CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. I

CUSTOMS APPEAL NO. 51917 OF 2024

(Arising out of Order-in-Original No. 37/2024-VCG/Pr.Commr/ICD-Import/TKD dated 05.06.2024 passed by the Principal Commissioner of Customs (Import), ICD-TKD, New Delhi)

Gravity Bath Pvt. Ltd. **...Appellant**
28/3/2, Site IV, Sahibabad Industrial Area
SAHIBABAD (UP)

VERSUS

Principal Commissioner of Customs (Import) **...Respondent**
ICD, Tughlakabad
New Delhi.

WITH

C/51918/2024	**C/51240/2025**	**C/51685/2025**
C/51686/2025	**C/51747/2025**	**C/51748/2025**

APPEARANCE:

Mr. Chinmaya Seth and Ms. Palak Mathur, advocates for the appellant

Mr. Nikhil Mohan Goyal, Mr. Ranjan Prakash and Mr. Srimali Sadashiv, authorised representatives of the department

CORAM: HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE SMT HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 01.09.2026
DATE OF DECISION: 20.11.2026

FINAL ORDER NOS. 51718-51724/2026

DR. RACHNA GUPTA :

The order dated June 05, 2024 passed by the Principal Commissioner of Customs (Import)[1], ICD-TKD, New Delhi, adjudicated

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1. **the Principal Commissioner**

the show cause notice dated October 20, 2022 rejecting the assessable value of the goods declared in the respective Bills of Entry filed by the appellants under rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007[2] and re-determines the same under section 14 of the Customs Act, 1962[3] read with rule 9 of the 2007 Valuation Rules. Accordingly, the differential duty has been directed to be recovered from the appellants under section 28(4) with interest under section 28AA of the Customs Act. The goods have also been ordered to be confiscated under section 111(m) of the Customs Act with an option to the appellants to redeem the same on payment of redemption fine under section 125(1) of the Customs Act. The order also confiscates the cash recovered from the residence of the Directors of Gravity Bath and this amount has been appropriated towards the liability against duty, interest and penalty on appellants.

2. It transpires from the record that Gravity Bath, Vinayak Traders and Aditya Industries are importers and manufactures of bathroom fittings and sanitary items including Faucets, Taps, Overhead Showers, Hand Showers, Shower Tube, Brass Ceramic Cartridges and Handles of Faucets. It is claimed that during the course of business, Gravity Bath through its Directors were added to various chat groups which were used by the Chinese suppliers to share information of their products which includes performa invoices/proposed sale contracts, but not the acted or final invoices products. It has further been claimed that whenever the products contained quotes, the same only acted like proforma invoices and the actual value of the goods were decided after

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2. the 2007 Valuation Rules
3. the Customs Act

negotiation with the buyers. It is also claimed that true and correct value of the goods were paid and the goods were cleared by the customs officers after proper investigation.

3. On October 25, 2021, a search was conducted by the officers of the Directorate of Revenue Intelligence[4] and three Panchnamas were drawn at the following premises - (i) residence of Anoop Kumar Garg, Rahul Agrawal and Suresh Chand Aggarwal at A-30, 2nd Floor Panchwati, Azadpur, North West Delhi and cash amounting to Rs. 34 lacs was seized with certain documents, mobile phones and goods on the apprehension that they were linked to under-valuation in the import declarations and on the basis that no supporting documents were provided by them (ii) Office-cum-Godown premises of Gravity Bath, Vinayak Traders and Aditya Industries and certain documents and electronic devices were also resumed; and (iii) factory premises of Gravity Bath.

4. Statements of Anoop Kumar Garg, Rahul Agrawal and Suresh Chand were also recorded under section 108 of the Customs Act.

5. The electronic devices resumed under the Panchnamas dated October 25, 2021 were forensically examined and cloning/data retrieval process of these devices was conducted by Connectal Security Systems Pvt. Ltd. between October 28, 2021 and November 01, 2021.

