement of shipments pertaining to M/s DP Enterprises, M/s JP Traders, M/s Jai Sales, M/s Raj International, M/s Sam International, M/s Davs Impex, M/s Fire on Logistics, M/s Kumar International to Shri Lokesh Garg as Lokesh Garg had requested their office to update about the movement of Cargo to him on the email address given by him as he claimed that all these 8 companies belonged to him. On being asked specific about the email message sent to Shri Lokesh Garg, dated December 17, 2009 (12:55PM) wherein the message was "Please find attached revised B/L copy" he stated that this message was sent to Shri Lokesh Garg, that this message was pertaining to status of movement of Container No. APZU3359800 and APZU3858585 under B/L No. APLU053113400 to Shri Lokesh Garg and the revised copy of B/L was provided by the agent M/s Great Eastern Logistics Co. China.

h. Shri Vikas Chaudhary, Managing Director in M/s Committed Logistics Pvt. Ltd. in his reply to the SCN has categorically admitted that he had provided Delivery Orders in respect of 26 containers out of the 71 containers. I find from the records that Delivery Orders in respect of these 26 containers were issued in the name of bogus/non-existent/fictitious firms such as M/s Jai Sales Organisation, M/s DP Enterprises and M/s Track Exports. On examination of these 26 containers, goods valued at Rs. 49.31 crore were seized as they were found to be grossly misdeclared. Thus, I find that M/s Committed Logistics and Shri Vikas Chaudhary were facilitating in the illegal imports by providing Delivery Orders of non-existent/bogus firms to Shri Lokesh Garg. The other issue raised by the notice that in respect of remaining 45 containers, under investigations/SCN pertains to other

shipping lines/freight forwarders and none of these has been made noticee in the said SCN. This point has been well taken and I direct the investigating agency to examine their role and issue show cause notice if warranted as there is no time limit for issuance of show cause notice for penal action under the provisions of Customs Act, 1962.

i. I find substance in the fact that Shri Vikas Chaudhary of M/s Committed Logistics was providing delivery orders to Shri Lokesh Garg for various fictitious firms on behalf of his foreign agents for whom he was appointed as nominated agent in India. Shri Vikas Chaudhary acted without taking sufficient documents and without knowing the real identity of the person to whom he was giving delivery orders and thus abetted in the smuggling of goods of foreign origin by Shri Lokesh Garg and others as discussed above. Thus, his nexus/abetment in the act of smuggling by Shri Lokesh Garg is established and as such he and his company are liable to penal action under section 112 of the Customs Act, 1962 for their acts omission and commission in respect of 26 seized containers having grossly misdeclared goods to the tune of Rs.49.31 crores. It is true that Department has not in the show cause notice indicated his knowledge regarding misdeclaration in the containers. However, he discharged a vital role in giving Delivery Orders to a person who was not the person to whom cargo was destined. Hence, he played a very vital role in the entire chain of smuggling.”

(emphasis supplied)

6. Shri, Prashant Shrivastava, learned counsel for the appellant submitted that the order passed against the appellant is solely based on the statements made by the appellant and Pramod under section 108 of the Customs Act and so the impugned order imposing penalty upon the appellant under section 112(a)(i) and 112(a)(ii) of the Customs Act should be set aside. In support of this contention,

learned counsel placed reliance upon the decision of the Tribunal in **M/s Surya Wires vs. Principal Commissioner, CGST, Raipur**⁴.

Learned counsel also submitted that even the impugned order notes that the show cause notice did not allege that Vikas Chaudhary had knowledge of misdeclaration in the containers yet a penalty has been imposed upon him under section 112(a)(i) of the Customs Act. In support of this, learned counsel placed reliance upon the decision of the Supreme Court in **Shri Ram vs. The State of U.P.**⁵ and **Amritlakshmi Machine Works vs. Commr. Of Cus. (Import), Mumbai**⁶

7. Shri Mukesh Kumar Shukla, learned authorized representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

8. The submissions advanced by learned counsel for the appellant and learned authorized representative appearing for the department have been considered. The main two issue that arise for consideration in this appeal is whether the appellant abetted the doing or omission of an act resulting in imposition of penalty under section 112(a)(i) of the Customs Act and whether the Commissioner committed an error in solely placing reliance upon the statements made by the appellant and Pramod under section 108 of the Customs Act for the purpose of imposing penalties upon the appellant.

9. Penalty under section 112(a)(i) of the Customs Act can be imposed for the reason that the appellant abetted the doing or omission of an act. The Supreme Court in **Shri Ram** observed:

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

5. **Criminal Appeal No. 142 of 1973**

6. **2016 (335) E.L.T. 225 (Bom.)**

"6. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107."

