CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87501 of 2023

(Arising out of Order-in-Appeal No. MUM-CUS-MA-IMP-235 to 237/2022-23 NCH dated 24.02.2023 passed by the Commissioner of Customs (Appeals), Mumbai-I).

Bhaijaan Stores **.... Appellant**
110/118, Ground Floor, Fida House
Maulana Azad Road, Duncan Road
Mumbai – 400 008.

Versus

Commissioner of Customs (Import-II), Mumbai **....Respondent**
New Custom House, Ballard Estate,
Mumbai – 400 001

WITH

Customs Appeal No. 85820 of 2024

(Arising out of Order-in-Appeal No. MUM-CUS-MA-IMP-235 to 237/2022-23 NCH dated 24.02.2023 passed by the Commissioner of Customs (Appeals), Mumbai-I).

Junaid Kudia **.... Appellant**
Partner of M/s Bhaijaan Stores
901/902, 9th Floor, HUDA Heights
Ghas Guali, Sahane Guruji Marg
Mumbai – 400 008.

Versus

Commissioner of Customs (Import-II), Mumbai **....Respondent**
New Custom House, Ballard Estate,
Mumbai – 400 001

AND

Customs Appeal No. 85951 of 2024

(Arising out of Order-in-Appeal No. MUM-CUS-MA-IMP-235 to 237/2022-23 NCH dated 24.02.2023 passed by the Commissioner of Customs (Appeals), Mumbai-I).

Sadik Kudia **.... Appellant**
Partner of M/s Bhaijaan Stores
901/902, 9th Floor, HUDA Heights
Ghas Guali, Sahane Guruji Marg
Mumbai – 400 008.

Versus

Commissioner of Customs (Import-II), Mumbai **....Respondent**
New Custom House, Ballard Estate,
Mumbai – 400 001

APPEARANCE:

Shri J.C. Patel, Advocate for the Appellants
Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85657-85659/2026

Date of Hearing: 23.02.2026
Date of Decision: 12.05.2026

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Bhaijaan Stores, Mumbai (for short, referred to as "the appellant company") along with S/Shri Junaid Kudia, Sadik Kudia, both partners of the appellant company M/s Bhaijaan Stores (herein after, referred together as "the appellants", for short) assailing the Order-in-Appeal No. MUM-CUS-MA-IMP-235 to 237/2022-23 NCH dated 24.02.2023 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Mumbai-I, 2nd Floor, New Custom House, Ballard Estate, Mumbai – 400 001.

2.1 The brief facts of the case are that the appellants had imported varieties of bags, PVC leather cloth falling under Customs Tariff Item (CTI) 4202 2290, 5903 1090 and 5903 2090 of the First Schedule to the Customs Tariff Act, 1975 from China through the ports of Nhava Sheva, Mumbai. Directorate of Revenue Intelligence, Regional Unit, Surat (DRI) had developed an intelligence that the appellants have resorted to under valuation of imported goods with an intention to evade customs duty in connivance with overseas suppliers/manufacturers/commission agent. Detailed investigation was conducted by DRI including search of registered premises of the appellant company M/s Bhaijaan Stores on 11.04.2017 as well as at the premises of M/s Winsor Enterprises, Mumbai and documents in the form of print outs of e-mails were recovered which indicated that the appellants had mis-declared the actual value of the goods before the proper authorities of Customs at the time of seeking clearance of imported goods. Further, statements were recorded from various persons concerned.

2.2 On completion of investigation, DRI had issued Show Cause Notice (SCN) vide F. No. DRI/AZU/SRU-22/2017-Bhaijaan dated 23.01.2019 proposing for redetermination of assessable value under Section 14(1) of the Customs Act, 1962 and consequent demand of differential duty under Section 28(4) *ibid* along with proposals for confiscation of goods under sub-section (m) of Section 111 *ibid* and for imposition of penalties on the appellants under Section 112(a), 114A, 114AA *ibid*. Further, similar SCN was also issued separately vide F. No. DRI/AZU/SRU-22/2017 dated 04.09.2018 to M/s Winsor Enterprises involved in the present case.

