

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

REGIONAL BENCH - COURT NO. - I

Customs Appeal No. 30602 of 2019

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-041 to 044-18-19 dated
26.10.2018 passed by Commissioner of Central Excise & Customs (Appeals), Guntur)

M/s Temple City Developers .. **APPELLANT**
Pvt Ltd.,

Plot No. 360/6057,
2nd Floor,
Biju Pattanaik Commercial
Complex, Damana Square,
Chandrasekharapur,
Bhubaneswar,
Odisha - 751 016.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam - Customs

4th Floor,
Customs Hose,
Port Area,
Visakhapatnam,
Andhra Pradesh - 530 035.

WITH

Customs Appeal No. 30183 of 2019

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-041 to 044-18-19 dated
26.10.2018 passed by Commissioner of Central Excise & Customs (Appeals), Guntur)

Shri Pradeep Kumar Mangaraja, .. **APPELLANT**
Managing Director,

M/s Temple City Developers
Pvt Ltd.,
MIG-97, Kanan Vihar,
Phase - II, Patia,
Bhubaneswar,
Odisha - 751 016.

VERSUS

Commissioner of Customs .. **RESPONDENT**
Visakhapatnam - Customs

4th Floor,
Customs Hose,
Port Area,
Visakhapatnam,
Andhra Pradesh - 530 035.

WITH

Customs Appeal No. 30184 of 2019

(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-041 to 044-18-19 dated
26.10.2018 passed by Commissioner of Central Excise & Customs (Appeals), Guntur)

Shri Ranjan Kumar Pattanaik .. **APPELLANT**

Plot No. N3/363,
IRC Village,
Bhubaneswar,
Odisha - 751 016.

*VERSUS***Commissioner of Customs
Visakhapatnam - Customs**4th Floor,
Customs Hose,
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

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RESPONDENT**AND****Customs Appeal No. 30185 of 2019**(Arising out of **Order-in-Appeal** No.VIZ-CUSTM-000-APP-041 to 044-18-19 dated
26.10.2018 passed by Commissioner of Central Excise & Customs (Appeals), Guntur)**Sabyasachi Pattanaik**C-2, 205 (2nd Floor),
Lake View Homes Appartments,
Nayapalli,
Bhubaneswar,
Odisha – 751 016.

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APPELLANT*VERSUS***Commissioner of Customs
Visakhapatnam - Customs**4th Floor,
Customs Hose,
Port Area,
Visakhapatnam,
Andhra Pradesh – 530 035.

..

RESPONDENT**APPEARANCE:**

Shri S.C. Choudhary, Consultant for the Appellant.

Shri B. Subhas Chandra Bose, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)****FINAL ORDER No. A/30184-30187/2026**

Date of Hearing: 04.02.2026

Date of Decision: 07.04.2026**[ORDER PER: A.K. JYOTISHI]**

M/s Temple City Developers Pvt Ltd., Shri Pradeep Kumar Mangaraja, Shri Sabyasachi Pattanaik and Shri Ranjan Kumar Pattanaik (hereinafter referred to as appellants) are in appeal against the Order-in-Appeal dated 26.10.2018 (impugned order), whereby, the Commissioner has rejected their appeals against the Order-in-Original confirming demand of differential duty and imposition of penalty.