10. This decision of the Supreme Court was followed by the Bombay High Court in **Amritlakshmi Machine Works** and the relevant paragraph is reproduced below:

"25. Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof "*Any person - (a) who in relation to any goods does or omits to do any act*" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any *mens rea* on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty. To illustrate innocent transferee of a license which enabled the purchaser of the license to misuse the license could be imposed with penalty. This could never be the intent or objective of Section 112(a) of the Act."

11. In the instant case, there is no allegation against the appellant that he had knowledge of mis-declaration in the containers. Penalty under section 112(a)(i) could not have been imposed upon the appellant under the Customs Act.

12. The statement of witnesses are recorded under section 108 of the Customs Act and section 138B of the Customs Act deals with relevancy of statements under certain circumstances.

13. The statement of witnesses are recorded under section 14 of the Central Excise Act, 1944⁷ and section 9D of the Central Excise Act deals with relevancy of these statements under certain circumstances.

Customs Act

14. Section 108 of the Customs Act deals with power to summon persons to give evidence and produce documents. It provides that any Gazetted Officer of customs shall have the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under the Customs Act.

15. Section 138B of the Customs Act deals with relevancy of statements under certain circumstances and it is reproduced below:

“138B. Relevancy of statements under certain circumstances.

(1) A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out

7. the Central Excise Act

of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

Central Excise Act

16. Section 14 of the Central Excise Act deals with power to summon persons to give evidence and produce documents in inquiries under the Central Excise Act. Any Central Excise Officer duly empowered by the Central Government in this behalf has the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document in any inquiry which such Officer is making for any of the purposes of the Central Excise Act.

17. Section 9D of the Central Excise Act deals with relevancy of statements under certain circumstances and it is reproduced below:

"9D. Relevancy of statements under certain circumstances

(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,—

(a) when the person who made the statement is dead or cannot be found, or is

incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a court, as they apply in relation to a proceeding before a court."

18. It would be seen section 108 of the Customs Act and section 14 of the Central Excise Act enable the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under these provisions. It is these statements which are referred to either in section 138B of the Customs Act or in section 9D of the Central Excise Act. A bare perusal of sub-section (1) of these two sections makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 9D of the Central Excise Act or sub-section (2) of section 138B of the Customs Act, the

provisions of sub-section (1) of these two Acts shall apply to any proceedings under the Central Excise Act or the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.

19. It would now be appropriate to examine certain decisions interpreting section 138B of the Customs Act and section 9D of the Central Excise Act.

20. In **Ambika International vs. Union of India**⁸ decided on 17.06.2016, the Punjab and Haryana High Court examined the provisions of section 9D of the Central Excise Act. The show cause notices that had been issued primarily relied upon statements made under section 14 of the Central Excise Act. It was sought to be contended by the Writ Petitioners that the demand had been confirmed in flagrant violation of the mandatory provisions of section 9D of the Central Excise Act. The High Court held that if none of the

8. 2018 (361) E.L.T. 90 (P&H)

circumstances contemplated by clause (a) of section 9D(1) exist, then clause (b) of section 9D(1) comes into operation and this provides for two steps to be followed. The first is that the person who made the statement has to be examined as a witness before the adjudicating authority. In the second stage, the adjudicating authority has to form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice. The judgment further holds that in adjudication proceedings, the stage of relevance of a statement recorded before Officers would arise only after the statement is admitted in evidence by the adjudicating authority in accordance with the procedure contemplated in section 9D(1)(b) of the Central Excise Act. The judgment also highlights the reason why such an elaborative procedure has been provided in section 9D(1) of the Central Excise Act. It notes that a statement recorded during inquiry/investigation by an Officer of the department has a possibility of having been recorded under coercion or compulsion and it is in order to neutralize this possibility that the statement of the witness has to be recorded before the adjudicating authority. The relevant portions of the judgment are reproduced below:

"15. A plain reading of sub-section (1) of Section 9D of the Act makes it clear that clauses (a) and (b) of the said sub-section set out the circumstances in which a statement, made and signed by a person before the Central Excise Officer of a gazetted rank, during the course of inquiry or proceeding under the Act, shall be relevant, for the purpose of proving the truth of the facts contained therein.

16. Section 9D of the Act came in from detailed consideration and examination, by the Delhi High

Court, in J.K. Cigarettes Ltd. v. CCE, 2009 (242) E.L.T. 189 (Del.). Para 12 of the said decision clearly holds that by virtue of sub-section (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well.

