CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. II

Customs Appeal No. 86279 of 2016

[Arising out of Order-in-Original CAO No. COMMR/AKG/06/2016/ADJN.ACC(X) dated 29.02.2016 passed by the Commissioner of Customs-IV, Air Cargo Complex-Export, Mumbai]

Seej India **.... Appellant**
G/301, Allied Housing Complex,
Causa, Mumbra, Thane 400 102.

Versus

Commissioner of Customs (ACC & Export), Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai 400 099.

WITH

Customs Appeal No. 86297 of 2016

[Arising out of Order-in-Original CAO No. COMMR/AKG/06/2016/ADJN.ACC(X) dated 29.02.2016 passed by the Commissioner of Customs-IV, Air Cargo Complex-Export, Mumbai]

Idris Ujjainwala **.... Appellant**
75, Patharia Palace,
Shop No.1, Mohammed Ali Road,
Mumbai 400 003.

Versus

Commissioner of Customs (ACC & Export), Mumbai **.... Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai 400 099.

APPEARANCE:

None for the Appellant in Appeal No. C/86279/2016
Shri Sujay Kantawala with Ms. Aishwarya Kantawala and Shri Harsh Gosalia, Advocates

Shri Dinesh Nanal, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85794-85795/2026

Date of Hearing: 22.04.2026
Date of Decision: 17.06.2026

PER: ASHOK JINDAL

This is the second round of litigation. In the earlier round of litigation, this Tribunal remanded the matter back to the adjudicating authority with the following directions:-

"a) The examination order and examination reports endorsed on the export document.

b) The examination order, examination reports and departmental officers comments in the EDI system.

c) The report appraising section whenever representative sealed samples were drawn and export permitted thereafter.

d) The contemporaneous value of exports on which the Adjudicating Authority would seek to rely with supporting documents.

e) Shall provide examination/cross examination of concerned examining/appraising officers if required by the appellant."

2. In remand proceedings, the directions of this Tribunal have not been followed by the learned adjudicating authority and the impugned order has been passed confirming penalties on the appellants under Section 114(i) and 114(iii) of the Customs Act, 1962. Against the said order, appellants are before us.

3. The learned counsel appearing on behalf of the appellants submits that during the impugned period, an export took place in September 1999-2000. The provisions of Section 114(iii) was not in the statute book. Therefore, no penalty can be imposed on the appellants under the said provisions. With regard to imposition of penalties under Section 114(i) of the Customs Act, 1962, learned counsel for the appellant submits that to impose penalty on the appellants, various statements have been relied upon, but no procedure has bee followed as prescribed under Section 138B of the Customs Act. Therefore, penalties on the appellants are not imposable. The learned counsel also relied on the decision of this Tribunal in the case of *P.C. Jain vs. Commissioner of Customs (Port), Kolkata [(2026) 38 Centax 211 (Tri.-Cal)]*.

4. On the other hand, learned AR supported the impugned order.

5. Heard the parties and considered the submissions.

6. We find that in this case in the earlier round of litigation, this Tribunal remanded the matter back to the adjudicating authority vide order dated 23.04.2013 with certain directions as stated hereinabove. Though these directions have not been followed by the adjudicating authority solely on this ground, this order is not sustainable in the eyes of law.

7. Further, the learned counsel for the appellant has submitted that in this case penalties have been imposed on the appellants on the basis of statements of various persons recorded during the course of investigation and the same have been relied upon. The reliance of those statements is not sustainable in the eyes of law as the procedure laid down under Section 138B has not been followed.

8. We find that the said issue has been decided by the Tribunal in the case of *P.C. Jain* (supra) wherein the Tribunal has held as follows:-

> *"21. Learned counsel for the appellant also submitted that the statement of various persons like Employees/Directors of Amarnath Industries and the appellant were relied upon though they were inadmissible since they failed to comply with the provisions of section 9D of the Central Excise Act and denial of cross examination of the said persons has also vitiated the order.*
> *22. This submission advanced by learned counsel for the appellant also deserves to be accepted.*
> *23. The Allahabad High Court in Parmarth Iron examined this issue in detail and on a perusal of section 9D of the Central Excise Act observed:*
> *"16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue choose to rely on the statements, then in that the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered."*

24. The Punjab and Haryana High Court in Jindal Drugs also observed as follows:

"9. 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.

10. 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.

There can, therefore, be no doubt about the legal position that the procedure prescribed in sub-section (1) of Section 9D is required to be scrupulously followed, as much in adjudication proceedings as in criminal proceedings relating to prosecution.