2. The issue, in brief, is that based on certain intelligence Department carried out certain investigation and searches which revealed that the appellants have mis-declared the value of their export consignments, resulting in non-payment customs duty to the tune of Rs.43,01,233/-. The enquiry also revealed that the exporter M/s Temple City Developers Pvt Ltd., (TCDPL) had entered into a contract dated 16.07.2013 and Addendum No.1 27.09.2013 in the name of one M/s Pacific Global Resources Pte Ltd., Singapore (hereinafter referred to as M/s PGRPLS) as buyer for export of iron ore fines having 57% Fe content. The FOB price agreed and mentioned was USD 70 PDMT. The exporters sent two consignments under the cover of two shipping bills dated 25.07.2013 and 12.08.2013 per vessels 'M.V. Olympus' and 'M.V. Ruby Halo' respectively. In both the shipping bills, the declared FOB was USD 70 PDMT. The investigation revealed that there was another contract referred to by Department as Second Contract bearing no. BBSPL/RGPLS/034/13-14 dated 16.07.2013 between one M/s Rotomac Global Pte Ltd., Singapore (M/s RGPLS) as seller and M/s Bagadiya Brothers (Singapore) Pte Ltd., Singapore (M/s BBSPL), both Singapore registered companies, as seller and buyers for 25,000 WMT of iron ore fines having 57% Fe content. Department also noticed that M/s PGRPLS was fully controlled and managed on day-to-day basis by one M/s Rotomac Global Pvt Ltd., Kanpur (M/s RGPLK). All the said three companies were held and managed on day-to-day basis by same set of directors and employees. It was also noticed by Department that one Shri Pradeep Kumar Mangaraja, Managing Director of M/s TCDPL in association with Shri Sabyasachi Pattnaik negotiated with the overseas buyer for both shipments and one Shri Ranjan Kumar Pattnaik helped in preparation of export documents for the said two iron ore shipments.

3. In the course of investigation, statements were recorded under Section 108 of Customs Act, 1962 from Shri Pradeep Kumar Mangaraja working as Managing Director of the appellant, Shri Ranjan Kumar Pattnaik and Shri Sabyasachi Pattnaik and one Shri Manoj Kumar Upadyay who was Manager (Forex and Trade) of M/s RGPLK. Shri Pradeep Kumar Mangaraja, inter alia, confirmed that the contracts between the M/s PGRPLS and M/s TCDPL were signed by Shri Manoj Kumar Upadyay and himself and on his suggestion, the Department also recorded the statements of Shri Ranjan Kumar Pattnaik. The statement of Shri Ranjan Kumar Pattnaik, inter alia, revealed that he was informed about the export price for both the consignments as USD 70 PDMT and that he was not aware of contract no. BBSPL/RGPLS/034/13-14 dated 16.07.2013, wherein, the price was shown as USD 89 PDMT. He also stated that export receivables in India as per contracted price was USD 70 PDMT and apart from above, if any other amounts received from the buyer it can be explained by one Shri Nihar Sapathy of the company. He also perused the print out and e-mail communication dated 06.09.2013 from one Shri Banamali Balyarsingh to him and a copy marked to Shri Manoj Kumar Upadyay and confirmed that said e-mail contains details of differential amount receivable in relation to said consignments and that he was not aware that actual price of cargo exported was USD 89 PDMT. He also perused certain other e-mails and clarified the factual positions.

4. Based on these statements and scrutiny of various documents and e-mails correspondence retrieved/recovered during the investigation, Department felt that the transaction value declared by the appellant to the Customs Authorities for the purpose of finalization of provisional assessment and payment of export duty was not correct and therefore the said declared value was proposed to be rejected. It was further considered that as the

actual FOB value in terms of another contract, was USD 89 PDMT and therefore the differential duty was required to be recovered in terms of provision of Section 28(4) of Customs Act. Department also felt that for their role, these three appeals namely Shri Pradeep Kumar Mangaraja, Shri Ranjan Kumar Pattnaik and Shri Sabyasachi Pattnaik were also liable for penalty under Section 114(ii) and 114AA.

