CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL NO. 50497 of 2021

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/PR.COMMR/01/2020-21 dated 27.05.2020 passed by the Principal Commissioner of Customs (Preventive), New Delhi)

Purshottam Jajodia **....Appellant**
NP-12-A, Pitampura
New Delhi

Versus

Pr. Commissioner of Customs (Preventive) **....Respondent**
New Customs House, Near IGI Airport
New Delhi - 110 037

APPEARANCE:

Dr. G.K. Sarkar, advocate for the appellant
Shri Nikhil Mohan Goyal, authorized representative of the department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing : 29.01.2026
Date of Decision : 21.05.2026

FINAL ORDER NO. 50969/2026

JUSTICE DILIP GUPTA :

Purshottam Jajodia[1] has filed this appeal to assail that portion of the order dated May 27, 2020 passed by the Principal Commissioner of Customs (Preventive)[2] that imposes a penalty of Rs. 50 lacs upon him under section 112 of the Customs Act, 1962[3].

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1. the appellant
2 the Principal Commissioner
3 the Customs Act

2. It transpires from the records that proceedings were initiated against one Pushpak Lakhani, an employee of Johnson Watch Co. Pvt. Ltd.[4], on a belief that he was engaged in smuggling and supply of high end wrist watches for Johnson. This resulted in searches conducted in October, 20212 at various premises including the premises of the appellant.

3. A show cause notice dated October 27, 2017 was issued to many noticees, including the appellant. In respect of the appellant, it was stated that five watches were seized from his residential premises valued at Rs. 38,000/- as also Rs. 10 lacs. The relevant portion of the show cause notice is reproduced below :

> "**From the above facts and statements recorded, it is clear that Sh. Pushpak Lakhani, an employee of M/s JWCPL, New Delhi was engaged in an organized racket of smuggling and supply of high-end wrist watches for M/s JWCPL**. Such smuggled high-end wrist watches were being smuggled/ illegally procured through various carriers from Hong Kong, Nepal & Dubai and were then sold through the shops/ showrooms of M/s JWCPL and thereby huge amount of customs duties was being evaded. The procurement of high-end wrist watches through illegal means was well within the knowledge, and was being done in connivance with/for the Directors of M/s JWCPL, namely S/Sh. Anil Madan, Ankit Madan, Rajesh Madan and Manish Madan. **Sh. Pushpak Lakhani was assisted by Ms. Shikha Pahwa and Sh. Nikhil Malhotra who were also the employees of M/s JWCPL, Sh. Purshottam Jojodia and Shiv Kumar Lakhani @ Pintoo. All these persons were well aware of the smuggled nature of the subject high-end watches**."
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> **[emphasis supplied]**

4. It needs to be noted that prior to the issuance of the show cause notice dated October 27, 2017, earlier a show cause

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4 Johnson

notice dated October 28, 2013 was also issued proposed confiscation of the five watches and Rs. 10 lacs seized from the premises of the appellant. The customs duty to the extent of Rs. 9,041/- was demanded under the provisions of section 28(4) of the Customs Act with penalty under section 112, 114A and 114AA of the Customs Act. The appellant filed a Writ Petition (C) No. 416/2014 before the Delhi High Court against the show cause notice and by a judgment dated July 24, 2014, the Delhi High Court allowed the Writ Petition filed by the appellant and directed for release of the watches and currency unconditionally.

5. The present show cause notice dated October 27, 2017 is based on the statement of the appellant recorded in 2012 under section 108 of the Customs Act.

6. The appellant filed a detailed reply to the show cause notice dated October 27, 2017 and denied the allegations made therein. However, the Principal Commissioner has confirmed the demand proposed in the show cause notice and imposed a penalty of Rs. 50 lacs on the appellant under section 112 of the Customs Act only on the basis of the statement of the appellant recorded in 2012.

7. Dr. G.K. Sarkar, learned counsel appearing for the appellant has made the following submissions :

(i) The issue is about 3364 wrist watches which have been proposed for confiscation and payment of duty from Johnson and other concerned persons. There is nothing in the show cause notice or in the impugned order relating to role of the appellant in respect of the

3364 watches, in respect of which demand has been raised and confirmed in the present proceedings;

(ii) For imposition of penalty upon the appellant, it has to be established that there was a positive and deliberate defiance of law in respect of 3364 watches;

(iii) The only basis for imposition of penalty on the appellant is the statement made by the appellant under section 108 of the Customs Act; and

(iv) The statement recorded under section 108 of the Customs Act cannot be considered as relevant if the procedure contemplated under section 138B of the Customs Act is not followed.

8. Shri Nikhil Mohan Goyal, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions :

(i) Penalty upon the appellant has correctly been imposed under section 112 of the Customs Act; and

(ii) The Principal Commissioner committed no illegality in placing reliance upon the statement of the appellant made under section 108 of the Customs Act.