22. If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1) comes into operation. The said clause prescribes a specific procedure to be followed before the statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.

- (i) the person who made the statement has to first be examined as a witness in the case before the adjudicating authority, and
- (ii) the adjudicating authority has, thereafter, to form the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.

23. There is no justification for jettisoning this procedure, statutorily prescribed by plenary parliamentary legislation for admitting, into evidence, a statement recorded before the gazetted Central Excise Officer, which does not suffer from the handicaps contemplated by clause (a) of Section 9D(1) of the Act. The use of the word "shall" in Section 9D(1), makes it clear that, the provisions contemplated in the sub-section are mandatory. Indeed, as they pertain to conferment of admissibility to oral evidence they would, even otherwise, have to be recorded as mandatory.

24. The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/investigation, by the gazetted Central Excise Officer, has every chance of

having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. **It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudication authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.**

25. **Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of Section 9D(1).** The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of Section 9D(1) of the Act would apply. **In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the gazetted Central Excise Officer, unless and until he can legitimately invoke clause (a) of Section 9D(1).** In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of Section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudication proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

26. In fact, Section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to

precede cross-examination, and cross-examination has to precede re-examination.

27. **It is only, therefore, -**

- (i) **after the person whose statement has already been recorded before a gazetted Central Excise Officer is examined as a witness before the adjudicating authority, and**
- (ii) **the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,**
that the question of offering the witness to the assessee, for cross-examination, can arise.

28. **Clearly, if this procedure, which is statutorily prescribed by plenary parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof."**

(emphasis supplied)

21. The Punjab and Haryana High Court in **Jindal Drugs** that was decided on 21.06.2016 also held that unless and until one of the circumstances contemplated by clause (a) of section 138B(1) of the Customs Act applies, the adjudicating authority is bound to strictly follow the procedure contained in clause (b) of section 138B(1) of the Customs Act, before treating a statement recorded under section 108 of the Customs Act as relevant.

22. In **Hi Tech Abrasives Ltd. vs. Commissioner of C. Ex. & Cus., Raipur**⁹ decided on 04.07.2018, the Chhattisgarh High Court also examined the provisions of section 9D of the Central Excise Act.

9. **2018 (362) E.L.T. 961 (Chhattisgarh)**

The allegation against the appellant was regarding clandestine removal of goods without payment of duty and for this purpose reliance was placed on the statement of the Director of the Company who is said to have admitted clandestine removal of goods. The contention of the appellant before the High Court was that the statement of the Director could be admitted in evidence only in accordance with the provisions of section 9D of the Central Excise Act. After examining the provisions of sub-sections (1) and (2) of section 9D of the Central Excise Act, and after placing reliance on the judgment of the Punjab and Haryana High Court in **Ambika International**, the Chhattisgarh High Court held:

"9.3 A conjoint reading of the provisions therefore reveals that a statement made and signed by a person before the Investigation Officer during the course of any inquiry or proceedings under the Act shall be relevant for the purposes of proving the truth of the facts which it contains in case other than those covered in clause (a), only when the person who made the statement is examined as witness in the case before the court (in the present case, Adjudicating Authority) and the court (Adjudicating Authority) forms an opinion that having regard to the circumstances of the case, the statement should be admitted in the evidence, in the interest of justice.

9.4 The legislative scheme, therefore, is to ensure that the statement of any person which has been recorded during search and seizure operations would become relevant only when such person is examined by the adjudicating authority followed by the opinion of the adjudicating authority then the statement should be admitted. The said provision in the statute book seems to have been made to serve the statutory purpose of ensuring that the assessee are not subjected

to demand, penalty interest on the basis of certain admissions recorded during investigation which may have been obtained under the police power of the Investigating authorities by coercion or undue influence.

9.5 ***** **The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory.** Therefore, unless the substantive provisions contained in Section 9D are complied with, the statement recorded during search and seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. **Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers.** Indeed, without examination of the person as required under Section 9D and opinion formed as mandated under the law, the statement recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. **We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the**

statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice. In taking this view, we find support from the decision in the case of *Ambica International v. UOI* rendered by the High Court of Punjab and Haryana.”

