# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
# CHENNAI
# REGIONAL BENCH, COURT No. I

## Customs Appeal No. 263 of 2011

(Arising out of Order in Original No. 15595 of 2011 dated 11 April 2011 passed by the Commissioner of Customs, Custom House, New No. 60, Rajaji Salai, Chennai)

**Shri R. Dewakar** **...Appellant**
Proprietor, M/s. Sri Vinayaka Enterprises
2/2A, 4th Cross, Assayee Road, Bangalore 42

**Versus**

**Commissioner of Customs (Seaport, Imports)** **...Respondent**
Custom House, No. 60, Rajaji Salai
Chennai 600 001

**APPEARANCE**

Mr. Satish Sundar, Advocate for the Appellant
Ms. O.M. Reena, Authorised Representative for the Respondent

**CORAM**

**HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)**
**HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)**

**FINAL ORDER No. 41067/2026**

DATE OF HEARING:30.04.2026
DATE OF DECISION:06.10.2026

**Per Mr. AJAYAN T.V.**

Shri R. Dewakar, the Appellant herein, questions the Order in Original No. 15595/ 2011 dated 11 April 2011 passed by the Commissioner of Customs, Custom House, Chennai. In respect of two imports, namely Bill of Entry No. 401210 dated 8 December 2006 filed with the Custom House, Tuticorin in the name of M/s J.P. Connection, Chennai, whose Importer Exporter Code stood in the name of S. Jayakanth, declaring one engine and one chassis of a Suzuki Hayabusa 1300 cc motorcycle as automobile spare parts under Chapter Heading 8714 1900 at declared values of US$ 6,400 and US$ 2,850 on C&F terms, and Bill of Entry No. 354469 dated 11 December 2006 filed at Chennai Port in the name of M/s Sri Vinayaka Enterprises, Bangalore, of which the Appellant is the proprietor, declaring various items of motorcycle body parts as spare parts of motorcycle under Chapter Heading 8714 9900 at a declared value of US$ 1,312, the Adjudicating Authority reclassified both consignments

under CTH 8711 50 00 by invoking Rule 2(a) of the General Rules for the Interpretation of the Import Tariff, rejected the declared value under Rule 10A of the Customs Valuation Rules, 1988 and redetermined it under Rule 8 at Rs. 4,37,938/- for the goods imported at Tuticorin and Rs. 2,75,000/- for the goods imported at Chennai, confirmed differential duty of Rs. 6,33,716/- and Rs. 4,01,917/- respectively along with interest, ordered confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962 with redemption fine, and imposed penalties under Section 114AA.

2. Relevant facts, as gleaned from the appeal records, are that the Directorate of Revenue Intelligence, acting upon intelligence that the Appellant was evading customs duty by dismantling superbikes and importing them through different ports under borrowed Importer Exporter Codes, commenced investigation. In the course of that investigation statements were recorded under Section 108 of the Customs Act, 1962 from J. Venkatesh, through whom the Importer Exporter Code of M/s J.P. Connection was procured and also from S. Jayakanth, the proprietor of M/s J.P. Connection, on 28 December 2006 and on 05.01.2007. Statement under Section 108 of the Act was recorded from the Appellant on 10 January 2007. The Appellant gave a further statement on 29 January 2007 in which he reiterated and reaffirmed the material particulars stated earlier. None of the statements was retracted. The goods were thereafter physically examined. Upon examination of the Chennai consignment, an approved Chartered Engineer and Valuer deputed by the Automobile Association of Southern India (AASI) found that it comprised all the parts of a Suzuki GSX 1300 R except the engine and the chassis, and that it bore a number plate marked FZ 9128Z, and by its letter dated 27 April 2007 the Association appraised those goods at Rs. 2,75,000/-. The Tuticorin consignment was likewise examined by an approved Chartered Engineer, who found an engine mounted upon a chassis bearing corresponding manufacturer’s markings with several ancillary components fitted, and by his report dated 11 May 2007 assessed its C&F value at SGD 14,760. Finally, by a joint inspection report dated 7 June 2007, the Association confirmed that the two consignments, put together, constituted one complete Suzuki GSX 1300 R motorcycle. Both consignments had originated from the same overseas supplier, M/s Mezzo International, Singapore.

3. Show Cause Notice F. No. VIII/48/4/2007-DRI dated 7 June 2007 was accordingly issued, alleging misclassification, mis declaration of description, undervaluation through solicited invoices and use of a borrowed Importer Exporter Code to conceal the identity of the real importer. It proposed rejection of the declared classification and value, demand of differential duty, confiscation of the goods, and imposition of penalties under Sections 112(a), 114A and 114AA upon the Appellant and under Sections 114A, 112(a) and 117 upon Jayakanth.

4. The noticees denied the allegations and contended, among other things, that the two Bills of Entry had been filed by legally distinct entities and could not be clubbed. By the impugned order dated 11 April 2011 the Adjudicating Authority rejected that defence. Relying upon the Appellant's own admissions under Section 108, upon the statements of Jayakanth and Venkatesh as corroboration, and upon the valuation and joint inspection reports of the Association, the Authority confirmed the reclassification, the revaluation and the differential duty, directed that the duty on the Tuticorin consignment be paid jointly and severally by the Appellant and Jayakanth, ordered confiscation with redemption fine, and imposed penalties upon the Appellant under Section 114AA. No penalty was imposed upon the Appellant under Sections 112(a) or 114A, though proposed.

5. Shri Satish Sundar, learned Counsel for the Appellant, argued at length. The two importing entities are legally distinct, he urged, and no nexus between them is established except through the statements recorded during investigation. There is no material showing how parts cleared at two different ports could have been physically brought together and assembled into one motorcycle. Uncorroborated statements and an unverified valuation report cannot form the basis of a finding that there was a single conspiratorial import. Rule 2(a) of the General Rules for Interpretation cannot be invoked to treat goods imported under separate Bills of Entry, at different times and at different places, as one complete article. Ld. Counsel relied on *Union of India v. Tarachand Gupta and Bros., 1983 (13) E.L.T. 1456 (S.C.), Award Electronics v. Commissioner of Customs, 2003 (153) E.L.T. 210 (Tri. Mad.)* and *Commissioner of Customs, New Delhi v. Sony India Ltd., 2008 (231) E.L.T. 385 (S.C.)*. Classification, it was further urged, must be determined upon the goods as presented at the time

of import and not upon any subsequent assembly or use, for which *Dunlop India Ltd. and MRF Ltd. v. Union of India, 1983 (13) E.L.T. 1566 (S.C.)* and *Sony India* were cited.

6. Ld. Counsel next contended that duty cannot be demanded jointly and severally from two distinct assessees, that statements cannot be relied upon without compliance with Section 138B of the Act. Reliance was placed on *Moti Bhatia v CC, 2026 (38) Centax 160 (Tri-Bom) : 2025 (6) TMI 1284-CESTAT MUMBAI* for this proposition and it was argued that the test not having been applied the statements are to be discarded from the proceedings. It was next contended that duty cannot be demanded jointly and severally from two distinct assessees. Section 28 speaks of the importer, and the definite article, as the Apex Court explained in *Consolidated Coffee Ltd. v. Coffee Board, Bangalore, (1980) 3 S.C.C. 358*, denotes a specified event or entity and not universal. Reliance was placed on the decisions in *Unik Traders vide Final order No.40775 of 2025 dated 21.07.2025, Rimjim Ispat Ltd. v. CCE, Kanpur, 2013 (293) ELT 124 (Tri-Del), Baba Baidyanath Trading Co (2024) 23 Centax 320 (Tri-Cal)* in this regard. It was finally urged that Section 114AA is not attracted in the absence of proof that any document used was false or fabricated. In support of these contentions reliance was placed upon *TPV Technology India Ltd. v. Commissioner of Customs, (2025) 33 Centax 229*. Reliance was also placed on the decision in *Mittal Impex v. Principal Commissioner of Customs, New Delhi, (2025) 32 Centax 394 (Tri. Del.)* in support of the appellant's contentions.

7. Ms. O.M. Reena, learned Authorised Representative appearing for the Respondent, reiterated the findings in the impugned order. She argued that the Appellant's own admission under Section 108, corroborated by the statements of Jayakanth and Venkatesh, established that he was the real importer of both consignments. The presence of a foreign registration number plate upon the Chennai consignment attracted the Licensing Note to Chapter 87 governing second hand vehicles. Rejection of the declared value under Rule 10A was warranted, the invoices being admittedly solicited. Joint and several recovery of duty, and the penalties under Section 114AA, were correctly ordered, the Appellant having used a borrowed Importer Exporter Code to conceal the true nature of the import.

Reliance was placed upon *Commissioner of Customs, New Delhi v. Phoenix International, 2007 (9) T.M.I. 275 (S.C.)*.

8. The appeal was heard on 30 April 2026. Written submissions in rejoinder were thereafter filed on behalf of the Appellant, in which it was contended that *Phoenix International* is distinguishable upon its facts, and reliance was placed upon the decision of a coordinate Bench of this Tribunal in *Final Order Nos. 40569 to 40572 of 2026 dated 4 May 2026 in Subash Iyappan and others v. Commissioner of Customs, Chennai*, to contend that Rule 2(a) of the GRI was inapplicable. We have taken those submissions on record and have considered them.

9. We have heard the rival submissions at length and have carefully perused the material available on record.

10. The following issues arise for our determination, namely,

(i) Whether the two consignments imported under Bill of Entry No. 401210 dated 8 December 2006 at Tuticorin and Bill of Entry No. 354469 dated 11 December 2006 at Chennai, filed by ostensibly distinct entities, could be clubbed and reclassified as a complete motorcycle under CTH 8711 50 00 by invoking Rule 2(a) of the General Rules for Interpretation?

(ii) Whether rejection of the declared transaction value under Rule 10A of the Customs Valuation Rules, 1988 and its consequent redetermination under Rule 8 was tenable?

(iii) Whether duty could be demanded jointly and severally from the Appellant and Jayakanth as has been done in respect of the import at Tuticorin?

(iv) Whether the goods were liable to confiscation under Sections 111(d) and 111(m) and whether redemption fine was rightly imposed?

(v) Whether the penalties imposed upon the Appellant under Section 114AA are sustainable? and

(vi) A subsidiary but pervasive question, which we take up in the course of the first issue because it governs the evidence available upon every issue, is the effect of the admitted non

compliance with Section 138B of the Act upon the statements recorded under Section 108.

11. A brief recapitulation is apposite. The investigation disclosed that the Tuticorin Bill of Entry was filed in the name of M/s.J. P. Connection. Statements were recorded under Section 108 from the Appellant, from Jayakanth and from Venkatesh, and none was retracted. The goods were thereafter physically examined. The Chennai consignment was found to contain substantially all the parts of the motorcycle except the engine and the chassis, and to bear the number plate FZ 9128Z. The Tuticorin consignment was found to contain the engine and the chassis. The manufacturer's markings upon the two corresponded. The Automobile Association of Southern India, upon joint inspection, found that the two consignments together constituted one Suzuki GSX 1300 R motorcycle.

12. Adverting to the first issue, we do not have a scintilla of doubt that the grundnorm of the applicability of Rule 2(a) is whether the goods, as presented, possess the essential character of the complete article. In *Commissioner of Customs, New Delhi v. Sony India Ltd., 2008 (231) E.L.T. 385 (S.C.)*, where the imports had taken place over twenty two months in ninety four lots in containers holding different parts sourced from different countries, the Hon'ble Supreme Court held that Rule 2(a) would apply only if all the components intended to make the final product were presented at the same time for customs clearance. The Apex Court reiterated the settled position that goods are to be assessed in the form in which they are imported and presented to customs, and not on the basis of the finished goods manufactured after subjecting them to some process following import. We have no quarrel whatsoever with that principle, namely that classification normally follows the goods as presented and is not to be built upon an artificial aggregation across consignments. It is that principle which stood reiterated by the coordinate Bench of this Tribunal in *Subash Iyappan*.

13. The present case, however, rests upon materially different facts. There are only two consignments. They were imported within four days of each other, albeit at two different Custom House stations. They originated from the same overseas supplier, M/s Mezzo International, Singapore. One contained the engine and the chassis. The other contained substantially all the remaining components. The

manufacturer's markings corresponded. Physical examination by approved Chartered Engineers, taken with the joint inspection report of the Association, established that the two consignments together constituted one Suzuki GSX 1300 R motorcycle. It is in this setting that the decision of the Apex Court in *Commissioner of Customs, New Delhi v. Phoenix International, 2007 (9) T.M.I. 275 (S.C.)* becomes relevant, for there the Apex Court held that split consignments may be clubbed and treated according to their true composite character. The attendant arrangement in that case, being a common supplier, a common signatory, interest free funding and along with the admissions on record, established that the formal bifurcation was a subterfuge to bypass a restriction and to evade duty. The Apex Court held that the intention behind the import plays an important role and found that the entire bifurcation had been arranged in order to circumvent the restriction imposed by paragraph 156(A) of the EXIM policy. It was further held that the true nature of the transaction prevailed over the formal invoicing, and went on to identify the party there before it, M/s. PIL, as the real importer.

14. Here too the facts establish a direct and contemporaneous correlation between the two consignments. The Licensing Note to Chapter 87 treats as a second hand vehicle one which has been registered for use in any country before its importation into India. Upon physical examination the Chennai consignment was found to bear the number plate FZ 9128Z. That number plate is physical evidence found upon the goods themselves. It does not depend upon any statement recorded under Section 108. Its presence bears directly upon the question whether the motorcycle had previously been registered for use outside India. Read with the physical examination and the matching manufacturer's markings, it supports the conclusion that the goods represented a previously registered motorcycle imported in dismantled form. The declaration of the goods merely as spare parts could not, in these circumstances, defeat the licensing requirements applicable to the vehicle, and the finding of contravention of the applicable import restriction is sustainable.

15. This is therefore not a case of unrelated components imported over a long period and subsequently brought together by the Department. It is a case of two consignments originating from the same supplier which, upon physical examination, were found to constitute one

motorcycle with matching manufacturer's markings, neither consignment being of any use whatsoever without the other. We have arrived at that conclusion upon those facts alone, and we come presently to the reasons which have led us to leave the statements recorded under Section 108 entirely out of account.

16. There remains the submission of the learned Counsel that the failure to adhere to the procedure prescribed by Section 138B of the Act vitiates the evidentiary value of the statements recorded under Section 108. On a query from the Bench, learned Counsel fairly conceded that no request for cross examination of any person was made at any stage before the Adjudicating Authority, that none of the statements was retracted, and that the voluntariness of the Appellant's own statements dated 10 January 2007 and 29 January 2007 was not impugned, whether in the reply to the show cause notice or in the adjudication proceedings or before us in the grounds of appeal. It is nonetheless common ground that the procedure contemplated by Section 138B was not followed at all in respect of any deponent. Where the case rests upon the statements of witnesses whom the noticee has asked to confront and has not been permitted to confront, the resulting order is a nullity for breach of natural justice, as the Apex Court held in *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata II, 2017 (50) S.T.R. 93 (S.C.)*. The High Court of Gujarat, in *Mitesh Impex v. Union of India, (2026) 38 Centax 43 (Guj.)*, has more recently held that unless an opportunity of cross examination is given to the assessee against whom the statement of a witness is proposed to be used, that statement is inadmissible under Section 138B. A coordinate bench of this Tribunal has examined the scope of Sections 108 and 138B, and of the corresponding Sections 14 and 9D of the Central Excise Act, 1944, in *Geetham Steels Pvt. Ltd. v. Commissioner of GST and Central Excise, Salem, 2025 (3) T.M.I. 1098 (CESTAT, Chennai)*.

17. We are, however, unable to accept the submission in the wider form in which it was pressed, namely that a statement recorded under Section 108 is denuded of all substantive evidentiary worth for want of compliance with Section 138B, and that non retraction is of no consequence whatever. Stated so absolutely, the proposition cannot be reconciled with binding authority. In *Assistant Collector of Central Excise, Rajahmundry v. Duncan Agro Industries Ltd., 2000 (120)*

*E.L.T. 280 (S.C.)*, the Apex Court held that a statement recorded by customs officers under Section 108 is admissible in evidence, and that the enquiry open to the court is whether the inculpating portion was made voluntarily or stands vitiated by one of the premises enumerated in Section 24 of the Indian Evidence Act, 1872. That position was restated, after a survey of the precedent from *Barkat Ram* and *Romesh Chandra Mehta* to *K.I. Pavunny* and *Padam Narain Aggarwal*, in *Commissioner of Customs (Imports), Mumbai v. Ganpati Overseas, 2023 (386) E.L.T. 802 (S.C.)*, where the Apex Court held at paragraph 28 that a statement made under Section 108 before the concerned customs officer is admissible in evidence and can be used against such a person, and that it is for the adjudicating authority, exercising quasi judicial power, to find out whether there was any duress or coercion in the recording of it. The reconciliation of that position with Section 138B lies, as we shall show, not in denying admissibility but in identifying with precision what it is that Section 138B withholds.

18. The error in the submission, and equally in the manner in which the Adjudicating Authority approached the matter, lies in treating admissibility and relevancy as one and the same thing. They are not. More often than not the two expressions are used as synonyms, but their legal implications are distinct and different, as the Apex Court explained at paragraph 6 of *Ram Bihari Yadav v. State of Bihar, (1998) 4 S.C.C. 517*, a passage this Tribunal has noticed in *Geetham Steels*. Facts which are relevant may not be admissible, communications between spouses during marriage or between an advocate and his client being the illustrations the Apex Court gave. Facts which are admissible may equally be irrelevant, the illustration there being questions permitted in cross examination to test veracity or impeach credit. The probative value of evidence, the Apex Court added, is the weight to be given to it, which has to be judged having regard to the facts and circumstances of each case. Admissibility therefore asks whether the law permits this species of material to be received at all. Relevancy asks whether, being received, it may be used to prove the particular fact in issue. Probative value asks what weight it then carries. Anterior to all three stands Section 24 of the Evidence Act, which withdraws an involuntary confession from the field altogether by declaring it irrelevant. The strict letter of the Evidence Act does not govern an adjudication under the Customs Act,

but its principles are attracted and an adjudicating authority is obliged to adhere to them, as the High Court of Calcutta held in *Sampad Narayan Mukherjee v. Union of India, 2019 (366) E.L.T. 280 (Cal.)*.