5. In the course of adjudication, the appellants have mainly submitted that they had sent the consignment to M/s PGRPLS and have also received export proceeds from M/s PGRPLS as per agreed contracted rate of USD 70 and they have not received any amount over and above the contract price. Further, they submitted that the statements cited as evidence are not reliable as all of them have been shown to be fully involved in transaction and there is no other corroborative or supporting evidence and therefore they have no evidentiary value. They also pointed out that had there has been any evasion of customs duty by way of receiving higher price than the declared one, the M/s RGPLS as well as Shri Manoj Kumar Upadyay were also equally involved in said evasion, but no action has been proposed against them by Department in the show cause notice which shows the bias of the Department. They also requested to cross examine Shri Sabyasachi Pattnaik, Shri Ranjan Kumar Pattnaik and Shri Manoj Kumar Upadyay, Shri Vinit Wakhare, Shri Manish Chandra, IO, DR and Shri Venu Kumar Reddy, SIO. It was also pointed out that statements would have evidential value only if the Adjudicating Officer has admitted the statements as evidences. They have also highlighted the fact that it has been alleged that difference of USD 17 PDMT has been received by M/s RGPLS and thereafter they have transferred the same to India to be paid in cash to Shri Ranjan Kumar Pattnaik. However, there is no trail as to who actually gave cash and to

whom. Therefore, the request for cross-examination, which was rejected by the Adjudicating Authority relying on certain case laws and finding no merit in accepting the same given in the circumstances of the case, has deprived them the principle of natural justice.

6. Learned Advocate for the appellant has mainly contested that the allegation labelled in the show cause notice has been confirmed on the basis of holding that the contract between M/s TCDPL and M/s PGRPLS is the dummy one and contract between M/s Rotomac Global Pte Ltd., Singapore and M/s Bagadiya Brothers (Singapore) Pte Ltd., is the real one, which was sought to be supported by the confessional statements of co-accused and some e-mail correspondences. Heavy reliance has been placed on the statement of Shri Manoj Kumar Upadyay, Manager of M/s RGPLS, who confirmed that both M/s PGRPLS and M/s RGPLS were controlled by M/s RGPLS and he was the person holding contact. The Department also relied on e-mails from Shri Manoj Kumar Upadyay in which the figure of USD 85 PDMT was reflected and not USD 70 PDMT. Therefore, the Shri Manoj Kumar Upadyay was required to explain the difference between the allegation of export at USD 70 PDMT or at USD 85 PDMT. He has also relied on various case laws in support that these statements have no evidential value in the absence of any independent corroboration, as also, in view of denial of cross-examination by the Adjudicating Authority of the persons, whose statements have been relied upon. Secondly, he argued that reliance placed by the Department on e-mail and some documents taken as printouts from computers, are not admissible as evidence as the provisions of Section 138C of the Customs Act were not complied with. In this regard, they have relied on the judgment in the case of SN Agrotech Vs Commissioner of Customs, New Delhi [2018 (361) ELT 761 (Tri-Del)].

7. Learned AR on the other hand reiterates the findings and also submits that the retraction of statements by the concerned persons at the time of adjudication were an afterthought as it was done only at the time of adjudication. Moreover, the e-mails and statements are sufficient evidence to corroborate that the actual contract price was USD 89 PDMT and not the declared FOB of USD 70 PDMT. He also submitted that all the statements were recorded under Section 108 of Customs Act, which are admissible as substantive evidence. He has also relied on various case laws, including MD Akhtar Vs Commissioner of Central Excise, Customs & Service Tax [2015 (323) ELT 136 (Patna)], Romesh Chandra Mehta Vs State of West Bengal [1999 (110) ELT 324 (SC)] and Haroon Haji Abdulla Vs State of Maharashtra [1999 (110) ELT 309 (SC)], wherein, inter alia, the Hon'ble Supreme Court did not uphold retraction of statements alleging duress and torture, which came months later and statements were therefore relevant. He has also relied on certain other judgments Collector of Customs, Madras & Others Vs D. Bhoormull [1983 (13) ELT 1546 (SC)] in support that Department is not required to prove its case mathematical precision.