6. A live consignment imported under a Bill of Entry dated November 18, 2021 was also examined.

7. Statement of Anoop Kumar Garg was further recorded on February 22, 2022 and it is stated that he was made to review 5422

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4. DRI

pages on that day relating to messages between him and Alisha on WeChat. Statement of Anoop Kumar Garg was again recorded on August 05, 2022, August 12, 2022, August 23, 2022 and August 29, 2022 and he was made to review 5442, 9285, 3895 and 1099 documents respectively on these dates.

8. Statement of Ankit Goyal was also recorded on September 09, 2022 and he was made to review 315 pages on that day.

9. Thereafter, a show cause notice dated October 20, 2022 was issued to Gravity Bath, Vinayak Traders, Aditya Industries, Anoop Kumar Garg, Rahul Agrawal, Suresh Chand and Ankit Goyal. Gravity Bath, Vinayak Traders and Aditya Industries were called upon to show cause as to why the value of the goods declared in the Bills of Entry should not be rejected under rule 12 and re-determined under rule 9 of the 2007 Valuation Rules, and why differential duty should not be demanded from them under section 28(4) of the Customs Act with interest and penalties. Anoop Kumar Garg, Rahul Agrawal, Suresh Chand and Ankit Goyal were called upon to show cause why penalties under sections 112 and 114AA of the Customs Act should not be imposed upon them.

10. An interim reply dated September 12, 2023 was filed with a prayer that the provisions of section 138B of the Customs Act should be followed if the statements recorded under section 108 of the Customs Act were to be relied upon. The cross-examination of panch witnesses was also sought. The request of cross-examination was denied by an order which is said to have been served upon the appellant with the letter served for personal hearing.

11. The Principal Commissioner passed the order dated June 05, 2024 and it is this order that has been challenged in these appeals.

12. The Principal Commissioner framed the following issues for determinations:

(i) Whether the assessable value of the goods declared in the Bills of Entry should be rejected in terms of rule 12 of the 2007 Valuation Rules and re-determine in terms of section 14 of the Customs Act read with rule 9 of the 2007 Valuation Rules with consequential duty liability;

(ii) Whether the differential duty alongwith interest is liable to be recovered from the importing firms by invoking the extended period of limitation under section 28(4) of the Customs Act;

(iii) Whether the goods are liable for confiscation under section 111(m) of the Customs Act;

(iv) Whether penalties can be levied upon the importers under section 112, 114A and 114AA of the Customs Act; and

(v) Whether penalties under sections 112 and 114AA of the Customs Act can be imposed upon Anoop Kumar Garg, Rahul Agarwal, Suresh Chand, Ankit Goyal.

13. For the purposes of under valuation of the imported goods the Principal Commissioner examined whether the provisions of section

138C of the Customs Act had been followed. In this connection, the Principal Commissioner noticed that it was not a case where electronic devices were seized and resumed during search operations and the same were forensically examined on a later date. The finding recorded by the Principal Commissioner on this issue is as follows:

> "8.1 (iii) xxxxxxx. I have gone through the relevant portion of the notice of show cause and RUDs to check whether provisions of section 138(c) of the Customs Act, 1962 has been complied with by DRI officers or not. **I observe that in the impugned matter, it is not the case that some electronic devices were seized and resumed during search operations and the same were forensically examined on a later date. It is very clear that the commercial invoices of imports made by the noticee import firms from China were prepared by Sh Ankit Goyal, Manager (Accounts & Finance)-Noticee No. 5 on the instruction of Shri Anoop Kumar Garg, Director/Proprietor of the noticee import firm, on the office Lenovo laptop being used by him.** The Chinese suppliers used to send the Proforma invoice/Packing list/account statements etc. shown the actual rates, value and description of the goods through WeChat & Whatsapp, which were retrieved through mobile phones of Shri Anoop Kumar Garg, Director/Proprietor in the noticee firm and Shri Ankit Goyal, Manager (Accounts & Finance), Noticee No. 5."
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> **(emphasis supplied)**

14. The Principal Commissioner placed emphasis on the statements made by Anoop Kumar Garg and Ankit Goyal to conclude that the commercial invoices did not bear the actual value of the imported goods and that the actual proforma invoices, packing list, description of the

goods were shared through WeChat and Whatspp by the foreign supplier to Anoop Kumar Garg.