19. Applied to a statement recorded under Section 108, the distinction yields the following understanding. The statement is admissible, because the officer who records it is not a police officer and the bar in Sections 25 and 26 of the Evidence Act is therefore not attracted, and because the person summoned does not stand in the character of an accused. That much *Duncan Agro* and *Ganpati Overseas* settle. Admissibility, however, is not acceptability, as the jurisdictional High Court put it in *Commissioner of Customs (Imports), Chennai I v. Sainul Abideen Neelam, 2014 (300) E.L.T. 342 (Mad.)*. Whether the statement may be used to prove the truth of the facts it contains is a separate question, and it is precisely that question which Section 138B addresses. The section is headed "Relevancy of statements under certain circumstances", and the operative words of sub section (1) are that such a statement shall be relevant for the purpose of proving the truth of the facts which it contains only in the circumstances the section specifies. Section 138B is thus a rule of relevancy and not a rule of admissibility. Noncompliance with it does not render a Section 108 statement inadmissible. It withholds from that statement the character of substantive proof of its contents. The two consequences are different and the difference matters, because a statement that is admissible but not relevant to prove its contents may still be used for purposes for which relevancy under Section 138B is not required, such as to contradict its maker, or to test his credit.

20. Since the point recurs before us with some frequency, and since the impugned order discloses a complete unawareness of it, we think it useful to set out what the section requires. Sub section (1) of Section 138B provides that a statement made and signed by a person before any gazetted officer of customs during the course of any inquiry or proceeding under the Act shall be relevant, for the purpose of proving the truth of the facts which it contains, in two situations and in two only. Clause (a) covers the case where the maker 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 is in the circumstances unreasonable. Clause (b) covers the case where the maker is examined as a witness in the case and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interests of justice. Sub section (2) then provides that sub-section (1) shall, so far as may be, apply in relation to any proceeding under the Act other than a proceeding before a court, as it applies in relation to a proceeding before a court. It is sub-section (2) which carries the section into adjudication and substitutes the adjudicating authority for the court. That is the construction placed upon the corresponding Section 9D(2) of the Central Excise Act, 1944 by the High Court of Delhi in *J.K. Cigarettes Ltd. v. Commissioner of Central Excise, 2009 (242) E.L.T. 189 (Del.)*, a decision this Tribunal has followed in *Geetham Steels* upon noticing that Sections 14 and 9D of that Act are in *pari materia* with Sections 108 and 138B of the Customs Act.

21. The procedure which follows is sequential, and each step is a condition of the next. Where the Department seeks to bring the case within clause (a), it must first adduce evidence before the adjudicating authority of the existence of the circumstance relied upon, and the authority must record a finding, supported by reasons, that the circumstance is established, after affording the affected party an opportunity of making submissions upon the material on which it proposes to act. It is not open to the authority to assume the circumstance or merely to assert it. Where, as is ordinarily the case, clause (a) is not attracted, clause (b) comes into operation and it operates in two stages, as the High Court of Punjab and Haryana explained in *Ambika International v. Union of India, 2018 (361) E.L.T. 90 (P&H)*. At the first stage the maker must be summoned and examined in chief as a witness before the adjudicating authority, an exercise which extends, where the factum of recording is in question, to the deposition of the gazetted officer before whom the statement was given, that being the mode of proving the recording. At the second stage the adjudicating authority must apply its mind and form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice, and must record that opinion with reasons. The stage of relevance arises only after the statement has been so admitted. Thereafter, if the deposition is to the detriment of the noticee and the

noticee asks for it, the witness must be offered for cross examination. This Tribunal has held in *Geetham Steels* that cross examination is not an imperative in every case, since it does not arise where clause (a) applies, nor where the authority upon examination finds the witness to have resiled and treats him as hostile, and since the right is one to be asserted by the noticee and not thrust upon him. The jurisdictional High Court has taken the same view in *K. Sugumar v. Commissioner of Customs (Preventive), 2021 (10) T.M.I. 1411 (Mad.)*, holding that there is no inflexible rule and that the answer turns upon the factual matrix, the request in that case having been specific and repeated. What is not dispensable, however, is the examination in chief and the recorded opinion, for these are the only means by which an authority can perform the function the section assigns to it. That is the very reason why this Tribunal held in *Geetham Steels* that Section 9D(2), read with Section 9D(1)(b), leads to the inexorable conclusion that the adjudicating authority must itself conduct an examination in chief of the deponent, so as to determine the voluntary character of the statement, to test the truth of its contents, to ascertain whether the witness stands by it or has resiled, and only then to decide whether to act upon it. The requirement has been held to be mandatory, in *Ambika International*, and by the Principal Bench in *Surya Wires Pvt. Ltd. v. Principal Commissioner, CGST, Raipur, 2025 (4) T.M.I. 441 (CESTAT, New Delhi)* and failure to comply with it to was held to mean that no reliance can be placed upon the statement. The same obligation was restated by the Bench at Mumbai in *Moti Bhatia*, where statements and electronic material that had not been subjected to Section 138B and 138C were held liable to be discarded from the proceedings.

22. One recent decision must be noticed, since it takes a different view of the reach of the section. The High Court of Karnataka in *Commissioner of Customs, Bangalore v. Jyothi C. Jain, 2025 (9) T.M.I. 1225*, decided on 13 August 2025, read Section 138B as confined by its language to prosecutions for offences under the Act, and held that the Tribunal had erred in invoking it in adjudication proceedings, cross examination being owed only where the statement of a witness has been recorded, is proposed to be relied upon against the assessee, and is asked for. With great respect, we are unable to adopt the first of those propositions. It proceeds upon sub-section (1) alone, and sub-section (2) is the whole answer to it, for that sub-

section applies sub-section (1) to proceedings under the Act other than proceedings before a court. The import of the phrase "so far as may be" in sub-section (2) has been dealt with in *Geetham Steels*. The second proposition we respectfully accept, and it accords both with what we have said above and with *K. Sugumar*. We should add that in *Additional Director General (Adjudication), Directorate of Revenue Intelligence v. Suresh Kumar and Co. Impex Pvt. Ltd., 2025 INSC 1050, decided on 29 August 2025*, the Apex Court, while deciding that matter upon Section 138C(4), left the evidentiary value of Section 108 statements in other proceedings to be considered in accordance with law, including the compliance of Section 138B, and thereby left the requirement of complying with Section 138 B intact.

23. It follows that a statement recorded under Section 108 attains the character of substantive evidence of the truth of its contents in one of two situations and not otherwise. The first is where the conditions in clause (a) of Section 138B(1) obtain and are proved to obtain. The second is where the procedure in clause (b) is gone through in the manner just described. In either situation the statement must additionally survive the test of voluntariness, failing which it is rendered irrelevant however faithfully the procedural conditions may have been observed, and is the imperative stated by the Apex Court in *Ganapati Overseas* when cautioning that "*It is axiomatic that when a statement is admissible as a piece of evidence, the same has to conform to minimum judicial standards*." Outside these two situations the statement remains upon the record as an admissible document, but it cannot be made the foundation of a finding. To hold otherwise would be to permit the incongruity we cautioned against in *Geetham Steels*, of a statement being used as evidence to prove itself, its contents being presumed relevant because the document is admissible, and the document being received because its contents are assumed to be relevant.

24. We turn to why the ascertainment of voluntariness is not a formality but the pivot upon which the whole edifice rests. The justification for receiving a Section 108 statement at all is statutory and it is narrow. Sub section (3) of Section 108 binds the person summoned to state the truth, and sub section (4) deems the enquiry to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. The law receives the statement because the law has

commanded its maker to speak truthfully and has attached penal consequences to his speaking falsely. Where the statement is procured by inducement, threat, coercion or promise, that premise collapses. What is then recorded is not the truth elicited under a statutory command but the answer the officer desired, and the document proves nothing beyond the circumstances of its own making. This is why the Apex Court in *Ganpati Overseas*, having held the statement admissible, immediately added that the adjudicating authority bears the onerous responsibility of finding out whether there was any duress or coercion in recording such a statement. There is thus no gainsaying that a statement so recorded must meet the standard of basic judicial principles and natural justice, that a statement recorded under duress or coercion cannot be used against its maker, and that it is for the adjudicating authority to find out whether there was any duress or coercion, since it exercises quasi-judicial power. The sequence is that prescribed by the three Judge Bench in *K.I. Pavunny v. Assistant Collector, 1997 (90) E.L.T. 241 (S.C.),* which this Tribunal has noticed in *Geetham Steels*, namely that the authority must first satisfy itself that the statement is voluntary, must then satisfy itself that it is true, and may only thereafter act upon the inculpatory portion, prudence in the meanwhile counselling the comfort of corroboration. Seen in this light the procedure under Section 138B is no technicality at all. The examination in chief which the section commands is the very machinery by which an adjudicating authority is enabled to test voluntariness and truth, and the rationale the courts have assigned to the section, that a statement recorded during investigation by a departmental officer has every chance of having been recorded under coercion or compulsion and that the statutory procedure exists to neutralise that possibility, is the same rationale that underlies the enquiry into voluntariness. The burden in this behalf is not upon the noticee. *Vinod Solanki v. Union of India, 2009 (233) E.L.T. 157 (S.C.)* places the initial burden of establishing that a confession was voluntary upon the Department, and holds that the attending circumstances, the time of retraction and the nature and manner of it are all to be weighed.

25. A further distinction that needs elaboration remains and it is upon which we have reflected with some care. It might be thought that Section 138B being in its entire conception a rule about witnesses,

has no application to the statement of the noticee himself. Examination in chief before the adjudicating authority, the forming of an opinion upon admission in the interests of justice, and the tender of the deponent for cross examination, would all appear to presuppose a maker who is someone other than the person against whom the statement is to be used and it might be said that a party can neither be a witness against himself nor cross examine himself. We are unable to adopt that view. The premise upon such a distinction would have to rest is that the maker, being the person proceeded against, cannot be summoned and examined at all. That premise is unsound. A person who makes a statement under Section 108 is not an accused. When an enquiry is being conducted under Section 108 and a statement is given by the person against whom the enquiry is being held, it is not a statement made by a person accused of an offence, and the person giving it does not stand in the character of an accused. That was laid down by the Constitution Bench in *Romesh Chandra Mehta v State of West Bengal, 1999 (110) ELT 324 (SC)* and was followed in *Percy Rustomji Basta v State of Maharashtra, 1983 (13) ELT 1443 (SC)*, and *in Veera Ibrahim v State of Maharashtra, 1983 (13) ELT 1590 (SC)*, all of which the Apex Court has noticed in *Duncan Agro*. and restated in *Ganapati Overseas* at paragraph 28.

26. It follows that Article 20(3) of the Constitution, which protects a person accused of an offence against compulsion to be a witness against himself, is not attracted, whether at the stage of the enquiry under Section 108 or when an adjudicating authority, in a quasi-judicial proceeding, summons the maker and examines him upon the statement he has given. Section 108(3) commands him to state the truth and does not excuse him upon the ground that what he says may be used against him, and Section 108(4) deems the enquiry to be a judicial proceeding. There is therefore no bar, constitutional or statutory, upon an adjudicating authority summoning the noticee and examining him in chief upon his own statement, including for the very purpose of ascertaining whether that statement was voluntary. Far from being disabled from doing so, the authority has the maker readily at hand, for the noticee is before it in the proceedings. The right of cross examination in this setting does not belong exclusively to the party against whom the statement is used. It belongs equally to the Department which seeks to rely upon the statement and which

carries the burden, placed upon the Department by *Vinod Solanki*, of establishing that it was made voluntarily. Where a noticee, upon being examined in chief, resiles from, qualifies or explains away what he has earlier stated, the Authorised Representative is entitled to cross examine him upon the explanation, in the same manner in which a party is permitted, under Section 154 of the Indian Evidence Act, 1872, to put questions in the nature of cross examination to its own witness who turns hostile. We accordingly hold that both limbs of Section 138 (1)(b), the examination in chief, and as and when the occasion for it arises, the opportunity of cross examination, apply with equal force to the noticee's own statement, exactly as they apply to the statement of any other deponent. On the facts before us, however, the occasion for cross examination did not arise, since it stands conceded, as we have recorded, that the Appellant never resiled from or sought to explain away either of his statements at any stage. What was consequently wanting, and wanting in full, is the mandatory core itself, namely the examination in chief and the recorded opinion.

27. The consequence is that the statements of the Appellant, of Jayakanth and of Venkatesh alike fail to acquire the character of substantive proof of the truth of their contents, and we exclude the whole of that material from consideration in arriving at our findings upon every issue in this appeal. The statements do not thereby vanish. They remain admissible documents upon the record, available to contradict their makers or to test credit should occasion arise. What they cannot do is be the basis for a finding. Nor can the want of the statutory procedure be supplied by the circumstance, upon which the Revenue laid emphasis, that none of the statements was retracted. Non retraction proves nothing by itself. It is not a substitute for the conditions of relevancy which the section prescribes, and it cannot convert a statement that has not been tested into proof of what it asserts. Its purpose is confined. It is one of the circumstances from which an adjudicating authority, had it embarked upon the enquiry which the section requires, might have concluded that a statement was voluntary and that its maker stood by it. It cannot dispense with the enquiry itself. So, too, with the further circumstances that the Appellant reaffirmed his earlier statement on 29 January 2007 and did not dispute its contents in his reply to the show cause notice, circumstances which the Apex Court

treated as significant in *Suresh Kumar and Co. Impex*. They go to voluntariness, upon which nothing turns once the statements are excluded for want of relevancy.

28. The impugned order is woefully found wanting on this aspect. The Adjudicating Authority relied upon all three statements without summoning any deponent, without examining any of them in chief, without recording any opinion under Section 138B(1)(b), and indeed without adverting to the provision at all. Nor did it address itself, as *Ganpati Overseas* requires of a quasi-judicial authority, to the voluntariness of the statements upon which it chose to act. The omission is the less excusable because no impediment whatever stood in the Authority's way. A provision which conditions the very relevancy of the material relied upon is not a formality to be passed over in silence, and the duty to satisfy oneself that a statement was voluntary is not discharged by assuming that it was. The default was wholly avoidable, and it has exposed an otherwise well investigated case to an attack which the Authority could have avoided by taking the few steps the section prescribes. We say no more than that the omission ought not to recur.

29 The consequence of the exclusion is, however, confined. We have taken care, in arriving at our conclusion upon the first issue, not to rest it upon any statement recorded under Section 108, whether of the Appellant or of anyone else. The finding of a single composite import is established independently by the two Bills of Entry and the proximity of four days between them, by the common overseas supplier, by the physical composition of the two consignments, the one carrying the engine and chassis and the other substantially all the remaining components, by the matching of the manufacturer's markings across both, by the reports of the approved Chartered Engineers, by the joint inspection report of the Automobile Association of Southern India, and by the number plate found upon the goods themselves. These are objective facts, ascertained upon examination of the goods, and they owe nothing to the admissibility or the relevancy of any statement. Excluding the statements altogether, as we have done, our conclusion remains the same.

30. We return to the first issue, and to an apparent difficulty which must be addressed rather than passed over. *Sony India* states the requirement of simultaneous presentation in terms which, read in

isolation, would appear to foreclose any clubbing of consignments presented at different times and at different ports. *Phoenix International*, decided earlier, permits precisely such clubbing where the separation is shown to be contrived. The two decisions are not in conflict, because they answer different questions. Sony India answers the question how goods that have been presented are to be classified, and holds that the classifier must take them in the state in which they were in fact presented and must not construct a complete article out of what was not. *Phoenix International* answers the anterior question, namely what has in truth been presented, and holds that where the Department establishes that one composite import was split into separate consignments as a device to escape duty or a restriction, the true character of the transaction prevails over its formal division. Once that anterior question is answered, the rule in *Sony India* operates upon the transaction as it truly is, and not upon the form which the importer has given it. So understood, *Sony India* governs the ordinary case and *Phoenix International* governs the case of subterfuge. *Sony India* itself was a case of ninety four lots across twenty two months from different countries, in which no subterfuge was alleged, and *Subash Iyappan* was a case of the same description. The same anti circumvention principle appears in the passage from *Girdharilal Bansidhar v. Union of India, A.I.R. 1964 S.C. 1519* set out in *Mittal Impex*, where the Apex Court declined to accede to the position that importers may be permitted to do indirectly what they are forbidden to do directly.

31. The Appellant has placed reliance upon Mittal Impex. It is apposite to notice the following paragraphs from that decision.

> "6.8 learned counsel for appellant also raised the point that Goods imported separately cannot be clubbed together as discussed in the following cases. The Tribunal in the case of *P.R. Trivedi v. CC*, 2005 (192) E.L.T. 801 (Tri. Bom) held that if the goods are imported and presented by different importers they cannot be allowed to be treated as complete car cassette player. Even if they are imported by the same importer but in different consignments, they still do not become complete article since they are not presented together as a complete article in CKD condition as was also held by the Hon'ble Supreme Court in the case of *C.C., Delhi v. Sony India,* 2008 (231) E.L.T. 385 (S.C.).
>
> 6.9 But we simultaneously observe that the core dispute as to whether the different parts imported under more than two or several Bills of Entry

spread over certain period can be combined together for the purpose of assessment by applying Rule 2(a) of the Interpretative Rules, has been considered by the Hon'ble Apex Court in the case of Girdharilal Bansidhar v. Union of India, A.I.R. 1964 S.C. 1519 wherein the Apex Court observed as follows,

> "..... We cannot accede to the position that it is the intention of the rule that importers are permitted to do indirectly what they are forbidden to do directly, and that it permits the importation separately of components which have no use other than as components of an article whose importation is prohibited, and that an importer is thereby enabled to assemble them here as a complete article though if they were assembled beyond the Customs Frontiers the importation of the assembled article into India is prohibited."

6.10 **This decision when read with the decisions discussed above, we hold that the ultimate requirement for invoking Rule 2(a) of GRI is that the goods imported during the proximate time should include such number of parts as are sufficient to consider the goods as the complete article, as different from being mere parts**."

**(emphasis supplied)**

32. Mittal Impex is therefore of no assistance to the Appellant. The test which that decision formulates at paragraph 6.10 has two elements, namely that the goods be imported during a proximate time, and that they include such number of parts as are sufficient to constitute the complete article rather than mere parts. Both elements are satisfied upon the facts before us. The two Bills of Entry are separated by four days, which is proximity of the closest kind. The two consignments between them contained every part of the motorcycle, as the approved Chartered Engineers and the Association found upon examination. We are of the firm opinion that the true character of a transaction cannot be defeated by a formal division of one composite import into separate Bills of Entry, where the evidence establishes that the division was intended to avoid the duty and the restrictions applicable to the article in fact imported.