8. Heard both the sides and perused the records.

9. The crux of the issue is whether the appellants had exported iron ore at lower FOB value in terms of a dummy contract and also received higher consideration over and above the contracted value in cash from the buyer of the consignment. The case has been made out on the basis of detection of a so called dummy contract, which showed that there was another contract between two entities in Hong Kong selling the consignment at a higher price i.e. USD 89 PDMT. Department has tried to establish that this was real FOB value and differential amount between USD 89 and USD 70, after deducting

funding charges were paid to Appellant in cash. The Department has made out a case that the whole thing was orchestrated by splitting the price into two parts. Firstly, the exports were made on declared value of USD 70 PDMT for supply of iron ore to M/s PGRPLS, whereas, there was another contract of USD 89 PDMT between M/s Rotomac Global Pte Ltd., Singapore and M/s BBPTEL, Singapore. A statement recorded in respect of Shri Manoj Kumar Upadyay revealed that he was the one who had signed contract with M/s TCDPL on behalf of the M/s PGRPLS and also that M/s PGRPLS and M/s RGPLS were controlled by M/s RGPLK. According to him, it was as per direction of Shri Ranjan Kumar Pattnaik, that a dummy contract was prepared between M/s PGRPLS and M/s TCDPL for USD 70 PDMT and that M/s TCDPL were aware that the actual price of the cargo was USD 89 PDMT. He also explained the content of the e-mail and the differential amount of USD 15 PDMT/ USD 17 PDMT to be received by M/s TCDPL in cash and remaining USD 4/2 PDMT was retained as funding charges by M/s RGPLS for arranging the funds.

10. We find that first of all before we examine the existence of so called second contract being the genuine contract and the first one being dummy, it has to be ascertained whether the export has been made to M/s PGRPLS or to some other company. Further, whether the payments have been received in cash over and above that amount through from them or through some other entity on their behalf and the entire differential amount has been settled in cash. In order to consider these evidences in the nature of statements, e-mail, etc., it is to be examined in the light of statutory provision under which such evidences are admissible under the Customs Act. While statements recorded under Section 108 per se is an admissible

evidence, however, it requires certain amount of corroboration through some other independent evidence.

11. In most of the statements, the concerned persons have been confronted by Investigating Officers with a contract dated 16.03.2013 between M/s Bagadia Brothers (Singapore) Pte Ltd., and M/s Rotomac Global Pte Ltd., Singapore, both overseas companies. They were also show certain print outs and e-mails by Investigating Officers in support that there was well planned conspiracy involving M/s Rotomac Global Pte Ltd., Singapore and appellant to under value export consignments. We however find that there is nothing concrete on record to the extent that M/s PGRPLS was a dummy company operating in Singapore or that they had not signed or agreed to contractual price @ USD 70. Thus, existence of buyer cannot be denied. In fact, surprisingly, the person who procured the order and negotiated the FOB value with M/s PGRPL, Singapore i.e. Nihar Satpathy was never asked as to whether said company was dummy or negotiated price of USD 70 or USD 89.

12. Further, in this case, the statements given by three co-accused and also the appellants in the present appeal were retracted though not allowed by the Adjudicating Authority as it was done only at the time of adjudication. While, we agree with the contention of the Learned AR that such retraction at such a late stage is nothing but an afterthought but in view of the admitted position that such retractions were made before the Adjudicating Authority, he could have passed an order giving detailed reasons as to why such retraction at such stage was not permissible. Further, in so far as reliance of e-mails are concerned and other documents like bills issued by M/s Rotomac Global Pte Ltd., Singapore on M/s Bagadiya Brothers

(Singapore) Pte Ltd., Singapore, we find that, as is evident from relied upon documents to Show Cause Notice (Annexure-R), there is no Panchanama or recovery documents indicating the recovery proceedings of such documents as to how Department took out the printouts of various e-mails and got hold of documents i.e. contract bills etc., which are heavily relied upon by Department. There is no Panchanama showing such recovery and veracity of the said e-mail cannot be established and some reflection of details cannot be corroborated except for statements given by Shir Manoj Kumar Upadhyay, who incidentally has neither being made a co-accused nor his cross examination was allowed, when sought by the appellants.

