CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH - COURT No. III

Customs Appeal No. 40724 of 2024

(Arising out of order-in-original No. 107255/2024 dated 11.06.2024 passed by the Commissioner of Customs, Chennai).

Hitin Sachdeva **...Appellant**
F-12/7, First Floor,
Model Town,
New Delhi-110009

VERSUS

Commissioner of Customs **...Respondent**
Chennai-II (Import)
Customs House, No. 60, Rajaji Saiai,
Chennai-600001

WITH

C/40725/2024 **C/40726/2024**
C/40913/2024 **C/40914/2024**

APPEARANCE:

Shri Piyush Kumar, Advocate for the Appellant
Shri Sanjay Kakkar, Authorized Representative for the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 24.02.2026
DATE OF DECISION: 19.03.2026

FINAL ORDER NO. 40396-40400/2026

JUSTICE DILIP GUPTA:

Customs Appeal No. 40724 of 2024 has been filed by Hitin Sachdeva[1] to assail the order dated 11.06.2024 passed by the Commissioner of Customs, Chennai-II[2]. The order is in respect of the

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1. **the appellant**
2. **the Commissioner**

goods imported through Chennai Port, Nhava Sheva Port, Mumbai and Kolkata Port and seeks to reject the declared value of the imported goods in the Bills of Entry under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[3] and re-determines the same under rule 9 of the said Rules. Accordingly, the demand of duty short paid has been confirmed with interest and penalty upon the appellant under sections 114A and 114AA of the Customs Act, 1962[4] by treating the appellant to be the beneficial owner. The goods imported in the name of M/s. Mega Auto Industries, M/s. Majestic Motors, M/s. Highline Enterprises and M/s. India Enterprises have also been held liable to confiscation under section 111(m) of the Customs Act but as the goods had been cleared, a redemption fine in lieu of confiscation has been imposed upon the appellant under section 125 of the Customs Act.

2. **Customs Appeal No. 40725 of 2024** has been filed by Sandeep Kumar Das to assail the order dated 11.06.2024 to the extent it imposes penalty upon him as a partner of M/s. Highline Enterprises under sections 114AA and 112(b)(ii) of the Customs Act.

3. **Customs Appeal No. 40726 of 2024** has been filed by S.K. Dhawan to assail that portion of the order dated 11.06.2024 passed by the Commissioner that imposes penalty upon him as proprietor of M/s. Dhawan Impex under sections 114AA and 112(b)(ii) of the Customs Act.

4. **Customs Appeal No. 40913 of 2024** has been filed by Harvinder Sachdeva to assail that portion of the order dated 11.06.2024 passed by the Commissioner that imposes penalty upon him as Director

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3. the 2007 Valuation Rules
4. the Customs Act

of M/s. Sino Diesel Automotive Co. Ltd. under sections 114AA and 112(b)(ii) of the Customs Act.

5. **Customs Appeal No. 40914 of 2024** has been filed by Madhav Sachdeva to assail that portion of the order dated 11.06.2024 passed by the Commissioner that imposes penalty upon him as partner of M/s Mega Auto Industries and M/s. India Enterprises under sections 114AA and 112(b)(ii) of the Customs Act.

6. The case of the appellant is that when the appellant arrived at Terminal T-3 of IGI Airport on 03.09.2021 at around 09:45 PM with Bipin Jha, partner in M/s. Bird Automotive, the officers of the Department of Revenue Intelligence[5] took the appellant and Bipin Jha to their office and took possession of their phones and laptop and locked both of them in separate enclosures. Thereafter, the DRI officers tortured the appellant, stripped him, physically beat him with a stick and metal rod and deprived him of food and water. The appellant further contends that the officers stopped beating him only when they obtained his signature on a statement already prepared, typed and stored in the computers of the department and also forced him to sign some documents without permitting him to read the same. The appellant was thereafter arrested on 04.09.2021 at 5:15 PM and produced before the duty magistrate at his residence on 10:35 PM and, thereafter, lodged in jail. The appellant also contends that when he arrived at the jail, the doctor on duty examined him and finding marks of beating, recorded in his report 'multiple bruises over shoulder, thigh, abdomen, hands due to physical assault'. Next morning when the appellant complained of immense pain, nausea and fever, the jail doctor

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5. DRI

recommended for examination at a government hospital. The appellant was then taken to Deen Dayal Upadhyay Hospital on 06.09.2021 and the doctors, after thorough examination, found several bruises over right thigh right knee, left buttock, multiple bruises on right arm, bruises over left shoulder and bruises over left flank which evidenced physical assault and this was recorded in the medical examination report.

7. The appellant further contends that on 13.09.2021, the officers again brought a pre-typed statement to the Tihar Jail and asked the appellant to sign on the same and when the appellant declined to sign the officers threatened the appellant that if he did not sign on the typed statement, they would arrest his father, mother and the younger brother. According to the appellant, it is because of this psychological pressure exerted upon him that he signed the statement, but on the very next day i.e. 14.09.2021, the appellant filed a representation before the Chief Metropolitan Magistrate Patiala House, New Delhi retracting the statement. The appellant stated that the said statements were extracted by the DRI officers by physically abusing and mentally torturing the appellant. The appellant further stated that even after he was enlarged on bail, he was forced to sign on dotted lines on the statements already prepared on DRI computer on 23.11.2021 and 09.02.2022. The appellant again filed an application retracting the statements and stated that the same were extracted by force. According to the appellant the other co-appellants were also coerced into signing statements.