33. The remaining decisions cited for the Appellant do not carry the matter further. *Moti Bhatia* is in truth an authority against the Appellant upon the point that matters here. The Bench at Mumbai set aside the demand in that case because the goods had never been inventorised or examined, so that no one could say what the consignments had in fact contained, and it held that to presume that

the present was the past is neither logical nor legal. The very evidence whose absence was fatal there is present here in full measure, the goods of both consignments having been examined by approved Chartered Engineers and thereafter jointly inspected, with the result recorded in writing. *Baba Baidyanath Trading Company* turned upon a finding that the importers had not imported many vital and essential parts without which a finished tricycle could not come into existence, so that what was imported remained parts and nothing more, and upon the genuine commercial separateness of a manufacturer and a trader dealing with each other at arm's length. Neither feature is present here, where the two consignments between them lacked nothing and where neither was of the least use without the other. *Tarachand Gupta* and *Award Electronics* likewise proceeded upon the absence of any finding of subterfuge or mis declaration and upon the basis of bona fide, unconnected imports of parts. *Dunlop India* states the principle of classification upon the goods as presented, which we have accepted and applied in the manner explained above. None of these decisions displaces the ratio of *Phoenix International* as applied by us. Accordingly, we uphold the reclassification of the goods under CTH 8711 50 00 by clubbing the two Bills of Entry, and the first issue is answered against the Appellant.

34. Addressing the second issue of valuation, it is seen that the declared invoices were not accepted by the Department, which found them to have been solicited and not reflective of the true value. We must at once put aside the Appellant's admission under Section 108 that the invoices were solicited, that material having been excluded for the reasons already given, and ask whether the rejection can stand without. We hold that it can, and upon a ground that is independent of any statement. The goods here were declared as assorted spare parts of motorcycles falling under Chapter Heading 8714. Upon our finding on the first issue, which rests upon physical examination alone, the goods in truth imported were the dismantled parts of one previously registered Suzuki GSX 1300 R motorcycle, classifiable as a motorcycle under CTH 8711 50 00. The values of US$ 6,400, US$ 2,850 and US$ 1,312 were therefore declared for goods other than the goods imported, and cannot represent the transaction value of the article that was in fact presented for clearance. A price declared for a thing not imported furnishes no basis for assessment of the

thing that was. That alone is reason to doubt the truth and accuracy of the declared value, and the rejection of the declared transaction value under Rule 10A of the Customs Valuation Rules, 1988 is accordingly sustained. We may add that this conclusion is consistent with *Ganpati Overseas,* where the Apex Court held that undervaluation has to be proved by evidence or information about comparable imports, and declined to sustain a rejection of the invoice price which rested upon statements unsupported by such material. Here the rejection is not on the basis of any statement but upon the established nonconformity between the goods declared and the goods imported.

35. Once the declared value stood rejected, the statutory sequence had to be followed. Rules 5 and 6 concern identical and similar goods. Rules 7 and 7A provide for the deductive and the computed value. Rule 8 is the residual provision. The record discloses no reliable and quantifiable contemporaneous data for identical or similar goods, and no sufficient material upon which Rules 7 and 7A could be applied. Valuation was therefore required to be undertaken under Rule 8. That rule does not authorise an arbitrary value, and the value arrived at must rest upon reasonable means consistent with Section 14 and with the Valuation Rules. Such material exists here. The Automobile Association of Southern India, by its letter dated 27 April 2007, appraised the Chennai consignment at Rs. 2,75,000/- upon examination of those goods. The approved Chartered Engineer, by his report dated 11 May 2007, assessed the C&F value of the Tuticorin consignment at SGD 14,760 upon examination of those goods. The joint inspection report dated 7 June 2007, by which the Association confirmed that the two consignments together constituted one motorcycle, establishes the identity of what was being valued. Each of these assessments proceeded upon the goods physically examined, and together they provide relevant material for a determination under Rule 8. In the absence of contemporaneous import data for identical or similar goods, recourse to Rule 8 upon the basis of these reports cannot be faulted. The redetermined values of Rs. 4,37,938/- for Tuticorin and Rs. 2,75,000/- for Chennai, and the consequent differential duty demands of Rs. 6,33,716/- and Rs. 4,01,917/- with applicable interest, are accordingly sustained. The second issue is answered against the Appellant.

36. We now deal with the third issue of the demand of duty made jointly and severally. Upon this issue the submissions of the learned Counsel are, in substantial measure, well founded. Duty under Section 28(1) of the Act is recoverable from the importer of the goods. We accept, as counsel urged upon the authority of *Consolidated Coffee Ltd*., that the definite article is not idle. Where Parliament writes the importer and not an importer or any importer, it points to a single ascertained person, and the liability it creates is that person's liability and no one else's. This Bench said as much in *Commissioner of Customs, Chennai v. Unik Traders, Final Order No. 40775 of 2025 dated 21 July 2025*, holding that duty can be demanded only from a person liable to pay the duty as per law and that the question of demanding duty jointly or severally does not arise unless it can be shown that the goods have been imported jointly. The Principal Bench held to like effect in *Rimjhim Ispat Ltd*., where a demand confirmed jointly and severally against two legal entities was set aside because individual liability had not been segregated, and the Bench at Kolkata in *Baba Baidyanath Trading Company* held that there is no provision for a joint and several demand of duty, penalty or redemption fine from two separate importers. The goods here were not imported jointly. They were, upon our finding, one import made by one person. It follows that the direction in the impugned order that the duty upon the Tuticorin consignment be paid jointly and severally by the Appellant and by Jayakanth cannot be sustained, and it is set aside.

37. Now what consequences might that entail? It does not follow that the demand itself must fall, nor that the matter must go back for a fresh determination of the person liable. The vice in the impugned order is that it named two persons where the statute contemplates one. That vice is cured by identifying the one, and neither principle nor authority disables us from doing so upon a record which permits the identification to be made. The Principal Bench in *Rimjhim Ispat Ltd*. did indeed remand, but it did so because the demand there had to be apportioned between two genuine manufacturing units, the one making ingots and the other flats, an exercise upon quantities which that Bench could not undertake for itself. Here there is nothing whatever to apportion. There is one import, one article and one duty. Nor does that decision stand in the way upon principle. In that case, Revenue had relied upon *Calcutta Chromotype Ltd. v. Collector of Central Excise, Calcutta, 1998 (99) E.L.T. 202 (S.C.)*, and the

Principal Bench distinguished it upon the footing that the issue there was one of related persons and that paragraph 14 of that judgment had not dealt with the confirmation of a demand jointly and severally against two persons. That is a true distinction so far as it goes. But the Principal Bench was careful to record clearly that the matter before it did not relate to the lifting of the veil, about which, it said, there could be no doubt. The doctrine was therefore not doubted at all. It was held inapplicable to a case of two real producers of two different commodities, which is not the case before us.

38. Ld. Counsel would argue that in any event, the importer can only be the person named in the Bill of Entry, which for the Tuticorin consignment was M/s J.P. Connection. The definition in the Act is against him. At the material time Section 2(26) defined importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, as including any owner or any person holding himself out to be the importer. The words beneficial owner were inserted only by the Finance Act, 2017 and do not govern these imports of December 2006, and we do not rely on it. It is enough that the unamended definition reached any owner. Ownership is a question of fact and is not concluded by the name entered in a Bill of Entry. The identification of the single person whom Section 28 contemplates must therefore be made upon the substance of the transaction. In *Unik Traders* this Bench pointed out that it does not matter if the importer entrusts the responsibility of paying duty to somebody else, the liability in law resting with the importer, and the same reasoning requires that where a Bill of Entry is filed in the name of a person who is not the owner, the owner is not displaced as the importer.

39. We find that the doctrine laid down in *Calcutta Chromotype* is directly on point. The Hon'ble Apex Court there approved the statement that the corporate veil may be lifted where a statute itself contemplates the lifting of the veil, or where entities are so inextricably connected as to be in reality part of one concern, adding that it is neither necessary nor desirable to enumerate the classes of case in which the course is permissible. Drawing upon *McDowell and Company Ltd. v. Commercial Tax Officer*, *(1985) 3 SCC 230 : (1985) 154 ITR 148*, the Apex Court went on to hold that tax planning may be legitimate provided it is within the framework of law, that colourable devices

cannot be part of tax planning, and that dubious methods resorting to artifice or subterfuge to avoid payment of taxes upon what is really taxable can no longer be applauded and legitimised as a splendid work by a wise man but must be condemned. Most pertinently for the present purpose, the Court held that once the reality behind the form is seen, the further conclusion may be reached by presumption, regard being had to the common course of natural events, human conduct and public and private business, and it expressly referred in that connection to Section 114 of the Evidence Act. These observations guide us in proceeding further.

40. In the present case, what is sought to be defeated is a taxing statute, by the simple expedient of entering one half of a single article in the name of a person who has nothing to do with it. Section 2(26), as it stood allows a search behind the named party. When faced with colourable devices and dubious methods employed to evade tax, the imprimatur granted by the Apex Court in *Calcutta Chromotype* to consider the letter and the spirit of the law together, permit us to look to the substance. M/s J.P. Connection is a proprietary concern. It has no legal personality distinct from Jayakanth, and there is accordingly no veil to lift. What was interposed was not a corporate form but a name and an Importer Exporter Code. If the authorities may look behind the separate personality of a company where that personality is worn as a mask, they may with greater reason look behind a trade name which has no separate personality at all. We therefore identify the importer as a matter of fact upon the definition in the Act, and we take from *Calcutta Chromotype* the principle that the substance of the transaction prevails over its form and the warrant for the presumption we proceed to draw.

41. Upon whom, then, does the liability fall here? We answer that question without recourse to any statement. The Chennai consignment was imported in the name of the Appellant's own proprietary concern and contained every part of a Suzuki GSX 1300 R except the engine and the chassis. The Tuticorin consignment contained the engine and the chassis and nothing that could be used apart from the Chennai goods. Both came from the same overseas supplier within four days. The manufacturer's markings upon the two correspond. The goods in the Tuticorin consignment were, on these facts, of no conceivable value or use to M/s J.P. Connection and of

value and use to the Appellant alone, who held the remainder of the very motorcycle to which they belonged. Regard being had to the common course of natural events and human conduct, and applying the principle underlying Section 114 of the Indian Evidence Act, the inference is irresistible that the Appellant was the owner of the Tuticorin goods and the real importer of both consignments, and that the name of M/s J.P. Connection was lent to the transaction and nothing more. The liability to pay duty upon the Tuticorin consignment accordingly falls upon the Appellant alone, as the importer within the meaning of Section 2(26) read with Section 28. We should add, lest it be thought that we are enlarging the Appellant's liability in his own appeal, that we are doing nothing of the kind. A demand made jointly and severally fastens the whole of the liability upon each person against whom it is made. The Appellant was therefore already answerable for the entirety of the duty upon the Tuticorin consignment, and confining the demand to him does not add a rupee to his burden. What our order does is to relieve Jayakanth of it, and that follows as a corollary of our finding and not as an adjudication upon any claim of his, he not being an appellant before us. His liability under the impugned order is confined to the penal consequences of his having facilitated the import. The third issue is answered accordingly, the Appellant succeeding upon the form of the demand and failing upon its incidence.

42. As regards the fourth issue of liability to confiscation and imposition of redemption fine, it follows from the decision of the Apex Court in *Collector of Customs, Madras v. D. Bhoormull, 1983 (13) E.L.T. 1546 (S.C.)* that the initial burden upon the Department to establish mis declaration is discharged not by proof to a mathematical certainty but by circumstantial evidence sufficient to raise a reasonable inference. The reports of the approved Chartered Engineers, the joint inspection by the Association, the matching markings across both consignments and the number plate found upon the Chennai goods constitute more than sufficient material to discharge that burden, the Appellant's own admissions are merely an added assurance. The onus thereupon shifted to the Appellant to explain the true nature and value of the import, and he has failed to do so. We accordingly uphold the confiscation under Sections 111(d) and 111(m) and the consequent imposition of redemption fine. We have not been apprised whether the goods have been redeemed. In case they are yet to be redeemed,

having regard to the facts and circumstances and to the efflux of nearly two decades since the import, the redemption fine is reduced to Rs. 40,000/- in respect of the goods imported at Chennai and to Rs. 60,000/- in respect of the goods imported at Tuticorin, so as to facilitate such redemption. The fourth issue is answered against the Appellant, subject to that reduction.

43. Last, in so far as the penalties imposed on the Appellant under Section 114AA, a plain reading of the section requires that a person should knowingly or intentionally make, sign or use, or cause to be made, signed or used, a declaration or document which is false or incorrect in any material particular. We have found upon the independent evidence set out above, and upon no statement whatsoever, that the Appellant caused two Bills of Entry to be filed which declared as assorted spare parts what were in truth the dismantled parts of one previously registered motorcycle, and that the splitting of that single article between two ports four days apart, one of the two consignments being entered in the name of a person with no interest in the goods, admits of no explanation consistent with innocence. Knowledge and intention are accordingly established by the conduct itself. That is a factual matrix which distinguishes the present case from *TPV Technology India Ltd.*, where no such falsity was established. The ingredients of Section 114AA are made out. However, in the present circumstances, and having regard to the lapse of time, the penalties imposed under that section are reduced to Rs. 50,000/- each in respect of the import at Chennai and the import at Tuticorin. The fifth issue is answered against the Appellant, subject to that reduction.

44. In view of our aforesaid analysis and discussions, the impugned order stands modified in the above terms and the appeal is accordingly disposed of in the aforesaid terms, with consequential reliefs, in law, if any.

(Order pronounced in open court on 6.10.2026)

**Sd/-**
**(AJAYAN T.V.)**
**MEMBER (JUDICIAL)**

(Separate order)
**(M. AJIT KUMAR)**
**MEMBER (TECHNICAL)**

ra

**Per M. Ajit Kumar**

45. I have had the benefit of going through the order authored by my ld. Brother, Shri T. V. Ajayan, Member (Judicial). I concur with the ultimate conclusion reached by him. I am, however, unable to concur with the reasoning adopted in relation to Section 138B of the Customs Act, 1962 ("**the Act**"), for the following reasons: first, the issue relating to the non-observance of examination-in-chief and cross-examination was not raised in the Appeal Memorandum and second, I am unable to agree with the conclusion that it is a necessary requirement for the adjudicating authority to depose all the deponents by way of examination-in-chief, who have given statement under Section 108, save as those that are unavailable in the scenarios given in 138B(1)(a), before the statements are admitted in evidence. I also find that the issue of jurisdiction of DRI officers to issue notice and record statements as 'proper officers', along with the right of the Common Adjudicating Authority to assess the matter has been raised by the Appellant in the Appeal Memorandum but has not been addressed. Hence, I propose to do the same. I, therefore, record this separate order indicating the limited point of difference. Before briefly recapitulate the principal issue and moving on to a discussion on section 138B, the issue of jurisdiction needs to be addressed.

**Jurisdiction of DRI Officers**

46. A jurisdictional issue must be examined at the threshold. In the present case, the Appellant has challenged the jurisdiction of the DRI officers to issue a show cause notice under Section 28 of the Act and to record statements under Section 108 thereof. This issue, however, is no longer res integra. The Hon'ble Supreme Court, in

**Commissioner of Customs Vs M/s Canon India Pvt. Ltd.** [2024 INSC 854], has held that DRI officers, among others, are proper officers for the purposes of Section 28 and are competent to issue a show cause notice thereunder. As regards the power under Section 108, the provision separately empowers the competent Customs officers to summon persons whose attendance is considered necessary for giving evidence or producing documents or other things. DRI officers being competent officers under the Act can record statements, where necessary for the purpose of the Act. The jurisdictional objection raised by the Appellant is, accordingly, devoid of merit and is rejected.

**Common Adjudicating Authority**

47. The Appellant has also challenged the right of the Common Adjudicating Authority appointed vide CBIC Notification No. 21/2008-Cus, dated 05.03.2008, to club the two clearances for purpose of assessment.

47.1 In **M/s. Kiran Global Chem Ltd. Vs Commissioner of Customs, W.P. No. 18660 of 2018, dated 26.07.2018**, the Madras High Court rejected the challenge to the appointment of a **Common Adjudicating Authority (CAA)** as being without jurisdiction. Referring to **Section 152(a)** and Notification No. 60/2015-Customs (N.T.), the Court held that the powers of the Board under **Sections 4 and 5** could validly be exercised by the Principal Director General, DRI, for appointing specified officers for adjudication. The Court further held that such arrangement did not constitute an impermissible delegation, but a valid exercise of the powers conferred under Sections 4 and 5, and dismissed the petition. Further, in **M/s. Eskay Design Vs. Union of India & Ors.**, **[2026-TIOL-890-HC-MAD-ST, dated**

**06.07.2026]**, the Madras High Court Division Bench upheld Notification No. 22/2014-Service Tax, holding, relying on **National Building Construction Company Ltd. Vs Union of India,** [(2019) 62 GSTR 166], and the Supreme Court's three-Judge Bench review decision in *Canon India* (supra), that the jurisdiction of officers empowered under Chapter V of the Finance Act, 1994 need not be confined to the assessee's local territorial limits and may extend throughout India. The Court further held that plurality of "proper officers" does not create jurisdictional chaos; once a SCN identifies a competent adjudicating authority, that authority should proceed with the SCN to the exclusion of others who may otherwise have jurisdiction. Hence their submission on this ground is also rejected.

**Tribunal cannot make out a case not pleaded by the Appellant**

48. In the present case, as recorded in the order above, the appellant did not request for cross-examination of the makers of the statements before the adjudicating authority, nor was this issue made a ground in the Appeal Memorandum. Consequently, there was no demonstrated prejudice caused to the appellant. Further, an appellate authority adjudicates the case set up by the parties. A contention not raised in the appeal cannot ordinarily be supplied by the Tribunal on behalf of a litigant. This is consistent with the principle of *secundum allegata et probata*, namely, that a party cannot succeed in a case which it has neither pleaded nor sought to establish. In **Union of India Vs K.V. Lakshman** [ CIVIL APPEAL NO. 1374 of 2008 /AIR 2016SC 3139], the Hon'ble Supreme Court examined this issue and after reference to a large number of judgments stated:

> 62. This Court while dealing with an issue in **Kalyan Singh Chouhan v. C.P. Joshi**, AIR 2011 SC 1127, after placing

reliance on a very large number of its earlier judgments including **Messrs. Trojan & Co. v. RM.N.N. Nagappa Chettiar,** AIR 1953 SC 235; **Om Prakash Gupta v. Ranbir B. Goyal**, AIR 2002 SC 665; **Ishwar Dutt v. Land Acquisition Collector & Anr.**, AIR 2005 SC 3165; and **State of Maharashtra v. M/s. Hindustan Construction Company Ltd.**, AIR 2010 SC 1299, held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. **No party can he permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.** It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.

63. In **Bachhaj Nahar Vs Nilima Mandal & Ors**., AIR 2009 SC 1103, this court held that a case not specifically pleaded can be considered by the court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. **In absence of pleadings, the court cannot make out a case not pleaded, suo motu.**"

(emphasis added)

48.1 Hence, an issue which was neither raised by the Appellant in the Appeal Memorandum nor sought to be introduced by way of an amendment thereto could not properly have been examined or adjudicated upon in the final order. Consideration of such an issue, in the absence of any specific plea or ground having been raised in the appeal, also deprives the other side of a fair and effective opportunity to present its views and make submissions on a question of law of critical significance.