2.3 The said SCN dated 23.01.2019 was adjudicated by the learned Joint Commissioner of Customs (Import-II), Mumbai-I confirming all the proposals made in the SCN by issuing the Order-in-Original dated 12.07.2019. In the said order the adjudicating authority has rejected the declared assessable value of Rs. 26,24,367/- in respect of 04 consignments imported through Mumbai port by the appellant company and re-determined the same at Rs. 1,83,47,408/-; confirmed differential customs duty amounting to Rs.46,29,020/- under Section 28(4) of the Customs Act, 1962 along with interest; appropriated the amount of Rs.8,75,000/- deposited by the appellant; confiscated the imported goods without imposing redemption fine, since the same was not physically available with the department under sub-section (m) of Section 111 *ibid*; imposed penalty equal to duty evaded at Rs. 46,29,020/- under Section 114A *ibid* on M/s. Bhaijaan Stotes. Besides, the adjudicating authority also imposed penalties of Rs.4,50,000/- each on the appellants Shri Junaid Kudia and Shri Sadik Kudia, respectively, under Section 112(a) *ibid*. Further, he had also imposed penalty of Rs.10,00,000/- on Shri Junaid Kudia under Section 114AA *ibid*.

2.4 With regard to three consignments of goods imported through JNCH, Nhava Sheva port, the order of the original authority dated 12.07.2019, has rejected the declared assessable value of Rs.50,03,145/- and re-determined the same at Rs.76,23,625/-; confirmed differential customs duty amounting to Rs.7,71,495/- under Section 28(4) *ibid* along with interest and also confiscated the impugned goods. The impugned order has imposed penalty of Rs. 7,71,495/- on the appellant company under Section 114A ibid; imposed penalty of Rs.75,000/- each on the appellant Shri Junaid Kudia and Shri Sadik Kudia, respectively, under Section 112(a) ibid. Further, he had also imposed penalty of Rs.1,75,000/- on Shri Junaid Kudia

under Section 114AA *ibid*. Being dissatisfied with the above order of the original authority, the appellants have preferred appeals before the learned Commissioner of Customs (Appeals), who vide Order-in-Appeal dated 24.02.2023 (which is impugned herein), by upholding the order of the original authority has rejected the appeals filed by the appellants.

2.5 Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

3.1 Learned Advocate submitted that the adjudicating authority had confirmed the demands based on the statements of partners of the appellant company, without considering the vital facts about the value of goods declared before the jurisdictional customs authorities and after paying proper duty had the goods cleared from customs control. He further stated that Shri Junaid Kudia, has been treated as de-facto partner of the appellant company and statements were recorded from him on different dates and also from other persons concerned by DRI; these statements had been recorded under duress by the investigation agency and those statements have been retracted by the concerned persons at the first available opportunity and thus these cannot form the basis for such confirmation of the demand of duty.

3.2 Learned Advocate submitted that alleged higher value invoices and other evidential documents were taken by way of computer printouts of e-mails during search of premises of M/s Bhaijaan Stores and M/s Winsor Enterprises by DRI. Since the legal requirements of the Section 138C of Customs Act, 1962, have not been complied during the process of recording it, he claimed that the said computer printouts are not admissible as evidence under Section 138C ibid. Further, he also submitted that the request for cross examination of Shri Zulfikar, Office Assistant, M/s Winsor Enterprises from whose possession e-mails proving alleged under valuation have been recovered, was not permitted by the adjudicating authority. Since, the investigation had neither recorded any independent statement from Shri Zulfikar nor the adjudicating authority gave an opportunity to the appellants, for cross examining him, these evidences cannot be relied upon for confirmation of duty demands.

3.3 Learned Advocate further submitted on the basis of the same investigation of DRI, show cause proceedings initiated for one another business entity of their sister concern i.e., Plastic Cottage Trading Co., and

its partners S/Shri Zunaid Kudia, Zaid Kudia, the matter was examined in detail by the Tribunal and vide Final Order No. A/86237-86239/2023 dated 25.08.2023, the duty demands and the penalties imposed were held to be not sustainable. Further, in an appeal filed by the department against the said Tribunal's Order, the Hon'ble Supreme Court had upheld the order of the Tribunal and rejected the department's appeal, by dismissing the Civil Appeal Diary No.4161 of 2024 dated 04.03.2024 [2024 (388) E.L.T. 529 (S.C.)]. Similarly, the proceedings against M/s Winsor Enterprises were also held as not sustainable vide Final Order No. A/88904-85906/2025 dated 16.06.2025. Therefore, he claimed that the appeals filed in these cases also be allowed on the above basis.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that documents in the form of print outs of emails were recovered, which indicated that the appellants had mis-declared the actual value of the imported goods. Hence, he submitted that the impugned order is sustainable.

5. Heard both sides and carefully examined the case records. The additional submissions made in the form written paper book in this case was also perused carefully.

6. The short issue for determination before the Tribunal is that in the facts and circumstances of the present case, whether the demand of differential duty on the imported goods; confiscation of goods and consequently imposition of penalty, is legally sustainable or not?