8. A show cause notice dated 13.01.2023 was, thereafter, issued to the appellant and six others, including the four co-appellants Sandeep

Kumar Das, S.K. Dhawan, Harvinder Sachdeva and Madhav Sachdeva. The show cause notice proposed to reject the declared value and re-determine the same for the following reasons:

> "**40. Grounds for Rejection of Declared Value and Re-determination of Value**
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> **40.1** From the evidences on record as discussed above, it appears that Sh. Hitin Sachdeva and Sh. Harvinder Sachdeva are the beneficial owners of the goods imported by using IECs of M/s Mega Auto Industries, M/s Majestic Motors, M/s Highline Enterprises, M/s Bird Automotive, M/s India Enterprises and M/s Dhawan Impex and has imported the said goods by grossly mis- declaring the value with the intent to evade payment of duties of customs. **Sh. Hitin Sachdeva in his voluntary statement dated 03-04.09.2021 and dated 13.09.2021 admitted the undervaluation and gave an elaborate description of the modus operandi adopted by him for misuse of the IECs to import, clear and dispose of the goods by resorting to mis-declaration and undervaluation. Further, Sh. Hitin Sachdeva, in his statement recorded before DRI admitted that the values declared before the Customs were not the correct transaction value and he used to declare approximately 50% of the actual value of the imported goods and used to send the balance amount through hawala and non-banking channels. Sh. Hitin Sachdeva also admitted that M/s Mega Auto Industries, M/s Majestic Motors, M/s Highline Enterprises, M/s Bird Automotive, M/s India Enterpriscs and M/s Dhawan Impex were proxy/dummy IECS, which were actually owned/ controlled by himself. All the alleged Partners/ proprietors of the said firms also admitted that the respective firms/IECs were created and controlled by Hitin Sachdeva.**
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> **40.2** Whereas the Bills of Entry mentioned supra were filed for home consumption under Section 46 of the Customs Act, 1962 by way of mis-declaration, as the goods under the said Bills of Entry filed by M/s

Mega Auto Industries, M/s Majestic Motors, M/s Highline Enterprises, M/s Bird Automotive, M/s India Enterprises and M/s Dhawan Impex were found mis-declared with respect to the value of the goods. **In the instant case, the value of goods declared in the import invoices and respective Bills of Entry did not match with actual values of the imported goods as per the actual/ original invoices issued by the supplier of the goods. Therefore, the import invoices submitted before Customs cannot be considered for assessment of the subject goods to the duty. Further, Hitin Sachdeva admitted to gross undervaluation of the imported goods in his voluntary statements tendered before DRI officers under the Customs Act, 1962. Even the statement of his customer and own employee clearly indicates that the goods were grossly undervalued. Further, from the evidences discussed above, it is evident that Sh. Hitin Sachdeva submitted fraudulent or manipulated documents/invoices for clearance of the imported goods. Therefore, the value declared in the subject Bills of Entry cannot be accepted as true transaction "value under the provisions of Section 14 of the Customs Act,** 1962 read with the provisions of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 (hereinafter referred as "CVR, 2007") and **the same is liable to be rejected in terms of Rule 12 of the CVR, 2007 and needs to be re-determined.**

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40.9 Since the beneficial owner Hitin Sachdeva admitted that the goods were undervalued and the correct transaction value was not disclosed to the Customs, the declared value of the imported goods did not appear to be fair and genuine and appears liable to be rejected as provided under Rule 12 of the CVR, 2007. Further, during investigation, the actual transaction value of the identical goods, imported in past consignments in the name of various other dummy/proxy IECs owned/ controlled by Hitin Sachdeva were submitted by him as

> received by him on email from the overseas supplier. Therefore, the value of the imported goods have been re-determined under Rule 9 of CVR, 2007, read with Section 14 of the Customs Act, 1962, in accordance with the actual transaction value of the imported goods, found during investigation by DRI and detailed in Annexure-A. In the invoices submitted before Customs, the invoice term is CIF and the currency is USD. Therefore, unit value (CIF) of the identical goods found in actual invoices has been denominated in 'USD' as well. **Further, Hitin Sachdeva, in his statement recorded before DRI admitted that he never declared the correct transaction value of the imported goods before Customs and used to declare approximately 50% of the actual value of the imported goods and used to send the balance amount through Hawala channels. On perusal of Table-IV, V and VI, it is evident that the values declared before Customs are close to 50% of the actual re-determined transaction value.** This lends further credence to the fairness and robustness of the methodology adapted in re-determining the values detailed in Annexure-A."
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> **(emphasis supplied)**

9. The show cause notice, thereafter dealt with role of the other co-appellants and noted that for their acts of omission and commission in rendering the goods liable to confiscation, penalty under section 112 of the Customs Act was liable to be imposed on them.