48.2 Further, I am, with utmost respect, unable to agree with the reasoning adopted by the learned Member (Judicial) on the

examination of the makers of statement for ascertaining its relevancy as per Section 138B of the Act.

**Factual Matrix and Rule 2(a) of the Interpretative Rules**

49. The principal issue is whether the consignments covered by the Bills of Entry filed at Tuticorin and Chennai were genuinely independent imports, or whether they represented one contemporaneous import of a complete motorcycle deliberately bifurcated into separate consignments to obtain a lower incidence of duty or avoid the applicable import restriction.

49.1 Rule 2(a) of the General Rules of Interpretation (**GRI**), of the Customs Tariff ordinarily requires classification to be arrived at according to the goods as presented for assessment. That principle cannot, however, compel the Department to treat as unrelated two consignments which the evidence establishes to be parts of a single composite import, intentionally split to secure a financial benefit. "Fraud" which is an act of deliberate deception with the design of securing something by taking unfair advantage, vitiates every solemn act. [See: **S.P. Changalvaraya Naidu Vs Jagannath** - 1994 (1) SCC 1 and **Sagamma @ Sythoon Beevi Vs The Settlement Officer Madras High Court -** W.P.No.7857 of 2010 & M.P.No.2 of 2010, DATED 14.08.2019]. The inquiry must therefore address the substance of the transaction and not merely the form in which the goods were presented.

49.2 In **Commissioner of Customs, New Delhi Vs Phoenix International Ltd.** [(2007) 10 SCC 114], the Supreme Court, having regard to the facts and circumstances of the case, did not accept the "as presented" principle under Rule 2(a) as canvassed by the

Appellant. It held that intention plays an important role in matters in which there is an allegation of duty evasion and found that the entire device of bifurcation was arranged in order to bypass the restriction imposed vide para 156(A) of the EXIM Policy. The principle was found not to protect a fictitious bifurcation where related importers bring complementary components under coordinated arrangements to obtain a fiscal advantage. The Court held that such consignments may be clubbed and assessed as complete goods in SKD form. Likewise, in **Sharp Business Machines (P) Ltd. Vs Collector of Customs, Bangalore** [(1991) 1 SCC 154], the Apex Court treated the import of plain paper copiers components imported in four consignments by two companies i.e. M/s. Phoenix International Ltd. and Phoenix Industries Ltd., to circumvent licence restrictions as a "complete fraud on the Import Policy," and held M/s. Phoenix International Ltd. to be the real importer of all the four items and, that in the circumstances, the Department was right in clubbing the four consignments for the purpose of assessment.

49.3 In the present case the evidence discloses that the two consignments arrived within four days of each other from the same overseas supplier. The Tuticorin consignment contained the engine and chassis, while the Chennai consignment contained substantially all the remaining components. The manufacturer's markings corresponded. Physical examination and inspection by the Automobile Association of Southern India established that the components constituted one identified Suzuki GSX 1300 R motorcycle. The foreign number plate recovered from the Chennai consignment furnished further corroboration. These circumstances form a cogent and continuous

chain pointing to deliberate bifurcation of a single import. The transaction must accordingly be assessed as a whole. This is thus not a case of the department retrospectively aggregating genuinely independent consignments. Hence, the Appellant must also bear the legal consequences arising from such blameworthy conduct, in accordance with the provisions of the Act.

49.4 I am in agreement with the ld. Member (Judicial) in this regard.

**Meaning of 'Examination'**

50. Where the allegation is that apparently separate transactions were deliberately and surreptitiously structured so as to confer a financial benefit upon the Appellant at the cost of the exchequer, the knowledge and intention of the persons directly involved in such transactions assume material significance. Such knowledge and intention may be brought on record through the statements of persons having direct knowledge of the transactions, which may constitute relevant and material evidence. Statements recorded under Section 108 of the Customs Act, 1962 may, therefore, possess significant evidentiary value. However, their evidentiary use for establishing the truth of the facts stated therein is subject to the requirements of Section 138B. The manner in which such statements may be admitted and relied upon in adjudication, therefore, requires consideration.

50.1 The order of the ld. Member (Judicial) at para 21 above, holds that the procedure of examination-in-chief must be followed by the adjudicating authority, as per section 138B. The relevant portion of the para is reproduced for contextual reference:

> "21. **The procedure which follows is sequential, and each step is a condition of the next.** Where the Department seeks to bring the case within clause (a), it must first adduce evidence before the adjudicating authority

> of the existence of the circumstance relied upon, and the authority must record a finding, supported by reasons, that the circumstance is established, after affording the affected party an opportunity of making submissions upon the material on which it proposes to act. It is not open to the authority to assume the circumstance or merely to assert it. Where, as is ordinarily the case, clause (a) is not attracted, clause (b) comes into operation and it operates in two stages, as the High Court of Punjab and Haryana explained in Ambika International v. Union of India, 2018 (361) E.L.T. 90 (P&H). At the **first stage** the maker must be summoned and examined in chief as a witness before the adjudicating authority, an exercise which extends, where the factum of recording is in question, to the deposition of the gazetted officer before whom the statement was given, that being the mode of proving the recording. At the **second stage** the adjudicating authority must apply its mind and form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice, and must record that opinion with reasons. The stage of relevance arises only after the statement has been so admitted. **Thereafter**, if the deposition is to the detriment of the noticee and the noticee asks for it, the witness must be offered for cross examination."
>
> (emphasis added)

The examination-in-chief and the recorded opinion, were held indispensable for these are the only means by which an authority can perform the function the section assigns to it. In fact the opening line of the paragraph which states that the procedure is sequential, and each step is a condition of the next, makes the procedure mandatory. Failure to follow the mandatory steps, as per the order of the ld. Member (Judicial), renders the statement inadmissible and disentitles the adjudicating authority from relying upon it. The process of permitting re-examination for clarifying matters in the cross-examination is not made a part of the mandatory process or referred to at all.

50.2 Relevancy, admissibility and probative value are distinct concepts. Admissibility concerns whether the law permits the evidence to be received and considered for the purpose for which it is tendered.

Relevancy denotes the legal connection between a fact and the fact in issue or another relevant fact. Probative value concerns the weight or persuasive force of evidence after it is found legally receivable. In my respectful opinion however, they do not constitute a statutory three-stage process under Section 138B.

50.3 Section 138B(1)(b) of the Customs Act, 1962, provides for the use of a statement made before a Central Excise Officer of gazetted rank, for the purpose of proving the truth of its contents in a prosecution under the Act, subject to the conditions stipulated therein. The relevant provision reads as follows:

> "(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,-
> . . . . . .
> (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**."
>
> (emphasis added)

50.4 Further it is seen that the Customs Act, 1962 is a self-contained statutory code containing its own rules of evidence, presumptions and admissibility, the following sections are noteworthy:

i) **Section 108**: Power to summon persons to give evidence and produce documents.
ii) **Section 123**: Burden of proof in certain cases.
iii) **Section 138B**: Relevancy of statements under certain circumstances.
iv) **Section 138C**: Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence.
v) **Section 139**: Presumption as to documents in certain cases.

This demonstrates that the Customs Act contains its own statutory scheme of evidentiary rules, distinct from that embodied in the Evidence Act. The two enactments therefore operate within their respective fields, with the specific provisions of the Customs Act governing matters expressly dealt with therein.

50.5 The Hon'ble Punjab and Haryana High Court, in **Ambika International Vs Union of India** [2018 (361) E.L.T. 90 (P&H)], after observing that Section138 of the Indian Evidence Act, 1872, prescribes the sequence of examination of witnesses, whereby examination-in-chief precedes cross-examination, which in turn precedes re-examination, interpreted Section 9D of the Central Excise Act, 1944, and laid down a two-stage procedure for admitting such statements in evidence before the adjudicating authority, namely:

> "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."

50.6 It is, however, pertinent to note that the judgment did not examine the expression "so far as may be" occurring in sub-section (2) of Section 9D, which extends the application of the provision to proceedings before an adjudicating authority other than a Court. It also did not prescribe that the maker of the statement be subjected to an examination-in-chief before the statement is found relevant.

50.7 In **Mandvi Cooperative Bank Ltd. Vs Nimesh B. Thakore**, [(2010) 3 SCC 83], the Hon'ble Supreme Court held that an affidavit filed under Section 145 of the Negotiable Instruments Act, 1881 (**NIA**),

serves as examination-in-chief. It further discussed the word "examine" in Section 145(2) of the NIA and stated that, **section 137 of the Evidence Act does not define "examine" to mean and include the three kinds of examination of a witness. It simply defines "examination-in- chief", "cross-examination" and "re-examination". The court may, at its discretion, call a person giving his evidence on affidavit and examine him as to the facts contained therein.** Accordingly, when the deponent is summoned at the accused's request under Section 145(2), the deponent may be cross-examined on the affidavit without repeating the examination-in-chief. The Court rejected the argument that a fresh deposition is necessary to challenge hearsay or irrelevant material, holding that affidavit evidence remains subject to the rules of admissibility and that specific objections must be decided by the Court. The court noted that even while following the procedure of summary trials, the non-obstante clause and the expression "as far as possible" used in section 143 coupled with the non-obstante clause in section 145 of the NIA, allows for the evidence of the complainant to be given on affidavit, that is, in the absence of the accused. It further explained that Sections 143 and 145 permit affidavit evidence while fully preserving the accused's right to cross-examination. **Requiring repetition would defeat the statute's aim of a simpler and swifter procedure and improperly import the process under Section 296(2) of the Code of Criminal Procedure.** Thus, the meaning of "examine" depends on the statutory context and does not invariably require examination-in-chief, cross-examination and re-examination in sequence. Further the petitioners argued that evidence by affidavit allows complainant or any of his

witnesses to introduce hearsay or irrelevant facts that would otherwise be objected to during oral examination-in-chief. However, the Hon'ble Court rejected this contention, holding that if an affidavit contains inadmissible statements, the accused can raise objections before the court, which will address them in accordance with law. **The Hon'ble Court by relying on a large number of judgments held that reasoning, in the guise of interpretation it is not permissible.** The relevant portions of the judgment are reproduced below:

> "22. We are completely unable to appreciate the submission. The plea for a literal interpretation of section 145(2) is based on the unfounded assumption that the language of the section clearly says that the person giving his evidence on affidavit, on being summoned at the instance of the accused must start his deposition in court with examination-in-chief. We find nothing in section 145(2) to suggest that. **We may also make it clear that section 137 of the Evidence Act does not define "examine" to mean and include the three kinds of examination of a witness; it simply defines "examination-in- chief", "cross-examination" and "re-examination".** What section 145(2) of the Act says is simply this. **The court may, at its discretion, call a person giving his evidence on affidavit and examine him as to the facts contained therein.** But if an application is made either by the prosecution or by the accused the court must call the person giving his evidence on affidavit, again to be examined as to the facts contained therein. What would be the extent and nature of examination in each case is a different matter and that has to be reasonably construed in light of the provision of section 145(1) and having regard to the object and purpose of the entire scheme of sections 143 to 146. The scheme of sections 143 to 146 does not in any way affect the judge's powers under section 165 of the Evidence Act. As a matter of fact, section 145(2) expressly provides that the court may, if it thinks fit, summon and examine any person giving evidence on affidavit. But how would the person giving evidence on affidavit be examined, on being summoned to appear before the court on the application made by the prosecution or the accused? The affidavit of the person so summoned that is already on the record is obviously in the nature of examination-in-chief. Hence, on being summoned on the application made by the accused the deponent of the affidavit (the complainant or any of his witnesses) can only be subjected to cross-examination as to the facts stated in the affidavit. In so far as the prosecution is concerned the occasion to summon any

of its witnesses who has given his evidence on affidavit may arise in two ways. The prosecution may summon a person who has given his evidence on affidavit and has been cross-examined for "re-examination". The prosecution may also have to summon a witness whose evidence is given on affidavit in case objection is raised by the defence regarding the validity and/or sufficiency of proof of some document(s) submitted along with the affidavit. In that event the witness may be summoned to appear before the court to cure the defect and to have the document(s) properly proved by following the correct legal mode. This appears to us as the simple answer to the above question and the correct legal position. Any other meaning given to sub-section (2) of section 145, as suggested by Mr. Ranjit Kumar would make the provision of section 145(1) nugatory and would completely defeat the very scheme of trial as designed under sections 143 to 147.

*****. *****. *****

25. . . . **Section 296 is part of the elaborate procedure of a regular trial under the Code while the whole object of section 145(2) of the Act is to design a much simpler and swifter trial procedure departing from the elaborate and time consuming trial procedure of the Code. Hence, notwithstanding the apparent verbal similarity between section 145(2) of the Act and section 296(2) of the Code, it would be completely wrong to interpret the true scope and meaning of the one in the light of the other.** Neither the legislative history of 296(2) nor any decision on that section can persuade us to hold that under section 145(2) of the Act, on being summoned at the instance of the accused the complainant or any of his witnesses should be first made to depose in examination-in-chief before cross-examination.

26. Mr. Ranjit Kumar next submitted that in giving evidence on affidavit, **the deponent (the complainant or any of his witnesses) can introduce hearsay or irrelevant facts in evidence to which the accused could have objected if the deposition was made in court as examination-in-chief**. Hence, the accused must have the right to call the complainant (or his witness giving evidence on affidavit) into the witness box for examination-in-chief so as to get the inadmissible parts in the affidavit excluded from his evidence. **Once again the submission is devoid of merit.** It is noted above that the evidence given on affidavit by the complainant is "subject to all just exceptions". This simply means that the evidence given on affidavit must be admissible and it must not include inadmissible materials such as facts not relevant to the issue or any hearsay statements. **In case the complainant's affidavits contain statements that are not admissible in evidence it is always open to the accused to point**

> **those out to the court and the court would then surely deal with the objections in accordance with law**.
>
> *****. *****. *****
>
> 33. Coming back to the fist error in the High Court's **reasoning, in the guise of interpretation it is not permissible for the court to make additions in the law and to read into it something that is just not there.** In **Union of India and Anr. Vs Deoki Nandan Aggarwal**, 1992 Supp. (1) SCC 323, this court sounded the note of caution against the court usurping the role of legislator in the guise of interpretation."
>
> (emphasis added)

[Also see: **Indian Bank Association & Ors. Vs Union of India** - (2014) 5 SCC 590; **Radhey Shyam Garg Vs Naresh Kumar Gupta** - (2009) 13 SCC 201]

50.8 The learned Member (Judicial), while interpreting the provision by relying upon *Ambika International*, has as seen from the passage above, further held as follows:

> (i) At the first stage the **maker must be summoned and examined in chief** as a witness before the adjudicating authority.
>
> (ii) Where the factum of recording is in question, to the deposition of the **gazetted officer** before whom the statement was given.
>
> (iii) At the second stage the adjudicating authority must apply its mind and form an opinion, having regard to the circumstances of the case, whether the statement should be admitted in evidence in the interests of justice, and must record that opinion with reasons.

50.9 With utmost respect, the aforesaid procedural requirements, particularly the insistence upon examination-in-chief of the maker – seemingly borrowed from section 137 & 138 of the Evidence Act – and if required the gazetted officer – a procedure which does not find

support in the Evidence Act or in *Ambika International* - as an indispensable second stage, do not emerge expressly from a plain reading of the provision. The Tribunal – a creature of the statute - is required to interpret the statute in accordance with settled principles of statutory construction and cannot, under the guise of interpretation, introduce procedural requirements which the Legislature has not prescribed. The progression from the statutory expression "examined as a witness" in respect of "the person who made the statement", as considered in *Ambika International*, to a mandatory requirement of "examination-in-chief" of the maker and where necessary an examination of the gazetted officer also, represents a considerable enlargement of the statutory language, which is impermissible as stated in *Mandvi Cooperative Bank* (supra). The interpretation is also without reference to administrative realities discussed below.

50.10 The Hon'ble Supreme Court, in **Federation of Hotel & Restaurant Association of India, etc. Vs Union of India and Ors.,** [(1989) 3 SCC 634], has observed that "wide latitude" does not mean "wild latitude". The principle is apposite here: while a provision may warrant a purposive or liberal interpretation, such interpretation cannot extend to supplying procedural requirements which the Legislature has not enacted.

50.11 The provision must therefore be construed in its entirety, including the expression "so far as may be" occurring in sub-section (2), which governs its application to departmental adjudication. The scope and import of this expression have, as observed by the ld. Member (Judicial), been considered in **M/s. Geetham Steels Pvt. Ltd. Vs Commissioner of GST & Central Excise, Salem** [Final

Order No. 40260-40274/2025 dated 21.02.2025], and warrant due consideration in determining the procedure applicable to such proceedings. This aspect shall be considered at the appropriate stage of this order.

50.12 In **J.K. Cigarettes Ltd. Vs Commissioner of Central Excise** [2009 (242) E.L.T. 189 (Del.)] — a decision under the Central Excise Act relied upon in the impugned order and hence relevant here — the Hon'ble Delhi High Court examined the scope and application of Section 9D of the Central Excise Act, 1944. **The petitioner, inter alia, contended that the sweep of the powers conferred upon the Central Excise Officers under Section 9-D was so wide as to be susceptible to misuse in the absence of guidelines regulating the exercise of such power.** The conclusions of the Court were summarised at para 32 of the judgment which is reproduced below:

> "32. Thus, **we summarize our conclusions as under** :-
>
> (i) We are of the opinion that the provisions of Section 9-D (2) of the Act are not unconstitutional or ultra vires;
>
> (ii) while invoking Section 9-D of the Act, the concerned authority is to **form an opinion on the basis of material on record** that a particular ground, as stipulated in the said Section, exists and is established;
>
> (iii) such an opinion has to be supported with reasons;
>
> (iv) **before arriving at this opinion, the authority would give opportunity to the affected party to make submissions on the available material on the basis of which the authority intends to arrive at the said opinion**; and
>
> (v) it is always open to the affected party to challenge the invocation of provisions of Section 9-D of the Act in a particular case by filing statutory appeal, which provides for judicial review.
>
> (emphasis added)

The Hon'ble Supreme Court in its judgment in **G.T.C. Industries Ltd. (Now known as Golden Tobacco Ltd.) Vs Collector Of Central Excise New Delhi** [Civil Appeal No's. 8583-8584 OF 2010, dated; 09.02.2023], endorsed the views of the High Court insofar as it spurned the challenge of the appellants to the constitutional validity of section 9-D of the Excise Act.