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

10. The issue that arises for consideration in this appeal is whether a statement made under section 108 of the Customs Act can

be considered as relevant if the procedure contemplated under section 138B of the Customs Act has not been followed.

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

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

> "**138B. Relevancy of statements under certain circumstances.**
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> **(1)** A statement made and signed by a person before any Gazetted Officer of customs during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —
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> (a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or
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> (b) when the person who made the statement is examined as a witness in the case before the court and the court is of opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice.
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> **(2)** The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a

court, as they apply in relation to a proceeding before a court."

13. It would be seen that section 108 of the Customs Act enables the concerned Officers to summon any person whose attendance they consider necessary to give evidence in any inquiry which such Officers are making. The statements of the persons so summoned are then recorded under this provision. It is these statements which are referred to in section 138B of the Customs Act. A bare perusal of sub-section (1) of section 138B makes it evident that the statement recorded before the concerned Officer during the course of any inquiry or proceeding shall be relevant for the purpose of proving the truth of the facts which it contains only when the person who made the statement is examined as a witness before the Court and such Court is of the opinion that having regard to the circumstances of the case, the statement should be admitted in evidence, in the interests of justice, except where the person who tendered the statement is dead or cannot be found. In view of the provisions of sub-section (2) of section 138B of the Customs Act, the provisions of sub-section (1) of the Customs Act shall apply to any proceedings under the Customs Act as they apply in relation to proceedings before a Court. What, therefore, follows is that a person who makes a statement during the course of an inquiry has to be first examined as a witness before the adjudicating authority and thereafter the adjudicating authority has to form an opinion whether having regard to the circumstances of the case the statement should be admitted in evidence, in the interests of justice. Once this determination regarding admissibility of the statement of a witness is

made by the adjudicating authority, the statement will be admitted as an evidence and an opportunity of cross-examination of the witness is then required to be given to the person against whom such statement has been made. It is only when this procedure is followed that the statements of the persons making them would be of relevance for the purpose of proving the facts which they contain.

14. In the case of **M/s Surya Wires Pvt. Ltd.** vs. **Principal Commissioner, CGST, Raipur**[5], a Division Bench of this Tribunal examined the provisions of section 108 and 138B of the Customs Act as also the provisions of section 9D and 14 of the Central Excise Act, 1944, which are similar to the provisions of section 108 and 138B of the Customs Act, and the observations are:

> "**28**. It, therefore, transpires from the aforesaid decisions that both section 9D(1)(b) of the Central Excise Act and section 138B(1)(b) of the Customs Act contemplate that when the provisions of clause (a) of these two sections are not applicable, then the statements made under section 14 of the Central Excise Act or under section 108 of the Customs Act during the course of an inquiry under the Acts shall be relevant for the purpose of proving the truth of the facts contained in them only when such persons are examined as witnesses before the adjudicating authority and the adjudicating authority forms an opinion that the statements should be admitted in evidence. It is thereafter that an opportunity has to be provided for cross-examination of such persons. **The provisions of section 9D of the Central Excise Act and section 138B(1)(b) of the Customs Act have been held to be mandatory and failure to comply with the procedure would mean that no reliance can be placed on the statements recorded either**

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

> **under section 14D of the Central Excise Act or under section 108 of the Customs Act.** The Courts have also explained the rationale behind the precautions contained in the two sections. It has been observed that the statements recorded during inquiry/investigation by officers has every chance of being recorded under coercion or compulsion and it is in order to neutralize this possibility that statements of the witnesses have to be recorded before the adjudicating authority, after which such statements can be admitted in evidence."
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> **(emphasis supplied)**

15. In **Ambika International** vs. **Union of India**[6] decided on 17.06.2016, the Punjab and Haryana High Court examined the provisions of section 9D of the Central Excise Act. The show cause notices that had been issued primarily relied upon statements made under section 14 of the Central Excise Act. It was sought to be contended by the Writ Petitioners that the demand had been confirmed in flagrant violation of the mandatory provisions of section 9D of the Central Excise Act. The High Court held that if none of the circumstances contemplated by clause (a) of section 9D(1) exist, then clause (b) of section 9D(1) comes into operation and this provides for two steps to be followed. The first is that the person who made the statement has to be examined as a witness before the adjudicating authority. In the second stage, the adjudicating authority has to form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice. The judgment further holds that in adjudication proceedings, the stage of relevance of a statement

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6. 2018 (361) E.L.T. 90 (P&H)

recorded before Officers would arise only after the statement is admitted in evidence by the adjudicating authority in accordance with the procedure contemplated in section 9D(1)(b) of the Central Excise Act. The judgment also highlights the reason why such an elaborative procedure has been provided in section 9D(1) of the Central Excise Act. It notes that a statement recorded during inquiry/investigation by an Officer of the department has a possibility of having been recorded under coercion or compulsion and it is in order to neutralize this possibility that the statement of the witness has to be recorded before the adjudicating authority. The relevant portions of the judgment are reproduced below:

> "15. **A plain reading of sub-section (1) of Section 9D of the Act makes it clear that clauses (a) and (b) of the said sub-section set out the circumstances in which a statement, made and signed by a person before the Central Excise Officer of a gazetted rank, during the course of inquiry or proceeding under the Act, shall be relevant, for the purpose of proving the truth of the facts contained therein.**
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> 16. Section 9D of the Act came in from detailed consideration and examination, by the Delhi High Court, in J.K. Cigarettes Ltd. v. CCE, 2009 (242) E.L.T. 189 (Del.). Para 12 of the said decision clearly holds that by virtue of sub-section (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well.
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> *****
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> 22. **If none of the circumstances contemplated by clause (a) of Section 9D(1) exists, clause (b) of Section 9D(1) comes into operation. The said clause prescribes a specific procedure to be followed before the**

statement can be admitted in evidence. Under this procedure, two steps are required to be followed by the adjudicating authority, under clause (b) of Section 9D(1), viz.

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

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

24. **The rationale behind the above precaution contained in clause (b) of Section 9D(1) is obvious. The statement, recorded during inquiry/ investigation, by the gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion.** It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. **It is obviously in order to neutralize this possibility that, before admitting such a statement in evidence, clause (b) of Section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudication authority, as, in such an atmosphere, there**

would be no occasion for any trepidation on the part of the witness concerned.

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

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

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

(i) **after the person whose statement has already been recorded before a gazetted Central Excise Officer is examined as a witness before the adjudicating authority, and**

> (ii) **the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,**
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> **that the question of offering the witness to the assessee, for cross-examination, can arise.**
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> 28. **Clearly, if this procedure, which is statutorily prescribed by plenary parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the CCE, on the said statements, has to be regarded as misguided, and the said statements have to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof.**"
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> **(emphasis supplied)**

16. In **Hi Tech Abrasives Ltd.** vs. **Commissioner of C. Ex. & Cus., Raipur**[7] decided on 04.07.2018, the Chhattisgarh High Court also examined the provisions of section 9D of the Central Excise Act. The allegation against the appellants was regarding clandestine removal of goods without payment of duty and for this purpose reliance was placed on the statement of the Director of the Company who is said to have admitted clandestine removal of goods. The contention of the appellants before the High Court was that the statement of the Director could be admitted in evidence only in accordance with the provisions of section 9D of the Central Excise Act. After examining the provisions of sub-sections (1) and (2) of section 9D of the Central Excise Act, and after placing reliance on the

7. 2018 (362) E.L.T. 961 (Chhattisgarh)

judgment of the Punjab and Haryana High Court in **Ambika International**, the Chhattisgarh High Court held:

> "9.3 **A conjoint reading of the provisions therefore reveals that a statement made and signed by a person before the Investigation Officer during the course of any inquiry or proceedings under the Act shall be relevant for the purposes of proving the truth of the facts which it contains in case other than those covered in clause (a), only when the person who made the statement is examined as witness in the case before the court (in the present case, Adjudicating Authority) and the court (Adjudicating Authority) forms an opinion that having regard to the circumstances of the case, the statement should be admitted in the evidence, in the interest of justice.**
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> 9.4 **The legislative scheme, therefore, is to ensure that the statement of any person which has been recorded during search and seizure operations would become relevant only when such person is examined by the adjudicating authority followed by the opinion of the adjudicating authority then the statement should be admitted. The said provision in the statute book seems to have been made to serve the statutory purpose of ensuring that the assessee are not subjected to demand, penalty interest on the basis of certain admissions recorded during investigation which may have been obtained under the police power of the Investigating authorities by coercion or undue influence.**
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> 9.5 ***** **The provisions contained in Section 9D, therefore, has to be construed strictly and held as mandatory and not mere directory.** Therefore, unless the substantive provisions contained in Section 9D are complied with, the statement recorded during search and

seizure operation by the Investigation Officers cannot be treated to be relevant piece of evidence on which a finding could be based by the adjudicating authority. A rational, logical and fair interpretation of procedure clearly spells out that before the statement is treated relevant and admissible under the law, the person is not only required to be present in the proceedings before the adjudicating authority but the adjudicating authority is obliged under the law to examine him and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice. **Therefore, we would say that even mere recording of statement is not enough but it has to be fully conscious application of mind by the adjudicating authority that the statement is required to be admitted in the interest of justice. The rigor of this provision, therefore, could not be done away with by the adjudicating authority, if at all, it was inclined to take into consideration the statement recorded earlier during investigation by the Investigation officers.** Indeed, without examination of the person as required under Section 9D and opinion formed as mandated under the law, the statement recorded by the Investigation Officer would not constitute the relevant and admissible evidence/material at all and has to be ignored. **We have no hesitation to hold that the adjudicating officer as well as Customs, Excise and Service Tax Appellate Tribunal committed illegality in placing reliance upon the statement of Director Narayan Prasad Tekriwal which was recorded during investigation when his examination before the adjudicating authority in the proceedings instituted upon show cause notice was not recorded nor formation of an opinion that it requires to be admitted in the interest of justice.** In taking this view, we find support from the decision in the case of Ambica International v.

UOI rendered by the High Court of Punjab and Haryana."

(emphasis supplied)

17. In **Additional Director General (Adjudication)** vs. **Its My Name Pvt. Ltd.**[8] decided on 01.06.2020, the Delhi High Court examined the provisions of sections 108 and 138B of the Customs Act. The department placed reliance upon the statements recorded under section 108 of the Customs Act. The Delhi High Court held that the procedure contemplated under section 138B(1)(b) has to be followed before the statements recorded under section 108 of the Customs Act can be considered as relevant. The relevant paragraphs of the judgment of the Delhi High Court are reproduced below:

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

A Division Bench of this Court has, speaking through A.K. Sikri, J. (as he then was) held, in J & K Cigarettes Ltd. v. Collector of Central Excise [2009 (242) E.L.T. 189 (Del.)] that, by virtue of sub-section (2), Section 138B(1) of the Act would apply, with as much force, to adjudication proceedings, as to criminal proceedings.

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8. 2021 (375) E.L.T. 545 (Del.)

> We express our respectful concurrence with the above elucidation of the law which, in our view, directly flows from Section 138B(1) of the Act - or, for that matter, Section 9D of the Central Excise Act, 1944.
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> 77. The framers of the law having, thus, subjected statements, recorded under Section 108 of the Act, to such a searching and detailed procedure, before they are treated as relevant in adjudication proceedings, we are of the firm view that such statements, which are yet to suffer such processual filtering, cannot be used, straightaway, to oppose a request for provisional release of seized goods. **The reliance, in the appeal before us, on various statements recorded during the course of investigation in the present case cannot, therefore, in our view, invalidate the decision, of the Learned Tribunal, to allow provisional release of the seized 25400.06 grams of gold jewellery, covered by Bill of Entry No. 107190, dated 20th April, 2019.**"
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> **(emphasis supplied)**

18. In **M/s. Drolia Electrosteel P. Ltd.** vs **Commissioner, Customs, Central Excise & Service Tax, Raipur**[9] decided on 30.10.2023, a Division Bench of the Tribunal examined the provisions of section 9D of the Central Excise Act and after placing reliance upon the decision of the Punjab and Haryana High Court in **Jindal Drugs Pvt. Ltd.** vs. **Union Of India**[10], observed that if the mandatory provisions of section 9D(1)(b) of the Central Excise Act are not followed, the statements cannot be used as evidence in proceedings under Central Excise Act. The relevant portions of the decision of the Tribunal are reproduced below:

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

> "14. Evidently, the statements will be relevant under certain circumstances and these are given in clauses (a) and (b) of subsection (1). There is no assertion by either side that the circumstances indicated in (a) existed in the case. **It leaves us with (b) which requires the court or the adjudicating authority to first examine the person who made the statement and form an opinion that having regard to the circumstances of the case, the statement should be admitted in evidence. Of course, the party adversely affected by the statement will have to be given an opportunity to cross examine the person who made the statement but that comes only after the statement is, in the first place, after examination by the adjudicating authority, admitted in evidence.** This has not been done in respect of any of the 35 statements. Therefore, all the statements are not relevant to the proceedings.
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> 15. **It has been held in a catena of judgments including Jindal Drugs Pvt. Ltd. versus Union Of India [2016 (340) E.L.T. 67 (P&H)] that section 9D is a mandatory provision and if the procedure prescribed therein is not followed, statements cannot be used as evidence in the proceedings** under Central Excise Act. *****
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> 16. Therefore, the 35 statements relied upon in the SCN are not relevant and hence also not admissible."
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> **(emphasis supplied)**

19. In this view of the matter, as the procedure contemplated under section 138B of the Customs Act was not followed, the statement made by the appellant under section 108 of the Customs Act cannot be considered as relevant. The statement made by the

appellant under section 108 of the Customs Act is the sole basis for imposition of penalty upon the appellant.

20. The impugned order dated May 27, 2020 passed by the Principal Commissioner, therefore, deserves to be set aside and is set aside. The Appeal is, accordingly, allowed.

(Order pronounced on **21.05.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Golay