11. As already noticed hereinabove, subsection (1) of Section 9D sets out the circumstances in which a statement, made and signed before a gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein.

In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore, completely lost, unless and until the case falls within the parameters of Section 9D(1).

12. The consequence would be that, in the absence of the circumstances specified in Section 9D(1), if the adjudicating authority relies on the statement, recorded during investigation in Central Excise, as evidence of the truth of the facts contained in the said statement, it has to be held that the adjudicating authority has relied on irrelevant material. Such reliance would, therefore, be vitiated in law and on facts.

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19. 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.

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22. 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." (emphasis supplied)

25. The Commissioner found that since the departmental officers had verified the facts which had been declared by the appellant in the statutory records and the test reports also indicated that the goods would be Crude Mint Oils, the genuineness of test report conducted after receipt of the goods from Amarnath Industries, cannot be doubted and so the request for cross examination of departmental officers and other persons should not be granted. The Commissioner also observed that the case against the appellant is not only on the basis of statements of employees of Amarnath Industries, but also on circumstantial test reports and, therefore, denying the right of cross examination would not be violative of principle of natural justice.

26. These observations made by the Commissioner in the impugned order are clearly contrary to the principles enunciated by the Allahabad High Court *in Parmarth Iron and the Punjab and Haryana High Court in Jindal Drugs. In the first instance, under section 9D of the Central Excise Act it is clear that a statement made during investigation/enquiry before a central excise officer cannot be relied upon unless it is first admitted and for this the person who made the statement has to be summoned and examined as a witness in adjudication proceedings. Failure to do so would mean that the adjudicating authority has relied upon an irrelevant material and, therefore, the order would be vitiated. The question of cross examination would arise only after examination of the person who makes statement before the central excise officer.*

27. The Commissioner has placed reliance upon the statements without following the procedure prescribed under section 9D of the Central Excise Act. The order passed by the Commissioner deserves to be set aside for this reason also."

6.9 *Further, the Hon'ble Pubjab & Haryana High Court in the case of G.Tech Industries v. Union of India reported in 2016 (339) E.L.T. 209 (P&H.), has examined this issue and observed as under :*

"4. In view of the fact that the case of the petitioner is essentially premised on Section 9D of the Central Excise Act, 1944, it would be appropriate to reproduce the said provision, in extenso, thus :

*"**9D. Relevancy of statements under certain circumstances.** - (1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank 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, -*

(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

(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.

(2) The provision 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."

5. 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.

6. 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.) ="2011" (22) S.T.R. 225 (Del.). Para 12 of the said decision clearly holds that by virtue of subsection (2) of Section 9D, the provisions of sub-section (1) thereof would extend to adjudication proceedings as well.

7. There can, therefore, be no doubt about the legal position that the procedure prescribed in sub-section (1) of Section 9D is required to be scrupulously followed, as much in adjudication proceedings as in criminal proceedings relating to prosecution.

8. As already noticed herein above, sub-section (1) of Section 9D sets out the circumstances in which a statement, made and signed before a Gazetted Central Excise Officer, shall be relevant for the purpose of proving the truth of the facts contained therein. If these circumstances are absent, the statement, which has been made during inquiry/investigation, before a Gazetted Central Excise Officer, cannot be treated as relevant for the purpose of proving the facts contained therein. In other words, in the absence of the circumstances specified in Section 9D(1), the truth of the facts contained in any statement, recorded before a Gazetted Central Excise Officer, has to be proved by evidence other than the statement itself. The evidentiary value of the statement, insofar as proving the truth of the contents thereof is concerned, is, therefore, completely lost, unless and until the case falls within the parameters of Section 9D(1).

9. The consequence would be that, in the absence of the circumstances specified in Section 9D(1), if the adjudicating authority relies on the statement, recorded during investigation in Central Excise, as evidence of the truth of the facts contained in the said statement, it has to be held that the adjudicating authority has relied on irrelevant material. Such reliance would, therefore, be vitiated in law and on facts.

10. Once the ambit of Section 9D(1) is thus recognized and understood, one has to turn to the circumstances referred to in the said sub-section, which are contained in clauses (a) and (b) thereof.

11. Clause (a) of Section 9D(1) refers to the following circumstances :

(i) when the person who made the statement is dead,

(ii) when the person who made the statement cannot be found,

(iii) when the person who made the statement is incapable of giving evidence,

(iv) when the person who made the statement is kept out of the way by the adverse party, and

(v) when the presence of the person who made the statement cannot be obtained without unreasonable delay or expense.