50.13 **It is pertinent to note that the judgment neither refers to the procedure prescribed under Section 138 of the Evidence Act nor directs that examination-in-chief of the maker be undertaken as a safeguard to his rights. The Court held that, before forming the requisite opinion, the adjudicating authority must afford the affected party an opportunity to make submissions on the material available on the basis of which such opinion is proposed to be formed. As per my view, this requirement of natural justice, is adequately met in departmental adjudication proceedings, through:**

> (i) Issuance of a **Show Cause Notice** setting out the material proposed to be relied upon. Allowing for a written response and special requests, like cross-examination if any.
>
> (ii) Followed by an opportunity of **personal hearing** to the noticees to make their submissions, in person or through their authorised representative, and to raise requests if any.
>
> (iii) Culminating in the issue of a **reasoned finding** as part of an Order-in-Original.
>
> (iv) Such order is, in turn, amenable to the statutory **appellate remedy**.

In my view, the administrative reality is that the procedure ordinarily followed in departmental adjudication is consistent with the guidelines laid down in *J.K. Cigarettes* and falls within the permissible scope of

examination explained by the Hon'ble Supreme Court in *Mandvi Cooperative Bank*.

50.14 Hence, the admissibility and evidentiary value of a statement recorded under Section 108 of the Act has been recognised in a catena of judgments which shall be discussed later in this order. Section 138B of the Act deals with the relevancy of such statements in the circumstances specified therein, where the statement is sought to be relied upon for proving the truth of the facts contained therein. Once the statutory requirements governing its relevancy and admissibility are satisfied, the probative value of the statement and the weight to be accorded to it, in the context of the other evidence available on record, needs to be decided.

50.15 These are all matters for determination by the adjudicating authority within his discretionary jurisdiction and within the framework of section 138B of the Act, without going through the protracted three distinct and sequential stages in the examination of a witness, namely, examination-in-chief, cross-examination and re-examination during a trial, prescribed in sections 137 and 138 of the Evidence Act (or through the truncated procedure of mandatory examination-in-chief, cross examination where relevant and without re-examination). However, such determination is required to be made judicially, having regard to the facts and circumstances of each case and is subject to judicial scrutiny. The Hon'ble Supreme Court in the case of **Mahesh Chandra Vs Regional Manager, U.P. Financial Corporation** [(1993) 2 SCC 279], observed that wherever wide power is conferred by statutes on public functionaries, the same is subject to inherent

limitation that it must be exercised in a just, fair and reasonable manner, bona fide and in good faith; otherwise, it would be arbitrary.

50.16 Having delineated the points of difference, it is however necessary to set out the legal principles underlying the conclusion, which will be discussed under the following heads::

(i) No plea of prejudice

(ii) Customs Officers are not Police Officers and a statement made before them is admissible as evidence.

(iii) Difference between Customs adjudication and criminal prosecution

(iv) Principles of Natural Justice and the test of prejudice

(v) Section 138B - Statutory Provision

(vi) Applicability of Sections 137 and 138 of the erstwhile Indian Evidence Act; Legislation by Reference or Incorporation and *Casus Omissus*

*(vii)* Judicial Interpretation Must Adhere to the Statutory Text

(viii) Voluntary nature of a statement

(ix) Difference between Section 164 of the Code of Criminal Procedure and Section 108 of the Customs Act

(x) Judgments of Non-Jurisdictional High Courts

(xi) Judgments of the Madras High Court

(xii) Established Practice - cursus curiae est lex curiae

(xiii) Judicial Discipline

(xiv) Judgments of the Supreme Court

**No plea of prejudice**

51. In the present dispute, it is admitted by the appellant that they did not seek cross-examination of the persons who gave their

statements. There was consequently no refusal by the Original Authority and no denial of an opportunity of cross-examination that had been invoked. No statement was retracted, and no specific plea of threat, inducement or coercion was raised. Hence no prejudice was shown to be caused during the adjudicatory process. The statement hence made under a deemed judicial proceeding requiring the maker of the statement to state the truth, need not be doubted for its voluntary nature.

**Customs Officers are not Police Officers and a statement made before them is admissible as evidence.**

52. The Constitution Bench in **Ramesh Chandra Mehta Vs State of West Bengal** [AIR 1970 SC 940 / (1969) 2 SCR 461], held that a Customs Officer is entrusted with specific powers under the Sea Customs Act for collection of Customs duties, prevention of smuggling, and adjudication of confiscation and penalties. These include powers of search, arrest, detention, obtaining search warrants, summoning persons and documents, and collecting evidence. However, such powers are conferred for enforcing the Customs law and adjudicating violations thereof. They do not confer upon a Customs Officer the same investigative powers as a police officer under the Code of Criminal Procedure. In particular, **a Customs Officer has no power to investigate offences triable by a Magistrate or to submit a police report under Section 173 of the Code of Criminal Procedure but may only lodge a written complaint before the competent Magistrate.**

52.1 It is trite law that a Customs officer exercising power under Section 108 is not a police officer, and a statement made before such officer is not inadmissible on that ground. This principle is recognised

in **State of Punjab Vs Barkat Ram** - **AIR 1962 SC 276** (3 Judge Bench); **Romesh Chandra Mehta Vs State of West Bengal**, AIR 1970 SC 940 (Constitutional Bench); **Illias Vs Collector of Customs, Madras** - **AIR 1970 SC 1065** (Constitutional Bench) **Harbansingh Sardar Lenasingh & Anr. Vs The State of Maharashtra & Ors.** - (1972) 3 SCC 775 (three Judge Bench); **Percy Rustomji Basta Vs State of Maharashtra**, (1971) 1 SCC 847; **Romesh Chandra Mehta Vs State of West Bengal**, 1999 (110) E.L.T. 324 (S.C.); **Poolpandi Vs Superintendent, Central Excise**, 1992 (60) E.L.T. 24 (S.C.); **Commissioner of Customs (Imports), Mumbai Vs Ganpati Overseas**, 2023 (386) E.L.T. 802 (S.C.) and the recent judgment in **Amad Noormamad Bakali Vs State of Gujarat,** 2026 INSC 180, Dated: 23.02.2026.

52.2 In **Surjeet Singh Chhabra** (supra), the Hon'ble Supreme Court stated that the confession of the appellant, though retracted, is an admission and binds the petitioner. It held as under:

> "3. It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross- examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. **The customs officials are not police officers. The confession, though retracted, is an**

> **admission and binds the petitioner.** So there is no need to call panch witnesses for examination and cross-examination by the petitioner."
>
> (emphasis added)

52.3 A statement recorded by a customs officer under Section 108 of the Act, is hence admissible evidence and is not hit by Section 25 of the Evidence Act, 1872 (**Evidence Act**) or Article 20(3) of the Constitution. Section 108(3) of the Customs Act requires the person examined to state the truth, while sub-section (4) deems the inquiry to be a judicial proceeding for the purposes of Sections 193 and 228 of the IPC.

52.4 In **Assistant Collector of Central Excise, Rajamundry Vs Duncan Agro Industries Ltd.** [(2000) 7 SCC 53 / (2000) 7 SCC 53], the Hon'ble Supreme Court examined whether it was necessary to comply with the precautions of administering the warning to the makers of the statement as required under section 164 of the Code of Criminal Procedure, when Customs officers record statement under Section 108 of the Customs Act? The Court observed that the entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. **There was no tinge of inadmissibility in evidence if it was made when the person concerned was not then in police custody**. It held that a statement recorded under Section 108 by a Customs officer is admissible in evidence, as the officer is not a police officer and the maker is not in police custody. However, since such statements are not recorded with the safeguards applicable to confessions before a Magistrate, they must be scrutinised for voluntariness and tested against the safeguards of Section 24 of the Evidence Act. If found voluntary, an inculpatory statement may be relied upon against its

maker. No reference to section 138 of the Evidence Act was made. [Also see: **Union of India Vs Padam Narain Aggarwal**, [(2008) 13 SCC 305].

52.5 In **Nagubai Ammal & Ors. Vs B. Shama Rao & Ors**., AIR 1956 SC 593, the Hon'ble Supreme Court, relying upon **Slatterie Vs Pooley,** [(1840) 6 M&W 664], observed that "What a party himself admits to be true, may reasonably be presumed to be so." In the present case, the statement recorded under Section 108 of the Customs Act, 1962 has not been retracted or challenged on the ground of coercion, threat, inducement or lack of voluntariness. In such circumstances, and in the absence of any specific challenge to its voluntariness, the mere fact that the maker has not been subjected to examination-in-chief cannot, by itself, furnish a basis to doubt its voluntary character and not be considered as substantive evidence.

52.6 In **M/s. Tasha Gold Pvt Ltd Vs The Principal Commissioner of Customs, (Adjudication) - New Delhi** [2026 (9) TMI 1052 - CESTAT NEW DELHI / FINAL ORDER NO's. 51451-51461/2026, DATED: 15.09.2026], a Coordinate Bench of this Tribunal it its recent judgment, held:

> "29. The issue of Section 108 confessions again returned to the Supreme Court in case of **Amad Noormamad Bakali Vs State of Gujarat,** in Criminal Appeal No. 1232-1237 of 2012. Vide judgment dated 23.02.2026 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 Vs 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. In **Radhika Agarwal Vs 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**."
>
> 30. In **Poolpandi Vs Superintendent, Central Excise** 1992 SCR (3) 247 the Supreme Court rejected 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."
>
> (emphasis added)

53. [Also see **M/s. HP India Sales Private Ltd. Vs Commissioner of Customs, Bangalore** - 2026 (8) TMI 339 - CESTAT BANGALORE, Paras 43 and 44]

**Difference between Customs adjudication and criminal prosecution**

53. Further, the strict rules of evidence applicable to criminal proceedings do not govern Customs adjudication. Tax liability must be adjudicated independently and cannot be examined through the lens of criminal law. The applicable standard is that of preponderance of probabilities, rather than proof beyond reasonable doubt required in criminal proceedings. The principles stated in **Collector of Customs, Madras Vs D. Bhoormull**, 1983 (13) E.L.T. 1546 (S.C.); **K.I. Pavunny Vs Assistant Collector,** 1997 (90) E.L.T. 241 (S.C.); and **Commissioner of Customs, Calcutta Vs South India Television (P) Ltd**., 2007-TIOL-126-SC-CUS, support that distinction. The separate character of Customs adjudication and criminal prosecution has also been recognised in **Department of Customs Vs Sharad Gandhi, Proprietor** [AIRONLINE 2019 SC 518 / LAWS(SC)-2019-2-277 ]. The Hon'ble Court held:

> "63. In fact, we find that this Court in the **Assistant Collector of Customs, Calcutta Vs Sitaram Agarwala and Another** AIR 1966 SC 955 considered the scheme of Sea Customs Act, 1878 as contained in Section 167. . . . This is what the Court had to declare in regard to the aforesaid penalties :
>
> "Then comes Ch. XVI dealing with offenses and penalties. Offence enumerated in Ch. XVI are of two kinds; first there are contraventions of the Act and rules thereunder which are dealt with by Customs officers and the penalty for which is imposed by them. These may be compendiously called **customs offences**. Besides these there are **criminal offences** which are dealt with by Magistrates and which result in conviction and sentence of imprisonment and/or fine. These two kinds of offences have been created to ensure that no fraud is committed in the matter of payment of duty and also to ensure that there is no smuggling of goods, without payment of duty or in defiance of any prohibition or restriction imposed under Ch. IV of the Act."
>
> **Thus, this Court has held that there are custom offences and criminal offences**. The criminal offences were dealt with by the Magistrate which may culminate in conviction and imposition of imprisonment and or fine. Thus, this being the scheme of the Sea Customs Act, when Section 5 of the Antiquity (Export Control) Act, 1947 provided that prosecution for contravening Section 3 of the said Act would be without prejudice to the imposition of penalties and ordering confiscation the word 'penalty' could take in both the customs offences and also the criminal offences. If it is interpreted as embracing the criminal offences then the word 'penalty' would also embrace within its scope penalty by way of imprisonment or fine imposed for the commission of a criminal offence after a prosecution before the Magistrate."
>
> [emphasis added]

53.1 In **Assistant Commissioner of Customs Vs L.R. Melwani** [AIR 1970 SC 962 / (1969) 2 SCR 438], the Supreme Court reiterated that adjudication before the Collector of Customs is not a prosecution and the Collector is not a court. Consequently, a finding in customs adjudication does not amount to an acquittal and does not ordinarily operate as issue estoppel in a subsequent criminal prosecution.

53.2 In **K.I. Pavunny** (supra), the Hon'ble Supreme Court examined whether a statement recorded under section 108 of the Act, is

admissible in evidence before a **trial court** and could form basis for conviction and whether retracted confessional statement requires corroboration on material particulars from independent evidence? The Court held it true that in a trial and *proprio vigore* in a criminal trial, courts are required to marshal the evidence. It is the duty of the prosecution to prove the case beyond reasonable doubt. The Court thus distinguished the evidentiary standards applicable to criminal prosecution, where guilt must be proved beyond reasonable doubt, from the assessment of statements in Customs proceedings. The court noted that the object of the Act empowering Customs Officers to record the evidence under Section 108 is to collect information of the contravention of the provisions of the Act or concealment of the contraband or avoidance of the duty of excise so as to enable them to collect the evidence of the proof of contravention of the provisions of the Act so as to take proceedings for further action of confiscation of the contraband or imposition of the penalty under the Act etc. It held that in a criminal trial punishable under the provisions of the IPC it is now well settled legal position that confession can form the sole basis for conviction. In the case of a **retracted confession**, the first enquiry is whether it was voluntary and truthful. If the circumstances raise a reasonable doubt as to voluntariness, the statement cannot be acted upon unless its voluntary character is established. Once voluntariness is established, the further question is whether the statement is true and reliable. The Supreme Court also held that there is no absolute bar against relying upon a retracted confession, though corroboration from other evidence may, as a matter of prudence, be sought.

53.3 The Hon'ble Delhi Court in **M/s. Vallabh Textiles Vs. Addl. Commr., Central Tax GST, Delhi East & Ors.** [2025 : DHC : 2559: DB], held that **proceedings under a show cause notice cannot be converted into mini-trials** and that cross-examination is not an unfettered right.

53.4 In **M/s. Williamson Magor and Company Ltd Vs The Assistant Collector of Central Excise Prosecution, Madras** [2019 (11) TMI 1846 – Madras High Court], the Hon'ble Madras High Court while dealing with a **Criminal Appeal**, observed that statements recorded under Sections 164 and 161(3) Cr.P.C. do not ordinarily constitute substantive evidence. **The judgment is important as the Hon'ble Court noted that fiscal statutes prescribe special evidentiary rules permitting statements recorded by authorised officers to be treated as substantive evidence, subject to statutory conditions.** Section 9D, along with analogous provisions, was introduced into the Central Excise Act, 1944 by Clause 19 of the Customs, Gold (Control) and Central Excises and Salt (Amendment) Act, 1973. It further noted that the legislative amendment followed the recommendations contained in the **47th Report of the Law Commission of India on 'Trial and Punishment of Social and Economic Offences'**, submitted to the Government of India in February 1972. Accordingly, Section 9D of the Central Excise and Salt Act, permits such statements to be treated as substantive evidence without examining the maker where the conditions under Section 9D(1)(a), are established. Speaking in the context of the Criminal Appeal, the Court held that the officer must depose to the existence of

those conditions and subject himself to cross-examination by the defence.

53.5 As held by an eight-Judge Bench judgment of the Apex Court in **M.P. Sharma and Ors. Vs Satish Chandra** [1954 SCR 1077], the word "witness", under the Evidence Act, must be understood in its natural sense i.e. as referring to a person who furnishes evidence. It further held that under the Evidence Act a person can be a "witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See Section 119 of the Evidence Act) or the like. However a 'witness' is examined under section 138B(1) only on a narrower compass i.e. with regard to a statement made and signed by a person before any Gazetted Officer of Customs. Such a statement made as per a deemed judicial proceeding of section 108 of the Act, is admissible as evidence as held by Constitutional Courts, cited above.

53.6 Further the **Supreme Court in Collector of Customs, Madras Vs D. Bhoormull**, **(1974) 2 SCC 544 : AIR 1974 SC 859** held, in the context of confiscation proceedings under the Customs Act, that **the provisions of the Evidence Act and the Code of Criminal Procedure do not, in terms, govern the onus of proof in proceedings under the Customs Act**. "The Court recognised the distinct nature of Customs adjudication and held that the Department is required to establish its case on the basis of a degree of probability rather than the criminal standard of proof beyond reasonable doubt".

53.7 In **Amba Lal VsUnion of India [**AIR 1961 SC 264], concerning proceedings under the Sea Customs Act and Land Customs Act, the **Supreme Court observed that the Evidence Act and the Code of**

**Criminal Procedure do not apply unless expressly made applicable by the statute**. At the same time, the Court emphasised that fundamental principles of criminal jurisprudence and natural justice continue to govern such proceedings.

53.8 The Madras High Court in **M/s. Jet Unipex & Another Vs Commissioner of Customs, Chennai-III**, [2020 (373) E.L.T. 649 (Mad.)], considered the nature of Section 108 proceedings and the applicability of the Evidence Act. The Court relied upon Supreme Court authorities including *Percy Rustomji Vs State of Maharashtra* and *K.I. Pavunny Vs Assistant Collector (HQ), Central Excise Collectorate*, and held that **Section 24 of the Evidence Act is not applicable to statements recorded under Section 108**, since a Customs officer conducting such an inquiry is not a police officer and the person whose statement is recorded is not an accused at that stage.

53.9 Hence the provisions of the Evidence, the Code of Criminal Procedure and that of the Customs Act operate in their own fields.

**Principles of Natural Justice and the test of prejudice**

54. It has been held by Constitutional Courts that the issue of permitting cross-examination of a person whose statement is being relied upon in the adjudication proceedings has to been held to be one of adhering to the principles of natural justice. As held by the Apex court in **Dharampal Satyapal Ltd Vs Dy. Commr of C. Ex., Gauhati [2015 (320) ELT 3 SC]**, the validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing. In **Shalini Steels Pvt. Ltd. Vs Commissioner of Customs & Central Excise, Hyderabad** [2011 (269) E.L.T. 485 (A.P.)]**,** the Andhra Pradesh High

Court held that cross-examination of a witness whose statement is relied upon by the adjudicating authority is a facet of natural justice. However, the applicability and extent of natural justice depend upon the facts and circumstances of each case. The Court further held that a plea of violation of natural justice must demonstrate prejudice caused by such non-observance, particularly where denial of cross-examination is alleged. The Court, observed that natural justice cannot be applied through a rigid formula; the essential test is **fair play in action** and whether the alleged non-observance has resulted, or is likely to result, in prejudice or a deflection of the course of justice. **Where the material facts are undisputed and only one conclusion is possible, denial of an inquiry or cross-examination may not, by itself, establish prejudice.**

54.1 In **K.L. Tripathi Vs State Bank of India** [(1984) 1 SCC 43**]**, the Apex Court, in a case of departmental proceedings pertaining to a bank, held that natural justice is not governed by a rigid formula and that the relevant consideration is fair play in action and whether the alleged non-observance has caused, or is likely to cause, prejudice or a deflection of the course of justice. Thus, **where the material facts are undisputed and only one conclusion is reasonably possible, denial of an inquiry or cross-examination does not, by itself, establish prejudice**.