10. The appellant and the other co-appellant filed detailed replies to the show cause notice and denied the allegations made therein. The appellant described the circumstances under which the statements were recorded under section 108 of the Customs Act and contended that no reliance can be placed on the same as they were obtained by coercion and has also been retracted. The appellant also pointed out the statements of other persons recorded under section 108 of the Customs

Act could not be relied upon. The relevant portion of the reply submitted by the appellant is reproduced below:

> "**2.2** Noticee submits that DRI initiated present investigation on 03.09.2021 and arrived at Noticee's residence in the morning, whereat on being asked, Noticee's parents duly informed that he was out on a business trip and was scheduled to arrive in the late evening of 03.09.2021. **The officers thereafter intercepted Noticee at Terminal T-3 of IGI Airport when he arrived around 9:45 PM per Vistara Flight No. UK-992 from Pune along with Shri Bipin Jha, Noticee's partner in M/s Bird Automotive. The officers per force took Noticee and Bipin Jha to their office in CGO Complex, Lodhi Road, New Delhi and after reaching the close confines of the office, locked both of them in separate enclosures to instil fear and to create psychological pressure. Thereafter, they mercilessly tortured Noticee, stripped him, physically beat him with stick and metal rod, deprived him of food/water and did not even permit him to attend nature's call. The officers stopped beating only after obtaining Noticee's signature on statement which was already prepared, typed and stored on DRI's computer.**
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> **2.3 After procuring Noticee's signature on pre-typed statement under physical abuse, beating and mental torture, the officers arrested him on 04.09.2021 at 5:15 PM; produced him before the Duty Magistrate at his residence at 10:35 PM; and thereafter lodged him in Jail No. 7, Tihar Jail after midnight. On arrival at the jail, Doctor on duty examined Noticee and finding marks of beating recorded in his report "multiple bruises over shoulder, thigh, abdomen, hands due to physical assault". Next morning when Noticee complained of immense pain, nausea and fever, Jail Doctor recommended for examination at a Government hospital and accordingly, Noticee was taken to Deen Dayal Upadhyay Hospital on 06.09.2021, whereat the Doctors, after thorough examination,**

found several marks of beating namely bruise over right thigh, bruise over right knee, bruise over left buttock, multiple bruises on right arm, bruise over left shoulder, bruise over left flank evidencing history of physical assault and recorded the same in their medical examination report. Copies of aforesaid Report dated 05.09.2021 relating to medical examination at Tihar Jail and Report dated 06.09.2021 issued by Medical Officer at DDU Hospital are enclosed for Hon'ble Commissioner's kind perusal marked as Annexure-3 (colly.), which clearly depict that Noticee was mercilessly beaten at DRI office and the statement pressed into service as voluntary statement was in fact involuntary prepared and pre-typed by DRI officers, whereupon Noticee's signatures were obtained under acute physical and mental torture.

2.4 On 13.09.2021, the officers again appeared in Tihar Jail for Noticee's interrogation and along with them brought a pre-typed statement and asked Noticee to sign on the same. When Noticee declined to sign on the same, the officers threatened Noticee that if he did not sign on the typed statement, they would arrest Noticee's Father, Mother and younger Brother in the present case, thus under immense psychological pressure, Noticee signed on the typed statement. On the very next day i.e. 14.09.2021, Noticee filed a representation before the Hon'ble CMM, Patiala House Courts, New Delhi retracting the statement and stating that the same were extracted by the DRI officers under physical abuse and mental torture. A copy of Noticee's retraction letter addressed to Hon'ble CMM, Patiala House Courts, New Delhi is enclosed for Hon'ble Commissioner's kind perusal marked as Annexure-4.

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5.2 During the course of interrogation, on being asked, Noticee provided details and password of his e-mail and thereafter using their wi-fi connection, DRI officers sent e-mails to

various IDs found in Noticee's e-mail database, called them telephonically and threatened them to prepare and forward documents as desired by them. In compliance to their directions and buckling under the threats issued by them, some of them prepared documents as directed by them and e-mailed the same to Noticee's e-mail address. Noticee submits that all the documents annexed with the Show Cause Notice as RUD- 26 and RUD-27 had arrived on 04.09.2021 at 11:25 AM and 1:16 PM when Noticee was in DRI custody and the laptop was in the possession of DRI officers.

5.3 Noticee urges the Hon'ble Commissioner's to peruse the aforesaid documents to appreciate that all the e-mails which are now being alleged as voluntarily furnished by Noticee, had arrived in Noticee's e-mail inbox when he was in DRI's custody and his laptop was in the possession of Investigating Officer and further requests Hon'ble Commissioner to verify the fact that the contextual mails had arrived in Noticee's inbox through DRI's Wi-Fi network/IP address. All the aforesaid purported Invoices retrieved from inbox of Noticee's e-mail address had arrived in Noticee's inbox, e-mail was logged in not on Noticee's laptop but on the Desktop installed in DRI office connected through DRI's internet wi-fi connection and therefore, Noticee prays Hon'ble Commissioner to cause impartial inquiry into the arrival of purported Invoices in Noticee's inbox at 1:16 PM on 04.09.2021 when Noticee was in DRI's custody through DRI's IP address using DRI's internet connection and on DRI's desktop for conscionable adjudication of present Show Cause Notice.