(emphasis supplied)

23. In **Additional Director General (Adjudication) vs. Its My Name Pvt. Ltd.**¹⁰ decided on 01.06.2020, the Delhi High Court examined the provisions of sections 108 and 138B of the Customs Act. The department placed reliance upon the statements recorded under section 108 of the Customs Act. The Delhi High Court held that the procedure contemplated under section 138B(1)(b) has to be followed before the statements recorded under section 108 of the Customs Act can be considered as relevant. The relevant paragraphs of the judgment of the Delhi High Court are reproduced below:

“76. **We are not persuaded to change our view, on the basis of the various statements, recorded under Section 108 of the Act, on which the Learned ASG sought to rely. Statements, under Section 108 of the Act, we may note, though admissible in evidence, acquire relevance only when they are, in fact, admitted in evidence, by the adjudicating authority and, if the affected assessee so chooses, tested by cross-examination. We may, in this context, reproduce, for ready reference, Section 138B of the Act, thus : *******

A Division Bench of this Court has, speaking through A.K. Sikri, J. (as he then was) held,

10. 2021 (375) E.L.T. 545 (Del.)

in J & K Cigarettes Ltd. v. Collector of Central Excise [2009 (242) E.L.T. 189 (Del.)] that, by virtue of sub-section (2), Section 138B(1) of the Act would apply, with as much force, to adjudication proceedings, as to criminal proceedings.

We express our respectful concurrence with the above elucidation of the law which, in our view, directly flows from Section 138B(1) of the Act - or, for that matter, Section 9D of the Central Excise Act, 1944.

77. The framers of the law having, thus, subjected statements, recorded under Section 108 of the Act, to such a searching and detailed procedure, before they are treated as relevant in adjudication proceedings, we are of the firm view that such statements, which are yet to suffer such processual filtering, cannot be used, straightaway, to oppose a request for provisional release of seized goods. **The reliance, in the appeal before us, on various statements recorded during the course of investigation in the present case cannot, therefore, in our view, invalidate the decision, of the Learned Tribunal, to allow provisional release of the seized 25400.06 grams of gold jewellery, covered by Bill of Entry No. 107190, dated 20th April, 2019."**

(emphasis supplied)

24. In **Drolia Electrosteel** decided on 30.10.2023, a Division Bench of the Tribunal examined the provisions of section 9D of the Central Excise Act and after placing reliance upon the decision of the Punjab and Haryana High Court in **Jindal Drugs**, observed that if the mandatory provisions of section 9D(1)(b) of the Central Excise Act are not followed, the statements cannot be used as evidence in proceedings under Central Excise Act. The relevant portions of the decision of the Tribunal are reproduced below:

“14. Evidently, the statements will be relevant under certain circumstances and these are given in clauses (a) and (b) of subsection (1). There is no assertion by either side that the circumstances indicated in (a) existed in the case. **It leaves us with (b) which requires the court or the adjudicating authority to first examine the person who made the statement and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence. Of course, the party adversely affected by the statement will have to be given an opportunity to cross examine the person who made the statement but that comes only after the statement is, in the first place, after examination by the adjudicating authority, admitted in evidence.** This has not been done in respect of any of the 35 statements. Therefore, all the statements are not relevant to the proceedings.

15. **It has been held in a catena of judgments including Jindal Drugs Pvt. Ltd. versus Union Of India [2016 (340) E.L.T. 67 (P&H)] that section 9D is a mandatory provision and if the procedure prescribed therein is not followed, statements cannot be used as evidence in the proceedings** under Central Excise Act. *****

16. Therefore, the 35 statements relied upon in the SCN are not relevant and hence also not admissible.”

(emphasis supplied)

25. A Division Bench of this Tribunal in **Surya Wires** after examining the aforesaid decisions of the High Court held that the statements made under section 108 of the Customs Act during the course of an inquiry under the Customs Act shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating

authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence.

26. It, therefore, transpires from the aforesaid decisions that both section 138B(1)(b) of the Customs Act and section 9D(1)(b) of the Central Excise Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. The provisions of section 138B(1)(b) of the Customs Act and section 9D of the Central Excise Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 108 of the Customs Act or under section 14D of the Central Excise Act. The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence.

27. As seen from the show cause notice and the order impugned, penalty upon the appellants has been imposed only on the basis of

the statement made by the appellants under section 108 of the Customs Act. A statement made under section 108 of the Customs Act cannot be considered as relevant as the procedure contemplated under section 138B of the Customs Act was not followed.

28. Thus, for all the reasons stated above, the impugned order dated 31.03.2013 passed by the Commissioner insofar as it imposes penalty upon the appellant and Vikas Chaudhary under section 112(a)(ii) of the Customs Act cannot be sustained and is set aside and both the appeals are allowed.

(Order pronounced on **12.02.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Kritika