15. The Principal Commissioner thereafter compared the provisions of section 138C(2) of the Customs Act and the evidence of record to ascertain whether the conditions had been complied with and after a consideration of the statements made by Ankit Goyal, Manager (Accounts & Finance of Gravity Bath) and Anoop Kumar Garg, Director of Gravity Bath has also the certificates said to have been issued under section 138C(2) of the Customs Act recorded a finding that all the conditions specified under section 138C(2) of the Customs Act had been complied with.

16. The Principal Commissioner thereafter examined the roles played by each of the noticees and a recorded a finding that Anoop Kumar Garg and Rahul Agarwal admitted to acts and commission and omission in their statements recorded under section 108 of the Customs Act. In respect of the role of Suresh Chand, the Principal Commissioner also placed reliance on a statement recorded on 26.09.2022 under section 108 of the Customs Act. In regard to the role played by Ankit Goyal, the Principal Commissioner relied upon the statement made under section 108 of the Customs Act.

17. The Principal Commissioner then examined whether the declared value was liable to be rejected under rule 12 and re-determined rule 9 of the 2007 Valuation Rules. The finding recorded in this regard is as follows:

> "10.6 The investigation revealed that the importers were importing same goods having different specifications and quality but importers were declaring

the said item under a general description in the BES. For example, the importer was purchasing different models of stainless steel showers having different specifications (size. weight etc), quality & grades but the said details which were relevant for ascertaining the value, quality etc of the imported goods were not declared in the BEs. It is also evident from the various proforma invoices, invoices, packing lists. etc. that the items imported by the instant importers were bearing the brand name "Gravity" or were packed with the packing material having said brand name. However, the importers did not declare the same to the Customs.

10.7 From the evidence discussed above, it is also evident that the proforma invoices. Packing lists Sales contract contained the actual value and description of imported goods but the importer with an intent to declare less than actual transaction value of the imported goods, prepared forged invoices and packing lists of the suppliers with less than actual value and manipulated description of the imported goods and submitted the same to the Customs. This qualifies as the reason mentioned in Rule 12(2)(f) of CVR. and raised doubt on the truth or accuracy of the declared valueby the importers.

10.8 xxxxxxxxxxxx

From the evidences before me, I find that the value declared in the subject Bills of Entry was not the actual transaction value of the imported goods. Therefore, the value declared value by the importers in the BEs is rejected under the provisions of Rule 12 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 (hereinafter referred as "CVR. 2007") and the same is required to be redetermined in terms of the provisions of Section 14 of the Customs Act. 1962 read with the relevant Rules of the CVR. 2007."

18. The Principal Commissioner then re-determined the value and the finding recorded is as follows:

"10.9 Re-determination of value on the basis of direct evidence viz. actual proforma invoices

From the foregoing facts as discussed at para 9 and 10 supra, I find that actual proforma invoices. packing lists, sales contracts etc. retrieved from the electronic devices of importers. The evidence recovered during investigation clearly indicate that the transaction value available in the recovered documents is the FOB value**. As the direct evidence to support the actual price of the imported goods was available, the same, being the actual price paid for the goods covered therein. has been taken as the transaction value for the purpose of computation of actual duty payable in respect of the said goods in terms of Rule 3 ibid read with Section 14 of the Customs Act 1962. The correct transaction value in respect of these consignments are accordingly to be re-determined. I therefore find that recourse of other Rules of CVR 2007 is not required. During investigation, the evidences of actual value of the goods imported from Oct, 2019 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 3 of the CVR. 2007.**

10.10 Re-determination of value where direct evidence could not be recovered

In respect of some bills of entry, where the direct evidence in form of proforma invoices were not retrieved. **The rates/value of similar imported goods prior to Oct, 2019 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. For these items and Bs/E, the similar goods 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 5 of the CVR, 2007."

(emphasis supplied)

19. Being aggrieved, the appellants are before this Tribunal.

20. We have heard Shri Chinmaya Seth, learned counsel assisted by Shri A.K. Seth, Ms. Khushboo Seth, Ms. Palak Mathur, Shri Karanveeer Singh and Shri Rupesh Gupta advocates for the appellants and Shri Nikhil Mohan Goyal, learned authorized representative of the department assisted by Shri Rajesh Singh, authorized representative.

21. Shri Chinmaya Seth, learned counsel for the appellant made the following submissions:

(i) The Chinese suppliers through the chat group shared information of their products which included proforma invoices/proposed sale contracts but not the actual/final invoices. The actual value of the goods were decided after negotiation with the buyer.

(ii) On going through the statement of Anoop Kumar Garg recorded on 25.10.2021 under section 108 of the Customs Act, it transfers that various documents allegedly found in his phone have

been reproduced even though the said phones were seized at his residential premises and the forensic examination did not start before 28.10.2021;

(iii) The statements of Anoop Kumar Garg under section 108 of the Customs Act on 22.02.2022, 05.08.2022, 12.08.2022, 23.08.2022 and 29.08.2022 were recorded under coercion. On 22.02.2022 he is alleged to have gone through 5422 chats/messages; on 05.08.2022 he is alleged to have reviewed 5442 pages of chats running into 5,551 pages; on 12.08.2022 he is said to have reviewed 9285 chats; on 23.08.2022 he is alleged to have review 3895 chats; on 29.08.2022 he is supposed to have reviewed 1099 pages of chats. This is humanly impossible and supports the contention of the appellant that he was forced to sign on blank pages;

(iv) In any view of the matter statements recorded under section 108 of the Customs Act cannot be relied upon if the procedure contemplated under section 138B of the Customs is not followed;

(v) The statements were also subsequently retracted.

(vi) The forensic report and certificate dated 02.11.2021 issue by Connectal Security Systems Private Limited under section 138C of the Customs Act are false, fabricated and inadmissible in evidence;

(vii) The said certificate does not disclose the date of material particulars of the devise/digital record, including the make and model of the device, serial number, HASH value of the digital record. The chats were admittedly taken out from unsealed/working copy of the cloned data and, therefore, cannot be relied upon. This clearly brakes the chain of custody;

(viii) The panchanama was not drawn at the time the alleged We-Chats messages were purportedly printed by the department;

(ix) The relied upon documents were supplied in a pen drive without furnishing any certificate under section 138C of the Customs Act.

(x) Even assuming that proforma invoices were found in chats, commercial invoices were not recovered;

(xi) The finding recorded in the impugned order that differential payments were made through hawala channel is based on assumption and surmises.

Telegraphic Transfer copies or record hawala transaction were not found;

(xii) No evidence have been brought on record to link the amount of Rs. 34,00,000/- to the alleged under-valuation of the imported goods. The burden was on the department, but it failed to discharge to this burden;

(xiii) The appellant had declared a correct value of goods;

(xiv) The burden was on the department to establish under valuation the goods were duly assessed examined and cleared upon payment of appropriate customs duty no objection was raised at that time;

(xv) The goods were not liable to confiscation and so penalty under section 112(a)(ii) of the Customs Act cannot be imposed;

(xvi) Penalty under section 114AA could not be imposed as a section applied only if a person knowingly or intentionally makes, signs or uses, or causes to be made any declaration, statement or documents.

All appeals are, accordingly, prayed to be allowed while setting aside the impugned order.