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6.4 Moreover, qua the 44 purported actual invoices pressed into service by DRI to buttress the charge of under invoicing, Noticee further submits that in 14 cases, description of goods mentioned in the purported

actual invoices and description of goods mentioned in the Commercial Invoice filed with the Bs/E are different, which clearly depicts that the so-called actual invoices are not relatable to impugned imports and hence, cannot be relied to sustain the charge of under invoicing. Noticee has since compiled the aforesaid mismatch cases in the Chart along with copies of aforesaid purported actual invoices/Commercial Invoice for Hon'ble Commissioner's kind perusal marked as Annexure-7 (colly)."

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6.7 The case of DRI is the the purported Invoices arrived in Noticee's inbox on 04.09.2021 were sent by the overseas supplier and depicted actual value, whereas in 27 imports when the overseas supplier dispatched the goods, clearly mentioned the value on Bills of lading. These Bills of Lading are overseas supplier's documents and issued at the time of dispatch of consignments and therefore, values mentioned on Bills of Lading being the same as those mentioned in the Commercial Invoices filed with the Bs/E, allegation of under invoicing on the basis of purported actual invoices inadmissible in evidence, is ex-facie unlawful. Details of consignments wherein overseas supplier had indicated transaction value in the Bills of Lading are tabulated in the Chart and the copies of such Bills of Lading are enclosed as Annesure-10 (colly.) for Hon'ble Commissioner's kind perusal."

(emphasis supplied)

11. The Commissioner, however, rejected the declared value of the goods declared by the appellant in the Bills of Entry and re-determined the same and demanded differential duty. The relevant portion of the order rejecting the declared value under rule 12 of the 2007 Valuation Rules is reproduced below:

"**62.1 As seen from the various evidences adduced by the investigating agency, it is a case of undervaluation designed in an ingenius way.** I

find that, multiple dummy/proxy IEC firms as detailed in below table, all owned/controlled by Shri Hitin Sachdeva and Shri Harvinder Sachdeva were engaged in import of automobile parts of SORL Brand and they used to grossly under-value the imports of automobile spare parts of SORL brand viz. Power Steering Pump, Clutch servo, slack adjusters etc. from China. The said goods were imported through Chennai Port (INMAAI), Kolkata Port (INCCUI) and Nhava Sheva Port (INNSAI). All the dummy/proxy IECs used to supply all such imported SORL brand Auto parts to only one firm i.e. M/s. Sino Diesel Automotive Private Limited (earlier Known as M/s. Diesel Garage) whose director is Shri Harvinder Sachdeva. M/s. Sino Diesel used to supply the SORL brand auto parts mainly power steering pumps, clutch servo, slack adjusters etc. domestically to different retailers/wholesalers and end customers.

62.2 Further, based on comparison of value of the Actual invoices for year 2020 and 2021, issued by the supplier of the goods, i.e., M/s Ruili Group Ruian Auto Parts Co. Ltd. and M/s Zhejiang New SORL Auto Pats Co. Ltd., as received by Shri Hitin Sachdeva on his e-mail ID (hitin.hitin@hotmail.com), from the supplier e-mail ID (ym@sorl.com.cn), in relation to imports made by above mentioned firms vis-à-vis values mentioned in the fabricated invoices submitted before Customs, I find that gross under-valuation to the tune of approximately 50% has been resorted by Shri Hitin Sachdeva, in relation to imports in various dummy/ proxy IECs controlled by him by way of submitting fabricated invoices before the Customs. Also, Shri Hitin Sachdeva in his voluntary statement admitted that the import/ commercial invoices submitted before Customs for assessment of duty were actually generated by him on his laptop using excel software and the above mentioned actual/ original invoices issued by the supplier of the goods (SORL group, China) were never submitted before Customs. Therefore, it is evident that the actual original invoices issued by the supplier of

goods were not submitted before Customs and forged/ fabricated invoices shown to be issued in the name of various proxy/dummy IEC firms, under investigation, were submitted by Shri Hitin Sachdeva wherein the value of the goods were under-valued by approx. 50% A comparison of value declared before customs based on the forged/fabricated invoices with the actual/original invoices is illustrated below to understand the undervaluation:

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62.9 From the evidences on record as discussed above, it is quite evident that Shri Hitin Sachdeva and Shri Harvinder Sachdeva are the beneficial owners of the goods imported by using IECs of M/s Mega Auto Industries, M/s Majestic Motors, M/s Highline Enterprises, M/s Bird Automotive, M/s India Enterprises and M/s Dhawan Impex and has imported the said goods by grossly mis-declaring the value with the intent to evade payment of duties of customs. Shri Hitin Sachdeva in his voluntary statement dated 03-04.09.2021 and dated 13.09.2021 admitted the undervaluation and gave an elaborate description of the modus operandi adopted by him for misuse of the IECS to import, clear and dispose of the goods by resorting to mis-declaration and undervaluation. Further, Shri Hitin Sachdeva, in his statement recorded before DRI admitted that the values declared before the Customs were not the correct transaction value and he used to declare approximately 50% of the actual value of the imported goods and used to send the balance amount through hawala and non-banking channels. Shri Hitin Sachdeva also admitted that M/s Mega Auto Industries, M/s Majestic Motors, M/s Highline Enterprises, M/s Bird Automotive, M/s India Enterprises and M/s Dhawan Impex were proxy/dummy IECs, which were actually owned/ controlled by him. All the alleged Partners/ proprietors of the said firms also

admitted that the respective firms/IECs were created and controlled by Hitin Sachdeva.

