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

E-HEARING

Customs Appeal No. 52896 of 2016

(Arising out of Order-in-Appeal No. CC (A) Cus/D-II/ICD/542/2016 dated 04.07.2016 passed by the Commissioner of Customs (Appeals), New Delhi)

Commissioner of Customs & Excise, Patparganj Appellant
Inland Container Depot,
Patparganj & Other ICDs,
East Delhi, Delhi-110096

Vs.

M/s Premier Plastic Industries Respondent
B-63, Gali No. 6, Jagatpuri, Delhi-6

With
Customs Appeal No. 52897 of 2016

(Arising out of Order-in-Appeal No. CC (A) Cus/D-II/ICD/541/2016 dated 04.07.2016 passed by the Commissioner of Customs (Appeals), New Delhi)

Commissioner of Customs & Excise, Patparganj Appellant
Inland Container Depot,
Patparganj & Other ICDs,
East Delhi, Delhi-110096.

Vs.

M/s Premier Plastic Industries Respondent
B-63, Gali No. 6, Jagatpuri, Delhi-6

And
Customs Appeal No. 52904 of 2016

(Arising out of Order-in-Appeal No. CC (A) Cus/D-II/ICD/543/2016 dated 04.07.2016 passed by the Commissioner of Customs (Appeals), New Delhi)

Commissioner of Customs & Excise, Patparganj Appellant
Inland Container Depot,
Patparganj & Other ICDs,
East Delhi, Delhi-110096.

Vs.

M/s Premier Plastic Industries Respondent
B-63, Gali No. 6, Jagatpuri, Delhi-6

Appearance:

Present for the Appellant: Shri K.K. Bashisth, Authorized Representative

Present for the Respondent: Shri Priyadarshi Manish, Advocate

CORAM:
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing: 02.07.2026
Date of Decision:21.08.2026

Final Order Nos. 51356-51358/2026

Dr. Rachna Gupta

The present order disposes of three appeals filed by the department for assailing the common order of Commissioner (Appeals) bearing No. CC(A) Cus/D-II/ICD/542/2016 dated 04.07.2016 who has rejected the department's proposal of demand of respective differential duty of Customs against the same importer leveling same allegations. The details are as follows:

S. No.	Appeal No.	Show Cause Notice No.	Order-in-Original No.	Order-in-Appeal No.	Amount in question
1.	C/52896/2016	V(SIIB)21/ENQ/113/2012/173 dated 24.08.2012	89/JC/PPG/2016 dated 04.03.2016	CC(A) Cus/D-II/ICD/542/2016 dated 4.7.2016	20,08,933
2.	C/52897/2016	V(SIIB)21/ENQ/113/2012/9400 dated 04.09.2012	77/JC/PPG/2016 dated 20.01.2016	CC(A) Cus/D-II/ICD/541/2016 dated 4.7.2016	32,85,849
3.	C/52904/2016	V(SIIB)21/ENQ/113/2012/12411 dated 02.12.2013	64/PPG/JC/2015 dated 27.11.2015	CC(A) Cus/D-II/ICD/543/2016 dated 4.7.2016	18,26,677.37

2. Briefly stated, an information was received on 09.01.2012 through an officer of DRI about one consignment covered under Bill of Entry No. 5641814 dated 03.01.2012 to have been mis-declared

in terms of description of goods and value. Acting upon the said information, on 12.01.2012, the officers of Special Investigation and Investigation Branch[1] visited ICD Ballabgarh and examined the import documents of the said consignment filed by the importer - M/s Premier Plastic Industries, the documents were filed through Customs House Agent[2] - M/s PCC Consultant. In the Bill of Entry the goods were declared as "Urea Houseware - Trays and Bowls" as detailed in show cause notice as follows:

S.No.	Mark & No.	Description	Quantity	
			No. of Cartons	**Qnty. of goods in dozen**
1.	YL938052	BOWLS	62	496
2.	YL68715	BOWLS	396	792
3.	YL15311	BOWLS	767	3068
4.	YL28220	BOWLS	324	648
5.	60075	COASTER	294	1176

