CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH-COURT NO. 1

CUSTOMS APPEAL NO. 50308 OF 2024

[Arising out of Order in Original No. 57-2023-VCG-Pre.Commissioner-ICD-Import-TKD dated 22.12.2023 passed by the Principal Commissioner of Customs (Import), New Delhi]

PROWELD INDUSTRIES PVT LTD **.....APPELLANT**

C-704, Saibaba Apartment,
Sector-9, Rohini, New Delhi-110085

Vs.

PRINCIPAL COMMISSIONER OF CUSTOM IMPORT-NEW DELHI ICD TKD **.....RESPONDENT**

ICD, TKD, New Delhi-110020

AND

CUSTOMS APPEAL NO. 50373 OF 2024

[Arising out of Order in Original No. 57-2023-VCG-Pre.Commissioner-ICD-Import-TKD dated 22.12.2023 passed by the Principal Commissioner of Customs (Import), New Delhi]

SHRI DINESH JUNEJA, DIRECTOR **.....APPELLANT**

M/s Proweld Industries Pvt Ltd.
C-704, Saibaba Apartment,
Sector-9, Rohini, New Delhi-110085

Vs.

PRINCIPAL COMMISSIONER OF CUSTOM IMPORT-NEW DELHI ICD TKD **.....RESPONDENT**

ICD, TKD, New Delhi-110020

Appearance:

Shri Devesh Tripathi and Shri Divesh, Advocates for the Appellant

Shri Nikhil Mohan Goyal, Authorised Representative for the Respondent

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO'S. 50737-50738 /2026

DATE OF HEARING : 18/02/2026
DATE OF DECISION : 16/04/2026

P.V.SUBBA RAO

1. The Order dated 22.12.2023 passed by the Principal Commissioner (Inland Container Depot)(Import), TKD, New Delhi is assailed by M/s Proweld Industries Private Limited[1] and its Director Shri Dinesh Juneja[2] in these two appeals in so far as it is pertaining to them. In the impugned order, the Commissioner has confirmed demand of customs duty of Rs. 1,53,17,038/- on Proweld under section 28(4) of the Customs Act, 1962[3] along with applicable interest and imposed an equal amount as penalty under section 114A of the Act. He has also imposed a penalty of Rs. 40,00,000/- on Proweld under section 114AA of the Act. The Commissioner has also imposed penalty of Rs. 10,00,000/- on Dinesh under section 114AA of the Act.

2. Proweld is a private limited company which imports and sells welding machines and its parts and Dinesh is its Director. Acting on intelligence, the Directorate General of Revenue Intelligence[4] initiated investigation suspecting undervaluation of imported good by Proweld to evade customs duty. In the course of the investigation the officers of DRI retrieved parallel invoices from the mobile phone of Dinesh and also recorded statement of Dinesh, some buyers and also gathered certain other evidence. After completing the investigation, a Show Cause Notice[5] dated 25.09.2020 was issued by DRI to Proweld and Dinesh proposing to reject the transaction value, re-determine the value, recover

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1 Proweld
2 Dinesh
3 Act
4 DRI
5 SCN

differential duty, hold the imported goods liable to confiscation and to impose penalties. Both the appellants resisted the proposals in the SCN which were, however, confirmed in the impugned order. Hence these two appeals.

Submissions of the appellant.

3. Shri Devesh Tripathi, learned counsel for the appellant has made the following submissions:

(i) Proweld is a private company established by its Director Dinesh and his wife Mrs. Jyoti Juneja in 2012 and in 2015 it started importing welding machines and its parts and accessories.

(ii) During May 2015 to August, 2016, the appellant imported goods from various suppliers in China and filed Bills of Entry and cleared goods accordingly.

(iii) On 01.10.2019, DRI issued summons to Dinesh alleging that the appellant evaded customs duty by undervaluing imported welding machines and on 07.10.2019. Dinesh gave his statement under section 108 of the Act accepting the allegation of undervaluation.