62.10 Whereas the Bills of Entry mentioned supra were filed for home consumption under Section 46 of the Customs Act, 1962 by way of mis-declaration, as the goods under the said Bills of Entry filed by M/s Mega Auto Industries, M/s Majestic Motors, M/s Highline Enterprises, M/s Bird Automotive, M/s India Enterprises and M/s Dhawan Impex were found mis-declared with respect to the value of the goods. In the instant case, the value of goods declared in the import invoices and respective Bills of Entry did not match with actual values of the imported goods asper the actual/ original invoices issued by the supplier of the goods. Therefore, the import invoices submitted before Customs cannot be considered for assessment of the subject goods to the duty. **Further, Hitin Sachdeva admitted to gross undervaluation of the imported goods in his voluntary statements tendered before DRI officers under the Customs Act, 1962. Even the statement of his customer and own employee clearly indicates that the goods were grossly undervalued. Further, from the evidences discussed above, it is evident that Shri Hitin Sachdeva submitted fraudulent or manipulated documents/invoices for clearance of the imported goods. Therefore, the value declared in the subject Bills of Entry cannot be accepted as true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 (hereinafter referred as "CVR, 2007") and the same is liable to be rejected in terms of Rule 12 of the CVR, 2007 and needs to be re-determined.**"

(emphasis supplied)

12. The value was determined under rule 9 of the 2007 Valuation Rules and the relevant paragraphs is reproduced below:

"**62.22** I find that during investigation, the evidences of actual value of the goods imported from 2020 onwards, were recovered which is admittedly the correct and true transaction value and therefore, the said value has been taken as FOB transaction value of the goods imported under the respective bills of entry, in terms of the Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007. The rates/value of similar imported goods prior to 2020 declared in the other bills of entry (for which direct evidence is not available) procured from the same supplier are in concurrence with the rate/value declared in the bills of entry in respect of which direct evidences of undervaluation have been found. Hence, for the purpose of calculation of Customs duty, the value of the goods in respect of direct evidence of actual price paid or payable are not available, has been calculated as per the rate of similar imported goods available in the recovered documents and data containing the actual transaction value.

62.23 In continuation of the above I also find that during investigation, parallel/ actual invoices of identical goods imported by Hitin Sachdeva in past through different proxy/dummy IECs, all controlled by him directly were submitted by him for the year 2020 and 2021. In the said actual invoices, actual transaction value of identical goods was found and it was noticed that the said value was much higher than the values declared before Customs at the time of import of subject consignments. As the actual invoices reflecting the correct transaction value of the goods, pertained to year 2020 and 2021, the Wholsesale Price Indices (WPI) released by the office of the Economic Adviser, Department for Promotion of Industry and Internal Trade https://eaindustry.nic.in/download_data_1112. asp) for the subject goods, were taken into consideration to arrive at the contemporaneous value of the identical goods for year 2018 and 2019. Therefore, on the basis of actual/parallel invoices of identical goods and in terms of Rule 9 of the CVR, 2007, valuation of the subject goods has been done."

13. The contention of the appellant regarding retraction of the statements was not accepted by the Commissioner holding that it was an afterthought. A finding was also recorded by the Commissioner that the statements recorded under section 108 of the Customs Act are valid evidence. The relevant paragraph of the order is reproduced below:

> "**63.4 Therefore, it is clear that the retraction of the statements is an afterthought to save themselves from the clutches of the law.** Further, Shri Hitin Sachdeva in his voluntary statement dated 23.11.2021 once again validated his statement recorded on 03-04.09.2021. **Also, the statements given under Section 108 of the Customs Act, 1962 is valid evidence as held in several judgments.**"
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> **(emphasis supplied)**

14. The appellant was treated as the beneficial owner under section 2(3A) of the Customs Act as he was found to be the mastermind involved in mis-declaration and under valuation of the imported parts through several dummy/proxy forms controlled by him.

15. Shri Piyush Kumar, learned counsel for the appellant assisted by Ms. Reena Rawat and Ms. Shikha Sapra made the following submissions:

(i) The Commissioner committed an error in rejecting the value of the goods under rule 12 of the 2007 Valuation Rules as the finding is based on inadmissible evidence;

(ii) The charge of undervaluation is based primarily upon the statements of the appellant recorded on 03/04.09.2021 and 13.09.2021. Not only were these statements typed by the DRI Officers on which the signatures of the appellant were obtained by coercion, but even otherwise the statements recorded under

section 108 of the Customs Act cannot be considered as relevant if the procedure contemplated under section 138B of the Customs Act is not followed.

(iii) The fact that statements of the appellant were recorded under duress is apparent from the fact that the medical officer on duty in the Tihar Jail in his report mentioned about marks of beating on the body of the appellant and even the hospital where the appellant was sent for examination by the jail authorities also found visible marks of beating;

(iv) The Commissioner also confirmed under valuation on the basis of e-mail dated 04.09.2021 and its attachments retrieved from the inbox of the e-mail of the appellant. The said e-mail had arrived on 04.09.2021 at 11:25 AM and 01:16 PM when the appellant was in DRI custody and his laptop and phone were in the possession of DRI Officers and the laptop was also connected to internet through the Wi-Fi network IP address of the DRI. The said e-mails cannot be construed as information supplied to the computer in the ordinary course of activities as contemplated under section 138C(2)(d) of the Customs Act. The certificate produced by the department cannot be construed as a valid certificate;

(v) The purported actual invoices, on the basis of which that Commissioner has re-determined the assessable value, are not relatable to impugned consignments. Firstly, the same are in the name of Diesel Garage and not in the name of importers who had imported the

consignments under corresponding Bills of Lading and Bills of Entry. Secondly, in many cases, the goods mentioned in the purported actual invoices do not match with the description of the goods imported under the corresponding Bill of Entry. Thirdly, the invoice number and date mentioned in the purported actual invoices are also different from the number and dates of invoices furnished by respective importers before customs and fourthly, all the purported actual invoices are neither signed nor stamped;

(vi) The purported price list which has been heavily relied upon is a pdf file of some excel sheets printed on plain paper and not on supplier's letterhead and is not signed or stamped by the issuer. The said document does not have any of the attributes of a price list and, therefore, cannot be admitted in evidence as price list of the supplier. Even otherwise, re-determination of value on the basis of price list is unlawful, being contrary to the law propounded by Courts;

(vii) The re-determination of the value under rule 9 of the 2007 Valuation Rules is contrary to the provisions of the 2007 Valuation Rules;

(viii) The re-determination of value on the basis of wholesale price inbox is impermissible;

(ix) As the value of the imported goods could not be rejected nor determined, the demand of differential duty is bad in law;

(x) The appellant cannot be treated as the beneficial owner;

(xi) The imported goods were not liable to confiscation; and

(xii) Penalties upon the appellant and co-appellants could not have been imposed under various provisions of the Customs Act as the goods were not liable to confiscation.

16. Shri Sanjay Kakkar, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

(i) The appellant is the beneficial owner in terms of section 2(3A) of the Customs Act and, accordingly, is the importer under section 2(26) of the Customs Act. This is apparent from the statements of the appellant recorded under section 108 of the Customs Act;

(ii) The Commissioner did not commit any illegality in placing reliance upon the statements made under section 108 of the Customs Act;

(iii) The demand of cross examination by the appellant was correctly refused by the Commissioner;

(iv) The department had produced a certificate contemplated under section 138(c) of the Customs Act regarding the excel sheets and, therefore, the contention of the appellant that they are not admissible under section 138(c) of the Customs Act is incorrect;

(v) The value of the goods was correctly rejected under rule 12 of the 2007 Valuation Rules and also correctly re-determined under rule 9 of the 2007 Valuation Rules;

(vi) The Commissioner was justified in re-determining the value on the basis of wholesale price index; and

(vii) Penalties have been correctly imposed on the appellant and the co-appellants.

17. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

18. A perusal of the order passed by the Commissioner shows that the finding regarding rejection of the transaction value indicated in the Bills of Entry has been rejected for the following reasons:

(i) The statements of the appellant recorded under section 108 of the Customs Act on 03/04.09.2021 and 13.09.2021;

(ii) The statements of co-noticee's/witnesses recorded under section 108 of the Customs Act during the course of investigation; and

(iii) The e-mail dated 04.09.2021 and its attachments retrieved from the inbox of the e-mail of the appellant.

19. The first issue that arises for consideration is regarding the manner in which the statements of the appellant were recorded on 03/04.09.2021 and 13.09.2021 under section 108 of the Customs Act.

20. In the reply to the show cause notice, the appellant had in very clear terms described the manner in which the statements were recorded. The appellant stated that after he arrived at Delhi on 03.09.2021 at 9:45 PM by Vistara Flight with Bipin Jha, both he and Bipin Jha were taken to the office by the DRI Officers and confined and locked in separate enclosures. Thereafter, they "mercilessly tortured

Noticee, stripped him, physically beat him with stick and metal rod, deprived him of food/water and did not even permit him to attend nature's call". The appellant further stated that the officers stopped beating only after they obtained his signature on the statement which they had already prepared, typed and stored in the DRI computer. The appellant was thereafter arrested on 04.09.2021 at 5:15 PM and produced before the Duty Magistrate and thereafter lodged in Tihar Jail after midnight. On arrival at the jail, the doctor on duty examined the appellant and finding marks of beating recorded in his report "multiple bruises over shoulder, thigh, abdomen, hands due to physical assault". Next morning when the appellant complained of immense pain, nausea and fever the Jail Doctor recommended for examination at a Government hospital. The appellant was taken to Deen Dayal Upadhyay Hospital on 06.09.2021, and the doctors after examination, recorded in the medical examination report that the appellant had bruises over right thigh, bruises over right knee, bruises over left buttock, multiple bruises on right arm, bruises over left shoulder, bruises over left flank which evidenced history of physical assault.

21. It is, therefore, clear that the contention of the appellant that he was mercilessly beaten by the DRI officers is supported by the medical report of the Jail doctor and the report submitted by the doctor of Deen Dayal Upadhyay Hospital.

22. The appellant also contended that on 13.09.2021 when the DRI officers again interrogated the appellant in Tihar Jail, he was forced to sign a pre-typed statement as he was threatened that his mother and younger brother would be arrested. The very next day on 14.09.2021, the appellant filed a representation before the Chief Metropolitan

Magistrate Patiala House, New Delhi retracting the statement and stating that the same was extracted by the DRI officers under physical abuse and mental torture. The retraction statement dated 14.09.2021 of the appellant submitted to the Chief Metropolitan Magistrate is reproduced below:

> "I am Hitin Sachdeva S/o Harvinder Sachdeva aged 31 years, presently under judicial custody at Ward no.-5, Jail No.-7, of Tihar Jail. I am one of the partner in Highline Enterprises Enterprises, M/s MEGA Auto Industries & M/s Bird Automotive. **I was arrested by DRI officials on 04.09.2021. During interrogation, I was mercilessly beaten with wooden rods and threatened of dire consequences by DRI officials at DRI office in New Delhi. My signatures were forcefully taken on a pre-typed statement which was not read over to me. I wish to humbly submit that it is not my statement and my signatures were obtained on it under threat and pressure. I hereby wish to retract my statement given on 04/9/2021 and I do not own any of its contents. My request for retraction be humbly please be allowed. My medical examination was later done on 06/09/2021.**
>
> **Moreover, the DRI officials had visited Tihar Jail no. 7 (no. 7) on 13/09/2021 to take my statement. But I wish to bring to your notice that again the statement was again pre-typed in DRI laptop and I was again pressurized and threatened to worse conditions again if I did not sign the pre-typed statement. They threatened me to worse conditions to me and my family. I wish to please retract my statement again on 13/09/2021 as I do not own any of its contents. My request for retraction may please be allowed**
>
> Lastly, I would request you sir your honour that my and my family's statements should be taken infront of a magistrate in court as I was physically and mentally tortured by DRI officials. **I am very scared by the**

> **DRI officials and would humbly request you to kindly, grant the same that my and my family's statements are to be done in court infront of a magistrate, and we are not called at DRI office.**
>
> I humbly request for the acceptance of this request as I am mentally disturbed and scared because of my past incidences with the DRI officials."
>
> **(emphasis supplied)**

23. The Commissioner has not considered the facts stated by the appellant in the reply to the show cause notice regarding the manner in which the statements were recorded on 03/04.09.2021 and 13.09.2021. In view of the medical reports submitted by the jail doctor and the doctor at the Deen Dayal Upadhyay Hospital, the contention of the appellant deserves to be accepted.

24. Regarding the retraction statement dated 14.09.2021, the Commissioner has disregarded the same for the reason that the retraction statement was an afterthought to save himself from the clutches of law. The retraction was made before the Chief Metropolitan Magistrate on 14.09.2021 immediately after it was made on 13.09.2021. The retraction could not have been ignored merely by stating that it was an afterthought, more particularly when the facts stated by the appellant regarding the manner of obtaining the statements on 03/04.09.2021 had also been stated in this retraction statement. The statements made by the appellant on 03/04.2021 and 13.09.2021, therefore, cannot be considered as relevant.

25. A perusal of the statement of the appellant made on 03/04.09.2021 shows that it contains in Table 1 list of firms "said to have been created by the appellant for importing auto parts from China". A perusal of this Table shows that is contains the name of the

importer, the IEC code which runs into as many as ten digits the registered address of each of the forms and the IEC date. It is difficult to believe that all these data could have been stated by the appellant in his statement on his own. This apart, Table B contains comparison of the actual invoices with import invoice submitted to customs. It mentions fifteen original invoices with numbers, original invoices date, corresponding fake invoices numbers prepared by the appellant, import value as per the original invoice and import value as per the fake invoice. It is also difficult to believe that these figures could have been mentioned by the appellant on his own.

26. Even otherwise, a statement recorded under section 108 of the Customs Act cannot be considered as relevant if the procedure contemplated under section 138B of the Customs Act is not followed. Without examining the provisions of section 138B of the Customs Act, the Commissioner has merely stated that the statements recorded under section 108 of the Customs Act are valid.

27. In **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[6], a Division Bench of this Tribunal examined the provisions of section 108 and 138B of the Customs Act as also the provisions of section 9D and 14 of the Central Excise Act, 1944, which are similar to the provisions of section 108 and 138B of the Customs Act, and the observations of the Bench are:

> "**28**. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise

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6. Excise Appeal No. 51148 of 2020 decided on 01.04.2025

> Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. **The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either under section 14D of the Central Excise Act or under section 108 of the Customs Act.** The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."
>
> **(emphasis supplied)**

28. In **Ambika International** vs. **Union of India**[7] 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 circumstances contemplated by clause (a) of section 9D(1) exist, then

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7. 2018 (361) E.L.T. 90 (P&H)

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.

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

29. In **Hi Tech Abrasives Ltd.** vs. **Commissioner of C. Ex. & Cus., Raipur**[8] decided on 04.07.2018, the Chhattisgarh High Court also examined the provisions of section 9D of the Central Excise Act. The allegation against the appellants 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 appellants 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-

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8. 2018 (362) E.L.T. 961 (Chhattisgarh)

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)

30. In **Additional Director General (Adjudication)** vs. **Its My Name Pvt. Ltd.**[9] 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:*******
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> **A Division Bench of this Court has, speaking through A.K. Sikri, J. (as he then was) held, 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.

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9. 2021 (375) E.L.T. 545 (Del.)

> **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)**

31. In **M/s. Drolia Electrosteel P. Ltd. vs. Commissioner, Customs, Central Excise & Service Tax, Raipur**[10] 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 Pvt. Ltd.** vs. **Union Of India**[11], 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**

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10. Excise Appeal No. 52612 of 2018 decided on 30.10.2023
11. 2016 (340) E.L.T. 67 (P & H)

> **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)**

32. For the same reasons, the statement of the co-noticees/ other witnesses tendered under section 108 of the Customs Act could not have been relied upon.

33. Thus, the statements made by the appellant and other persons under section 108 of the Customs Act could not have been relied upon by the Commissioner to reject the transaction value.

34. The Commissioner has rejected the transaction value mentioned in the Bills of Entry also for the reason that the appellant had admitted under valuation in the statements recorded under section 108 of the Customs Act. The rejection of the transaction value for this reason cannot, for the reasons stated above, be sustained.

35. The Commissioner has also treated the appellant to be the beneficial owner under section 2(3A) of the Customs Act on the basis of the statements made by the appellant under section 108 of the Customs Act. This finding of the Commissioner cannot be sustained as statements made under section 108 of the Customs Act cannot be considered as relevant.

36. The rejection of the transaction value is also based on the e-mail dated 04.09.2021 and its attachment retrieved from the inbox of the e-mail of the appellant.

37. It needs to be noted that the appellant had in his reply had clearly stated that during the course of investigation on 04.09.2021, the appellant had provided password of his e-mail and, thereafter, the DRI Officers, using their wi-fi connection sent e-mails to various IDs found in the appellants e-mail database, called them telephonically and threatened them to prepare and forward documents as desired by them and it is in compliance of the said instructions that some of them prepared documents as directed by the DRI Officers and e-mailed them to the e-mail address of the appellant on 04.09.2021. The appellant also stated that the relied upon document numbers 26 and 27 to the show cause notice had arrived on 04.09.2021 at 11:25 AM and 01:16 PM when the appellant was in the custody of DRI and the laptop was in the possession of DRI Officers. The appellant also requested the Commissioner to verify that the contextual mails had arrived in appellant inbox through the Wi-Fi network/IP address of the DRI. In fact, the appellant also stated all the aforesaid purported Invoices retrieved from inbox of the appellant e-mail address had arrived not on the appellants laptop, but on the Desktop installed in DRI officers

connected through DRI internet Wi-Fi connection and, therefore, the appellant requested the Commissioner to cause an impartial inquiry regarding the arrival of purported invoices in the appellants inbox when the appellant was in DRI custody.

38. It is not in dispute that the said e-mails are not of any date prior to the date of import of the goods and are said to have been received on the e-mail address of the appellant on 04.09.2021. There appears to be no good reason as to why those e-mails would have been sent on 04.09.2021 when the import had already taken place earlier. The Commissioner has not dealt with the reply of the appellant and has blindly relied upon the invoices attached and considered them as parallel invoices.

39. The rejection of the transaction value under rule 12 of the 2007 Valuation Rules on the basis of the e-mail said to have been received by the appellant on 04.09.2021 is, therefore, not sustainable.

40. Once the rejection of the transaction value under rule 12 of the 2007 Valuation Rules cannot be sustained, the issue relating the contention of the appellant regarding wrongful re-determination of the value is not required to be examined.

41. In any case, the re-determination of the value is based on the basis of parallel invoices said to have been sent to the e-mail address of the appellant on 04.09.2021 and on the basis of the price list also sent by the e-mail on 04.09.2021. As observed earlier, e-mails received by the appellant on 04.09.2021 cannot be relied upon. This apart, the purported price list, which has been heavily relied upon by the Commissioner for re-determination of the value is a PDF file of some excel sheets printed on a plain paper and not on the letterhead of the

supplier nor is it signed or stamped by the issuer. The said document cannot be termed as a price list.

42. Thus, for all the reasons stated above, the transaction value of the imported goods cannot be rejected under rule 12 of the 2007 Valuation Rules. Subsequently, they could not have been re-determined under rule 9 of the 2007 Valuation Rules. The demand of differential duty with interest and penalty would also, therefore, have to be set aside.

43. Customs Appeals filed by Sandeep Kumar Das, S.K. Dhawan, Harvinder Sachdeva and Madhav Sachdeva imposing penalty upon them under sections 114AA and 112(b)(ii) of the Customs Act, therefore, cannot also be sustained. They are, accordingly, set aside.

44. Resultantly, the impugned order dated 11.06.2024 passed by the Commissioner is set aside and the Customs Appeal No's. 40724 of 2024, 40725 of 2024, 40726 of 2024, 40913 of 2024 and 40914 of 2024 are allowed.

(Order Pronounced on **19.03.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Jyoti