2.1 The said consignment was imported in Container No. PONU7831589, the said container was found sealed. In the presence of the representative of CHA/G card holder viz. Shri Rajinder Singh Negi also in the presence of officers of Customs, ICD the seal was broken 19 excess cartons said to contain certain Bowls (Item No.YL938052 of the above table) were found in the said container. The remaining cartons were found to tally with the declared quantity. In addition goods were found having 'DOLPHIN' brand under CTH 68159990 embossed on them. The department doubted the correct classification of the goods. Accordingly, three representative samples of each variety were drawn vide sample entry no. 57 dated 12.01.2012.

1 SIIB
2 CHA

2.2 One sample thereof was sent to Director, Central Revenue Control Laboratory[3], Pusa Complex, New Delhi on 13.01.2012 for determination of chemical composition of the goods, pending the receipt of the test result the party was allowed to warehouse the goods in customs bonded warehouse in terms of Section 49 of the Customs Act. The test report dated 20.01.2012 revealed that the sample packet was containing five kitchen-wares. Each of the kitchenware was found to be mainly composed of polymeric material – 'Urea Formaldehyde Resin' together with inorganic filler ranging from 2.20% to 7.20%.

2.3 The statement of the proprietor of the respondent – importer viz. Shri Om Parkash Khanna was initially recorded on 13.01.2012 and subsequently, after receiving the test report was recorded on 07.02.2012 both under Section 108. The respondent stated about importing kitchen wares, table wares and articles of glass for last 5 years through ICD Ballabhgarh; though, the firm is existing since last 35 years. The respondent also agreed to the test report dated 20.01.2012 acknowledging that the imported goods were made of 'Urea Formaldehyde'. Though in the bills of lading as well as in the Country of Origin Certificate[4] the goods have been mentioned as Houseware and Glassware - Trays and Bowls. The importer/appellant while acknowledging the same deposited the additional duty of Rs. 3 lakhs. Statement of father of the said proprietor viz. Shri Rajat Khanna was also recorded to the same effect. Based on the proceedings of the entire investigation and also from the records of ICD Ballabgarh, department came to know

3 **CRCL**
4 **(COO)**

that the respondent – importer had also cleared 20 such consignments of similar goods in last five years, as have been tabulated in para 8 of the show cause notice.

2.4 In addition, the department also obtained documents from outside India duly authenticated by the Indian High Commission abroad with respect to the goods imported by the respondent. An overseas enquiry was also called upon pursuant thereto. It was observed that the respondent - importer was undervaluing their imported goods in a planned manner. However, the extent of undervaluation was almost constant over the years i.e. approximately 68% of the FOB value declared by the exporter at the port of shipment.

2.5 Based on these observations that a Show Cause Notice No. 113/2012/173 dated 24.08.2012 was served upon the importer respondent proposing the recovery of the differential customs duty of such amount as tabulated above. The said proposal has been confirmed vide the respective order in original as tabulated above. Appeal against the said order has been allowed by the Commissioner (Appeals) vide the respective orders as tabulated above. Being aggrieved, the present three appeals have been filed by the department.

3. We have heard Shri K.K. Bashisth, learned Departmental Representative for appellant-department and Shri Priyadarshi Manish, learned counsel for the respondent.

4. Learned Departmental Representative for the appellant – department has submitted that the issue involved in three of the appeals pertains to mis-representation, mis-declaration and under-

valuation of the goods imported by the respondent to the extent of more than 68% of the actual invoice values by suppressing those actual invoices which were submitted before the China Customs. The respondent rather has submitted forged invoices before assessing authorities of Indian Customs. It is submitted that from the examination of the consignment, the excess quantity of imported goods was found with a brand name which was otherwise not declared. The classification under Chapter 68 was also not observed genuine. All these observations created a bona fide doubt in the mind of the proper officer who on investigation found that the declared values does not appear correct. Hence the value has rightly been rejected in terms of Rule 12 of Customs Valuation Rules, 2007. The same has been re-determined as per norms only.

