CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40040 of 2017

(Arising out of Order-in-Appeal C.Cus.II.No. 865/2016 dated 16.09.2016 passed by Commissioner of Customs (Appeals-II), No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Junaid Interior Design **...Appellant**
No. 1/25, 9th Main,
Yarab Nagar,
Banashankari 2nd Stage,
Bangalore – 560 070.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Ms. M. Punnagai, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40308 / 2026

DATE OF HEARING : 28.10.2025
DATE OF DECISION : 03.03.2026

Per Mr. VASA SESHAGIRI RAO

This appeal is filed by the Proprietorship firm *viz.,* M/s. Junaid Interior Design, Bangalore (hereinafter referred to as the Appellant) against order-in-appeal C.Cus II No. 865/2016 dated 16.09.2016 passed by the Commissioner of Customs (Appeals-II), Chennai (hereinafter referred to as "LAA").

2. Brief facts of the case are that based on specific intelligence developed by the officers of Directorate of Revenue Intelligence, Bangalore Zonal Unit, Bangalore (hereinafter referred to as DRI) that the Appellant was under-valuing architectural gypsum moulding products such as cornices, domes etc imported by them from M/s Hock Keng Heng Plaster Industrial SDN BHD, Malaysia, the officers of DRI conducted simultaneous searches at the premises of the office-cum godown of the Appellant and residential premises of Shri Ansar Khan, Proprietor of the Appellant firm. During the search, the officers recovered certain documents which appeared to be incriminating in nature and also recovered a Lenovo laptop under Mahazar dated 18.12.2013.

3. On preliminary scrutiny of the seized documents, the officers of DRI found that the value of the goods imported from M/s Hock Keng Heng Plaster Industrial SDN BHD, Malaysia had been mis-declared. Hence the imported goods valued at Rs. 6.79 Lakhs available at the premises of the Appellant were seized by the officers of DRI as they had reason to believe that the said goods were liable for confiscation for mis-declaration of value at the time of import.

4. Upon completion of investigation, a show cause notice dated 18.10.2023 was issued to the Appellant and same was adjudicated by the Additional Commissioner of Customs (Group 3&4), Chennai-II who passed the Order-in-Original No. 47654/2016 dated 10.06.2016 wherein unit value declared by the Appellant for the impugned imported goods was rejected and the actual unit value was re-determined, the differential duty of Rs.21,74,678/- calculated on the re-determined value was confirmed along with applicable interest under Section 28AA of the Customs Act, 1962; the goods valued at Rs. 1,32,77,668/- which were not available for seizure and confiscation were held liable for confiscation in terms of Section 111(d) and (m) of the Customs Act, 1962; the goods seized under Mahazar dated 18.12.2013 at the Appellant's premises were confiscated under Section 111(d) and (m) of the Customs Act, 1962 with the option to the Appellant to redeem the same on payment of a fine of Rs. 2,00,000/- imposed under Section 125 ibid and penalties of Rs. 21,74,678/- plus appropriate leviable interest as on date of payment of duty and Rs. 20,00,000/- were imposed on the Appellant Sections 114A and 114AA of the Customs Act, 1962 respectively.

5. Being aggrieved by the Order-in-Original No. 47654/2016 dated 10.06.2016, the appellant preferred an appeal before the first appellate authority. The first appellate authority upheld the Order-in-Original and rejected the appeal. Hence, the present appeal before this forum.

6.1 The Ld. Advocate Ms. M. Punnagai appeared and argued for the appellant and submitted that the demand is confirmed based on the statement dated 18.12.2013 recorded from the appellant which has been retracted and disputed by the Appellant in their reply dated 25.08.2014. She further submitted that the statement has been retracted by the Appellant at the earliest opportunity when the copy of the statement was received by the Appellant along with the show cause notice dated 17.06.2014 and the retracted statement cannot be relied upon without corroborative evidences as held by the Hon'ble Tribunal in the case of Jeen Bhavani International vs. Commissioner of Customs, Nhava Sheva reported in (2023) 6 Centax 11 (Tri.-Bom) which has been confirmed by the Hon'ble Supreme Court in Civil Appeal nos. 1482-1485 of 2023 reported in (2023) 6 Centax 14 (S.C.).