13. We find that it is the settled position that unless there is a compliance with the provisions under Section 138C of Customs Act, reliance cannot be placed on e-mails or other electronic evidence. We place reliance on the judgment of Co-ordinate Bench in the case of SN Agrotech Vs Commissioner of Customs, New Delhi [2018 (361) ELT 761 (Tri-Del)], wherein, inter alia, they also considered the order of the Hon'ble Supreme Court in the case of Anwar PV Vs P.K. Basheer [2014 (10) SCC 473]. We also taken note of the case laws cited by the Learned AR in support that it is not necessary to have a strict compliance of the provisions under Section 138C of the Customs Act for admissibility of the electronic evidence, as held by Hon'ble Supreme Court in the case of Additional Director General, Adjudication Vs S.K. and Company Pvt Ltd., & Others [2025 (9) TMI 76 (SC)]. However, we find that in the said case, the Hon'ble Supreme Court, while considering earlier judgment in the case of Anwar & P.K. Basheer, supra, inter alia, held that in view of the record of proceedings duly signed by recipients including the various statements in a peculiar fact of the case, there was a due compliance of the Section 138C(4) and therefore in a particular set of facts various

documents on record in the form of record or proceedings and the statements recorded under Section 108 could be said to be the due compliance of the Section 138C(4). It was also noted by the Hon'ble Supreme Court that at no point of time the statements recorded under Section 108 came to be retracted. In this regard, we find that in present appeal there is nothing on record to show as to how said e-mails were retrieved. We have also not found any panchanama for recovery of the said e-mails as relied upon documents to the show cause notice dated 16.12.2016. Thus, there are no details of proceedings as to how electronic documents were obtained by the Department. Therefore, these e-mails and print outs cannot be good evidence in the absence of compliance with the statutory provisions.

14. We also find that the relied upon statements also suffer from certain infirmities in as much as it has been alleged that there was another contract, however, nobody has explained as to how the whole transaction took place and as to whether the consignment was received by the original consignee, who sold to M/s BBSPL at higher price and thereafter recovered some extra money and repatriated it back in cash to their Indian counterpart, which in turn was again passed on to the appellant or otherwise. It is also to be noted that the appellant is a separate legal entity having it's own account, as distinguished from the account of individuals i.e. Shri P.K. Mangaraja. There is nothing on record to suggest that the appellant company had received any money over and above USD 70 PDMT with regard to the said two consignments. In fact, shipments were made to the same parties with whom appellant had entered into contract and also received payment @ USD 70 PDMT through proper banking channel as evidenced by BRC. It is also noted that appellants are not party to so called second contract between two

Singapore entities showing value as USD 89. First by the trading between two entities situated outside could be a trading activity in Singapore at any mutually agreed price and the trading income can flow back to seller in Singapore. The Department has also heavily relied on the statement of certain persons associated with the so called buyer or fund raiser and instrumental in sending differential money or were otherwise engaged in the entire transaction. Their statements and exchange of e-mails have been relied heavily by the Adjudicating Authority to establish that extra amount has been received by the appellant. However, neither said companies nor the persons actively associated in such alleged under valuation or transactions have been made party to the proceedings in the show cause notice. Moreover, it is also to be noted that the appellants were not allowed for cross-examinations of such person on the statements of whom the entire case has been based by Department.

15. We have also perused some of the case laws relied upon by the appellant in support of their submissions to the extent that statements recorded under Section 108 in respect of certain persons relied upon by Adjudicating Authority are either insufficient or inadmissible to be taken as evidence to confirm the alleged demand of differential duty. He has submitted that reliance placed by Adjudicating Authority on the judgment viz – M/s Shalini Steel Vs Commissioner of Central Excise [2011 (269) ELT 485 (AP)] and Murari Lal Harish Chandra Jaiswal Vs CCE, Ghaziabad [2012 (280) ELT 471 (Tri-Del)] is not proper as in these cases, there was a finding of Judicial authorities to the effect that submissions of witness do not lend much support to the case of appellant nor it discloses any prejudice being caused to the appellants. Whereas, in present appeal, the statement of witness i.e. Shri Manoj Kumar Uphadyay and relevance on a contract

between M/s Rotomac Global Pte Ltd., Singapore and M/s Bagadiya Brothers (Singapore) Pte Ltd., Singapore are the sole basis for the entire allegation of under valuation. Hence, denial of cross examination was bad in law and vitiated the whole proceedings leading to confirmation of demand. He has also tried to distinguish the case laws cited by Learned AR, namely MD Akhtar Vs CCE,, C & ST, Patna [2015 (323) ELT 136 (Patna)], Naresh J Sukhawani Vs Union of India [1996 (83) ELT 258 (SC)], Romesh Chandra Mehta Vs State of West Bengal, [1999 (110) ELT 324 (SC)] and T Manivannan Vs CC, Tuticorin [2017 (348) ELT 513 (Tri-Chennai)] and submitted that they are clearly distinguished on facts and hence not relevant. He has also distinguished case law cited by Learned AR in support that Department need not prove with mathematic precision in Bhoormas, supra, the case laws are also distinguished on facts.

16. We find that in the case of CCE, Delhi-II Vs Balajee Perfumes [2017 (358) ELT 87 (Delhi)], inter alia, the issue was denial of cross examination of witness, the Hon'ble High Court of Delhi upheld the decision of the Tribunal, which had set aside the confirmation of demand. Para 16, 23 and 24 are cited below for reference:

16. In the impugned order, the CESTAT noted that the case of the Department against the respondent hinged on (a) Railway receipts; (b) diaries recovered from the premises of dealers/distributors; and c) on the basis of statements of Varun Gupta, Pawan M. Prabhu, Avinash M. Baliga and Suresh Rao. The CESTAT held that the statements given at the time of investigation were followed by their affidavits. However, the affidavits had not been examined by the CCE. Further, no cross-examination was granted. It was therefore held that the statements were themselves not reliable in the absence of corroboration. Reliance was placed on the decision of the CESTAT in *M/s. Aswani & Co.* [Final Order No. A/54559-54565/2014, dated 2nd December, 2014]. [[2015 \(327\) E.L.T. 81](#) (Tribunal)]. It was further noticed that Mr. Ajay Gupta who was a witness was not examined and was not made a party to the case. It was accordingly held that the investigation conducted by the Department was not proper.

23. In a similar situation, this Court in its decision dated 2nd December, 2015 in CEAC No. 62/2014 (*Commissioner of Central Excise, Delhi-1 v. Vishnu & Co. Pvt. Ltd.*) [[2016 \(332\) E.L.T. 793](#) (Del.)] upheld an the order of CESTAT that had set aside

the adjudication order on the ground that it proceeded on the basis of the retracted statement of the persons who were not offered for cross-examination. It was observed in that case “where such statements are subsequently retracted or resiled from, it becomes necessary for the Department to produce other evidence which is of an independent nature which corroborates the retracted statements.” In that case, the Commissioner had proceeded on the basis of the retracted statements of persons not offered for cross-examination. There again, it was contended by the department that the retraction made beyond 20 months after the initial statement, would have no effect in the eyes of law. The Court negated the above statements and held as under :

“41. What the above submission overlooks is the 'reliability' of such statements. Once it is shown that the maker of such statement has in fact resiled from it, even if it is after a period of time, then it is no longer safe to rely upon it as a substantive piece of evidence. The question is not so much as to admissibility of such statement as much as it is about its 'reliability'. It is the latter requirement that warrants a judicial authority to seek, as a rule of prudence, some corroboration of such retracted statement by some other reliable independent material. This is the approach adopted by the CESTAT and the Court finds it to be in consonance with the settled legal position in this regard.”