54.2 Similar case law of the jurisdictional Madras High Court are discussed below under the sub-heading 'Judgment of Hon'ble Madras High Court'.

**Section 138B - Statutory Provision**

55. Section 138B of the Act, prescribes the circumstances in which a signed statement made before a Gazetted Officer of Customs is relevant to prove the truth of its contents. The section is reproduced below for ease of reference.

> **"138B. Relevancy of statements under certain circumstances.**
>
> (1) A statement made and signed by a person before any Gazetted Officer of customs 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 provisions 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."
>
> (emphasis added)

55.1 Section 138B(1) is framed in relation to relevancy of statements being used in proceedings before a Court, whereas Section 138B(2) extends the provision, "so far as may be," to proceedings under the Act other than proceedings before a Court. Hence section 138B(1) is relevant to Court proceedings in a trial, whereas section 138B(2) is relevant for departmental proceedings. Even with regard to section 138B(1) it is seen that the section does not reproduce the entire criminal-trial procedure or make any reference to it. Further, Section

138B(2) does not mandate the mechanical or wholesale application of the procedure contemplated under Section 138B(1) to adjudication proceedings. It extends the application of that provision only "so far as may be," having regard to the nature and circumstances of the proceedings. It is also relevant to bear in mind that the Customs authorities are statutory authorities of the Central Government entrusted, inter alia, with the assessment and collection of customs duty and the prevention of smuggling.

55.2 A five judge Constitutional Bench of the Hon'ble Supreme Court in **Ramesh Chandra Mehta Vs State of West Bengal** [AIR 1970 SC 940 /(1969)2SCR 461]**,** specifically recognised that Customs officers are entrusted with powers relating to the "collection of customs duty and prevention of smuggling". The statutory scheme concerning the assignment of functions relating to assessment and demand of customs duty was further explained in **Commissioner of Customs Vs Sayed Ali & Anr**., [(2011) 3 SCC 537 /2011 (265) E.L.T. 17 (S.C.)] and **Canon India Pvt. Ltd.** (supra). The statements recorded by such officers under Section 108 must, therefore, be considered in the context of the statutory functions for which the power to summon and record evidence has been conferred upon them, while their evidentiary value remains subject to the safeguards and principles governing their voluntary and reliable nature.

55.3 The Customs Act is a 'complete self-contained code' having its own rules of evidence, adjudicatory and appeal mechanism. Hence the provision is to be applied in a manner appropriate to the nature of a Customs adjudication, which is quasi-judicial proceeding and not a trial. Further the statement made before the Customs officials is not a

statement recorded under Section 161 of the Criminal Procedure Code, 1973, to subject it to the rigour of examination under section 137 and 138 of the Evidence Act. It has been held to be admissible evidence in a catena of Constitutional Court judgments, some of which have been cited above. As held in **Duncan Agro Industries Ltd.** (supra), there was **no tinge** of inadmissibility in evidence recorded under section 108 of the Act.

55.4 In **Dr. Pratap Singh and Another Vs Director of Enforcement, FERA** [AIR 1985 SC 989], the Supreme Court, while considering Section 37(2) of FERA, held that the expression **"so far as may be"** means **"to the extent possible"**. In *Geetham Steels* (supra), relied upon in the order of the ld. Member (Judicial) to interpret the meaning of the judgment has been interpreted to support the view that S.9D (2), casts an obligation on the adjudicating authority to generally follow the provisions of S.9D (1), to the extent possible, as it would apply to a proceeding before a Court. Thus, the term "shall" preceding, the phrase "so far as may be", in this section can only mean that the adjudicating authority has been legislatively mandated to apply the provisions of S.9D (1), depending on the facts and circumstances of the case, to the extent possible. In other words, the words "so far as may be" cannot be taken as a leeway to refrain from the application of S.9D(1), to the exclusion of the consideration of the word "shall", which would be contrary to the stated intent of the section.

55.5 The reasoning in *Geetham Steels* hence revolves substantially around the word 'shall' as a legislatively mandate to apply the Court proceedings of provisions of S.9D (1) to departmental proceedings.

However Constitutional Courts have taken a less rigid view of the mandatory or directory meaning of the word 'shall'. The settled position is that the use of the expressions "may" and "shall" is not, by itself, determinative of whether a statutory provision is mandatory or directory. In **State of U.P. Vs Babu Ram Upadhya, AIR 1961 SC 751 (Constitution Bench)**, the Hon'ble Supreme Court held that the question depends upon legislative intent, gathered from the nature, design and consequences of the provision. Either "may" or "shall" may, depending upon the context, bear the meaning ordinarily attributed to the other; where treating non-compliance as invalid would cause serious inconvenience or injustice without advancing the legislative object, the provision may be construed as directory, following *Maxwell on Interpretation of Statutes* and *Montreal Street Railway v. Normandin, AC 170*. The same principle was reiterated in **Muskan Enterprises & Anr. Vs State of Punjab & Anr.** [2024 SCC OnLine SC 4107], emphasising that interpretation must proceed from the text, context and scheme of the statute as a whole, and that substance and legislative intent prevail over the mere form of the expression. The principle was also recognised in **Rakesh Ranjan Shrivastava v. State of Jharkhand & Anr.** [(2024) 4 SCC 419], wherein the Court held that "may" ordinarily denotes discretion but may be construed as "shall", and vice versa, depending upon the nature and effect of the power, legislative intent and statutory context.

55.6 More recently, in **Canara Bank Vs Prem Latha Uppal (Dead) through LRs.,** [2026 INSC 4781, dated 12.05.2026], the Hon'ble Supreme Court reiterated that "may" is ordinarily permissive and cannot be treated as "must" without regard to the statutory context.

Referring to **T. Baba Prasad Vs Andhra Bank, 2011 SCC OnLine AP 276**, the Court held that Regulation 10, which empowered the competent authority to order common disciplinary proceedings, was **facilitative rather than obligatory**. It conferred discretion on the authority and did not create a corresponding right in the employee to insist upon a joint proceeding.

55.7 The same interpretative approach was reflected in **M/s. BLA Infrastructure Private Limited Vs State of Jharkhand & Ors.,** [W.P.(T) No. 6527 of 2024, dated 30.01.2024], with reference to *Muskan Enterprises*. Thus, the controlling consideration is not the isolated use of the expressions "may" or "shall", but the text, context, statutory scheme, legislative purpose and consequences of adopting either construction and read thus it will not render the word "shall" otiose in section 138B.

55.8 Further section 138B(1)(b) requires that the maker "is examined as a witness in the case" and that the statement is admitted in evidence **"in the interests of justice"**.

55.9 As stated by the Apex Court in **Zahira Habibulla H. Sheikh Vs State of Gujarat**, [AIR 2004 SUPREME COURT 3114 / (2004) 4 SCC 158], while elaborating on the phrase 'the interests of justice':

> "As reiterated supra the **ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice.** The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions."

55.10 Further the Apex Court in **Bengal Chemists & Druggists Association Vs Kalyan Chowdhury** [AIR 2018 SC 807 / (2018) 3 SCC 41]**,** after citing **Dr. Pratap Singh** (supra), held that the ratio of the judgment as far as the case under consideration is concerned is

that the expression "so far as may be" only means to the extent possible. [Also see: **Bhavnagar University Vs Palitana Sugar Mill (P) Ltd. & Ors. -** AIR 2003 SUPREME COURT 511 / (2003) 2 SCC 111]. The Hon'ble Supreme Court in **Hasmat Ali Vs Amina Bibi and Ors**. [2021 SCC OnLine SC 1142] at paragraph 12, observed that words such as "so far as may be" or "insofar as" mean 'as much' or 'to the extent' or 'to such extent' as possible.

55.11 In view of the aforesaid judgments, Section 138B must be construed in the context of the Customs Act being a complete and self-contained code governing customs administration and revenue matters, rather than criminal proceedings. Customs adjudication proceeds on the preponderance of probabilities, and not on proof beyond reasonable doubt. Following the principle of interpretation that **all words must be given its full effect**, accordingly, the expressions "examined as a witness" and "in the interests of justice" in Section 138B(1)(b), read with "shall, so far as may be" in Section 138B(2), cannot be construed as importing a rigid, three-stage procedure of examination-in-chief, cross-examination and re-examination - or even limited to examination-in-chief - applicable to criminal trials. Such a construction would disregard the statutory context and extend the procedural requirements of a criminal proceeding to departmental adjudication without express legislative mandate. Moreso when the procedure being followed and detailed at para 50.12, is found to meet the guidelines given in *J.K. Cigarettes*, a judgment relied in the order of the ld. Member (Judicial). I am, for the foregoing reasons, unable to fully subscribe to the narrow construction adopted of the term "shall", as, in my considered view, it does not adequately give effect to the

settled principles governing the interpretation of statutory provisions and must be understood as 'to the extent possible'. It can be examined from another angle as below.

**Applicability of Sections 137 and 138 of the erstwhile Indian Evidence Act; Legislation by Reference or Incorporation and *Casus Omissus***

56. Section 137 of the erstwhile Indian Evidence Act defines examination-in-chief, cross-examination and re-examination, while Section 138 prescribes their sequential order. The same scheme is substantially reflected in Sections 140 to 142 of the **Bharatiya Sakshya Adhiniyam, 2023 (BSA)**, effective from 01.07.2024. Examination-in-chief enables the party calling the witness to place the relevant testimony on record. Cross-examination affords the adverse party an opportunity to test its veracity, credibility and probative value and re-examination permits clarification of matters arising in cross-examination, subject to the control of the Court. Questions of relevancy and admissibility remain for judicial determination.

56.1 In **Dwarka Dass & Ors. Vs State & Ors.,** [1978 Cri LJ 1096], the Rajasthan High Court held that the "examination" of a witness is not confined to examination-in-chief, but comprehends examination-in-chief, cross-examination and re-examination.

56.2 However the Customs Act, 1962, being a special enactment, does not attract the provisions of the Evidence Act or BSA *proprio vigore* unless expressly or by necessary reference or incorporation made applicable.

56.3 Where the Legislature intends to apply provisions of one enactment to another, it may do so by **incorporation** or **reference** without being reproduced verbatim. In **referential legislation**, the

adopted provisions become part of the later enactment; in **referential legislation**, the later enactment merely refers to the earlier enactment for the purpose and to the extent specified. The distinction has been recognised by the Hon'ble Supreme Court in **Sneh Enterprises v. Commissioner of Customs, New Delhi, 2006 (202) E.L.T. 7 (S.C.)**; **Surana Steels Pvt. Ltd. v. Deputy Commissioner of Income Tax & Ors., (1999) 4 SCC 306**; and **M/s. Mahim Patram Private Ltd. v. Union of India & Ors., 2007 (7) STR 110 (SC)**. Whether a provision stands incorporated or is merely referred to must be ascertained from the language, scheme and object of the enactment concerned.

56.4 In the absence of such legislative adoption in Section 138B, the provisions of Sections 137 and 138 of the Evidence Act cannot, with respect, be imported into the Customs Act so as to impose the complete procedure governing examination of witnesses before a Court.

56.5 The above order of the learned Member (Judicial) relies upon **Ambika International** (supra), in support of the proposition that the adjudicating authority must itself conduct the examination-in-chief as a part of the three stage procedure outlined in his order above. The judgment in **Jindal Drugs Pvt. Ltd. Vs UOI** [2016 (340) E.L.T. 67 (P&H)], the Hon'ble Punjab and Haryana High Court refer to the three stages contemplated under Sections 137 and 138 of the Indian Evidence Act, 1872—examination-in-chief, cross-examination and re-examination—as clearly setting out the sequence of evidence while discussing the proceedings under Section 9D of the Central Excise Act. In both the aforementioned decisions, the judgment of the Hon'ble

Supreme Court in *Mandvi Cooperative Bank* (supra) was neither examined nor cited.

56.6 These judgments are entitled to due consideration and carry considerable persuasive value. However, they pertain to the Central Excise Act and even if the section is pari materia to section 138B of the Customs Act, interpretation must harmonise text with context. For example as stated in **Associated Cement Companies Ltd. v. Commissioner of Customs** [(2001) 4 SCC 593], while Section 28 of the Customs Act is stated to be *in pari materia* with Section 11A of the Central Excise Act, they materially differ. The phrase 'with intent to evade payment of duty' present in the proviso to Section 11A is absent in Section 28(1) and its proviso. In *Mandvi Cooperative Bank* (supra) the Hon'ble supreme Court held that notwithstanding the apparent verbal similarity between section 145(2) of the NIA and section 296(2) of the Code of Criminal Procedure, it would be completely wrong to interpret the true scope and meaning of the one in the light of the other. A statute must be read as a whole—*ex visceribus actus*—and in light of its object and purpose, ensuring that no clause or word is construed in isolation. By evaluating each provision within the scheme and setting of the entire enactment, the court ascertains true legislative intent, giving full effect and consistency to every part. [See: **Reserve Bank of India Vs Peerless General Finance and Investment Co. Ltd.:** (1987) 1 SCC 424; **Balram Kumawat Vs Union of India & Ors**.: AIR 2003 SC 3268]. Hence the judgments cannot be automatically relied upon in Customs cases.

56.7 In **J.K. Cigarettes Ltd**. (supra), as discussed at para 50.12, the Hon'ble Delhi High Court, while rejecting the challenge that Section 9-

D conferred unguided powers susceptible to misuse, upheld its Constitutional validity and held that the adjudicating authority must form a reasoned opinion on the material available and afford the affected party an opportunity to make submissions before arriving at such opinion. Significantly, the judgment neither invokes Section 138 of the Evidence Act nor mandates examination-in-chief of the statement-maker, but emphasises the opportunity to address the material relied upon for forming the requisite opinion. The procedure being followed by the department is also compliant, as discussed.

56.8 In **Naresh J. Shukawani Vs Union of India,** [1996 (83) E.L.T. 258 (S.C.)], the Hon'ble Supreme Court held that a statement recorded by Customs officers under Section 108 is not a statement under Section 161 of the CrPC, but constitutes substantive material evidence collected under the Customs Act and may be relied upon against the person concerned. The Court held:

> "4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. **Therefore, it is a material piece of evidence** collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr. Dudani's statement clearly inculpates not only himself but also the petitioner. **It can, therefore, be used as substantive evidence connecting the petitioner** with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine."
>
> (emphasis added)

56.9 With utmost respect, for the reasons stated in paragraphs 50.7 and 55.11 above, Section 138B does not expressly incorporate the entire procedure under Sections 137 and 138 of the Evidence Act. It

therefore does not warrant mechanically importing the court procedure or imposing an inflexible requirement of examination-in-chief in adjudication proceedings. The adjudicating authority must, however, independently apply its mind, record the requisite satisfaction before admitting or relying upon the statement, and observe natural justice, including, where warranted, affording a meaningful opportunity of cross-examination when sought by the noticee. **The procedure of a criminal trial cannot, therefore, be transposed wholesale to departmental adjudication, which operates under a distinct statutory framework and standard of proof.**

**Judicial Interpretation Must Adhere to the Statutory Text**

57. It is equally settled that statutory interpretation must proceed from the words employed by the Legislature. A Court cannot, under the guise of interpretation, add words, conditions or requirements that the Legislature has omitted. The same has already been referred to in **Mandvi Cooperative Bank** (supra) at para 50.7 above. Further in **Padma Sundara Rao (Dead) & Ors. Vs State of Tamil Nadu & Ors**. [(2002) 3 SCC 533], the Constitution Bench held that nothing may be read into a plain and unambiguous provision and that a *casus omissus* cannot ordinarily be supplied by judicial construction. The Court interprets the law and does not legislate. In **Satheedevi Vs Prasanna & Anr**. [(2010) 5 SCC 622], the Supreme Court stated that an important rule of interpretation is that the Court cannot rewrite, recast or reframe the legislation because it has no power to do so. **The Court cannot add words to a statute or read words which are not therein it. Even if there is a defect or an omission in the statute, the Court cannot correct the defect or supply the**

**omission.** The same principle stands reiterated in **Union of India Vs Rajiv Kumar Bani Singh**, (2003) 6 SCC 516, and **Phool Patti Vs Ram Singh**, (2009) 13 SCC 22.

57.1 Viewed in that light, Section 138B(1)(b) of the Customs Act, 1962, which contemplates the maker of a statement being "examined as a witness in the case before the Court", cannot be enlarged by judicial construction through the addition of words or conditions not enacted by Parliament. At the same time, the provision must be read in its entirety and in its statutory setting, including Section 138B(2), which applies sub-section (1), "so far as may be", to proceedings under the Act other than proceedings before a Court. The expression must therefore receive effect according to the words actually used, without importing an extraneous requirement or rendering any part of the provision otiose.

57.2 **Had the Legislature intended the examination of the maker, as per an elaborate procedure provided under the Evidence Act and later under the BSA, in every adjudication proceeding to be an invariable pre-condition before placing reliance on each statement recorded under Section 108 of the Customs Act, it could have said so expressly.** It is felt that the Tribunal cannot introduce such an absolute requirement on the premise that it would better advance the perceived object of Section 138B. Nevertheless, the safeguards expressly engrafted in Section 138B must be given full effect 'in the interest of justice', and the adjudicating authority must ensure that the manner in which he arrives at a decision on admitting the statement as evidence must be exercised in a just, fair and reasonable manner which is bona fide and in good faith. The

decision taken is amenable to appellate scrutiny in accordance with established legal principles, to examine whether the decision-making process suffers from illegality, procedural impropriety, or perversity. **The section must accordingly be construed in accordance with its text, structure and purpose, without supplying words that the Legislature has chosen not to enact.**

57.3 As discussed in paragraph 50.13 above, the procedures being followed by the department were found complaint with the conclusions of the Hon'ble High Court in *J.K. Cigarettes*, founded on a plain reading of Section 138B and summarised therein.

**Voluntary nature of a statement**

58. Although Section 24 of the Indian Evidence Act, which was prevalent at the relevant time, [Section 22 of the BSA] is not directly applicable to Customs adjudication, it indicates the underlying principle that the confession to lose its voluntary character, must appear to the Court to have been made by an accused person to a person in authority, by reason of any inducement, threat or promise proceeding from such person in authority and having reference to the charge against the accused and that such inducement, threat or promise must, in the opinion of the Court, be such as to lead the accused to believe or suppose that, by making the confession, he would gain some advantage or avoid some temporal evil in relation to the proceedings against him.

58.1 The question whether a statement is voluntary has to be determined from the circumstances attending its making. Where a statement is sought to be relied upon, it is proper that the authority must satisfy itself that it was not procured by inducement, threat,

coercion or other improper means. This requirement operates as a substantive safeguard of fair adjudication and natural justice and is distinct from the procedural scheme governing examination of witnesses under Sections 137 and 138 of the erstwhile Indian Evidence Act. The absence of examination-in-chief of the maker of the statement as a witness cannot, by itself, be equated with absence of verification of voluntariness.

58.2 In **K.T.M.S. Mohd. & Anr. Vs Union of India, (1992) 3 SCC 178**, the Hon'ble Supreme Court held that the voluntary nature of a statement made before the Customs or Enforcement authorities is a *sine qua non* for acting upon it and that a statement obtained by inducement, threat, coercion or other improper means must be rejected. The Court further held that a subsequent retraction does not, by itself, establish that the original statement was involuntary or unlawfully obtained. Nevertheless, where a retraction is made, the authority cannot rely upon the inculpatory statement while ignoring the retraction. It must consider the two together and apply its mind to the circumstances of the retraction before accepting the original statement as voluntary.

58.3 Further in the recent judgment of the Supreme Court in **Amad Noormamad Bakali** (supra), the Hon'ble Supreme Court approved the judgment of the Hon'ble High Court which had noted that **the appellants had failed to establish** any material to demonstrate that the statements under Section 108 of the Customs Act, 1962 were obtained under coercion, inducement, or threat, and **in the absence of such proof, the statements could not be discarded**.

58.4 The distinction between voluntariness and the subsequent assessment of truthfulness and probative value was explained in the Constitutional Bench decision in **K.I. Pavunny Vs Assistant Collector (HQ), Central Excise Collectorate, Cochin, (1997) 3 SCC 721**, the Court held that the burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in **Bhagwan Singh Vs State of Punjab** [AIR 1952 SC 214, para 30]. If it is established from the record or circumstances that the confession is shrouded with suspicious features, then it falls in the realm of doubt. The burden of proof on the accused is not as high as on the prosecution. If the accused is able to prove the facts creating reasonable doubt that the confession was not voluntary or it was obtained by threat, coercion or inducement etc., the burden would be on the prosecution to prove that the confession was made by the accused voluntarily.

58.5 In **Avadh Kishore Das Vs Ram Gopal & Ors.** [AIR (1979) SC 86], the Apex Court held that it is true that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted.

**Difference between Section 164 of the Code of Criminal Procedure and Section 108 of the Customs Act**

58.6 It is necessary, however, to distinguish the statutory duty of a Magistrate while recording a confession under **Section 164 of the Code of Criminal Procedure** from the evidentiary assessment of a statement recorded under **Section 108 of the Customs Act, 1962**.

In the former case, the Magistrate has an express statutory obligation to administer the prescribed caution and satisfy himself that the confession is voluntary. In **Tulsi Singh Vs State of Punjab, 1996 Supp (4) SCC 423**, the Hon'ble Supreme Court held that a mere endorsement by the Magistrate was insufficient where the record did not disclose that the requisite caution had been administered and appropriate questions put to satisfy the Magistrate as to voluntariness.

58.7 That specific statutory procedure under Section 164 CrPC cannot, however, be mechanically imported into Section 108 proceedings. The Customs Act does not prescribe an identical procedure for recording or certifying the voluntariness of a Section 108 statement. In such proceedings, the adjudicating authority must assess voluntariness from the circumstances and material on record. Where there is no retraction and no allegation of threat, coercion, inducement, promise or other improper means, there may be no factual foundation requiring an elaborate enquiry into voluntariness. Hence the need for a mandatory examination-in-chief for verifying the voluntariness of a statement is not well founded. Where a retraction is made, however, **K.T.M.S. Mohd.** (supra), requires the authority to consider it before relying upon the original inculpatory statement.

58.8 Accordingly, the legal position that emerges is that voluntariness is a condition precedent to acting upon an inculpatory statement. The Magistrate has a specific statutory duty to satisfy himself of voluntariness when recording a confession under Section 164 CrPC. In respect of a Section 108 Customs statement, voluntariness is to be assessed from the circumstances and material on record. A subsequent retraction does not, by itself, establish involuntariness but must be

considered before the statement is relied upon. Once voluntariness is established, truthfulness, reliability, corroboration and ultimate probative value constitute distinct questions to be considered by the adjudicating authority and a decision taken which is subject to the 'test of reasonableness'. The requirement of examining the maker as a witness under the procedural law of evidence in a trial and the requirement of satisfying oneself as to the voluntary character of a Section 108 statement in a departmental proceeding are, therefore, separate matters and should not be conflated.

59. In **M/s. Geetham Steels** (supra), authored for the Coordinate Bench by my learned brother Shri Ajayan T.V., Member (Judicial) - and referred to in his order above – the facts of the case concerns allegations of clandestine manufacture and clearance of M.S. ingots by the appellant without payment of Central Excise duty. Based on intelligence, DGCEI conducted searches at the appellant's factory and office, as well as the premises of its Managing Director, former accountant and certain scrap dealers, resulting in seizure of incriminating records, electronic devices, bank records and other documents. Statements were also recorded from the persons concerned which primarily came to be relied on as evidence. The Department alleged that these materials, including the statements, evidenced unaccounted clearances and irregular availment of CENVAT credit. Action was proposed by Revenue under the Central Excise Act, 1944 read with Central Excise Rules, 2002. It was the appellants case that no reliance can be placed on the depositions of various persons as the same are not supported by any cogent and tangible evidences. The deposition under Section 14 should be corroborated by independent

evidences. In the current appeal the matter relates to the import of parts of motor-vehicle under the Customs Act. The main issue is whether goods imported at two different ports can be assessed under Rule 2(a) of GRI, as a whole. While the appellant has challenged the recording of statements by DRI officers during a specific period, it has not sought cross-examination of the makers of statements or challenged the non-following of any of any procedure of section 138B of the Act, before the adjudicating authority or alleged threat, coercion or prejudice in the appeal memorandum. Moreover the statements in this case are used only to corroborate the substantive facts on record. As held by the Hon'ble Supreme Court in **Bhavnagar University Vs Palitana Sugar Mills Pvt. Ltd.** [(2003) 2 SCC 111], even a slight difference in facts or the presence of additional facts may materially affect the precedential value of a decision. The same principle was reiterated in **Escorts Ltd. Vs Commissioner of Central Excise, Delhi-II** [2004 (173) E.L.T. 113 (S.C.)], wherein the Hon'ble Supreme Court emphasised that circumstantial flexibility and even one additional or different fact may make a significant difference to the conclusion reached in two cases, and cautioned that cases ought not to be decided by placing blind reliance on a precedent. Thus, the applicability of a judicial decision must necessarily be examined in the context of the statutory provision and the facts and circumstances in which the decision was rendered. Hence the order of the Tribunal in *Geetham Steels* is distinguished both on facts and law.

59.1 In this situation the manner in which the jurisdictional Hon'ble Madras High Court has approached the procedure of verifying the relevancy of a statement, would merit examination. Before doing so, it

would also be appropriate to consider the relevant decisions of some of the other High Courts.

**Judgments of Non-Jurisdictional High Courts**

60. In **Mohammed Muzzamil** (supra)**,** the Telangana High Court held that where violation of natural justice is alleged on account of denial of cross-examination in proceedings under the CA 1962 or similar legislation, the question of prejudice caused by such denial has to be examined. In the absence of prejudice, no relief can be granted. In that case, although penalties were substantially based on statements recorded under Section 108 implicating the petitioners in smuggling, the Court found that denial of cross-examination of the persons who had implicated them had caused no prejudice.

61. The Andhra Pradesh High Court, in **Shalini Steels Pvt. Ltd. Vs Commissioner of Customs & Central Excise, Hyderabad** [2011 (269) E.L.T. 485 (A.P.)], held that cross-examination of a witness whose statement is relied upon by the adjudicating authority is a facet of natural justice. At the same time, the Court emphasised that the applicability and extent of natural justice depend upon the facts and circumstances of each case and that violation of natural justice must be considered with reference to the prejudice caused thereby. It held:

> "9. Cross-examination of a witness, on whose statement reliance is placed by the adjudicating authority, is no doubt a facet of the principles of natural justice. It is, however, well to remember that **natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all.** If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. **Unnatural expansion of natural justice, without reference to administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction**. . ." (emphasis added)

In this context, the Court referred to a large number of judgments for example, **Chairman, Board of Mining Examination and Chief Inspector of Mines Vs Ramjee**, (1997) 2 SCC 256; **K.L. Tripathi** (supra); **Union of India Vs P.K. Roy**, AIR 1968 SC 850; **Channabasappa Basappa Happali Vs State of Mysore**, AIR 1972 SC 32; **Syndicate Bank Vs Venkatesh Gururao Kurati**, AIR 2006 SC 3542; **Rajendra Singh Vs State of M.P.**, AIR 1996 SC 2736; **Aligarh Muslim University Vs Mansoor Ali Khan**, (2000) 7 SCC 529; **Anil Bajaj (Dr.) Vs Postgraduate Institute of Medical Education & Research**, AIR 2002 SC 2414 etc. These authorities establish that natural justice cannot be applied through a rigid formula and that interference on that ground ordinarily requires a demonstration of prejudice.

62. In **Commissioner of Customs (Preventive), Lucknow Vs Shri Sarad Chand Agrahari @ Sharad Chand Agrahari**, **2026:AHC-LKO:3332-DB, dated 16.01.2026**, the Allahabad High Court held that **Section 138B does not mandate cross-examination in every case**. However, where the noticee specifically seeks cross-examination of a witness whose statement is relied upon, such cross-examination is mandatory. If it cannot be provided, the adjudicating authority must record reasons, including the circumstances contemplated under Section 138B. The Court thus held that the obligation to provide cross-examination arises upon a specific request by the noticee, and is not an automatic requirement in every proceeding.

63. The Hon’ble High Court of Karnataka in **Commissioner of Customs, Bangalore Vs Jyothi C. Jain** [2025 (9) T.M.I. 1225

KARNATAKA HIGH COURT], held that in the light of the judgment of the Hon'ble Supreme Court in **M/s. Andaman Timber Industries Vs Commissioner of Central Excise, Kolkata-II**, [(2015) 62 taxmann.com 3 (S.C.)], it is only where the statement of a witness has been recorded and such statement is proposed to be relied upon against the assessee that, upon a request made by the assessee, the adjudicating authority is bound to afford an opportunity of cross-examination.

**Judgments of the Madras High Court**

64. In **M/s. Veetrag Enterprises Vs Commissioner of Customs**, the Hon'ble Madras High Court, [2015 (330) E.L.T. 74 (Mad.)], the Madras High Court dealt with a challenge to adjudication proceedings in which the Customs authorities had relied upon statements of eight persons in relation to allegations of misdeclaration and undervaluation. The petitioners had repeatedly sought an opportunity to cross-examine the persons whose statements were relied upon. The adjudicating authority, however, rejected the request for cross-examination only while passing the final adjudication order. The High Court set aside the adjudication order on the ground of breach of natural justice. It held that the request for cross-examination ought to have been considered and decided by a reasoned order before the adjudication was finally concluded. The Court accordingly directed that the concerned persons be made available for cross-examination before a fresh decision was taken. Significantly, however, the judgment did not invoke Section 138 of the Evidence Act. The Court's decision rested on the general principles of natural justice and the right of the noticee to an effective opportunity to test evidence relied upon against him.

64.1 In **Jet Unipex Vs Commissioner of Customs, Chennai-III**, 2020 (373) E.L.T. 649 (Mad.), the Hon'ble Madras High Court, relying on *K.I. Pavunny*, held that statements recorded under Section 108 may be relied upon in confiscation, penalty or prosecution proceedings, subject to appropriate evidentiary safeguards. Where such statements constitute the sole or primary basis of the demand, their makers may require cross-examination. However, where they are relied upon only as corroboration of independent evidence, cross-examination need not necessarily be permitted. The Court thus emphasised that the necessity of cross-examination depends upon the evidentiary role of the statement and recognised that **Customs adjudication is not governed by the strict rules of evidence and the principle of preponderance of probability applies.**

64.2 In **Annai Poly Packs Vs The Deputy Director,** [W.P.(MD) Nos.5447 and 5501 of 2018, Dated: 01.10.2024], relating to a Central Excise appeal, the Hon'ble Madras High Court held that in a quasi-judicial proceedings before **the department officers are governed only by the principles of preponderance of probability and are not governed by strict rules of evidence**. Unless, the statements of the persons who have given statements against the petitioners are solely relied for confirming the demand, question of cross-examination of any of the persons who have given statements against the petitioners does not arises only where demand is solely based on such statement, the Department has to allow cross-examination or in the alternative eschew such statements.

64.3 In **Nagoor Gani Vs Additional Commissioner of Customs** [W.P. Nos. 2396 and 2656 of 2019, dated: 29.07.2022], the Hon'ble

Madras High Court upheld the penalties imposed under Section 112 of the Customs Act in respect of smuggled gold. The Court found that the case against the petitioners was supported by mutually corroborative statements recorded under Section 108 of the Customs Act. It further observed that, in adjudication proceedings, the liability of a noticee may be established on the touchstone of preponderance of probabilities and that a retracted admission does not, by that fact alone, cease to be relevant or incapable of being relied upon. **The Court also observed that the right of cross-examination is not absolute in every case, particularly where the request is found to be merely strategic and the material on record otherwise provides corroboration**. It is pertinent to note that, compliance with the procedural requirements contemplated under Section 138 of the Indian Evidence Act, was not referred to.

64.4 In **J. Ibrahim Vs Special Director, Enforcement Directorate** [2001 (127) E.L.T. 38 (Mad.)], the petitioner sought permission to cross-examine witnesses in adjudication proceedings. The Hon'ble Madras High Court held that where the governing statute prescribes a particular procedure, the adjudicating authority cannot depart from it to permit cross-examination contrary to the applicable statutory scheme, and found no infirmity in rejection of the request.

64.5 In **Rajkumar Gowthaman Vs Joint Commissioner of Customs (Preventive), Tiruchirappalli** [W.P.(MD) No.3009 of 2020], involving the smuggling of gold decided on 28.05.2022, the Hon'ble Madras High Court held that where the Section 108 statements of the passengers had neither been retracted nor disputed and

constituted categorical confessions, there was no requirement to examine or cross-examine the mahazar or other witnesses.

64.6 In **M/s. Amritha Marketing, Madurai Vs Joint Commissioner of CGST and Central Excise, Central, Madurai** [2026-TIOL-148-HC-MAD-GST], decided on 26.11.2025, the Hon'ble Madras High Court considered a challenge arising from reliance upon a report prepared by a person who had retrieved electronic data from devices seized during search proceedings. Though the Court observed that technical rules of evidence do not apply as such to assessment proceedings, it held that where material relied upon is specifically challenged, the author may have to be made available for cross-examination, subject to the assessee demonstrating the need for such examination and prejudice arising from its denial. The Court specifically rejected a blanket claim for cross-examination of all persons whose statements had been recorded. In the facts before it, cross-examination was not considered necessary because the data had been retrieved in the presence of the assessees, the process had been certified by them, and the correctness of the data had not been disputed. The Court further noted that the assessees themselves had admitted, in their statements recorded under Section 70 of the CGST Act, that the data represented entries made by them. The Court held:

> "8.It is not in dispute that the assessment order relies on the report of the staff of M/s.FDI Labs, Chennai who retrieved the data from the electronic devices seized during the search operation. The technical rules of evidence may not be applicable as such to assessment proceedings. But when the report which forms the basis of the order itself is questioned, the proper officer is obliged to make available the author of the report for cross-examination. Failure to do so may render the assessment order vulnerable for having breached the principles of natural justice provided that the assessee is able to show prejudice on account of such denial. **It is well settled that though the right to cross**

> **examine a given witness may not be provided by or under the statute, it being a part of the principles of natural justice should be held to be an indefeasible right. But the assessee must still make out a case for cross examination. It will not be "Ask, and it shall be given".** The assessee seeking cross-examination ought to give specific reasons why cross-examination is needed in a particular situation and that too of specific witnesses. **A blanket request to cross-examine all persons whose statements have been recorded by the department, cannot be sustained** [vide 2025 (4) TMI 1154, Vallabh Textiles v. Addl. Commissioner, Central Tax (GST)].
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> 9. **Applying the above principle, the petitioners may not have a case for cross-examining the author of the report containing the data recovered from the electronic devices of the assessees. This is because, the assessees had nowhere questioned the veracity of the data retrieved from the systems maintained by them. It is seen that the retrieval took place very much in their presence.** The assessees themselves duly certified the process of retrieval. While the retriever who was only a technical person might not have been competent to describe the nature of the data retrieved from the systems as "actual sales data", that may not really make much of a difference. The assessees were examined and their statements were recorded under Section 70 of the Act. To specific questions, they admitted that the data retrieved from the systems was actually entered by them. I, therefore, hold that the request to cross-examine the retriever of data was rightly denied and in any case, it did not cause any prejudice to the petitioners.
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> (emphasis added)

64.7 More recently, in **Shri Sheik Dawood & Ors. Vs Additional Commissioner of GST and Central Excise, Chennai**, [2026: MHC:3952], decided on 07.09.2026, the Hon'ble Madras High Court considered denial of cross-examination of two persons whose statements had been relied upon in the adjudication. The appellants had specifically alleged coercion and sought their cross-examination. The Court held that while the right to cross-examine is not absolute in every case, once the adjudicating authority finds the statements sufficiently credible to rely upon them, fairness requires that the assessee be afforded an opportunity to rebut them by cross-

examination. The Court accordingly found denial of such opportunity unsustainable where the adverse conclusions flowed directly from the statements. The Court stated:

> "14. While **it is for the Assessing Authority to decide as to whether the statements recorded are credible**, once he finds them credible enough to use, in all fairness, the assessee must be given opportunity to rebut the same by cross-examination."

64.8 Section 136 of the CGST Act, 2017 is broadly analogous to Section 138B(1) of the Customs Act, particularly in respect of clauses (a) and (b) concerning the use of statements for proving the truth of their contents. The material distinction, however, lies in their statutory scope. Section 136 is confined to prosecutions, whereas Section 138B(2) expressly extends Section 138B(1), *"so far as may be,"* to proceedings under the Customs Act other than proceedings before a Court, including departmental adjudication. The CGST Act contains no corresponding provision. Thus, *Amritha Marketing* and *Shri Sheik Dawood* were decided within the statutory scheme of the CGST Act and on principles of natural justice; neither decision lays down that Sections 137 and 138 of the Evidence Act are incorporated into departmental proceedings.

64.9 These decisions indicate that the jurisdictional High Court, both in matters arising under the Customs law and under other economic-offence statutes empowering officers to summon and examine persons as witnesses, has adopted a contextual approach to the issue of cross-examination, while consistently applying the fundamental principles of natural justice and not sections 137 and 138 of the Evidence Act. The Court has considered, inter alia, the evidentiary role and significance of the statement relied upon, the availability of independent

corroborative material, the specific grounds and circumstances in which cross-examination is sought, and the nature and extent of prejudice, if any, occasioned by denial of such an opportunity. They do not import the complete machinery of Section 138 of the Evidence Act into Section 138B. Significantly, **none of these decisions treats even examination-in-chief of the maker and if required the gazetted officer by the adjudicating authority as an independent or indispensable stage for determining the relevancy or admissibility of a statement in departmental adjudication under Section 138B of the Customs Act**. The decisions deal with the fairness and evidentiary value of reliance upon statements and, where appropriate, the consequential right to test them by cross-examination;

64.10 We may contrast this position with the decisions of the Punjab and Haryana High Court in **Jindal Drugs** (supra), and **Ambika International** (supra), which as discussed earlier, is in the context of Section 9D of the Central Excise Act. These decisions, of a non-jurisdictional High Court in Central Excise matters are of persuasive value but are not binding, on this bench. Their persuasive value must necessarily be considered alongside the binding law declared by the jurisdictional High Court.

**Established Practice - cursus curiae est lex curiae**

65. Moreover, there has been no established quasi-judicial practice by the department, since the inception of the Act, of conducting an examination-in-chief of the maker of a statement and/or the gazetted officer for the purpose of determining its relevancy or for proving the truth of its contents before relying upon such statement in

departmental adjudication. In this regard, the maxim *cursus curiae est lex curiae* (the practice of the Court is the law of the Court.), is also relevant. In **Jamal Uddin Ahmad Vs Abu Saleh Najmuddin & Anr.** [AIR 2003 SC 1917 / (2003) 2 SCR 473], the Hon'ble Supreme Court recognised that an inveterate practice generally rests upon principles founded on justice and convenience. In **Maxworth Orchards (India) Ltd. Vs B. Ravi Babu**, [2023 (8) TMI 1104 (Mad.)], the Hon'ble Madras High Court, referring to the Full Bench decision in **Muttu Chidambara Vs Karuppa**, [(1884) ILR 7 Mad 382], reiterated that a long-settled practice should not ordinarily be unsettled and that the practice followed by the Court and its predecessors should be respected.

**Judicial Discipline**

66. Judicial discipline therefore requires that, before displacing the procedure consistently followed and importing a procedural requirement laid down by a non-jurisdictional High Court, the same must be tested by this Bench against the statutory scheme; the principles of interpretation as laid down by law and the binding law declared by the jurisdictional High Court. A decision of another High Court may undoubtedly have persuasive value; it cannot, however, by itself displace the law applicable within the territory of the jurisdictional High Court. In the absence of any binding decision of the Hon'ble Madras High Court holding that examination-in-chief of the maker of a statement and if required the gazetted officer, is an indispensable requirement under Section 138B, and there being no express reference or incorporation of Sections 137 and 138 of the Evidence Act in the Customs Act, and considering the principles of law as enumerated by

Constitutional Courts and discussed above I am, with utmost respect, unable to hold that such procedure must displace the past practice and invariably be followed in departmental adjudication, unless such departure is required by the statutory text or binding authority.

66.1 This Bench of the Tribunal is, bound to follow and give effect to the law laid down by the jurisdictional High Court. The legal position has also been recognised by ld. Brother, Shri Ajayan T.V., Member (Judicial) in his order in **A.R.A.S. Appliances Pvt. Ltd. Vs Commissioner of GST & Central Excise**, Interim Order No. 06/2026, dated 10.08.2026**,** [**JURISDICTIONAL HIGH COURT DECISION SQUARELY BINDS THIS BENCH OF THE TRIBUNAL** - paras 35 to 43]. Since the law on the matter is well settled the passage is not being extracted here. Hence, the decisions of the jurisdictional High Court, as stated above, are binding on this Bench of the Tribunal, and judicial discipline requires that they be faithfully followed and new procedures which are not expressly provided in the section should not be introduced, as held in **Rajiv Kumar Bani Singh**; **Phool Patti Vs Ram Singh** and **Padma Sundara Rao (Dead) & Ors.,** referred to above.

66.2 **As discussed above, Sections 108, 123, 138B, 138C and 139 of the Customs Act, 1962 prescribe a special evidentiary framework governing procedure, presumptions and admissibility in customs proceedings. The legislative intent is to facilitate expeditious adjudication without compromising the right to a fair adjudication process. The prescribed procedure must therefore be applied in preference to the general law, to the extent of any inconsistency. A similar departure from ordinary trial procedure under the NIA was upheld by the**

**Hon'ble Supreme Court in *Mandvi Cooperative Bank; Indian Bank Association* and *Radhey Shyam Garg*, referred to above. The judgments of the Hon'ble Madras High Court are consistent with this principle and are binding on subordinate authorities within its territorial jurisdiction.**

66.3 For completeness we need hence examine how the Hon'ble Supreme Court has dealt with the voluntary nature of a statement and whether it has insisted upon the three-step process in the examination of a witness.

**Supreme Court Judgments**

67. The judgments of the Hon'ble Supreme Court, when considered in their proper statutory context, have not stated that the procedure prescribed under Section 138 of the Evidence Act is incorporated into Section 138B of the Customs Act or that examination-in-chief is mandatory. Rather, the Court has examined the evidentiary value of statements and the requirement of cross-examination within the statutory scheme governing the particular proceedings and on the touchstone of natural justice. As observed in *Mandvi Cooperative Bank* (supra), **the rationale behind enacting a special statutory procedure is to streamline adjudication by eliminating lengthy trial stages that traditionally impede prompt disposal, while steadfastly safeguarding the right of the accused to a fair adjudicatory process.**

67.1 In **Kanungo & Co. Vs Collector of Customs** [(1973) 2 SCC 438 / 1983 (13) E.L.T. 1486 (S.C.)], concerning Customs adjudication itself, the Hon'ble Supreme Court held that natural justice did not require every person who had furnished information to the Customs

authorities to be produced for examination or cross-examination. At the same time, the Court independently examined the material relied upon and found the evidence insufficient. The decision therefore demonstrates that the question of cross-examination itself, is not governed by an inflexible procedural rule but by the nature and sufficiency of the material relied upon.

67.2 In **Surjeet Singh Chhabra** (supra), the Hon'ble Supreme Court considered a confession made before Customs officers which was subsequently retracted. The Court held that the confession constituted an admission binding upon the maker and that non-examination of the panch witnesses did not, in the facts of that case, constitute a violation of natural justice. Again, the Court did not import any separate statutory procedure governing examination of witnesses. The evidentiary value of the statement and the fairness of the adjudication were examined within the Customs legal framework.

67.3 Similarly, in **Gulam Hussain Shaikh Chougule Vs S. Reynolds, Superintendent of Customs, Marmagoa** [(2002) 1 SCC 155 / 2001 (134) E.L.T. 3 (S.C.)], and **IVRCL Infrastructure & Projects Ltd. Vs Commissioner of Customs, Chennai** [2015 (319) E.L.T. 194 (S.C.)], the Hon'ble Supreme Court proceeded on the settled position that statements recorded under Section 108 are admissible in evidence. The Court examined whether the statements were voluntary and whether there was material indicating coercion or involuntariness. In IVRCL Infrastructure (supra), the statements remained unretracted and there was nothing to indicate that they were involuntary. Accordingly, reliance upon them by the authorities below was held legally sustainable. Neither decision introduced the examination-in-chief,

cross-examination or re-examination procedure prescribed by the Evidence Act into Section 138B proceedings, even in a case where coercion was alleged.

67.4 In **CCE Vs Duncan Agro Industries Ltd.** [(2000) 7 SCC 53], the Hon'ble Supreme Court similarly held that an inculpatory statement recorded under Section 108 by a Customs officer is not inadmissible merely because it was made to a non-police officer. The Court directed that such statement be scrutinised with caution and satisfy the safeguards relating to voluntariness. Significantly, while referring to Section 24 of the Evidence Act, the Court did not hold that Sections 137 and 138 of that Act governed the procedure for receiving or testing a Section 108 statement. The reference was to the substantive safeguard against involuntary confessions, not to the procedural machinery governing examination of witnesses. The Court held:

> "The inculpatory statement made by any person under Section 108 is to non-police personnel and hence **it has no tinge of inadmissibility in evidence** if it was made when the person concerned was not then in police custody. Nonetheless the caution contained in law is that such a statement should be scrutinized by the court in the same manner as confession made by an accused person to any non-police personnel. The court has to be satisfied in such cases, that any inculpatory statement made by an accused person to a gazetted officer must also pass the tests prescribed in Section 24 of the Evidence Act. If such a statement is impaired by any of the vitiating premises enumerated in Section 24 that statement becomes useless in any criminal proceedings."
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> (emphasis added)

67.5 The decisions in **Lakshman Exports Ltd. Vs Collector of Central Excise** [2002 (143) E.L.T. 21 (S.C.)], and **Arya Abhushan Bhandar Vs Union of India**, 2002 (143) E.L.T. 25 (S.C.), involved specific requests for cross-examination which had been denied. The Supreme Court found procedural deficiencies in the circumstances of

those cases and directed appropriate corrective action. These decisions recognise the importance of cross-examination where the circumstances require it. They do not, however, prescribe examination-in-chief as an additional statutory stage under the relevant adjudicatory scheme.

67.6 In **Andaman Timber Industries** (supra), the assessee had specifically disputed the truthfulness of the statements relied upon and sought cross-examination to test the testimony. The denial of that opportunity, in the circumstances of that case, was held to constitute a serious violation of natural justice. The decision is therefore authority for the proposition that, where adverse statements constitute material evidence and their credibility is specifically put in issue, denial of a meaningful opportunity to test them may cause prejudice. It does not, however, hold that the procedure prescribed under Sections 137 and 138 of the Evidence Act stands incorporated into Section 138B.

67.7 The same approach is evident in **M/s. Telestar Travels Pvt. Ltd. Vs Special Director of Enforcement** [2013 (289) E.L.T. 3 (S.C.)], where the Hon'ble Supreme Court observed that **the probative value of a deposition can ordinarily be properly assessed after it is tested by cross-examination**. At the same time, whether denial of such opportunity warrants interference depends upon the prejudice caused and the facts and circumstances of the case. The Court thus applied the principle of fair adjudication without importing an independent statutory procedure into the enactment under consideration.

67.8 In **New India Assurance Co. Ltd. Vs Nusli Neville Wadia** [AIR 2008 SC 876], arising under the Public Premises (Eviction of

Unauthorized Occupants) Act, the Hon'ble Supreme Court observed that where a disputed fact is sought to be established through a witness, the affected party would ordinarily be entitled to an opportunity to test the testimony by cross-examination. This principle of natural justice applied by the Court cannot, however, be equated with incorporation of Section 138 of the Evidence Act into a special statutory adjudication.

67.9 In **K.L. Tripathi Vs State Bank of India** [(1984) 1 SCC 43], the Hon'ble Supreme Court explained that fair play is not a rigid formula and that the question of prejudice must be determined with reference to the facts of each case. Where facts are admitted or the credibility of the witness is not challenged, denial of cross-examination may not cause prejudice. Where disputed facts materially depend upon witness testimony, the position may be different. The principle is therefore one of fair opportunity and prejudice.

67.10 In **Dinesh Kumar Vs Surta Nath @ Surat Nath & Ors**. [2026 INSC 485], decided recently on 29.04.2026, the Hon'ble Supreme Court considered a request for cross-examination in election proceedings and held that the party seeking such examination must disclose sufficient and justifiable reasons. The Tribunal has discretion to permit cross-examination upon being satisfied that such grounds exist. As no sufficient reason had been disclosed in that case, denial of cross-examination was upheld. The decision again treats cross-examination as a procedural safeguard to be applied having regard to the circumstances.

67.11 More recently, in **Amad Noormamad Bakali** (supra), the Hon'ble Supreme Court considered statements recorded under Section

108 of the Customs Act in the context of criminal prosecution. Relying upon K.I. Pavunny, the Court recognised the object of Section 108 as enabling Customs authorities to collect relevant information and evidence and accepted voluntary statements under Section 108 as substantive evidence for confirming the guilt, particularly where corroborated by subsequent discoveries and recoveries. The Court found no perversity or legal infirmity in the concurrent findings of guilt:

> "21. Placing reliance on judgment of this Court in **K.I. Pavunny v. Assistant Collector (HQ), Central Excise Collectorate, Cochin**[5], the High Court held that the object of Section 108 of the Customs Act, 1962 is to empower Customs authorities to collect relevant information and evidence relating to contraventions of the Act, and that such statements, if found to be voluntary, are **substantive pieces of evidence capable of being relied upon in support of the prosecution case.**
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> 22. The High Court further noted that **the appellants had failed to establish any material to demonstrate that the statements under Section 108 of the Customs Act, 1962 were obtained under coercion, inducement, or threat, and in the absence of such proof, the statements could not be discarded**. The High Court negated the contention that the conviction was based solely on the statements recorded under Section 108, observing that **such statements had led to further discovery of incriminating material**, including contraband articles and money, duly documented through *panchnamas* and corroborated by the testimony of Customs Officers. It was held that such discoveries and recoveries constituted independent and relevant evidence within the meaning of Sections 6, 10, and 11 of the Evidence Act, thereby lending corroborative support to the statements made under Section 108. Consequently, it was held that the conviction of appellants was not based merely on confessional statements but in addition thereto, the prosecution provided tangible corroborative evidence. Therefore, the judgment of conviction did not suffer from perversity or legal infirmity.
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> 23. **Having considered the matter in its entirety, we find ourselves in agreement with the observations made by the High Court.** The findings of guilt recorded by the trial Court, which stand concurrently affirmed by the appellate Court as well as the High Court do not suffer from any perversity, illegality, or manifest error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution of India." (emphasis added)

67.12 The above authorities therefore disclose a consistent distinction between **(i) the substantive or evidentiary principles governing the reliability and use of a Section 108 statement, and (ii) the procedural machinery governing examination of witnesses under the Evidence Act**. The Supreme Court has applied principles of voluntariness, fair opportunity, natural justice, evidentiary sufficiency and prejudice where relevant, but none of these judgments holds that Section 138 of the Evidence Act are incorporated into Section 138B of the Customs Act or that examination-in-chief of the maker is an additional statutory prerequisite to the use of his statement in departmental adjudication.

67.13 In my view, this distinction is material. The fact that a principle embodied in the Evidence Act — such as the desirability of testing testimony by a three-stage procedure — may carry the requirements of natural justice, does not mean that the detailed procedural machinery of that Act is thereby incorporated into a special enactment. The Supreme Court judgments relied upon above do not make such an extension. They determine the admissibility, reliability or evidentiary weight of the material relied upon, within the statutory framework applicable to the proceedings and according to the requirements of the principles of natural justice.

**Conspectus of the Discussion**

68. The following points emerge from the foregoing discussion:

A. Section 138B is a specific statutory mechanism governing the use of statements for proving the truth of their contents. Section 138B(2) extends it, "so far as may be," to departmental proceedings. The requirements applicable to criminal prosecution cannot, therefore,

be mechanically transposed to adjudication. The procedural requirements must principally be gathered from the Customs Act, having regard to its self-contained scheme and the absence of any express or necessary incorporation of the Evidence Act.

B. Section 138B does not expressly prescribe the sequential procedure of examination-in-chief, cross-examination and re-examination under Sections 137 and 138 of the Evidence Act. Nor can examination-in-chief of every maker of a Section 108 statement be treated as an independent and universal precondition to its consideration, absent such incorporation. The adjudicating authority must instead exercise its statutory discretion, record the requisite satisfaction under Section 138B and observe the principles of natural justice.

C. Cross-examination is not an automatic entitlement. Its necessity depends upon the reasons advanced, the evidentiary role of the statement, the nature of the challenge, the availability of independent or corroborative evidence and the prejudice likely to result from its denial. Where a statement constitutes the principal or decisive basis of an adverse finding and its correctness is specifically disputed, cross-examination may be necessary. Where it is merely corroborative of independent evidence, its denial will not necessarily vitiate the proceedings.

D. The evidentiary weight of a Section 108 statement must be assessed having regard to its voluntariness, consistency, retraction, surrounding circumstances and corroboration. A categorical, voluntary and unretracted statement supported by independent material may

carry substantial weight. The enquiry is thus directed to reliability and probative value rather than procedural formality.

E. The controlling consideration is whether the affected party had a fair and meaningful opportunity to meet the material relied upon and whether denial of the requested procedure caused prejudice. Where, as in the present case, cross-examination was not sought and no prejudice is demonstrated, the statements cannot be held inadmissible merely for want of cross-examination. There is no uniform rule rendering every Section 108 statement inadmissible unless its maker is cross-examined. The principle of *cursus curiae est lex curiae* also supports adherence to the established statutory and judicial practice, subject to the statute and natural justice.

**Conclusion**

69. For the foregoing reasons, while concurring with the final conclusion reached by the ld. Member (Judicial), I respectfully differ from his reasoning insofar as it proceeds by examining an issue not pleaded in the appeal memorandum and further on the footing that it is a necessary requirement for the adjudicating authority to depose all the deponents by way of examination-in-chief, who have given statement under Section 108, save as those that are unavailable in the scenarios given in 135B(1)(a), before the statements are admitted in evidence. In my view, the procedure adopted by the department and discussed at para 50.13 are adequate compliance with section 138B(2). Further the statements remain part of the evidentiary material and are complaint with Section 138B ibid, so long as they are determined by the adjudicating authority in the exercise of its discretion under Section 138B, judicially and having regard to the facts

and circumstances of each case and are subject to judicial scrutiny. They should hence be accorded appropriate weight, in this case, in the circumstances stated above, particularly as the decisive finding is independently sustained by documentary, physical and expert evidence.

70. The appeal shall accordingly stand disposed of in terms of the conclusion recorded in the order of the ld. Member (Judicial), subject to the foregoing separate reasons on the applicability and evidentiary effect of Sections 108 and 138B of the CA 1962. These reasons further support the conclusions reached in the impugned order, as the statements recorded under Section 108, considered in the context of the other evidence on record, supplement the evidentiary foundation and enhance the degree of probability in establishing the facts in issue.

(Pronounced in open court on 06.10.2026)

**Sd/-**
(**M. AJIT KUMAR**)
Member (Technical)

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