6.2 Further, the Learned Advocate submitted that as seen from the fact that the Appellant studied upto 3rd

standard and that too in Government Urdu School, together with the fact that the statement of the Appellant has been recorded in English language, it is evident that it is a statement recorded as dictated by the Senior Intelligence Officer and is not at all an admission statement.

6.3 Referring to the two invoices, viz. 5510 dated 20.09.2013 and 5462/17.06.2013 recovered by DRI, she submitted that as per these invoices, it was observed that the price for Gypsum moulding powder supplied by Hock Keng was higher than the one declared in BE No. 3477858/10/07.2013 and BE No. 2630430/05.07.2013 and therefore the DRI entertained suspicion that all the imports effected by the Appellant during the period from May 2012 to November 2013 should have been undervalued. She placed reliance on the case of Kuber Impex Ltd vs. Commissioner of Customs, Nhava Sheva-V reported in (2023) 4 Centax 266 (Tri-Bom) to submit that the two invoices which were printed from the laptop seized from the Appellant cannot be relied upon without the certificate under section 138C of the Customs Act, 1962. The Learned Advocate also relied upon the case of Additional Director General Adjudication, *Directorate of Revenue Intelligence Versus Suresh Kumar And Co. Impex Pvt. Ltd. & Others [2025 (9) TMI 76 – Supreme Court]* to submit that in view of the fact that while

giving reply to the show cause notice, the proprietor of the Appellant has retracted his statement, the soft copies of invoices downloaded from the laptop of the Appellant are not admissible as evidences.

6.4 In support of her contention that the price found in the parallel invoice No. 5510 dated 20.09.2013 has been erroneously adopted as the basis for rejection of declared value and re-determination of price, the Learned Advocate submitted that invoice No. 5510 dated 20.09.2013 has no relevance for imports made in July 2013 under BOE No. 3477858 dated 10.07.2013 and BOE No.2630430 dated 05.07.2013 as the imports precede the date of invoice which is found to have been issued two months posterior to actual date of import.

6.5 Relying upon the case of *HariPriya Traders vs. Commissioner of Customs reported in (2023) 9 Centax 52 (Tri-Bang)* wherein it is held that since there was no evidence of contemporaneous import of identical or similar goods of same quality, quantity, commercial level, country of origin, model differences for comparison, the same cannot be relied for enhancement and for rejection of transaction value, the Learned Advocate submitted that in ignoring the Appellant’s submission that no details other than bill of entry

number and importer's name have been furnished to the Appellant to verify the contemporaneous nature of the imports relied upon for ascertaining the actual unit price in respect of 16 bills of entry, the LAA has failed to note that contemporaneous value has to be established by evidence and not by mere assertion or discussion.

6.6 Referring to Rule 5 of Customs Valuation Rules, 2007 in terms of which if there are different contemporaneous prices available the lowest value has to be adopted, she submitted that adoption of the higher prices in the said contemporaneous imports by the adjudicating authority is arbitrary.

6.7 Citing the price of USD 1.05 for HKHC669 and USD 2.05 for HKHC896, both as per DRI, she averred that the price of gypsum moulding powder varies based on the code number and in the absence of code number, it is not possible to ascertain whether the value adopted by DRI was for gypsum of the same code number.

6.8 Referring to the invoices raised by the Appellant for sale of the imported goods which were submitted to the LAA so as to establish that the Appellant could not have imported the goods at the higher price as claimed by DRI,

the Learned Advocate argued that Revenue bias is writ large in the observation of the LAA that "reference to the local sale value by the appellant can be of no help to the case of the appellant as the item sold in the local sale invoice cannot be correlated with import and it is not necessary that all items are sold in local market at profit. It is always possible that loss is suffered on sale of certain non-moving items". In this regard, she submitted that the Appellant deals with imported goods alone and is not dealing in non-moving items. She argued that the import was made to earn profit and not to lose money and that the price at which the Appellant sold the imported goods in India is a definite proof that the goods could not have been purchased at a higher price as claimed by DRI. She referred to the case of Bayer India Limited where transaction value was fixed by taking into account the resale price of the goods in India and even though there was contemporaneous import at higher price, the Tribunal held that transaction value was to be adopted and the same was also approved by the Supreme Court *vide 2015 (322) ELT 17 (SC).*

6.9 Further, the Ld. Advocate averred that the goods held in stock were seized on the suspicion that all the past imports were undervalued simply because in the cases of two earlier imports, invoice for higher value was recovered on

search of the Appellant's premises. She submitted that apart from the fact that authenticity of the invoice is doubtful, undervaluation of few imports cannot be applied to all imports and that evidence of undervaluation has to be there for each import. She relied upon the case of *Mysore Chip Boards [2012 (282) ELT 112 (Tri.)]* to submit that seizure of goods found in stock and confiscation of the same is illegal in the absence of evidence for undervaluation. It is the contention of the Ld. Advocate that imports of goods by someone else at a higher price is no evidence to prove under valuation of imported goods; and it is not proved in this case that the goods compared were identical, as there are numerous grades and variety of gypsum moulding products.

6.10 Regarding penalties, Learned Advocate submitted that imposition of penalties both under Section 114A and Section 114AA is punishing twice for the same offence. It is also submitted that Section 114AA is intended to deal with export-offences and that no penalty can be imposed under Section 114A as the re-determination of value is legally unsustainable.

7. *Per contra*, the Ld. AR Ms. Anandalakshmi Ganeshram, for the Department reiterated and supported the findings in the impugned order. Further, she placed reliance

upon the case of *M/s. AG Impex Versus Commissioner of Customs, New Delhi [2024 (9) TMI 1257 – CESTAT New Delhi]* to submit that the soft copies of invoices recovered from the Appellant's / proprietor's own laptop are documents admissible as valid evidence. Relying upon the case of *Shivam marketing and Gaurav Kushwaha Partner Versus Common Adjudicating Authority, Indore[2025 (6) TMI 1898 – CESTAT New Delhi-LB],* the Learned AR submitted that even if the importer produces an invoice with the Bill of Entry and other invoice for the same consignment is found in the private records or e-mail of the importer showing a different value, the customs duty under section 14 of the Customs Act can be determined on the basis of the transaction value reflected in the invoice retrieved from the e-mail account of the importer. Reliance has also been placed by her on the case of *Shri T.N. Malhotra and M/s. S.R. Bristle Products Pvt. Ltd. Versus Pr. Commissioner of Customs, New Delhi [2024 (6) TMI 202- CESTAT New Delhi]* to submit that as the Appellant in his voluntary statement admitted the documents which were recovered from his own laptop, the same are admissible as evidence.

8. We have heard both sides and perused the appeal records and case laws relied upon.

9. The issues for consideration in this appeal are: -

i. Whether rejection of the declared value on the basis of the statement of the Appellant recorded in English when the Appellant claims to have studied only upto 3rd Standard and that too in Government Urdu School is correct or not.

ii. Whether rejection of the declared value of the impugned goods on the basis of soft copies of two invoices downloaded from the laptop found at the premises of the Appellant, which do not contain signature of the Appellant, and which are dated later than the date of import is correct or not.

iii. Whether rejection of the declared value of the impugned goods on the basis of contemporaneous imports of identical goods supplied from the same supplier at higher unit prices when the Appellant submitted his local sale invoices as evidences in support of the value declared in the bills of entry is correct or not.

iv. Whether re-determination of the value of the goods imported by the Appellant on the basis of contemporaneous imports of identical goods from the same supplier and country of origin at higher unit prices is correct or not.

v. Whether the demand of differential duty of Rs. 21,74,678/- under Section 28(4) of Customs Act, 1962, confiscation of goods in terms of Section 111(d) and 111(m) of Customs Act, 1962, imposition of fine of Rs. 2,00,000/-under Section 125 of Customs Act, 1962 and imposition of penalties of Rs. 21,74,678/- plus appropriate leviable interest as on date of payment of duty and Rs. 20,00,000/- under Sections 114A and 114AA of Customs Act, 1962 respectively are correct or not.

10. The appellant has argued that a statement recorded from him is not a voluntary statement as evident from the fact that the statement is recorded in English whereas he studied only upto 3rd Standard and that too in a Government Urdu School. It is seen that this argument that the Appellant has studied only upto 3rd standard and that the contents were not explained to him in a language known to him has been brushed aside by the original adjudicating authority by stating that the Appellant has written in his own handwriting at the end of the voluntary statement dated 18.12.2013 that "I HAVE ONCE AGAIN READ MY STATEMENT AND IT IS CORRECTLY TYPED". The Appellant's claim that the statement recorded in English is not his voluntary statement as he is not well versed with English language

cannot be rejected by just citing another sentence written in English to the effect that the Appellant has once again read the statement and it is correctly typed. Unless the statement is recorded in the language known to the deponent, it cannot be considered as a voluntary statement. In the era of Google translator, it is not difficult for the investigating officer to record a statement in the language known to the deponent. All the above facts lead to the inevitable conclusion that the statement recorded from the Appellant cannot be legally treated as a voluntary statement.

11.1 Rival contentions have been made in this case about the admissibility of the soft copies of two invoices downloaded from the laptop of the proprietor of the Appellant firm as documents in evidence. The Learned AR has cited the decisions in the cases of *M/s. AG Impex Versus Commissioner of Customs, New Delhi [2024 (9) TMI 1257 – CESTAT New Delhi], Shivam marketing and Gaurav Kushwaha Partner Versus Common Adjudicating Authority, Indore [2025 (6) TMI 1898 – CESTAT New Delhi-LB]* and *Shri T.N. Malhotra and M/s. S.R. Bristle Products Pvt. Ltd. Versus Pr. Commissioner of Customs, New Delhi [2024 (6) TMI 202- CESTAT New Delhi].*

11.2 Relevant paras 6.14 to 6.16 of *M/s. AG Impex Versus Commissioner of Customs, New Delhi [2024 (9) TMI 1257 – CESTAT New Delhi]* read as under: -

> *"6.14 Despite these admitted facts, we find no proof from appellant to falsify invoices retrieved showing item details, deposits adjusted and also the actual cartons loaded compared with cartons shown in BL and to prove that there invoices have no relation to the invoices filed by the appellant-importer with Bills of Entry. It has already been observed as admitted fact that details of both set of invoices (retrieved and those filed with Bills of Entry) have absolute similarity vis-à-vis all details of the impugned imported goods except the values have been reduced and goods are declared as unbranded. The documents of comparison based whereupon the demand has been raised and confirmed as retrieved from proprietor of appellant's own mobile phone in his presence only. Thus to our opinion the retrieved documents/invoices are original/primary documents. In the light of above discussion about Section 65 of the Indian Evidence Act, to which Section 138C of the Customs Act is parameteria, we hold that the excel sheets/invoices retrieved to not need certificate of authenticity. Hence the argument of appellant for setting aside the demand for want of said certificate is not sustainable.*
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> *6.15 These excel sheets/invoices are received from the Chinese supplier, intentionally routed through the forwarder, and are preserved for all these years, the sanctity and importance of the documents. The invoices had remarks such as 'customer paid deposit', which have been shown adjusted to the total amount payable thus it also prove that there was other mode of payment also than the banking channels. In view of the above observed admissions and failures on part of the appellant to prove to the contraryand the above discussed legal proposition, we do not find any infirmity with the findings of authorities below.*
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> *6.16 Above all, we also find that it cannot be a mere coincidence that the invoice number, date, container number, description of goods, number of carton and quantity of goods mentioned in the invoices/documents recovered through e-mail matches with the invoices attached by the importer with Bills of Entry filed for customs clearance. Hence, we hold that there is sufficient evidence against appellant that the actual invoices have been altered by the appellant to undervalue and mis-declared the imported goods. The act amounts to committing fraud and fraud vitiates everything. Resultantly*

there is no infirmity in the findings to this effect in order under challenge."

Whereas in the case on hand, the invoice dates in the two soft copies are not matching with the invoice dates mentioned in the Bills of Entry. Two invoices recovered were dated 20.09.2013 and 17.06.2013 respectively whereas Bills of Entry were filed on 05.07.2013 and 10.07.2013. One of the invoices which was dated 20.09.2013 cannot be linked to the imports under question. Therefore, the case of *M/s. AG Impex Versus Commissioner of Customs, New Delhi [2024 (9) TMI 1257 – CESTAT New Delhi]* is clearly distinguishable on facts.

11.3 It is observed that Paras 4 and 5 of the decision in the case of *Shivam marketing and Gaurav Kushwaha Partner Versus Common Adjudicating Authority, Indore [2025 (6) TMI 1898 – CESTAT New Delhi-LB]* read as under: -

"5. While the officers of Directorate General of Revenue Intelligence [DRI] were investigating an earlier import made by the appellant under Bill of Entry No. 515 dated 12.02.2015, they asked Gaurav Kushwaha to open his e-mail account. Gaurav Kushwaha then opened his e-mail account and voluntarily downloaded one Commercial Invoice No. GIBHL0042 dated 28.01.2015 and a Packing List pertaining to Container No. OOLU2897353. This Invoice was in respect of the goods that were imported by the appellant for which a Bill of Entry No. 549 dated 05.03.2015 was presented by the appellant to the customs authorities. Statement of Gaurav Kushwaha was recorded on 06.02.2015 by the officers of DRI. However, Bill of Entry No. 549 dated 05.03.2015 had not been filed by the appellant at the time of recording of the statement of Gaurav Kushwaha.

> *6. When the DRI officers again visited ICD Kheda on 11.03.2015 for examination and valuation of the goods contained in Container No. OOLU2897353, they noticed that the appellant had filed Bill of Entry No. 549 dated 05.03.2015 with Commercial Invoice No. GIBHL0042 dated 28.01.2015. It appeared to the officers of DRI that the Invoice filed with the Bill of Entry No. 549 dated 05.03.2015 was false/fabricated."*

Thus, it is seen that in the case of *Shivam marketing and Gaurav Kushwaha Partner Versus Common Adjudicating Authority, Indore [2025 (6) TMI 1898 – CESTAT New Delhi-LB],* the invoices filed with Customs and the invoice downloaded from the e-mail account of the Appellant therein were matching in date. Further a packing list pertaining to the container in which the goods were imported was also found in the e-mail account of the said Appellant. In the case of the Appellant herein, the dates of the invoices downloaded from the Appellant's laptop were not matching with the dates of the invoices declared in the bills of entry and no packing list was downloaded from the Appellant's laptop. Therefore, the case of *Shivam marketing and Gaurav Kushwaha Partner Versus Common Adjudicating Authority, Indore[2025 (6) TMI 1898 – CESTAT New Delhi-LB]* is also not exactly applicable to the facts in this case.

11.4 Relevant Paras 20 and 21 of *Shri T.N. Malhotra and M/s. S.R. Bristle Products Pvt. Ltd. Versus Pr. Commissioner of Customs, New Delhi [2024 (6) TMI 202-CESTAT New Delhi]* read as under: -

"20. On the admissibility of the computer printouts retrieved from the email and we-chat, the learned Counsel for the appellant has raised an objection that the condition of furnishing the requisite certificate of the investigating officer as specified in Section 138C(4) of the Act has not been complied with and in support thereof relied on the decisions in Gaurav Kushwaha Vs. Commissioner of Central Excise, Indore [2018(363)ELT 859(Tri.-Del.)]; M/s. S.N. Agrotech Vs. Commissioner of Customs, New Delhi [2018(361)ELT 761(Tri.-Del.)] and M/s.Agarvanshi Aluminium Ltd Vs. Commissioner of Customs (I), Nhava Sheva [2014(299)ELT 83(Tri.-Mumbai)]. However, after the said decisions were rendered, the Gujarat High Court in Principal Commissioner of Customs Vs. Kishan Manjibhai Gadesriya (supra) affirmed the view taken by the Tribunal in M/s Laxmi Enterprises (supra) noting that the decision in M/s.Laxmi Enterprises (supra) was challenged before the Delhi High Court and the view of the Tribunal was upheld vide order dated 06.08.2019. Subsequently, the matter was taken up to Supreme Court and the special leave petition was dismissed as reported in M/s.Laxmi Enterprises Vs. Commissioner of Customs [2020(372) ELT A 33 (SC)]. Rejecting the contention of the party that the computer printouts taken out from the computer cannot be considered as evidence unless certificate as required under subsection (2) of section 138 C of the Act is issued, the High Court of Gujarat observed as under:-

> *"99. We do not find any merit in the above submission of Mr.Trivedi. The truth or the relevance of the documents has been admitted in no uncertain terms by the respondents in their statements recorded under Section 108 of the Act 1962. In such circumstances, it is too much for the respondents to say that the electronic evidence could not have been taken into consideration. In fact, the electronic evidence on record fortifies what has been stated by the respondents in their statements recorded under Section 108 of the Act.*
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> *100. In the aforesaid context, we may refer to one order passed by the CESTAT Principal Bench, New Delhi, in the case of Laxmi Enterprises vs. Commissioner of Customs (Prev.), New Delhi, reported in 2018 (361) E.L.T. 1054 (Tri.-Del.). We quote the relevant observations made by the Principal Bench of the Tribunal as under :*
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> > *"11. The appellant has raised objections to the admissibility of the documents recovered from the laptop. They have cited the provisions of Section 138C of the Customs Act. We find such objections without basis in as much as the truth of the documents printed-out from the laptop has been admitted by Shri Sumit Chawla son of the proprietor in clear terms.*

> *Further, their clear admission by him that these invoices recovered, reflect the correct valuation at which the transaction was concluded with the valuation supplier. Further the appellant was given an opportunity to prove the correct transaction value of the goods imported under 32 bills of entry by providing bank attested genuine invoices but Shri Sumit Chawla did not make same available. On the other hand, in his statement dated 19.01.2016, that the prices indicated in the invoices/commercial invoices could be taken for assessment of all past imports as the rate of product did not change much during period of imports. We are of the view that there is no infirmity on the part of the adjudicating authority in re-determining the value of the past imported goods on the basis of such invoices. In the peculiar facts and circumstances of the present case, there is no need for the Revenue to collect evidence in the form of contemporaneous imports."*
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> *(Emphasis laid)*
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> *21. We are of the view that in the facts and circumstances of this case, where the appellant had duly admitted the documents, which he recovered from his own email and we-chat after getting the OTP on his own mobile phone, the decisions of the two High Courts is squarely applicable, which are otherwise binding on us and therefore, the objection raised by the appellant is unsustainable. The issue is answered, accordingly, against the appellant and in favour of the Revenue."*

The Appellant in the above case has not retracted the statement admitting the documents recovered from his own e-mail and we-chat after getting the OTP on his own mobile phone, whereas the Appellant herein has retracted the statement in his reply to the show cause notice. Therefore, the case of *Shri T.N. Malhotra and M/s. S.R. Bristle Products Pvt. Ltd. Versus Pr. Commissioner of Customs, New Delhi [2024 (6) TMI 202- CESTAT New Delhi]* is distinguishable on facts. Further invoice copies downloaded are not matching

with the imports effected as one of the invoices was dated much later to the import (Para 11.2 *supra*).

11.5 The Ld. Advocate for the Appellant has relied upon the case of *Additional Director General Adjudication, Directorate of Revenue Intelligence Versus Suresh Kumar And Co. Impex Pvt. Ltd. & Others [2025 (9) TMI 76 – Supreme Court]* to submit that the soft copies of invoices downloaded from the laptop of the Appellant are not admissible as evidences as the proprietor of the Appellant has retracted his statement while giving reply to the show cause notice. Paras 43 to 45 of Additional Director General Adjudication, Directorate of Revenue Intelligence Versus Suresh Kumar And Co. Impex Pvt. Ltd. & Others (*supra*) read as under:

> *"43. Keeping the aforesaid in mind, we are of the view and, more particularly, considering the Record of Proceedings duly signed by the respondents, including the various statements of the respondents recorded under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962. When we say due compliance, the same should not mean that a particular certificate stricto senso in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C(4) of the Act, 1962.*
> *44. It is pertinent to note at this stage that at no point of time the statements recorded under Section 108 of the Act, 1962 came to be retracted.*
> *45. Even while giving reply to the show cause notice, the contents of such statements recorded under Section 108 of the Act, 1962 were not disputed. This, of course, would be relevant only insofar as determining whether there has been due compliance of Section 138C(4) of the Act, 1962 is concerned. The evidentiary value of such Section 108*

> *statements in any other proceedings, if any would have to be considered in accordance with law, including the compliance of Section 138B of the Act, 1962."*

Plain reading of above portion of the judgment of Hon'ble Supreme Court in the case of Additional Director General Adjudication, Directorate of Revenue Intelligence Versus Suresh Kumar And Co. Impex Pvt. Ltd. & Others (supra) shows that retraction of statement recorded under Section 108 of Customs Act, 1962 even at the stage of giving reply to the show cause notice renders the documents admitted in the statement as inadmissible evidence due to non-compliance of Section 138(C) of Customs Act, 1962. It is observed that the Appellant has retracted the statement in his reply to the show cause notice. Therefore, the soft copies of the invoices downloaded from the laptop of the Appellant are not admissible as evidences. We are of the view that each decision rendered has to be interpreted as to its applicability to the facts of the case in dispute.

12. It is to be noted that the invoices are dated later than the date of imports, which is obviously not the case with the invoices declared in the Bills of Entry. Due to the above deficiencies, soft copies of the two invoices downloaded from the laptop found at the premises of the Appellant cannot be considered as parallel invoices.

13. Higher contemporaneous import prices of identical or similar goods do provide a reason to doubt the correctness of the declared value. However, the same cannot override the evidences submitted by Appellant in support of the declared value, especially its import prices *vs.* market prices. This is amply clear from a plain reading of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which reads as under:-

> ***Rule 12. Rejection of declared value*** *. -*
> *(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
> *(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*
> *Explanation.-*
> *(1) For the removal of doubts, it is hereby declared that:-*
> *(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*
> *(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*
> *(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -*
> *(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
(c) the sale involves special discounts limited to exclusive agents;
(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;
(f) the fraudulent or manipulated documents.

14. It is observed that the Appellant has submitted evidences by way of local sale invoices under which impugned goods imported by the Appellant were sold after clearance from Customs. It is also observed that LAA has rejected the transaction value on the assumption that the Appellant must have sold the impugned imported goods at loss which is not tenable. In other words, it cannot be said that the LAA has accepted the claim of the Appellant that the impugned goods have been sold at the prices mentioned in the local sale invoices.

15. Having thus accepted the local sale prices as genuine, instead of assuming that local sales of the impugned imported goods have been made by Appellant at loss, LAA should have examined whether the prices mentioned in local sale invoices establish that the value declared in the bills of entry is correct or not. However, LAA has failed to do so and ignored the local sale invoices by holding that the item sold in the local sale invoice cannot be correlated with import. Further, Revenue has not rebutted

Appellant's argument that the local sale price proves that the declared value of the imported goods is correct. Thus, there was no evidence as to undervaluation of the imported goods.

16. Further, LAA has contradicted himself by holding on the one hand that the local sale invoice cannot be correlated with import while simultaneously assuming on the other hand that it is not always possible that all items are sold in local market on profit, and that it is possible that loss is suffered on sale of certain non-moving items. Moreover, Appellant's claim that he deals with imported goods alone and is not dealing in non-moving items, and that the import was made to earn profit and not to loose money has not been rebutted or disproved by the department.

17. For all the above reasons, the declared value of impugned imported goods cannot be rejected merely on the basis of higher contemporaneous import prices of identical or similar goods without considering the factors like quantity ordered, nature of the goods, whether imported under a contract, *etc.,* i.e., various commercial factors influencing the transaction value.

18. Appellant has raised the issue that except bills of entry number and importer's name, no other details were

provided to them to verify the contemporaneous import prices relied upon to reject the declared value and re-determine the value of the impugned imported goods. The LAA has held that the above contention of the Appellant is far from the facts as the original adjudicating authority has discussed the contemporaneous imports at higher value by discussing the imports made by other importers from the same supplier by giving specific Bills of Entry numbers in Para No. 32 of the Order-in-Original. Relevant portion of Para No. 52 of the Order-in-Original reads as under: -

> *"Contemporaneous import data of identical goods of comparable quantities imported into India from the same supplier M/s Hock Keng, from the same country of origin Malaysis were analysed and it appeared that M/s JID had undervalued the goods, viz. Corbels & Domes CB1 imported vide B/E No. 8509140 dated 17.11.2012 at a declared unit Price at USD 1.25 (total 12 pieces) was found imported by M/s Shri Balaji Traders vide B/E No. 8840059 dated 22.12.2012 at USD 1.7 (total 410 pieces) from the same supplier M/s Hock Peng. Similarly, Cornices and Corners with design/product No. 477/B was imported by M/s JID vide B/E No.8844600 dated 24.12.2012 (total 8 pieces) at unit price 1.4 USD, wherein the same was imported by M/s Balaji Traders vide B/E No. 8840059 dated 22.12.2012 (total 562 pieces) at unit price USD 2.5"*

It is observed that in para No. 32 of the Order-in-Original, the Adjudicating Authority has mentioned details of description and unit price in respect of 2 items, *viz*. Corbels & Domes CB1 and Cornices and Corners with design/product No. 477/B but no such details were provided to the Appellant in respect of the other items. On perusal of the Worksheet-I and Worksheet-II to the Show Cause Notice dated 17.06.2014 issued by the Additional Director, DRI, it is

observed that both the Worksheets contain either the name of the importer, along with bill of entry number and date, or the invoice No. & date of the contemporaneous imports but the item description is conspicuously missing in both the Worksheets. Therefore, the contention of the Appellant that except bills of entry number and importer's name, no other details were provided to them to verify the contemporaneous import prices relied upon to reject the declared value and re-determine the value of the impugned imported goods is correct except in respect of two items discussed in para No. 32 of the order-in-original dated 10.06.2016, *viz*. Corbels & Domes CB1 and Cornices and Corners with design/product No. 477/B. Therefore, except for the above two items, both the adjudicating authority and LAA have failed to verify whether the contemporaneous import prices relied upon by the Additional Director, DRI in the show cause notice dated 17.06.2014 to propose rejection of the declared value and re-determination of value of the impugned imported goods really represent contemporaneous import prices of identical or similar goods in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 or not. In the result, except for the above two items, viz. Corbels & Domes CB1 and Cornices and Corners with design/product No. 477/B, the unit price proposed in the Worksheet-I and II of the show cause notice dated

17.06.2014 cannot be considered as the contemporaneous import price of identical or similar goods in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. All the commercial factors that influence the transaction values like the quantity ordered, differences in quality and models, discounts offered, payments made in advance or not relationship as exporter and importer *etc.,* are required to be considered to arrive at contemporaneous prices and the importer has to be put on notice. When the model differences are evident and when the quantities ordered are in minimum number as compared to the impugned goods, enhancement of transaction values is not justified that too when the importer has given his local sale invoices.

19. In view of the above discussion and findings, all the issues in this appeal are decided in favour of the Appellant and against Revenue. The appeal is allowed with consequential relief, if any. The impugned Order-in-Appeal C.Cus.II.No. 865/2016 dated 16.09.2016 is set aside.

(Order pronounced in open court on 03.03.2026)

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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