12. Once discretion, to be judicially exercised is, thus conferred, by Section 9D, on the adjudicating authority, it is self-evident inference that the decision flowing from the exercise of such discretion, i.e., the order which would be passed, by the adjudicating authority under Section 9D, if he chooses to invoke clause (a) of sub-section (1) thereof, would be pregnable to challenge. While the judgment of the Delhi High Court in J&K Cigarettes Ltd. (supra) holds that the said challenge could be ventilated in appeal, the petitioner has also invited attention to an unreported short order of the Supreme Court in UOI v. GTC India in SLP (C) No. 21831/1994, dated 3-11995 [since reported in 1995 (75) E.L.T. A177 (S.C.)], wherein it was held that the order passed by the adjudicating authority under Section 9D of the Act could be challenged in writ proceedings as well. Therefore, it is clear that the adjudicating authority cannot invoke Section 9D(1)(a) of the Act without passing a reasoned and speaking order in that regard, which is amenable to challenge by the assessee, if aggrieved thereby.

13. 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

(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.

14. 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.*

15. 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 adjudicating authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.

16. 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.

17. 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.

18. 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, that the question of offering the witness to the assessee, for cross-examination, can arise.

19. 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.

20. Reliance may also usefully be placed on Para 16 of the judgment of the Allahabad High Court in C.C.E. v. Parmarth Iron Pvt Ltd. , 2010 (260) E.L.T. 514 (All.), which, too, unequivocally expound the law thus :

"If the Revenue choose (sic chose?) not to examine any witnesses in adjudication, their statements cannot be considered as evidence."

21. That adjudicating authorities are bound by the general principles of evidence, stands affirmed in the judgment of the Supreme Court in C.C. v. Bussa Overseas Properties Ltd., 2007 (216) E.L.T. 659 (S.C.), which upheld the decision of the Tribunal in Bussa Overseas Properties Ltd. v. C.C., 2001 (137) E.L.T. 637 (Tri.-Bom).

22. It is clear, from a reading of the Order-in-Original dated 4-42016 supra, that Respondents No. 2 has, in the said Orders-in-Original, placed extensive reliance on the statements, recorded during investigation under Section 14 of the Act. He has not invoked clause (a) of sub-section (1) of Section 9D of the Act, by holding that attendance of the makers of the said statements could not be obtained for any of the reasons contemplated by the said clause. That being so, it was not open to Respondent No. 2 to rely on the said statements, without following the mandatory procedure contemplated by clause (b) of the said sub-section. The Orders-in-Original, dated 4-4-2016, having been passed in blatant violation of the mandatory procedure prescribed by Section 9D of the Act, it has to be held that said Orders-in-Original stand vitiated thereby.

23. The said Order-in-Original, dated 4-4-2016, passed by Respondent No. 2 is, therefore, clearly liable to be set aside.

24. In view of the above facts and circumstances, the impugned Order-in-Original dated 4-4-2016 passed by respondent No. 2 stands set aside. Resultantly, the show cause notice issued to the petitioner is remanded to respondent No. 2 for adjudication de novo by following the procedure contemplated by Section 9D of the Act and the law laid down by various judicial Authorities in this regard including the principles of natural justice in the following manner :-

(i) In the event that the Revenue intends to rely on any of the statements, recorded under Section 14 of the Act and referred to in the show cause notices issued to Ambika and Jay Ambey, it would be incumbent on the Revenue to apply to Respondent No. 2 to summon the makers of the said statements, so that the Revenue would examine them in chief before the adjudicating authority, i.e., before Respondent No. 2.

(ii) A copy of the said record of examination-in-chief, by the Revenue, of the makers of any of the statements on which the Revenue chooses to rely, would have to be made available to the assessee, i.e., to Ambika and Jay Ambey in this case.

(iii) Statements recorded during investigation, under Section 14 of the Act, whose makers are not examination-in-chief before the adjudicating authority, i.e., before Respondent No. 2, would have to be eschewed from evidence, and it would not be permissible for Respondent No. 2 to rely on the said evidence while adjudicating the matter. Neither, needless to say, would be open to the Revenue to rely on the said statements to support the case sought to be made out in the show cause notice.

(iv) Once examination-in-chief, of the makers of the statements, on whom the Revenue seeks to rely in adjudication proceedings, takes place, and a copy thereof is made available to the assessee, it would be open to the assessee to seek permission to crossexamine the persons who have made the said statements, should it choose to do so. In case any such request is made by the assessee, it would be incumbent on the adjudicating authority, i.e., on Respondent No. 2 to allow the said request, as it is trite and well-settled position in law that statements recorded behind the back of an assessee cannot be relied upon, in adjudication proceedings, without allowing the assessee an opportunity to test the said evidence by cross-examining the makers of the said statements. If at all authority is required for this proposition, reference may be made to the decisions of the Hon'ble Supreme Court in Arya Abhushan Bhandar v. U.O.I. , 2002 (143) E.L.T. 25 (S.C.) and Swadeshi Polytex v. Collector, 2000 (122) E.L.T. 641 (S.C.)."

7.3 *Further, the Hon'ble Allahabad High Court has also examined this issue whether the statements recorded during the course of investigation is admissible or not ? in the case of Commissioner of Central Excise, Meerut I v. Parmarth Iron Private Limited reported in 2010 (260) E.L.T. 514 (All.), the Hon'ble High Court has observed as under :*

"15. The question, however, before us is, does the respondent have a right to call upon the appellants to make available the witnesses for cross-examination even before they being examined or their statements relied upon by the Department in proceedings in adjudication. None of the judgments cited above were on the issue of making available the witnesses for cross-examination in order to reply to a show cause notice. Those judgments as already explained were in the course of adjudicating proceedings.

Is, therefore, an assessee entitled to cross examine the witnesses at the stage of filing a reply to the show cause notice? A show cause notice is issued on the basis of uncontested material available before the Assessing Authority, who based thereon, has arrived at a prima facie finding whether a show cause notice ought to be issued or not. The material, thus, which has to be considered is, untested and uncorroborated. A party is called upon to reply to the said show cause notice in order to enable the Revenue to know the stand of the assessee, in the context of the material produced as to whether the proceedings should be further proceeded with. It is an opportunity to the party being proceeded against to disclose any material that the party may have to rebut the prima facie opinion. Even if, the assessee fails to reply to the show cause notice, that does not amount to an 'admission' of the contents of the show cause notice in the absence of any statutory provision and it is always open to an assessee to cross-examine the witnesses whose statements are relied upon or sought to be examined on behalf of the Revenue.

At the stage of show cause notice, there is no adjudication. It is only a step in the process of adjudication. The show cause notice by itself is not an order of assessment. The order of assessment will be passed only after considering the evidence and the material, which is placed before the quasi judicial authority/tribunal. Therefore, as the show cause notice is based on prima facie material and constitutes a prima facie opinion, that does not result into an order of adjudication. The question, therefore, of an assessee being entitled to cross-examination, even before the adjudication has commenced, in our opinion, surely would not arise. It is only after the *adjudication proceedings have commenced pursuant to the show cause notice and if the Revenue seeks to rely upon the statements or documents, then the principles of natural justice would require in the absence of any statutory provision, that the person whose statement was recorded is made available for cross-examination to test the veracity of the statement.*

16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue choose to rely on the statements, then in that the persons whose statements are relied upon have to be made available for crossexamination for the evidence or statement to be considered.

17. We are, therefore, clearly of the opinion that there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded, for cross-examination before the reply to the show cause notice is filed and before adjudication commences. The exercise of cross-examination commences only after the proceedings for adjudication have commenced.

Having said so, in our opinion, the first question is answered accordingly."

We take note of the fact that the provisions of Section 9D of the Central Excise Act, 1944 and Section 138B of the Customs Act,1962, are pari materia.

7.4 *In terms of Section 138B(1)(b) of the Customs Act, 1962, the relevant portion is that 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. In this case, no such procedure has been followed that the statement which has been relied upon by the adjudicating authority were not examined In-Chief and when the witness has not been examined, therefore, the question of making an opinion of the admissibility of the said statement as an evidence, does not arise. Consequently, the statement recorded during the course of investigation cannot be relied upon without following the procedure laid down under Section 138B(1)(b) of the Customs Act, 1962 as held by the judicial pronouncements cited above. In view of this, we hold that the* *statement recorded during the course of investigation cannot be relied upon to allege under-valuation against the appellants."*

9. Admittedly, in this case also the procedure laid down under Section 138B has not been followed.

10. Further, we find that the penalty has also been imposed under section 114(iii) for the period 1999-2000 when section 114(iii) was not inforce, therefore, the penalty under section 114(iii) is not imposable on the appellants. In the circumstances, we hold that the penalties on the appellants are not imposable. In view of this, we set aside the impugned order qua imposing penalties on the appellants.

11. Therefore, the appeals are allowed with consequential relief, if any.

(Order pronounced in open court on 17.06.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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