22. While rebutting the submissions made on behalf of the appellants, Shri Nikhil Mohan Goyal, learned authorised representative of the

department has submitted that M/s Gravity Bath Pvt. Ltd. and four of its sister concerns, namely, M/s Shree Vinayak Traders, M/s Aditya Industries, M/s Aditya Creations and M/s Gravity Facets Pvt. Ltd., all owned and controlled by Shri Anoop Kumar Garg, his father Shri Suresh Chand Agarwal and brother Shri Rahul Agarwal have deliberately and systematically undervalued imports of bathroom fittings, sanitary ware, taps, showers, oxygen concentrators, PVC ball valves, mini internal cartridges and mini internal valves from China over the last 4-5 years with the sole intention of evading legitimate customs duty. It is submitted that knowingly the importers adopted a dual invoice system – one prepared for the Chinese suppliers having high value commercial invoices and another with low value invoices exclusively for the Indian Customs. The differential amount between the suppliers' invoice and the invoice submitted to Indian Customs in itself is sufficient to show gross undervaluation and the price difference remitted to the Chinese suppliers through hawala/unofficial channels. Thus, the appellants by suppressing the assessable value and short paying the customs duty have caused loss to the government exchequer.

23. Learned authorized representative further emphasized that deliberate misdeclaration and undervaluation is conclusively established not only on the basis of confession of Shri Anoop Kumar Garg recorded under section 108 of the Customs Act, 1962 but also on the recovery of original high-value supplier invoices and proforma invoices from the residences and offices which exactly match the goods imported but show value which are 5-15 times higher than those declared to Indian Customs. The recovery of Whatsapp chats with the Chinese suppliers

and handwritten calculations recovered also prove the high actual prices and also that the differential amounts were paid to the foreign suppliers through hawala. The forensic examination of the seized mobile phones and laptop has confirmed the communication regarding actual values and hawala remittances. Thus, not only the specific live consignment, but the past one also show the consistent undervaluation.

24. Learned authorized representative further submitted that the said act of the appellant being intentional and that it has resulted into short payment of customs duty that the importers have rendered the imported goods liable to confiscation. Thus, the goods in question have rightly been ordered to be confiscated under section 111(m) of the Customs Act, 1962 for misdeclaration of description and value of the subject goods. The differential duty has rightly been demanded along with interest in terms of section 28(4) of Customs Act. Penalty of equal amount of duty under section 114A, penalty for use of false documents/invoices under section 114AA and personal penalties on the company as well as co-noticees under section 112(b) and under section 114 of the Customs Act, 1962 have rightly been imposed. Impressing upon no infirmity in those findings, all the appeals are prayed to be dismissed.

25. Having heard both the parties and perusing the entire evidence on record, it is observed that genesis of present litigation is intelligence based on investigation conducted by the Directorate of Revenue Intelligence, Delhi Zonal Unit, alleging systematic undervaluation of imported goods. All the goods were imported from China during the period March, 2021 to October, 2021 in the name of M/s Gravity Bath

Pvt. Ltd. and its sister concerns/co-noticees (as already named above). It is coming apparent from the investigation that Shri Anoop Kumar Garg, Director of M/s Gravity Bath Pvt. Ltd., was managing import related activities including rate negotiations and customs clearances. The statement of Shri Anook Kumar Garg as was recorded under section 108 of the Customs Act has fully been relied upon by the department. The appellant, however, has challenged the admissibility of the said statements for non-compliance of section 138B of the Customs Act and also for the reason that the statements were retracted by the appellants in their reply filed to the show cause notice.