4.1 The test report received from CRCL and the documents obtained from Indian Consulate at China had further corroborated the fact that the exporter/supplier at China had declared value almost four times the value declared by the respondent, before the Chinese Customs of the goods in question. And that the imported goods are not just Houseware, Trays and Bowls but are the 'Urea formaldehyde' kitchenware articles classifiable under Customs Tariff Heading[5] 39091010 whereas the respondent has wrongly classified the goods under CTH 68159990. Thus the presumption of Section 139 of the Customs Act, 1962 (hereinafter referred as the Act) has rightly been invoked.

4.2 Learned Departmental Representative further impressed upon that after acknowledging the correctness of the said test report and the documents received in overseas enquiry the respondent -

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5 **CTH**

importer had deposited Rs. 3 lakhs towards the differential amount of Customs duty. The confessional statements are the best evidences and needs no further proof. Decision of Hon'ble Supreme Court in the case of **Surjit Singh Chabbra Vs. Union of India**[6] has been relied upon. Finally submitting that the decisions of **Eicher Tractors Ltd. Vs. Commissioner**[7] and **Commissioner of Customs Vs. South India Television (P) Ltd.**[8]**,** as relied upon by the Commissioner (Appeals), are not applicable to the facts of the present case, the orders under challenge are prayed to be set aside and the appeals are prayed to be allowed.

5. No written submissions have been filed by the respondent importer. However, they have relied upon the grounds of appeal where primarily the violation of principles of natural justice has been objected and extended period of limitation is mentioned to be not invocable in the given set of circumstances. It is submitted that the entire case of department is based on the assumption and presumptions. The only document of reliance is the export declaration with respect to four Bills of Entries in alien language and a chart prepared by the customs. The said document is not at all admissible into evidence. There is no other corroboration produced by the department to the said document. The document otherwise do not bear the seal or signature of the custom officials of Hong Kong. The contents of those documents being in Chinese language could not be verified by the respondent importer. Such document has wrongly been used against the importer. Otherwise also the only thing which gets proved by those documents is the

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6 1997 (89) ELT 646
7 2000 (122) ELT 321 (SC)
8 2007 (214) ELT 3 (SC)

over invoicing by the exporter. Unless and until there is no proof that the importer had paid anything apart from the value declared by the appellant. The said over-invoicing cannot form the basis of rejecting the transaction value re-determining the same. Otherwise also the procedure under Import Valuation Rules, 2007 has not been followed; i.e. while determining the said value the Rules through Rule 4 to 9 should have been sequentially followed which has not been done in the present case.

6. With respect to mis-declaration, it is mentioned that the imported goods were correctly declared as 'Urea Houseware' . The test report obtained by the department corroborates the same as it reveals that the kitchenware were imported which were made of 'Urea Formaldehyde' resins. The goods were mistakenly classified at Chapter 68 and the correct classification is under CTH 3924. With all these submissions and impressing upon no infirmity in the orders passed by respective Commissioner (Appeals). Three of the appeals are prayed to be dismissed.

7. Having heard both the parties perusing the entire record, it is observed that in the impugned orders the demand of differential customs duty as was confirmed by the original adjudicating authority, has been set aside only on the finding that the documents received from Hong Kong Customs cannot be held to be the admissible documents in the light of several objections raised by the importer and not having been countered by the department. Commissioner (Appeals) has held that Section 139 of the Customs Act does not cover the present case.

7.1 Foremost, we have perused Section 139 of the Act which reads as under:

> **"139. Presumption as to documents in certain cases.**
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> - Where any document-
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> (i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
>
> (ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act, and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the Court shall-
>
> (a) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the Court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
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> (b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
>
> (c) in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.
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> Explanation.-For the purposes of this section, "document" includes inventories, photographs and lists certified by a Magistrate under sub-section (1-C) of section 110."

7.2 In the present case, the documents which were relied upon by the original adjudicating authority and have been negated by Commissioner (Appeals) are the declarations obtained from Consulate, Hong Kong with respect to four consignments in question. Thus, it is clear that the said documents are the documents covered under sub-clause (ii) of Section 139 as quoted above. Though, the respondent importer has objected these declarations for being used as the evidence. But under Section 139 (ii) of the Act, the presumption of correctness is attached to the said document, except when the contrary is proved. There is nothing on record to prove the contrary except the oral claim of the importer that the documents are not signed, not have been obtained through proper channel, do not bear stamp of any proper authority and are in alien language which is not interceptable by the respondent.

7.3 We also observe that the department after having prima facie doubt vis-à-vis undervaluation and after finding mis-declaration vis-à-vis the quantity as well as the brand of the goods had initiated an overseas enquiry through proper channel vide their letter dated 10.04.2012 and the documents received from Consulate of Hong Kong in respect of four impugned consignments were forwarded to the department vide a letter dated 03.07.2012 as is apparent from the letter from Additional Director (Policy) DRI dated 25.07.2012. The comparative chart along with the respective trade declarations as received from Chinese Customs in English translation duly authenticated was prepared by the Competent Authority. The said letter dated 25.07.2012 also clarifies that similar declarations were received with respect to all 15 consignments from the Consulate of Hong Kong vide an e-mail dated 25.07.2012 itself. It was reported that the items declared by the exporter in the bill of lading and country of origin certificate as filed before the Indian Customs is Houseware - Trays and Bowls whereas the same were declared as plastic pallets and plastic product before the Chine Customs. The value declared before

China Customs is reported to be almost 65% higher than the value declared at the Indian Customs despite suitable adjustments for freight and insurance as would have been made to arrive at the CIF values. The perusal of that letter is sufficient to falsify the importer's objection with respect to the said document. It is held that the department has sufficiently proved that the documents were obtained through proper channel from the competent authorities. Irrespective the documents were the photo copies of the declaration made before Chinese customs. Section 139 of the Customs Act had rightly been invoked by the original adjudicating authority. The section otherwise nowhere mandates for the document under that section to only be in original.

7.4 Further it is observed that the copies are duly been stamped by the Indian Customs. The chart prepared by the Indian Customs is admittedly in English language. It is not the case of importer respondent that the copies of those documents and that chart were not provided to the importer. The said documents have been objected for being in alien language. There was no bar with the importer to get those documents translated to prove contrary to what has been translated in the chart prepared by the department in consultation with the Hong Kong/Chinese Customs pursuant to the overseas inquiry initiated in the present matter. There is no such translation or any similar document produced by the importer respondent.

7.5 The decisions relied upon by Commissioner (Appeals) while negating the presumption of Section 139 of the Act are found not applicable to the facts and circumstances of the present case. In the case of **Md. Abdul Halim Vs. Commissioner**[9] the importer therein had got the imported goods valued from the approved valuer and the said valuation report was accepted by the adjudicating authority as it was showing the market value of the goods, similar to the one as was declared by the said importer (after adjusting the cost of importation and profit margin). That is not the case of present appeal. In the case of **Collector Vs. East Punjab Traders**[10] the presumption of Section 139 of Customs Act was denied for the reason that the documents from Japan Customs had not come from the proper custody. There was sufficient evidence to show that the Indian Customs did not interact with the Japanese Customs to get the authentic copies of the documents. Same is not the case of the present appeal. In the present case an overseas enquiry was initiated and after deliberations the documents in question have been received through proper channels. We draw our support from the decision of this Tribunal in the case of **Orson Electronics Pvt. Ltd. Vs. Collector of Customs, Bombay**[11] and similar were the findings in the case of **Décor Rubber Industries Vs. Commissioner of Customs, New Delhi**[12] and also in the case of **Martwin Electronics Vs. Commissioner of Central Excises & Service Tax, Ahmedabad**[13].

8. Another contention that the documents recorded by the Revenue had not been authenticated as per the procedure laid down under Section 3(2) of Diplomatic and Consular Officers

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9 2001 (130) ELT 842 (Tribunal)
10 1997 (89) ELT 11 (SC)
11 1996 (82) ELT 499 (Tri.-Del.)
12 (2023) 12 Centax 238 (Tri.-Del.)
13 2016 (331) ELT 85 (Tri.-Ahmd)

(Oaths and Fees) Act, 1948 is also not sustainable. We have examined the provisions under this Act as appearing in the judgment of *Vimal Chand.* It is obvious that Section 3 of this Act confers powers on Indian Diplomatic and Consular Officers in foreign countries to administer any oath and do notarial act. As regards the objective of the said Act, it aims at providing "the administration of oath by diplomatic and consular officers and to prescribe the fees leviable in respect of certain officials of their duties".

8.1 In our view, the said Act is just a mechanism available so that notarial act, as available through notary public in India, could also be available abroad. The availability of such mechanism cannot be made a mandate under the Customs law. If co-relatable documents were obtained independently from foreign countries from reliable sources (such as Customs) under their covering letter duly authenticated and signed by the said authorities, we do not find anything wrong in relying upon them. Further, the provisions under the Act of 1948 especially Section 3(2) does not require every document to be attested. From the perusal of the record and the statements made during the investigation, it appears to us that the fax messages cannot be brushed aside lightly mainly since their exchange was never contested by the appellants. The argument that the fax messages cannot be relied upon as they do not bear any signature does not, in our opinion, hold water.

9**.** In the light of the above discussion we hold that the sole document of reliance is the sufficient evidence in terms of Section 139 of the Customs Act.

9.1 Further, the goods imported were admittedly declared as Houseware, Trays and Bowls. The test report dated 20.01.2012 has proved those goods as 'Urea Formaldehyde Resin' based Kitchenwares. From the documents received from outside India/Hong Kong, it is also clear that the goods were declared as plastics and plastic pallets before Chinese Customs. They have also acknowledged the liability of differential customs duty and had deposited the amount of Rs. 3 lakhs without any protest. The statements under Section 108 are recorded by the gazetted customs officers who are different from the police officers. Hence the statements are admissible into evidence without any requirement as that of Section 27 of Indian Evidence Act.

9.2 In addition, the undervaluation has duly been acknowledged/admitted by the respondent in their statements recorded under Section 108 of the Customs Act. We observe In India's enforcement landscape, few legal provisions are as powerful as Section 108 of the Customs Act, 1962. It allows Customs officers to summon any person for inquiry, treats those proceedings as "judicial proceedings" equivalent to testimony before a court and permits the statements to be used as substantive evidence in a trial. A confession made to a police officer is inadmissible in court. A confession made to a customs officer, if deemed voluntary, is admissible. That distinction stands settled by a series of Constitution Bench judgements; going back to **Ramesh Chandra Mehta v State of West Bengaland Illias v Collector of Customs** in the late 1960s wherein it was held that a confession recorded by a Customs officer carries full evidentiary weight as substantive evidence, provided it is found to be voluntary. This precedent has long troubled civil liberty lawyers. The Bombay High Court gave voice to those concerns most pointedly in Paragraph 11 of **The Assistant Collector of Customs v Hasanali Rumi** (2019) decision. In **Amad Noormamad Bakali v State of Gujarat,** hon'ble Supreme Court reiterated that confession to Customs officer is admissible as evidence. The Supreme Court reaffirmed one of the most contested principles in Indian evidence law, placing reliance on **K.I. Pavunny v Assistant Collector (HQ), Central Excise Collectorate, Cochin** (1997). The Court held that statements recorded by customs officers are admissible as substantive evidence provided they are made voluntarily, and do not attract the bar under Sections 24, 25, or 30 of the Indian Evidence Act. The basis for this distinction is that Customs officers are not police officers and therefore the Evidence Act's bar on police confessions does not apply to them. This verdict arrives at a moment when Section 108 is under renewed judicial scrutiny. In **Radhika Agarwal v Union of India,** W.P.(Crl.) No.336 of 2018 & Connected matters a three-judge Bench addressed a batch of 279 petitions challenging the arrest and interrogation powers of Customs and GST officers. The Court upheld those powers but insisted on procedural safeguards such as recorded reasons for arrest, adherence to constitutional guarantees and protection against coercive pre-adjudicatory action. Crucially, it reaffirmed that Customs officers are not police officers, meaning Section 108 statements retain their full evidentiary weight. In **Poolpandi v Superintendent, Central Excise**[14] the Supreme Court rejected

14 1992 SCR (3) 247

the argument that questioning a person in a Customs office—without the presence of a lawyer or friends—violates Article 21. The Court held that such interrogation does not, by itself, infringe the right to life and personal liberty. The decision of **Surjit Singh Chabbra** (supra) is hereby relied upon. Hence it is held that the importer has clearly admitted the undervaluation declared in the Bills of Entries filed before Indian Customs.

10. Finally coming to the plea of the importer that the valuation has not been sequentially arrived at while re-determining the value of the imported goods. The value of goods was rejected under Rule 12 of Customs Valuation Rules. The fact in the case that when the goods were examined in the presence of the representative of importers CHA and the Custom officers who found mis-declaration vis-à-vis the quantity and mis-declaration vis-à-vis the brand name of the goods. Those observations were more than sufficient for the custom officers to reject the transaction value under Rule 12 of the Valuation Rules. Since the transaction value got rejected, Customs duty has to be determined sequentially under Rule 4 to 9.

10.1 Rule 4 provides for the valuation to be done on the basis of identical goods. Rule 5 provides for the valuation to be done on the basis of the value of similar goods. Rule 6 states if Rules 4 and 5 cannot determine the value then they must be done as per Rule 7 and thereafter Rule 8 but this sequence can be reversed at the option of the importer. In other words, if the importer so chooses, Rule 8 can be applied directly instead of Rule 7. Rule 7 provides for a deductive method of valuation on the basis of prices of similar or identical goods sold in India and after making some deductions from such prices. Rule 8 provides for a computed value, i.e., based on the cost of raw material, cost of manufacture, reasonable profit, etc. In view of Rule 6, the importer may choose the computed value without examining the feasibility of determining value through deductive methods. Rule 9 is a residual method which provides for determining the value where it cannot be determined under Rules 3 to 8. Rule 10, as already discussed, provides for some costs to be added to the transaction value if the valuation is done as per Rule 3. Rule 11 requires the importer to make a declaration. Rule 12 lays down the provision for rejection of transaction value. Rule 13 provides for interpretative notes for the Rules. The transaction value in the present case has been re-determined based on the value of the identical goods received from the same exporter in the consignment in question. There has been simultaneous admission that the same goods had been continuously imported by the importer in previous years also. Admission need no further proof. Hence it stands clear that sequentially rules have been followed while re-determining the value.

10.2 Finally coming to the plea of imposition of penalty under section 114A of the Customs Act it is observed that the penalty under the said section is a mandatory penalty and is equal to the amount of duty alleged to have been evaded. The section read as follows:

> "**Section 114A**. Penalty for short-levy or non-levy of duty in certain cases –

> Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."

10.3 Since we have upheld the demand of differential customs duty. The mandatory penalty of the equal amount under 114A as was imposed by the original adjudicating authority is hereby sustained.

11. In the light of the entire above discussion, we hold that the Commissioner (Appeals) has wrongly rejected the documents received from the Chinese Customs which otherwise prove that the values declared by the importers before Indian Customs were far lower than the values declared by the respondent – exporter before Chinese Customs as stands proved in terms of Section 139 of the Customs Act (as discussed above). Resultantly, we hereby set aside the impugned orders of Commissioner (Appeals). Consequent thereto, all three appeals filed by department are hereby allowed.

(Pronounced in open Court on 21.08.2026)

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R.PRIYA)
MEMBER (TECHNICAL)

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