24. Likewise, in its order dated 17th September, 2015 in CEAC 6/2013 (*Flevel International v. Commissioner of Central Excise*) [[2016 \(332\) E.L.T. 416](#) (Del.)] dealing with a similar situation where the Adjudicating Officer had denied the noticee the right of cross-examination, the Court observed as under :

“45. As regards the request for cross-examination of the other witnesses, the adjudication order again dealt with this perfunctorily. It simply stated in para 36 that if the request made by the Appellant in the letter dated 31st January, 1985 for cross-examination of “such a large number of persons was granted it would have taken the case to a non-ending process.” This cannot be a justified reason within the meaning of Section 9D of the Act to deny that opportunity to the Appellant.

46. The CCE also wrongly proceeded on the basis that there was no right of cross-examination overlooking the fact that Section 9D of the Act restricts the grounds on which the cross-examination can be denied. It also overlooks the decision of the Supreme Court in *Swadeshi Polytex Ltd. v. Collector of Central Excise* - [2000 \(122\) E.L.T. 641](#) (S.C.) and *Laxman Exports Ltd. v. Collector of Central Excise* - [2002 \(143\) E.L.T. 21](#) (S.C.) to the effect that when a statement is used against an Assessee an opportunity of cross-examining the persons who made those statements ought to be given to the Assessee.

47. In *GTC Industries Limited v. Collector of Central Excise, New Delhi* - [1997 \(94\) E.L.T. 9](#) (S.C.), the Supreme Court has frowned upon the practice of the adjudicating authority looking into allegations contained in another SCN to return a finding against the Assessee.”

17. Therefore, in the given factual matrix, by denying the cross examination of witness Shri Manoj Kumar Upadyay and others, their statements have lost relevancy for proving the case of Department. While there is no denial that charges of under valuation can be established on the basis of preponderance of probability, but it cannot be based on presumptions and assumptions. Suspicion, how so ever, grave cannot replace proof. The reliance on statements recorded under Section 108 of Customs Act and on certain e-mails or computer printouts are not absolute and are subjected to certain regulatory guidelines and procedure in the

interest of fair play and bonafide opportunity to person against whom Department has levelled charges based on these evidences only. Therefore, the fact that there is no cross examination of witness, no details of proceedings under which so called e-mails, documents were obtained by Department or produced by any of the witness or appellant, non-compliance of statutory provision before admitting electronic evidence etc., would indicate that reliance placed on such statements and documents are not tenable in the given factual matrix.

18. Therefore, we find in the facts of the case, the evidence relied upon are either insufficient or inadmissible to establish receipt of additional amount by appellant company, who exported the goods for the reasons, as under:

(a) the statements relied upon, in the absence of cross-examination of key persons and lack of any other cogent and admissible corroborative evidence, in the given factual matrix, cannot be a goods evidence to allege that extra or additional consideration has been received by the appellant company, who had exported the consignment

(b) there is lack of mandatory compliance to admit electronic evidence in the form of e-mails, computer print outs etc., in terms of the provisions under Section 138C of Customs Act, 1962.

(c) there is no evidence at all to establish or proof as to how and to whom the differential amount was paid, and by whom.

(d) the shipping bills finalized based on the Bank Realization Certificate and other documents submitted by the appellant was not subsequently reopened or reassessed by the Department before demanding differential duty.

19. Therefore, we find that in the given facts of the case and evidence relied upon, Department has not been able to conclusively establish that there is receipt of additional consideration by the appellant in relation to export of said two consignments, warranting revision of declared assessable value and consequent demand of differential duty. In view of the same, the order suffers from various infirmities as discussed, supra, and cannot be sustained. Further, since the impugned order itself does not sustain on merit, imposition of penalties on other appellants would also not sustain. Therefore, the impugned order is set aside.

20. Appeals filed by appellants are allowed.

(Pronounced in the open court on 07.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)