(iv) On 07.10.2019 and 27.12.2019 Dinesh submitted two demand drafts towards the partial discharge of the differential customs duty. On 16/17.10.2019 the Mobile phone of Dinesh was examined and documents were retrieved.

(v) The department also recorded statements of two buyers Shri Mohit Diwan and Shri Shankar Mirchand

Bhawani, in which they said that Proweld had issued invoices for lower prices to them than the actual sale price and collected the differential amount in cash.

(vi) During hearing, the appellant was allowed to cross-examine both buyers and they retracted their earlier statements.

(vii) On 19.06.2020, another statement of Dinesh was recorded and the show cause notice was issued on 25.09.2020.

(viii) On 09.08.2023 Dinesh appeared before the Commissioner for personal hearing, submitted written reply and during hearing he retracted his previous statement recorded under section 108 of the Act;

(ix) The Commissioner passed the impugned order erroneously.

(x) The alleged documents retrieved from Dinesh's mobile phone cannot be used to determine the value of the goods.

(xi) The department failed to comply with the mandatory procedure under section 138C of the Act and no certificate under this section was issued.

(xii) Dinesh's statement recorded cannot be relied upon as it was recorded under section 108 of the Act and the procedure prescribed under section 138B of the Act was not followed.

(xiii) The assessable value of the goods cannot be determined solely on the basis of third party quotations or proforma invoices.

(xiv) The nature and time of the allegedly retrieved documents do not match the imported goods of the appellant.

(xv) Re-determination of value on the basis of average percentage is legally unsustainable.

(xvi) The transaction value cannot be rejected in the absence of evidence of payments over and above the transaction value.

(xvii) The two buyers of Proweld had retracted the statements during cross-examinations;

(xviii) The impugned goods were not liable to confiscation under section 111(m) of the Act because there was no mis-declaration.

(xix) Extended period of limitation was wrongly invoked and the demand is time barred.

(xx) Penalties imposed on Proweld and Dinesh cannot be sustained.

Submissions of the Revenue

4. Learned authorized representative appearing for the Revenue vehemently supported the impugned order and submitted as follows:

(i) Proweld is a private limited company and Dinesh is the Director of Proweld and it is engaged in importing welding machines.

(ii) Suspecting undervaluation, DRI initiated investigation during which documents were retrieved from Dinesh's mobile phone which formed the basis for rejection of the transaction value and re-determination of the value. Statements from the buyers of the machines were also recorded and several evidences were also collected. The SCN primarily relied on three types of evidence to allege mis-declaration of the value.

(iii) Eight invoices allegedly showed higher transaction value than that was declared.

(iv) Statements of buyers who confirmed purchases at higher prices.

(v) Forensic examination of the mobile phone of Dinesh recovered from him under panchnama proceedings.

(vi) During hearing, cross-examination of two witnesses was conducted 07.11.2023 and 01.12.2023. The adjudicating authority held that the undervaluation was established based on the invoices and screen shots retrieved from Dinesh's mobile phone showed higher transaction value than those declared in the Bills of Entry. He also relied on his statements of persons to whom Proweld has sold the goods from and the forensic examination of the mobile phones lawfully conducted under panchnama.

(vii) The transaction value was rejected under rule 12 of the Customs Valuation (Determination of value of

imported goods)Rules, 2007[6] and it was re-determined under rule 9 of the Valuation Rules.

(viii) As far as the evidence recovered from mobile phone of Dinesh is concerned, it is true that a certificate under section 138C was not issued but that, by itself, does not negate the validity of the evidence and there is no dispute that mobile phone was recovered from Dinesh under a Panchnama. Reliance is placed on the judgment of Supreme Court in **Additional Director General, Adjudication, DRI** vs. **Suresh Kumar and Co. Impex & Ors** dated August 20, 2025. In that case the Tribunal had set aside the order of lower authority on the ground that no certificate under section 138C was issued. The Supreme Court held that the certificate under section 138C need not be in any particular format and since the recovery was done under panchnama that would suffice as the certificate under section 138C of the Act.

(ix) Shri Dinesh himself never retracted the statement during the entire proceedings before the reply to the show cause notice. Any person who issues a statement under duress or coercion is expected to retract it at the earliest opportunity. The statements were recorded on 07.10.2019 and on 19.06.2020. In between, on 10.10.2019 and 27.10.2019, Dinesh also

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6 Valuation Rules

submitted two demand drafts towards partial discharge of duty liability. Thereafter, the SCN was issued on 25.09.2022.

(x) The retraction claimed by the appellant was submitted in the written reply in the show cause notice on 09.08.2023 almost four years after the first statement was recorded. The assertion that the statement were recorded under threat and coercion has no legs to stand on.

(xi) What is admitted need not be proved. Dinesh has admitted to the undervaluation and did not retract his statement for at least four years. Further, undervaluation was proved on the basis of the documentary evidence recovered from Dinesh's phone. In view of the above, the impugned order is correct and proper and calls for no interference.

5. We have considered the submissions advanced by both sides and perused the records.

6. The arguments of the learned counsel for the appellant is based on (a) that no certificate under section 138C has been issued by the department and, therefore, the evidence collected from his mobile phone cannot establish a case against either of the appellants and (b) the statement of Shri Dinesh recorded under section 108 of the Act was recorded under threat and coercion and, therefore, it has no legal validity, and (c) the statements of two buyers of the machines do not advance the

cause of the department because during cross-examination they retracted from the earlier stand asserted that they purchased the welding machine from Proweld only for the prices indicated in the invoices.

7. As far as the electronic evidence recovered from the mobile phone of the Dinesh's phone is concerned, we find that an identical issue had come up before the Supreme Court in **Suresh Kumar and Company** and the relevant portion of the Supreme Court's Order is as follows:

> **"40.** Applying the two maxims referred to above, this Court proceeded to take the view that though Section 65B4 is mandatory, yet it would all depend on the facts of each case, how the same could be said to have been duly complied with.
> **41.** In the facts of the said case, this Court said that the respondents had done everything possible to obtain the necessary certificate which was to be given by a third party over whom the respondents therein had no control and, in such circumstances, must be relieved of the mandatory obligation contained in the said subsection.
> **42.** We have already reproduced paras 51 and 52 respectively of *Arjun Panditrao Khotkar* (supra) above.
> **43.** Keeping the aforesaid in mind, we are of the view and, more particularly, considering the Record of Proceedings duly signed by the respondents, including the various statements of the respondents recorded under Section 108 of the Act, 1962, that there was due compliance of Section 138C(4) of the Act, 1962. When we say due compliance, the same should not mean that a particular certificate *stricto senso* in accordance with Section 138C(4) must necessarily be on record. The various documents on record in the form of record of proceedings and the statements recorded under Section 108 of the Act, 1962 could be said to be due compliance of Section 138C(4) of the Act, 1962.
> **44.** It is pertinent to note at this stage that at no point of time the statements recorded under Section 108 of the Act, 1962 came to be retracted.
> **45.** Even while giving reply to the show cause notice, the contents of such statements recorded under Section 108 of the Act, 1962 were not disputed. This, of course, would be relevant only insofar as determining whether there has been due compliance of Section 138C(4) of the Act, 1962 is concerned. The evidentiary value of such Section 108 statements in any other proceedings, if any would have to be

considered in accordance with law, including the compliance of Section 138B of the Act, 1962.

46. At this stage, we must also look into the observations made by this Court in the case of "*Kum. Shubha @ Shubhashankar* v. *State of Karnataka*," reported in 2025 SSC online SC 1426 relied upon by the learned counsel appearing for the revenue. We quote:—

"A certificate not given in the prescribed format per se will not make it invalid, especially when the authenticity of these marked documents is not in dispute."

47. In view of the aforesaid, we partly allow these appeals of the revenue.

48. The judgment and order passed by the Tribunal is hereby set aside. The appeals filed by the assessees before the Tribunal are ordered to be restored to its original file and to be reheard by the Tribunal on grounds other than Section 138C(4) of the Act, 1962.