7. We find that the issue of enhancement of value on the basis of the computer print-outs, documents taken from the premises of M/s Bhaijaan Stores by DRI are the same as relied upon in a similar proceedings separately taken for their sister concern M/s i.e., Plastic Cottage Trading Co., M/s Winsor Enterprises and statements of the partners of the appellant company given before DRI which were retracted by them are also a part of the same investigation. These were examined by the Co-ordinate Bench of this Tribunal in the case of *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* – (2024) 16 Centax 503 (Tri.-Bom.), wherein it was held that the demand of differential duty by enhancing the assessable value and consequential imposition of penalty are not legally sustainable. The relevant paragraphs of the said Order are extracted and given below:

"6. Rejection of declared value on Bill of Entry is a serious charge and the same could have been rejected on the basis of cogent examination of evidences and justifiable reasons. We find that the DRI officers conducted search operation in the business premises of M/s Plastic Cottage Trading Co. and M/s Winsor Enterprises. Panchama's both dated 11-4-2017 were prepared in respect of recovery of records/ documents/ files/ print outs of emails and sets of invoices retrieved from emails /computers/ mobile phones and laptop. The Officers also recorded statement of Shri Junaid Kudia, Shri Mukhtar Kudia on different dates. On the basis of mails retrieved from the email ID of Shri Mukhtar Kudia, i.e., mukhtarkudia@yahoo.in or Shri Zulfikar Shaikh, office Assistant at M/s Winsor Enterprises i.e., zeeshu666@rediffmail.com it was contended that the actual rate of commodities imported by the appellant were different from that declared before the customs authorities. Accordingly, the demand of customs duty was confirmed for the period from January, 2014 to April, 2017 on the importation of Varieties of Bags etc. on the ground of under valuation. The issue involved in these cases is mainly confined for determination, as to whether, the transaction values declared by the importer/ appellant are correct or otherwise. The adjudicating authority observed that the evidence for the actual price was retrieved from the E-mails and invoices retrieved from E-mails. The authenticity of all the said Email printouts was admitted by partners of the appellant in their statements. On the other hand, the appellants disputed the veracity and authenticity of the evidences, collected through electronic devices.

7. In this context, we find that Section 138C of the Act, 1962 provides admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence. For the proper appreciation of the case, Section 138C of the Act, 1962 is reproduced below:…….

8. On reading of Section 138C of the Customs Act, 1962, it is seen that the Legislature had prescribed the detailed procedure to accept the computer printouts and other electronic devices as evidences. It has been stated that any proceedings under the Act, 1962, where it is desired to give a statement in evidence of electronic devices, shall be evidences of any matter stated in the certificate. In the present case, we find that the provisions of Section 138C of the Act were not complied with to use the computer printouts as evidence. It is noted that the certificate was not prepared during the seizure of the electronic devices, as required under the law. The investigation is normally started after collecting the intelligence/information from various sources. The investigating officers procure the evidences in the nature of documents, statements, etc., to establish the truth. During the evolution of technology, the electronic devices were used as evidence. In this context, the law is framed to follow the procedure, while using the electronic devices as evidence for authenticity of the documents, which would be examined by the adjudicating authority during adjudication proceedings. In the instant case, it is found that the entire case proceeded on the basis of the electronic documents as evidence. But the investigating officers had not taken pain to comply with the provisions of the law to establish the truthfulness of the documents and merely proceeded on the basis of the statements. Hence, the evidence of electronic devices, as relied upon by the adjudicating authority cannot be accepted.

9. We also find that the Hon'ble Supreme Court in the case of Anvar P.V. (supra), while dealing with Section 65B of the Evidence Act, 1872 (Pari materia to Section 138C of the Act, 1962), observed as under :

> *"13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original……..*
>
> *14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:*
> *(a) There must be a certificate which identifies the electronic record containing the statement;*
> *(b) The certificate must describe the manner in which the electronic record was produced;*
> *(c) The certificate must furnish the particulars of the device involved in the production of that record;*
> *(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and*
> *(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*
>
> *15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.*
>
> *16. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.*
>
> *17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India.*
> *……..*
>
> *22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia speciali bus non derogant, special law will always prevail over the general law. It appears, the Court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms*

of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

10. Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceedings. We note that the Section 138C of the Customs Act is parimateria to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted in the present proceedings, only subject to the satisfaction of the subsection (2) of Section 138C ibid. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices, have not been accompanied by a certificate as required by Section 138C(2) ibid as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices in respect of which the requirement of Section 138C(2) ibid has not been satisfied. On this ground, the impugned order suffers from uncurable error and hence, is liable to be set aside.