26. We observe that section 108 of the Customs Act empowers the gazetted officer of Customs to summon any person to provide evidence or produce documents. Sub-section (3) mandates that all persons so summoned are "bound to state the truth" and under sub-section (4) such inquiries are elevated by legal fiction to the status of "judicial proceedings". These statutory characteristics, to our opinion, fundamentally distinguishes these depositions from ordinary confessions recorded by police authorities. The Constitution Bench of Hon'ble Supreme Court in the case of **Illias** v. **Collector of Customs, Madras**[5] has held that the Customs Officers are not police officers for the purposes of Section 25 of the Evidence Act. Thus, any confession recorded by them is admissible as substantive evidence. Hon'ble Court held that such statements are neither hit by the exclusionary rules of the Evidence Act nor do they violate the constitutional protection against self-incrimination enshrined in Article 20(3). Otherwise also, at the

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5 AIR 1970 SC 1065

stage of recording of statement of a section 108 inquiry, the deponent is not an "accused". In another decision in the case of **K.I. Pavunny** vs **Assistant Collector (HQ), Central Excise Collectorate, Cochin**[6], the Court held that the statements recorded by Customs Officers are admissible as substantive evidence and do not attract the bar under section 24, 25 or section 30 of Indian Evidence Act provided those are made voluntary and have not been retracted. Though the appellants in the present case have submitted that they had retracted their statements, however, for a retraction to be legally potent, it must be contemporaneous as was held in **K.I. Pavunny (supra)** itself**.** The Hon'ble Court therein has held that "it is the duty of the Court to look into the facts and circumstances of each case to find whether the confession was voluntary. If the same is found voluntary, it can form the basis of conviction." Hon'ble Court also clarified the retraction alleging duress/coercion has to be made at the first available opportunity before the competent authority. This was also held by the Hon'ble High Court of Mumbai in the case of **Ciabro Alemao** vs **Commissioner of Customs, Goa**[7].

27. In the present case, the statements under section 108 of the Customs Act were recorded in the year 2022 (February and August, 2022). The show cause notice was issued on October 2022. However, the first ever retraction of the statement recorded under section 108 of the Customs Act was in the interim reply dated 12 September, 2023. Apparently, the same was not the first available opportunity nor the

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6 **1997 (3) SCC 721**

7 **2018 (362) ELT 465 (Bom)**

retraction was made before the authority who recorded the statement under section 108 of the Customs Act. Mere mention that while being examined under section 108 of the Customs Act, the deponent/Anoop Kumar Garg was made to go through pages running into thousands pages which is humanly impossible, is not sufficient to accept the said reply to the show cause notice as a statement of retraction. The statement of Shri Anoop Kumar as was recorded under Section 108 of the Act is otherwise a statement in form of admission. "Admissions need no further proof", is the settled principle of Indian Evidence Act as per Section 58 of Indian Evidence Act, 1872/Section 53 of the Bharatiya Sakshya Adhinium, 2023. Though this Tribunal has held that it is only when this procedure of Section 138B of the Customs Act, 1962 is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain as was held by this Tribunal in the case of **M/s Surya Wires Pvt. Ltd.** vs **Principal Commissioner, CGST, Raipur**[8]. However, in view of above provisions and the distinguishing facts of the present case, we hold that statement of Shri Anoop Kumar recorded under Section 108 of the Act has rightly been relied upon by the adjudicating authority below.

28. At this stage, we also take into consideration the another objection on the part of the appellants about denial of opportunity to examine the witnesses.

29. The adjudicating authority has categorically opined that once Panch witnesses were not examined at the time of adjudication, the

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

question of their cross-examination does not at all arise. The settled law with respect to cross-examination is that it is not available to the party as a matter of right and the same depends upon the facts of each case. As in the given convincing circumstances, the right of cross-examination can readily be denied. The witnesses who were requested to be cross-examined were none other than the co-noticees or their employees. Any deposition against the appellant from those witnesses cannot be accepted in any eventuality. Remaining, witnesses as that of Panch witnesses since were not opted to be examined by the adjudicating authority, the question of their cross-examination does not arise. Otherwise also, denial of cross-examination of the witnesses is not contrary to the settled position of law. We draw our support to the decision of the Apex Court in the matter of **Kanungo & Co. Vs Collector of Customs, Calcutta & Others**[9] had made following observations:

> "12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show- cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross- examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant."

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9 1983 (13) E.L.T 1486 (S.C)

30. In **Surjeet Singh Chhabra** vs **Union of India**[10] the Apex Court observed as under:

> "3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross- examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross- examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call panch witnesses for examination and cross- examination by the petitioner."

31. In the matter of **M/s Vallabh Textiles** Vs **Additional Commissioner Central Tax GST, Delhi East & Ors**[11] this Court observed as under:-

> "15. While cross-examination can be granted in certain proceedings, if it is deemed appropriate, the right to cross-examine cannot be an unfettered right. This has been so held recently by this Court in **Sushil Aggarwal v. Principal Commissioner Of Customs (2025:DHC:698-DB).** The relevant portion of the decision reads as under:
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> > "15. Accordingly, this Court is of the opinion that in order to ensure that there is compliance of Section 138(B) of the Act, **though the same cannot be claimed as an unfettered right in all cases, in the facts of the present case**, both Mr. Sushil

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10 **1997 (89) E.L.T. 646 (SC)**

11 **W.P. (C) 4576/2025 decided on 9th April, 2025**

> Aggarwal and Mr. Aidasani are afforded an opportunity to cross examine Mr. Bhalla."

32. Apart from above, it is not the case of the appellant that each of the witnesses whose statements are relied on, have retracted the same. Those who have retracted are also not appropriate, as already discussed above. At least, no material to that effect is placed on record by the appellant. That being so, the denial of cross examination can be said to be justified and appropriate, for which, reliance can be placed on the judgments in the matter of **Commissioner of Customs Excise, Mumbai** Vs **Kalvert Foods India Pvt. Ltd.**[12] and **Sushil Aggarwal** Vs **Principal Commissioner of Customs**[13]**.**

33. Reverting to the facts of the present case, initially the statements were recorded. It is coming apparent from the statement of Shri Anoop Kumar Garg, Director of M/s Gravity Bath Pvt. Ltd. that he had acknowledged about electronic devices to have been resumed under Panchnama dated 25.10.2021 from his factory-cum-godown premises and that the cloning of those devices was done in his presence and he had also seen the printouts thereof including of chats and messages cloned/recovered data of his mobile apple phone and external hard discs. It is also coming apparent on record that the investigating officer of DRI had given certificates dated 22.02.2022, 10.08.2022, 16.08.2022, 23.08.2022 and 29.08.2022 as are required under section 138C of the Customs Act, 1962 and section 65B of the then Indian Evidence Act, 1872 for the said data. Not only this, Shri Anoop Kumar Garg himself has put his signatures on those certificates.

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12 **2011 (270) E.L.T 643 (S.C.)**

13 **2025: DHC:698-DB**

34. We have also seen the statement of Shri Ankit Goyal, Manager (Accounts & Finance) of the appellant where he has stated, rather admitted, that the commercial invoices of the suppliers of impugned goods imported from China were prepared on the excel sheet on their office laptop and that the cloning/data extraction of the electronic devices including his own mobile phone was got done in his presence and that he also has been shown the printouts of the cloned retrieved data and had acknowledged the same as correct. Said Shri Ankit Goyal also acknowledged the fact that he in consultation with Shri Anoop Kumar Garg used to prepare the commercial invoices for the suppliers. Thus the excel data of their laptop which got cloned/retrieved of such commercial invoices has been acknowledged as correct. Though the appellant has taken the plea of non-compliance of section 9D of Central Excise Act *pari materia* to Section 138B of the Customs Act. However, the above discussed law with respect to Section 108 does not bar the admissibility and relevancy specifically of such statements which are in the nature of 'Admission'.

35. Further, it is observed from the above said two statements, under section 108, of Shri Anoop Garg and Shri Ankit Goyal the deponents had acknowledged about the correctness of the cloned/retrieved documentary evidence. The said documentary evidence has duly been confronted to those witnesses who have acknowledged the correctness thereof. In addition, the witnesses could not produce any other document to rebut the said documentary evidence as got retrieved from the cloned data of the resumed electronic devices from the appellant's premises including that of the mobile phone of the Director as well as of

the Manager (Finance & Accounts). It is also apparent on record that the devices resumed under Panchnama dated 25.10.2021 were got forensically examined and cloning/data retrieval of those devices was got conducted by Connectel Security System Private Limited. The DRI officers had taken printouts of the said relevant cloned/recovered data that too in the presence of the Director of the appellant. Not only this, the said Connectel Security System Private Limited has also issued a certificate dated 02.04.2021. Hence, the documentary evidence on record not merely corroborates correctness/testimony of Section 108, but also fulfils the requirement of Section 138C of the Customs Act.

36. A perusal of the relevant data includes commercial invoices as were raised by the supplier in China and also includes the invoice as was submitted by the appellant to the Indian Customs. The adjudicating authority has taken the scanned images of these documents in the impugned order. A perusal thereof reveals massive under-valuation of the impugned imported goods. No other document has been produced by the appellant to counter the voluminous documentary evidence produced by the Department under due compliance of technical procedure relevant for admissibility of those documents i.e due compliance of section 138C of the Customs Act. The Department has been meticulous while making the retrieved chats/messages from the resumed mobile phones of the appellant and their representative. Those chats have been the relied upon documents. The contents of those documents have initially been denied by the appellant, later the appellants have acknowledged the correctness thereof. There is no retraction of the appellant on record challenging the said

acknowledgement. In view of the law discussed above, this again is held to be the reason for admissibility of the statements recorded under section 108 of the Customs Act. In view of the entire above discussion, we do not find any infirmity in the order under challenge when the voluminous documentary evidence duly corroborating the statements under Section 108 of the Customs Act has been relied upon while confirming the alleged under-valuation of the impugned imported goods.

37. Coming to the issue of rejection and re-determination thereof, we observe that in para 10.1 to 10.1.10 and para 11 of the impugned order the adjudicating authority has discussed the relevant provisions vis-à-vis the rejection of the declared value in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the re-assessment thereof, sequentially following Rule 4 to 9. As already discussed above, the commercial invoices of the supplier got retrieved, got duly certified and have duly been acknowledged by the appellant. It is clear that the true and correct transaction value of the imported goods are available in the form of actual performa invoices/packing lists, even sale contracts were also on record, as were shared by the actual suppliers in the form of whatsapp chats/messages. There has already been admission of Director of the appellant that he did not declare the correct transaction value to the Customs. It is also evident from the various performa invoices retrieved from the cloned data that the items imported by the appellant were bearing the brand name 'Gravity' and were found packed with the packing material having the said impugned goods. However, the importer did not declare the same to the Customs. All these observations are held to qualify such

sufficient reason as mentioned in Rule 12 required for rejecting the declared value.

38. Since the transaction value got available from the retrieved commercial invoices of the supplier, the said value is relevant for the purposes of of assessment in terms of Section 14 of the Customs Act, 1962. In fact, there is no need to sequentially follow Rule 4 to Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, we hold that the value has rightly been re-determined taking the transaction value/value of the commercial invoices of suppliers as the relevant value. Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 also talks about the same. There was no other reason for following any other Rule. Accordingly, it is held that the value has rightly been re-determined based on the transaction value.

39. In the light of the entire above discussion, we do not find any reason to differ with the findings arrived at in the impugned order vis-à-vis rejecting the value declared by the appellant to Indian Customs and the redetermination thereof based on the transaction value that is the value in the commercial invoices of the Chinese supplier. With respect to the penalty, as it is substantially proved on the record that all the co-noticees have due knowledge of the impugned act of under valuation, the *mens rea* on their part stands fully proved from the record and thus no infirmity can be pointed out in the impugned order when the penalties have been imposed on the co-noticees. Consequent thereto,

the order under challenge is upheld and resultantly all the appeals are hereby dismissed.

(Order Pronounced on 20.11.2026)

(Dr. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Golay