49. It is needless to clarify that on remand the Tribunal shall rehear the entire appeals on their own merits without being influenced in any manner by any of the observations made by this Court. Our observations are confined only on the issue of Section 138C(4) of the Act, 1962.

50. Pending application(s), if any, stands disposed of."

8. In this case also, there is no dispute that the mobile phone belongs to Dinesh and the parallel invoices were found in them. Even during hearing before us, we have asked learned counsel whether the mobile phone belonged to Dinesh and he confirmed that seized mobile phone belonged to Dinesh. Such being the case, it is not possible to accept that there was a need for a separate certificate under section 138C when the mobile phone belonged to Dinesh. Undisputedly, it was recovered from him under a panchnama and then it was forensically examined to retrieve the documents. Therefore, the submission of the learned counsel that without a certificate under section 138C the documents retrieved from his mobile phone cannot be relied upon deserves to be rejected.

9. As far as the statements made under Section 108 are concerned, they only provide additional support to the allegation of undervaluation. The only thing which matters is the price at which the goods were imported. The transaction value can be either accepted or rejected. As per Rule 12 of the Valuation Rules, the transaction value can be rejected if the proper officer has a reasonable doubt about its truth and accuracy. In this case, the doubt arose from the statement of Dinesh during investigation as well as the parallel invoices recovered from his mobile phone. We, therefore, find no infirmity in the Commissioner rejecting the transaction value or re-determining the value in the impugned order.

10. As far as the confiscation of goods under section 111(m) are concerned, this section read as follows:

> "111. Confiscation of improperly imported goods, etc.—The following goods brought from a place outside India shall be liable to confiscation:—
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> (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

11. Since the goods did not correspond in value to what was declared in the Bills of Entry, the imported goods were liable for confiscation and it has correctly been held so in the impugned order. However, since the goods were not physically available, they were not confiscated or nor any redemption fine was imposed on the appellant.

12. The contention of the learned counsel for the appellant is that the demand was time barred.

13. Demand under section 28(4) can be raised if non-payment or short payment of duty is by reason of any collusion, willful mis-statement or suppression of facts. In this case, the appellant had submitted some invoices with the Bill of Entry while certain other invoices were found in the mobile phone of Dinesh. There was no explanation as to why the invoices were different in the mobile phone. It would have been a different case, if Dinesh had explained the documents retrieved from his mobile phone and how they did not pertain to him or were not relatable to the imported goods. This could have been done at the first instance, once through forensic examination, the invoices were retrieved.

14. We, therefore, find no infirmity in invoking the extended period of limitation under section 28(4) of the Act to demand duty.

15. Penalty under section 114A can be imposed if non-payment or short payment of duty is by reason of any collusion or willful mis-statement of suppression of facts.

16. Since we have found in favour of the Revenue on these facts with respect to issuing the demand under section 28(4) of the Act, there is no reason to take a different view with respect to the penalty under section 114A of the Act.

17. Penalty under section 114AA of the Act can be imposed for mis-declaration and this section reads as follows:

> "114AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

18. While we have no doubt that the appellant had mis-declared the value and under paid duty, in our considered view, given the facts of the case, the confirmation of demand of differential duty along with equal amount of penalty under section 114A is sufficient to meet ends of justice. We do not find justification to further impose penalties on Proweld and Dinesh under section 114AA of the Act.

19. In view of the above, Customs Appeal No.50308 of 2024 filed by Proweld is partly allowed setting aside the penalty of Rs. 40,00,000/- imposed on it under section 114AA of the Act; rest of the impugned order insofar as it pertains to Proweld is upheld.

20. Customs Appeal No. 50373 of 2024 filed by Dinesh is allowed and the penalty imposed on him under section 114 AA is set aside.

21. Both appellants will be entitled to consequential relief.

[Order pronounced on **16/04/2026**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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