11. The Learned AR for Revenue relied upon the decision of the Tribunal in the case of M/s. Laxmi Enterprises (supra), in which the Tribunal has upheld the charge of undervaluation and demand for differential duty. In the said decision, Tribunal overruled the objection of the appellant in connection with Section 138C, by holding that the documents printed out from laptop will be admissible as evidence, in view of the fact that the truth of such documents stand admitted by the proprietor in his statement. We have gone through the said decision of the Tribunal and we note that the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra) has not been cited and was never brought to the notice of the Bench. Consequently, we are of the view that the decision in the case of Laxmi Enterprises is not applicable to the facts of the present case.

12. It is submitted by the Learned Counsel for the appellant that the adjudicating authority had not examined the witnesses, as per the provisions of Section 138B of the Act, 1962. In this context, we find that the Hon'ble Delhi High Court, in the case of J&K Cigaratte v. Collector of Customs - 2009 (242) E.L.T. 189 = 2011 (22) S.T.R. 225 (Del.),while dealing with Section 9D(1) of the Central Excise Act, 1944 (Parimatria to Section 138B of the Customs Act, 1962) have held that the procedure as prescribed in the statute is required to be followed for proving the truth of the statement. The said decision of the Hon'ble Delhi High Court has also been relied upon by the Hon'ble Punjab & Haryana High Court, in the case of G-Tech Industries v. Union of India - 2016 (339) E.L.T.

209 (P & H). We find force in the submissions of the Learned Counsel for the appellant that the adjudicating authority has not followed the procedures prescribed under Section 138B of the Act, 1962. We are also in agreement with the Appellant that the statements of witnesses cannot be relied upon as Learned Adjudicating authority not conducted cross-examination. Hence, on this ground also demand of duty cannot be sustained.

13. We also noticed that the Adjudicating authority in order to justify the under valuation, has relied upon the statements of partners of the appellant's company. However, the Appellant has objected to such reliance, as the statements were retracted. The Appellant has pleaded that retracted statements cannot be accepted as evidence for confirmation of demand. The adjudicating authority in the impugned order has chosen not to consider the retraction. We are of the view that the said approach of the adjudicating authority is incorrect. Be that as it may, we note that statements cannot be the sole reason to confirm the charge of undervaluation. We also note that in the present matter there are no evidences produced by the department that the excess amount over and above the invoice price was paid to suppliers. There is no evidence as to how the Appellant came into possession of cash alleged to be differential amount towards goods imported, nor there is any evidence of any cash being handed over to any person, representing suppliers in India. Department had failed to produce corroborative evidences regarding the undervaluation of imported goods. Hence, in our view, the charge of undervaluation of imported goods in the present matter is not sustainable.

14. Further, we also find that in respect of disputed imported goods, Bills of entry were already been assessed at the time of importation of the goods and hence, further proposal to re-enhance the value, in the eventuality, when the earlier assessment orders having not been appealed against/reviewed, have attained finality and accordingly, cannot be proceeded with for rejection of the declared value. In other words, there cannot be any re-assessment of the said values, which had become final for want of appeal against the same. Our views are supported by the judgments in case CC v. Lord Shiva Overseas (supra), Malhotra Impex v. Commissioner of Customs, Ahmedabad - 2006 (203) E.L.T. 561 (Tri.-Del.) and Commissioner of Customs (Prev.), v. Paras Electronics - 2009 (246) E.L.T. 231 (Tri.-Mumbai).

15. In view of our above observations and findings, we are of the opinion that the duty demand confirmed against the appellant M/s. Plastic Cottage Trading Co. and penalties imposed upon it is not sustainable. For the same reason, the penalty imposed on the co-appellants namely, Shri Junaid Kudia and Shri Zaid Kudia is also not sustainable. Therefore, the impugned order confirming the adjudged demands on the appellants is set aside and the appeals are allowed with consequential relief to the Appellants, as per law."

8. The above decision of the Tribunal was subsequently appealed before the Hon'ble Supreme Court by the department in Civil Appeal Diary No. 4161 of 2024. The said case was decided vide judgement dated

04.03.2024, wherein the Hon'ble Supreme Court by agreeing with the views of the Tribunal, had dismissed the Civil Appeals filed by the department.

9. In view of the foregoing and on the basis of the order passed by the Tribunal in the case of *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* arising on the basis of same investigation and judgement delivered by the Hon'ble Supreme Court on this case, upholding the confirmation of differential duty along with interest, confiscation of the impugned goods and imposition of penalty on the appellants, by the learned Commissioner of Customs (Appeals) vide impugned order dated 24.02.2023 does not stand the legal scrutiny.

10. In the result, the impugned order dated 24.02.2023 passed by the learned Commissioner (Appeals) is set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 12.05.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha