IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 75015 of 2015

(Arising out of Order-in-Original No. KOL/CUS/PORT/43/2014 dated 14.07.2014 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Beriwala Impex Private Limited **: Appellant**
No. D-108, Mansarover Garden, 1st Floor,
New Delhi – 110 015

VERSUS

Commissioner of Customs (Port) **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Smt. Shreya Mundhra, Advocate, for the Appellant

Shri Subrata Debnath, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76015 / 2026

DATE OF HEARING: 15.07.2026

DATE OF DECISION: 05.08.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. KOL/CUS/PORT/43/2014 dated 14.07.2014 passed by the Ld. Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata, whereby the declared transaction value of the imported goods was rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined under Rule 3 thereof read with Section 14(1) of the Customs Act, 1962, resulting in confirmation of differential customs duty amounting to Rs.96,42,062/-, together with applicable interest and, inter alia, imposition of penalty under Section 114A of the said Act, against the appellant-company; the imported goods were held liable to confiscation under Section 111(m) of the Customs Act, 1962.

1.1. The subject appeal had earlier been allowed by this Tribunal following the judgment of the Hon'ble Supreme Court in *Canon India Pvt. Ltd. v. Commissioner of Customs reported in AIR 2021 SC 1699* on the question of jurisdiction of the Directorate of Revenue Intelligence to issue the Show Cause Notice. However, pursuant to the subsequent review judgment of the Hon'ble Supreme Court in *Commissioner of Customs v. Canon India Pvt. Ltd. reported in [2024] 12 S.C.R. 202*, an Order of remand has been passed in *Union of India & Ors. v. Aspam Petrochem Pvt. Ltd. & connected matters in Civil Appeal No. 6142 of 2019 & ors*. Thus, the matter stands remanded to this Tribunal for consideration of the issue on merits. The present proceedings, therefore, are confined to examination of the merits of the demand and the findings recorded in the impugned Order-in-Original.

2. Briefly stated, the appellant, M/s. Beriwala Impex Private Limited, holder of Importer-Exporter Code No. 0599014156, is a private limited company engaged, inter alia, in the import of LDPE re-processed/recycled granules. During the period from 2007 to 2009, the appellant imported the said goods through Kolkata Seaport, Chennai Seaport and Inland Container Depot (ICD), Tughlakabad, Delhi. It is the appellant's case that, at the time of importation, every consignment was subjected to scrutiny by the proper officer and, wherever considered necessary on the basis of contemporaneous import data, the declared value was enhanced before assessment. Upon

payment of customs duty on such enhanced assessable value, the consignments were finally assessed and cleared for home consumption.

3. Acting upon intelligence that certain importers of LDPE re-processed/recycled granules were resorting to undervaluation of imported consignments, officers of the Directorate of Revenue Intelligence (DRI) conducted simultaneous searches on 17.07.2009 at the office premises of the appellant, the residential premises of its Directors and the godown premises of the appellant-company, which are as provided below: -

a. The office premises of the appellant at Flat No. 9051/1, Multani Dhanda, Paharganj, Delhi;

b. The residential premises of the Directors, namely, Shri Kishori Saran Goel and Shri Praveen Goel (s/o. Shri Kishor Saran Goel) at D-108, Mansarover Garden, New Delhi; and

c. The godown premises of the appellant at 21/2, Bakkarwala Road, Mundaka, Delhi.

3.1. During the course of the said searches, Indian currency aggregating to Rs.42,00,000/-, 53.6 MT of LDPE re-processed/recycled granules, besides various documents, computers, CPUs, hard disks and laptop computers were, inter alia, seized under mahazar/panchnama proceedings.

4. During the course of investigation, statements under Section 108 of the Customs Act, 1962 were recorded from Shri Praveen Goel, Director of the appellant-company, Shri Kishori Saran Goel, Director, and Shri Naveen Goel, brother of Shri Praveen Goel. The investigation alleged that the appellant had

imported the recycled/reprocessed LDPE granules principally from two overseas suppliers, namely, M/s. Krishn-AKS Global Pte. Ltd., Singapore and M/s. Sterlite Polymet (M) SDN. BHD., Malaysia, both of which were owned by Shri Naveen Goel. According to the Department, the statements of Shri Praveen Goel and Shri Naveen Goel revealed that the consignments had been systematically under-invoiced to the extent of about USD 200-300 per metric tonne and that the differential consideration had been remitted through hawala channels. The seized electronic devices were thereafter forwarded to the Government Examiner of Questioned Documents (GEQD), Hyderabad for forensic examination and imaging, from which various electronic records, supplier price lists and transaction details were allegedly recovered. The Department further relied upon contemporaneous import prices of similar goods imported by M/s. Radha Enterprises and M/s. Shami Impex for alleging undervaluation of the appellant's imports.

4.1. Shri Praveen Goel, one of the Directors of the appellant-company, deposited Rs. 50,00,000/- (initially by cheque dated 17.07.2009 and thereafter by six demand drafts dated 22.07.2009 of ICICI Bank in favour of the Commissioner of Customs (Import), Chennai) towards partial discharge of the alleged duty liability, which, as per the appellant, was done under compulsion and the threat of arrest.

4.2. The appellant also disputed the voluntariness and correctness of the aforesaid statements, claiming that the same were obtained under duress and coercion and were written at the behest of the officers of the DRI.

5. On completion of investigation, a Show Cause Notice dated 03.04.2012 came to be issued proposing rejection of the declared transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determination of the assessable value under Rule 3 thereof read with Section 14(1) of the Customs Act, 1962 by uniformly loading the declared value by USD 300 per metric tonne. On such basis, differential customs duty amounting to Rs.96,42,062/- was proposed to be recovered, together with applicable interest, by invoking the extended period provisions under Section 28(4) of the Customs Act, 1962. The Notice further proposed confiscation of the imported goods under Section 111(m) of the Act and imposition of penalty upon the appellant-company under Section 114A ibid., amongst others. A proposal was also made therein for appropriation of the Indian currency seized during investigation of Rs.42,00,000/- together with the amount of Rs.50,00,000/- deposited by the appellant during investigation, against the alleged duty liability.

5.1. The appellant contested the proceedings by filing detailed replies disputing the allegations of undervaluation. It was, inter alia, contended that the assessments had already attained finality after scrutiny by the proper officer and enhancement of value, wherever considered necessary, at the time of import itself; that there was no flow back of consideration through hawala channels; that the declared transaction values represented the actual transaction values; that the transactions with the overseas supplier entities were on a principal-to-principal basis notwithstanding the relationship between the parties; and that the statements recorded during investigation, though remaining unretracted, had been obtained under threat of arrest, coercion and duress and were, therefore, not voluntary.

5.2. The ld. adjudicating authority, however, being not satisfied by the appellant's contentions, vide the impugned Order-in-Original dated 14.07.2014, rejected the declared transaction value, re-determined the assessable value by loading the declared value by USD 300 per metric tonne, confirmed differential customs duty amounting to Rs.96,42,062/- along with applicable interest, appropriated the amounts seized and deposited during investigation, ordered confiscation of the imported goods under Section 111(m) of the Customs Act, 1962, besides inter alia imposing penalty equal to the above differential duty demand upon the appellant-company under Section 114A of the Act.

5.3. Aggrieved thereby, the appellant has preferred the present appeal before this Tribunal.

6. During the course of hearing, the Ld. Counsel appearing on behalf of the appellant filed advanced various submissions, both oral and written, in support of her contentions, which are summarized as under: -

A. The declared values having been examined, loaded and assessed by the proper officer at the time of clearance, and duty having been paid on such enhanced value, the assessments attained finality and could not be reopened by way of a Show Cause Notice demanding further differential duty without the assessments first being reviewed under Section 129D(2) or set aside in appeal under Section 128 of the Customs Act, 1962.

(i) Admittedly, in respect of the 61 Bills of Entry filed at Kolkata, the 28 Bills of Entry filed at Chennai and the 3 Bills of Entry filed at ICD, Tughlakabad, the declared values were scrutinised by the proper officer and, wherever considered necessary, the assessable value was enhanced in a number of the consignments on the basis of contemporaneous import data, and the goods were assessed and cleared on payment of duty on such enhanced value. Thus, each such assessment/loading of value is an appealable order which, not having been challenged, attained finality.

(ii) It is settled law that so long as an assessment order stands and is not reviewed or modified in appeal, the duty is payable as per that order, and the self-same valuation cannot be reopened at the instance of another authority. The impugned Show Cause Notice, seeking further differential duty on the very same consignments without the original assessments being reviewed under Section 129D(2) or set aside in appeal under Section 128, is therefore wholly without jurisdiction and untenable.

(iii) In this context, reliance is placed on the following judgments:

- *Hitaishi Fine Kraft Indus. Pvt. Ltd. vs. Commr. of Cus., West Bengal reported in 2002 (148) E.L.T. 364 (Tri. – Kolkata)*
- *Vikas Spinners vs. Commissioner of Customs, Lucknow reported in 2001 (128) E.L.T. 143 (Tri. – Del.)*

(iv) Applying the ratio of the aforesaid decisions to the present case, the values of the very same consignments were examined and enhanced at the time of assessment and duty paid accordingly; those assessments were never reviewed under Section 129D(2) nor appealed against under Section 128. The impugned demand of further differential duty on the identical consignments is thus a collateral and impermissible reopening of concluded assessments, and is liable to be set aside on this short ground alone.

B. The entire demand is barred by limitation, the extended period of limitation under the proviso to Section 28(1)/Section 28(4) of the Customs Act, 1962 not being invocable, inasmuch as there was no collusion, wilful mis-statement or suppression of facts, the imports having been assessed and cleared with the full knowledge of the Department.

(i) The imports in question pertain to the period 2007–2009, whereas the Demand-cum-Show Cause Notice came to be issued only on 03.04.2012, i.e. beyond the normal period of limitation. The entire demand is therefore founded upon, and can survive only if, the extended period of limitation under the proviso to Section 28(1)/Section 28(4) of the Customs Act, 1962 is validly invocable.

(ii) It is a settled position of law that the extended period of limitation can be invoked only where the Revenue establishes collusion, or any wilful mis-statement, or suppression of facts on the part of the importer with intent to evade payment of duty. Mere alleged under-valuation, without more, does not amount to suppression so as to attract the extended period.

(iii) In the present case, the goods were imported under proper Bills of Entry accompanied by the commercial invoices, and the declared values were scrutinised by the proper officer and, wherever considered necessary, enhanced/loaded on the basis of contemporaneous import data, whereafter the goods were assessed and cleared on payment of duty. The entire import transaction and the valuation of the imported goods were thus squarely within the knowledge of the Department at the time of assessment itself. There being full disclosure and departmental knowledge, no suppression or wilful mis-statement with intent to evade duty can be attributed to the Appellant, and the extended period could not have been invoked.

(iv) In this context, reliance is placed on the ruling in the case of *M/s Sterling Meta-Plast India Pvt. Ltd. vs. Pr. Commissioner of Customs, Airport & Air Cargo Commissionerate, Kolkata reported in 2026 (5) TMI 1610 – CESTAT Kolkata.*

(v) Applying the said ratio to the present case, the self-same consignments having been examined, valued and cleared by the proper officer with the full knowledge of the Department, no suppression can be alleged, and the extended period was wholly unavailable to the Revenue.

(vi) Consequently, the demand raised by the Show Cause Notice dated 03.04.2012 in respect of imports made during 2007–2009, being beyond the normal period of limitation, is barred by limitation and is liable to be set aside on this ground alone, along with the interest and penalty.

C. Under-valuation being a serious charge, it is required to be established by the Revenue through positive, tangible and cogent evidence; in the absence of any evidence of contemporaneous imports of identical/similar goods at a higher price or of any extra consideration having flowed to the supplier, the transaction value declared by the Appellant could not have been rejected.

(i) It is a settled principle of law that the value declared in the import invoice is to be accepted as the transaction value under Section 14 of the Customs Act, 1962 read with Rule 3 of the Valuation Rules, and may be discarded only where the proper officer records cogent reasons under Rule 12 supported by tangible material.

(ii) The burden of proving under-valuation lies heavily upon the Revenue and can be discharged only by evidence of comparable contemporaneous imports at higher prices or of under-the-table/hawala remittance.

(iii) In the present case, there is no such evidence: no seized document, remittance record or money trail establishes any payment over and above the invoice value; the allegation of "hawala" payment is a bald assertion, wholly unsupported by any proof; and the enhancement has been made mechanically at a uniform USD 300 per MT, ignoring the admitted differences in grade, colour and characteristics of the granules. A demand of duty founded on assumptions, presumptions and confessional statements, unsupported by any independent corroboration, cannot be sustained.

(iv) It is a settled position of law that the invoice price is to be accepted as the correct value in the absence of any evidence of contemporaneous imports at a higher price, and that under-valuation must be proved by tangible evidence and not by uncorroborated statements. In this context, reliance is placed on the following judgments:

- *Commissioner of Customs (Imports), Mumbai vs. Ganpati Overseas reported in (2023) 11 Centax 101 (S.C.) / 2023 (386) E.L.T. 802 (S.C.)*
- *Commissioner Customs (EP), Mumbai vs. Yatin Steels India Pvt. Ltd. reported in 2019 (1) TMI 1050 – CESTAT Mumbai;*
- *M/s. Swastik Stockists and Traders Pvt. Ltd. & Anr. vs. Commissioner of Customs (Port), Kolkata reported in 2025 (8) TMI 1235 – CESTAT Kolkata;*
- *M/s Temple City Developers Pvt. Ltd. & Ors. vs. Commissioner of Customs, Visakhapatnam reported in 2026 (4) TMI 541 – CESTAT Hyderabad;*
- *M/s Uttam Steel Alloys Pvt. Ltd. & Ors. vs. Commissioner of Customs, Noida reported in 2026 (5) TMI 879 – CESTAT Allahabad;*
- *M/s. Mukesh Kumar & Ors. vs. Commissioner of Customs, Chennai reported in 2026 (2) TMI 916 – CESTAT Chennai;*

(v) Relying upon the principles laid down in the aforesaid judgments, and there being neither reliable contemporaneous comparables nor any proof of extra consideration on record, the Appellant submits that the rejection of the declared value and the consequent demand are wholly unsustainable and liable to be set aside.

D. The re-determination of value on the basis of the alleged import values of unconnected third-party importers, viz. M/s Radha Enterprises and M/s Shami Impex, and the uniform generic loading of USD 300 per MT, is contrary to Section 14 and to the sequential scheme of the Valuation Rules.

(i) The value of imports made by unconnected importers cannot be adopted as a yardstick to reject the transaction value of the Appellant without first establishing that the goods were identical/similar and that the imports were comparable in respect of quantity, quality, grade, commercial level and time of importation. The Impugned Order proceeds on the values of M/s Radha Enterprises and M/s Shami Impex without any such comparison, and then applies a flat enhancement of USD 300 per MT across all Bills of Entry, admittedly for the reason that the "exact undervaluation" could not be determined for any particular Bill of Entry and the description was "generic".

(ii) Such a mechanical and estimated loading, de hors the sequential rules (Rules 4 to 9) and without the mandatory comparability exercise, is impermissible in law and demonstrates that the re-determination rests on estimation and conjecture rather than on legally admissible comparables. In this context, reliance is placed on the following judgments:

- *Commissioner Customs (EP), Mumbai vs. Yatin Steels India Pvt. Ltd. reported in 2019 (1) TMI 1050 – CESTAT Mumbai*
- *M/s. Mukesh Kumar & Ors. vs. Commissioner of Customs, Chennai reported in 2026 (2) TMI 916 – CESTAT Chennai*
- *Commissioner of Customs (Imports), Mumbai vs. Ganpati Overseas reported in (2023) 11 Centax 101 (S.C.) / 2023 (386) E.L.T. 802 (S.C.)*

(v) As held in Yatin Steels, the transaction value cannot be rejected by reference to contemporaneous imports without recording the comparability required by the Rules; and in Mukesh Kumar this Hon'ble Tribunal specifically deprecated re-determination based on unreliable third-party data. The valuation exercise in the Impugned Order, being founded on the data of unconnected importers and a generic loading, is accordingly vitiated and liable to be set aside.

<u>E. The statements recorded under Section 108, having been obtained under duress and coercion and disputed by the Appellant, have no evidentiary value; even otherwise, they could not be relied upon without corroboration and without compliance with the mandatory procedure prescribed under Section 138B of the Customs Act, 1962 is a gross violation of the principles of natural justice.</u>

(i) Section 138B of the Customs Act, 1962 makes a statement recorded during inquiry relevant in adjudication only after the maker is examined as a witness before the adjudicating authority, the authority forms an opinion that the statement ought to be admitted in the interest of justice.

(ii) In the present case, the statements were extracted under coercion and duress, their voluntariness has been disputed throughout, and the makers were not examined-in-chief as required under Section 138B of the Customs Act, 1962.

(iii) It is further settled that a statement recorded under duress or coercion cannot be used against its maker, and that an inculpatory statement of a co-noticee cannot, by itself, fasten liability unless it is supported by independent and reasonably verifiable corroboration. Here, the entire re-determination of value rests upon such uncorroborated and disputed statements. In this context, reliance is placed on the following judgments:

- *T. Manivannan, Proprietor, M/s. N.K.R. Corporation vs. The Commissioner of Customs reported in 2024 (2) TMI 1101 – Madras High Court*

- *Ajanta Overseas vs. Principal Commissioner of Customs (Import), New Delhi reported in 2026 (2) TMI 444 – CESTAT New Delhi*

- *Ghanshyam Kamra & Ors. vs. Principal Commissioner of Customs (Import), New Delhi reported in 2026 (1) TMI 1295 – CESTAT New Delhi*

- *M/s Baba Leather Impex Pvt. Ltd. & Ors. vs. Commissioner of Central Excise (Adj.), New Delhi* *reported in 2026 (5) TMI 780 – CESTAT New Delhi*

- *M/s Temple City Developers Pvt. Ltd. & Ors. vs. Commissioner of Customs, Visakhapatnam reported in 2026 (4) TMI 541 – CESTAT Hyderabad*
- *M/s. Swastik Stockists and Traders Pvt. Ltd. & Anr. vs. Commissioner of Customs (Port), Kolkata reported in 2025 (8) TMI 1235 – CESTAT Kolkata*

(iv) Relying upon the aforesaid judgments, the Appellant submits that the statements, being coerced, disputed, uncorroborated and untested, can carry no evidentiary weight; and the Impugned Order, resting substantially upon them, stands vitiated for breach of Section 138B and of the principles of natural justice, and is liable to be set aside on this ground also.

<u>F. The data, printouts and imaged material retrieved from the CPUs, hard disks and laptop computers seized during the investigation are inadmissible in evidence in the absence of the mandatory conditions and certificate prescribed under Section 138C of the Customs Act, 1962.</u>

(i) It is further submitted that a computer printout/electronic record is admissible as evidence only upon strict compliance with the conditions of Section 138C(2) and the production of the certificate under Section 138C(4).

(ii) In the present case, the imaged data said to have been generated by the forensic department and the printouts relied upon was not accompanied by any certificate under

Section 138C(4), nor were the statutory conditions as to the regular use, custody and integrity of the devices satisfied.

(iii) Such electronic material, unsupported by the original source device and proper authentication, is inadmissible and cannot form the foundation of the allegation of under-valuation.

(iv) It is a settled position that mere seizure, panchnama or a subsequent forensic report is no substitute for the mandatory certification under Section 138C. In this context, reliance is placed on the following judgments:

- *Ajanta Overseas vs. Principal Commissioner of Customs (Import), New Delhi reported in 2026 (2) TMI 444 – CESTAT New Delhi*
- *Ghanshyam Kamra & Ors. vs. Principal Commissioner of Customs (Import), New Delhi reported in 2026 (1) TMI 1295 – CESTAT New Delhi*
- *M/s Baba Leather Impex Pvt. Ltd. & Ors. vs. Commissioner of Central Excise (Adj.), New Delhi reported in 2026 (5) TMI 780 – CESTAT New Delhi*
- *M/s Uttam Steel Alloys Pvt. Ltd. & Ors. vs. Commissioner of Customs, Noida reported in 2026 (5) TMI 879 – CESTAT Allahabad*
- *M/s. Mukesh Kumar & Ors. vs. Commissioner of Customs, Chennai reported in 2026 (2) TMI 916 – CESTAT Chennai*
- *P.C. Jain & Ors. vs. Commissioner of Customs (Port), Kolkata reported in 2025 (5) TMI 1626 – CESTAT Kolkata / (2026) 38 Centax 211 (Tri. – Cal.)*

(v) Relying upon the aforesaid judgments, the Appellant submits that the imaged data and printouts relied upon in the Impugned Order must be excluded from consideration for want of compliance with Section 138C; and once so excluded, there remains no admissible material whatsoever to support the re-determination of value.

(vi) The impugned Order is liable to be set aside on this ground itself.

G. When the demand of differential duty is itself unsustainable, there can be no confiscation, no recovery of interest and no imposition of penalty.

(i) The Appellant submits that the entire proceedings being founded on assumptions, disputed and coerced statements and inadmissible electronic material, the confirmation of duty is bad in law, and consequently the interest under Section 28AA, the confiscation under Section 111(m) and the penalties under Sections 114A of the Customs Act, 1962 cannot survive.

(ii) In this context, reliance is placed on the following judgments:

- *Vikash Kumar vs. Commissioner of Customs (Preventive), Kolkata reported in 2026 (2) TMI 344 – CESTAT Kolkata*
- *T. Manivannan, Proprietor, M/s. N.K.R. Corporation vs. The Commissioner of Customs reported in 2024 (2) TMI 1101 – Madras High Court*
- *M/s. Swastik Stockists and Traders Pvt. Ltd. & Anr. vs. Commissioner of Customs (Port), Kolkata reported in 2025 (8) TMI 1235 – CESTAT Kolkata*

(iii) Applying these principles, once the demand of duty is set aside, the confiscation, interest and all penalties may be set aside.

H. The sum of Rs. 92,00,000/- deposited/recovered under coercion during the investigation is liable to be refunded to the Appellant along with interest.

(i) Since no duty is payable by the Appellant, the amount of Rs. 42,00,000/- seized and Rs. 50,00,000/- deposited during investigation, aggregating Rs. 92,00,000/-, which has been appropriated by the Impugned Order is refundable to the Appellant together with applicable interest.

6.1. In view of the aforesaid submissions, the Ld. Counsel for the appellant prays for setting aside the impugned Order-in-Original dated 14.07.2014 in its entirety and granting the consequential refund of Rs.92,00,000/- to the appellant, along with applicable interest thereon.

7. On the other hand, the Ld. Authorized Representative appearing for the Revenue reiterates the findings recorded in the impugned Order-in-Original. He places reliance on the statements of Shri Praveen Goel and Shri Naveen Goel, recorded under Section 108 of the Customs Act, 1962, which as per him constitute clear and voluntary admissions establishing the deliberate undervaluation of the imported goods and the consequent evasion of customs duty. It was further contended that the electronic records and imaged data retrieved during investigation duly corroborate the said admissions

and demonstrate the actual value of the imported consignments. Thus, according to the Revenue, the material brought on record unequivocally establishes suppression and wilful misdeclaration on the part of the appellant with intent to evade payment of customs duty, thereby fully justifying invocation of the extended period of limitation. The Ld. Authorized Representative of the Revenue, therefore, prayed for dismissal of the appeal and for upholding the impugned order.

8. Heard both sides and perused the records placed before us.

9. At the outset, we note that the consignments forming the subject matter of the present proceedings were not mechanically cleared on the basis of the values declared by the appellant. The records reveal that, at the time of import itself, the proper officers had scrutinized each of the Bills of Entry and, wherever considered warranted, enhanced the declared assessable value on the basis of contemporaneous import data before permitting clearance of the goods. Duty was thereafter discharged on such enhanced assessable value and the consignments were finally assessed and cleared. It is therefore amply clear that the assessable values were subjected to scrutiny by the proper officers of the Revenue at the time of assessment and, wherever considered necessary, appropriate value loading was carried out before the goods were permitted clearance.

10. In the aforesaid factual backdrop, it appears that the contention of the appellant that the Department, having consciously examined the declared transaction values at the stage of

assessment and enhanced the same wherever considered appropriate, could not subsequently seek to reopen the very same assessments on identical material, cannot be brushed aside lightly. It is equally significant to note that the Revenue has not placed on record any material to indicate that the assessments so finalized were ever subjected to review under Section 129D of the Customs Act, 1962 or challenged before the appropriate appellate forum. Prima facie, therefore, the present proceedings appear to proceed on the footing that the very assessments earlier accepted by the Department were themselves erroneous, without any satisfactory explanation as to the legal basis for such subsequent departure.

11. The principal contention raised by the appellant in this case is that the allegation of undervaluation, being the very edifice on which the impugned proceedings rest, has not been established by the Revenue through positive, tangible and legally admissible evidence. Needless to emphasize that under the scheme of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the burden to displace the declared transaction value squarely rests upon the Revenue. Such burden cannot be discharged on the basis of mere suspicion, conjectures or assumptions, but must necessarily be supported by cogent material demonstrating that the importer had, in fact, paid consideration over and above the declared invoice value or that the declared transaction value otherwise ceased to represent the true transaction value.

11.1. In the present case, however, no seized document, remittance record, banking trail or other independent evidence has been brought on record to establish any payment made by the appellant over and above the invoice value declared before Customs. The allegation that differential consideration was remitted through hawala channels remains, therefore, a bare assertion unsupported by any objective or corroborative material. Such a serious allegation, carrying substantial civil consequences, cannot be sustained merely on the basis of assumptions in the absence of any demonstrable money trail or other convincing evidence establishing flow-back of consideration.

11.1.1. The same view has been expressed by the Hon'ble Supreme Court in the case of *Commissioner of Customs (Imports), Mumbai v. Ganpati Overseas [(2023) 11 Centax 101 (S.C.) / 2023 (386) E.L.T. 802 (S.C.)]*, wherein it has been observed as under: -

> *"39.1 This Court held that before rejecting the invoice price, the department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. In this regard, this Court held that under valuation has to be proved. If the department wants to allege under valuation, it must make detailed inquiries, collect material and also adequate evidence. If the charge of under valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. The charge of under invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It has been held as follows :*
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> *"12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price*

has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid. Therefore, the charge of under invoicing has to be supported by evidence of prices of contemporaneous imports of like goods."

39.2 Reverting to Section 14(1) of the Customs Act, this Court held that it is for the department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. This is what this Court has said :

"13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

40. Section 14 of the Customs Act and Rules 3 and 4 of the Customs Valuation Rules again came up for consideration before this Court in Varsha Plastics Private Limited [2009 (235) E.L.T. 193 (S.C.) = [2009] taxmann.com 323 (SC). As regards Section 14(1) of the Customs Act, this Court analysed the said provision in the following manner :

"19. Section 14(1) of the Act prescribes a method for determination of the value of the goods. It is a deeming provision. By legal fiction incorporated in this section, the value of the imported goods is the deemed price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade.

20. The word "ordinarily" in Section 14(1) is a word of significance. The ordinary meaning of the word "ordinarily" in Section 14(1) is "non-exceptional" or "usual". It does not mean "universally". In the context of Section 14(1) for the purpose of "valuation" of goods, however, by use of the word "ordinarily" the indication is that the ordinary value of the goods is what it would have been in the course of international trade at the time of import. Section 14(1), thus, provides that the value has to be assessed on the basis of price attached to such or like goods ordinarily sold or offered for sale in the ordinary course of events in international trade at the time and place of transportation."

40.1 After adverting to the procedural aspects provided in the Customs Valuation Rules, more particularly in Rules 3 and 4 thereof, this Court referred to its earlier decision in Eicher Tractors Limited (supra) and held that the price paid by the importer to the vendor in the ordinary course of commerce shall be deemed to be the value in the absence of any special circumstances indicated in Section 14(1) and particularised in Rule 4(2). However, when the transaction value under Rule 4 is rejected, the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Customs Valuation Rules. This Court held as follows :

"23. In Eicher Tractors this Court held that the value, according to Section 14, shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of

> *international trade. It was further held that by Rule 4(1) mandate has been cast on the authorities to accept the price actually paid or payable for the goods in respect of the goods under assessment as the transaction value but this mandate is subject to certain exceptions specified in Rule 4(2). It was also held by this Court in Eicher Tractors [(2001) 1 SCC 315] that both Section 14(1) of the Act and Rule 4 provide that the price paid by the importer to the vendor in the ordinary course of commerce shall be deemed to be the value in the absence of any of the special circumstances indicated in Section 14(1) and particularised in Rule 4(2). However, when the transaction value under Rule 4 is rejected, the value shall be determined by proceeding sequentially through Rules 5 to 8 of the Rules."*
>
> *40.2 This Court also referred to the decisions in Rabindra Chandra Paul (supra) and South India Television (P.) Ltd. (supra) to reiterate the recognised legal position that transaction value can be rejected if the invoice price is not found to be correct but it is for the department to prove that the invoice price is incorrect."*

11.2. Equally, we find that the re-determination of value undertaken in the impugned order substantially rests upon the import values declared by unrelated entities, namely, M/s. Radha Enterprises and M/s. Shami Impex. However, neither the Show Cause Notice nor the impugned Order undertakes any meaningful exercise to establish the comparability of such imports with those effected by the present appellant in terms of the statutory parameters governing valuation, such as grade, quality, quantity, commercial level or contemporaneity. On the contrary, the impugned order proceeds to adopt a uniform loading of USD 300 per MT across the disputed consignments despite acknowledging that the exact extent of alleged undervaluation in respect of individual consignments could not be ascertained. Such a mechanical exercise, founded upon values pertaining to unconnected importers without first establishing the mandatory comparability contemplated under the Valuation Rules, cannot be countenanced in law.

11.2.1. In this regard, reference may also be made to the decision of the CESTAT, Mumbai in the case of *Commissioner Customs (EP), Mumbai vs. Yatin Steels India Pvt. Ltd. [2019 (1) TMI 1050 – CESTAT Mumbai],* wherein, under a similar set of facts, the Bench has held as follows: -

> *"11. From the case records we find that the revenue has failed to establish its claim on the basis of contemporaneous import. The major factor which prompted the learned Commissioner to set aside the order-in-assessment passed by the Adjudication Authority was that in arriving at figure of US $ 460 PMT the Adjudicating Authority relied upon the value of import of HR Steel Plates and since HR Coils & HR Steel Plates are not similar, therefore there was no reason to doubt the truth or accuracy of the value declared by the respondent. According to us the Adjudicating Authority has erred in rejecting the declared price/transaction value of the goods imported by the respondent by taking recourse to Rule 12 of Customs Valuation Rules, 2007, Section 14 of Customs Act, 1962 as well as Custom Valuation Rules, 2007 do not sanction such a method, as adopted by the Adjudicating Authority, for redetermination of assessable value. The declared price/transaction value is required to be accepted unless there are valid reasons for rejection of such value as provided in Customs Valuation Rules. In the present case no valid reasons have been recorded by the Adjudicating Authority for rejecting the declared price/transaction value of HR Coils except me contemporaneous import price of HR Steel Plates, which is not valid. Therefore, we find no fault with the impugned order and the Appeal filed by Revenue is accordingly dismissed."*

11.3. The Revenue has also placed substantial reliance upon the statements recorded under Section 108 of the Customs Act, 1962. While such statements undoubtedly lend support to the Department's case, they cannot, in the peculiar facts of the present matter, be regarded to be conclusive by themselves. It is a fact that the appellant has consistently disputed the voluntariness of the said statements by asserting that the same were obtained under threat, duress and coercion. More importantly, the mandatory safeguards engrafted under Section 138B of the Customs Act, 1962 governing the evidentiary use of such statements during adjudication have also not been shown to have been complied with. In these circumstances, the statements, though relevant, cannot by themselves furnish an unimpeachable foundation for sustaining the serious allegation of systematic undervaluation.

11.4. Likewise, the electronic records, computer printouts and imaged data retrieved during investigation also do not substantially advance the Revenue's case. Admittedly, the electronic material relied upon is not accompanied by the certificate contemplated under Section 138C(4) of the Customs Act, 1962, nor has it been demonstrated that the statutory requirements regarding the regular use, lawful custody and integrity of the electronic devices stood duly satisfied. In the absence of compliance with these mandatory statutory safeguards, the evidentiary value of such electronic records stands materially diminished and they cannot, by themselves, constitute the sole basis for attributing fraudulent conduct or wilful suppression to the appellant.

11.5. Viewed cumulatively, therefore, we are of the considered opinion that the statements recorded and the electronic materials retrieved during the course of investigation, which form the foundation of the case sought to be built by the Revenue, coupled with the alleged contemporaneous import data and the other circumstances relied upon in the impugned proceedings, fail to constitute clear, cogent and legally admissible evidence necessary to conclusively establish deliberate undervaluation of the imported goods with the intent to evade the government exchequer. The case of the Revenue being unsubstantiated by positive and independent evidence, we find considerable merit in the appellant's contentions and hold that the Revenue has failed to discharge the burden cast upon it under law to justify rejection of the declared transaction value and the consequent re-determination thereof.

12. In view of the foregoing discussion, the impugned demand of differential customs duty, together with the consequential liability towards interest and penalty imposed upon the appellant-company, cannot be sustained in the eyes of law. The very foundation of the proceedings, namely the allegation of undervaluation, having remained unsubstantiated by legally admissible, cogent and convincing evidence, the consequential redetermination of value under the Customs Valuation Rules and the order of confiscation of the goods equally fail. The impugned Order-in-Original, to this extent, is therefore found to be legally unsustainable. The appellant therefore succeeds on merits.

13. The aforesaid circumstances also assume relevance while examining the allegation of deliberate suppression or wilful misdeclaration against the appellant, being the basis for these proceedings by invocation of the extended period of limitation in the facts of the present case. Where the declared values were themselves subjected to scrutiny by the departmental authorities at the threshold and enhanced wherever considered necessary, it becomes difficult to readily infer, without cogent and convincing evidence, that the appellant had succeeded in suppressing material particulars or practising fraud upon the Department. The burden to establish such serious allegations squarely rested upon the Revenue, and the existence of finalized assessments after due scrutiny substantially dilutes the foundation on which the extended period of limitation has been invoked.

13.1. We find that the Revenue has sought to invoke the extended period provisions for imports pertaining to the period from 2007 to 2009, whereas the impugned Show Cause Notice came to be issued only on 03.04.2012, which is well beyond the normal period of limitation prescribed under the Customs Act, 1962. It is well settled that the burden to establish the existence of collusion, wilful mis-statement or suppression of facts with intent to evade payment of duty squarely rests upon the Revenue, and the extended period cannot be invoked merely on the basis of allegations of undervaluation unsupported by cogent and convincing evidence.

13.2. In the instant case, as already observed hereinbefore, the fact that the imported consignments were presented before the proper officers of the Revenue under duly filed Bills of Entry accompanied by the requisite commercial documents, indicates that the valuation of the imported goods and the attendant import transactions were at all material times within the knowledge of the Department itself. In such circumstances, the allegation that the appellant had suppressed material facts or made wilful mis-statements with intent to evade payment of duty does not, prima facie, stand on a firm footing.

13.3. On the other hand, the Revenue has failed to offer any satisfactory explanation as to the considerable delay on the part of the investigating agency in initiating the present proceedings. The record reveals that extensive search operations were conducted on 17.07.2009; statements of Shri Praveen Goel, Shri Naveen Goel and Shri Kishori Saran Goel under Section 108 of the Customs Act, 1962 were recorded during July, 2009; and the electronic devices as well as documentary records relied upon by the Revenue had also come into its possession during the course of the investigation itself. Thus, the very materials which now constitute the principal foundation of the impugned demand had already been gathered by the investigating agency nearly three years prior to issuance of the Show Cause Notice. In spite of the above, the Revenue has not furnished any satisfactory explanation as to why the proceedings were initiated only on 03.04.2012. Neither the Show Cause Notice nor the impugned Order-in-Original discloses any fresh material unearthed subsequent to the investigation of July, 2009 which would justify such prolonged inaction. In the absence of any such explanation, the invocation of the extended period cannot be sustained merely by reproducing the statutory expressions of "suppression", "wilful mis-statement" or "intent to evade duty", without demonstrating the factual foundation necessary to attract the proviso to Section 28 of the Customs Act, 1962.

13.4. The case of the appellant on this score is further fortified by the facts already recorded in the preceding paragraphs of the order, which deal with the merits of the dispute. As already noticed, the Revenue has failed to substantiate the serious allegations of deliberate undervaluation by any cogent, positive or legally admissible evidence. Apart from the statements recorded under Section 108, which by themselves do not conclusively establish the allegations in the absence of adequate corroboration, no evidence of any extra consideration, money trail or alleged hawala remittance has been brought on record. Likewise, the electronic materials relied upon during investigation also suffer from the statutory infirmities already discussed hereinabove. Even the re-determination of value proceeds substantially on the basis of imports made by unrelated entities, without establishing the mandatory parameters of comparability contemplated under the Customs Valuation Rules. In view thereof, the aforesaid circumstances also unmistakably point to the absence of any element of fraud, collusion, wilful mis-statement or suppression of facts with intent to evade payment of duty, which constitute the essential statutory ingredients for invocation of the extended period of limitation under the Customs Act, 1962."

13.5. Having regard to the cumulative effect of the foregoing discussion, particularly the fact that the imported consignments had already undergone scrutiny and assessment by the proper officers of the Revenue, the absence of cogent and corroborative evidence establishing any extra-commercial consideration, the unexplained delay in issuance of the Show Cause Notice despite the investigation having substantially concluded in July, 2009, and the evidentiary deficiencies noticed in respect of both the statements and the electronic records relied upon by the Department, we are of the considered view that the Revenue has failed to discharge the burden cast upon it for invoking the extended period of limitation under the proviso to Section 28 of the Customs Act, 1962.

14. In view of the above observations, we also hold that the impugned Show Cause Notice dated 03.04.2012, relating to proceedings in respect of imports made during the period of dispute, is barred by limitation in the facts and circumstances of the present case. Consequently, the demand of differential customs duty, together with the consequential interest and penalty imposed upon the appellant-company under the impugned Order-in-Original, cannot be sustained in law, being time-barred, and is therefore liable to be set aside on this count.

15. The appellant, therefore, succeeds on merits as well as on limitation.

16. Accordingly, we set aside the demands of customs duty confirmed along with interest and penalty in the impugned Order-in-Original, insofar as it relates to the present appellant.

17. The appellant has also prayed for release of the amount of Rs.92,00,000/- appropriated by the learned adjudicating authority under the impugned order. The aforesaid amount broadly comprises two distinct components, namely, (i) Rs.42,00,000/- seized during the course of the search proceedings conducted at the appellant's premises; and (ii) Rs.50,00,000/- deposited by the appellant during the course of investigation towards the alleged customs duty liability. Since the nature and source of the aforesaid amounts are distinct, the entitlement of the appellant to their release is required to be examined separately.

17.1. Insofar as the amount of Rs.42,00,000/- seized during the course of search/investigation is concerned, we find that the Department has failed to place on record any cogent material establishing any nexus between the seized currency and the alleged act of under-valuation. As already held by us hereinabove, the very foundation of the proceedings alleging undervaluation has failed. Consequently, the question of appropriating the said seized amount towards any non-existent customs liability does not arise. It is also well settled that currency seized during investigation cannot be retained indefinitely in the absence of legally admissible evidence establishing its connection with the alleged offence. A similar view has been taken by this Tribunal in *Rajendra Roy & anr. v. Commissioner of Cus. (Prev.), Kolkata [Final Order Nos. 75615-75616 of 2026 dated 20.05.2026 in Customs Appeal Nos. 75021 & 75022 of 2022 – CESTAT, Kolkata],* wherein it was observed that, in the absence of any investigation establishing the source of the seized currency or its nexus with the alleged offence, the Department is not justified in retaining the same. The relevant portion of the said order is reproduced below as ready reference: -

> *"14.2. It is a settled position of law that statements recorded during investigation, in the absence of corroborative evidence, cannot ipso facto form the sole basis for sustaining a serious charge such as confiscation of currency on the ground of it being sale proceeds of smuggled goods. The allegation of the Revenue requires to be supported by cogent material indicating a clear nexus between the seized currency and the alleged smuggling activity. In the present case, it is seen from the record that no investigation appears to have been conducted to trace the source of the currency, nor has any attempt been made to establish a linkage between the seized gold and the alleged generation of sale proceeds in the form of the impugned currency. There is no iota of evidence on record so as to arrive at the conclusion that the seized amount represents proceeds of smuggled gold. Further, the formation of a "reasonable belief", which is a sine qua non for seizure and confiscation under the provisions of the Customs Act, is not discernible from the records insofar as the Indian currency is concerned. Mere suspicion, howsoever strong, cannot take the place of proof."*

17.1.1. Accordingly, we direct that the amount of Rs.42,00,000/- seized from the appellant be released to them forthwith along with applicable interest.

17.2. Coming to the amount of Rs.50,00,000/- deposited by the appellant during the course of investigation, we find that the said amount partakes the character of a deposit made pending adjudication. The Appellant submitted that the said amount was deposited by them under compulsion from the department. In any case, in view of our findings recorded in the preceding paragraphs holding that the demand of customs duty founded upon the re-determination of the declared transaction value is legally unsustainable, the Department cannot retain the said amount without the authority of law. This principle has been consistently reiterated in plethora of decisions of this Tribunal, wherein it has been held that once the very basis of the demand fails, any amount deposited during investigation cannot be retained by the Revenue except under the authority of law and is liable to be refunded in accordance with law. Accordingly, we direct that the aforesaid amount of Rs.50,00,000/- be refunded to the appellant together with applicable interest, in accordance with law.

18. The appeal stands allowed in the above terms, with consequential relief, if any, in accordance with law.

(Order pronounced in the open court on **05.08.2026**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd