M/s.Combine Trading Company And Anr. Vs Principal Commissioner of Customs-(Import), Inland Container Depot, Tughlakabad, New Delhi

Court: Customs, Excise And Service Tax Appellate, New Delhi

Date of Decision: Jan. 6, 2025

Acts Referred: Customs Act, 1962 â€" Section 14, 17(1), 28AA, 28(4), 46, 108, 111(m), 112(a)(ii), 114A, 114(AA), 138C
Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 â€" Section 4, 8, 9, 12
Indian Evidence Act, 1872 â€" Section 24

Hon'ble Judges: Binu Tamta, Member (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: N.K.Sharma, Kapil Gautam, M.S. Arora, Nagendra Yadav

Final Decision: Dismissed

Judgement

Binu Tamta, J

1. Two separate appeals have been filed by M/s. Combine Trading Co and

Shri Jaspreet Singh, assailing the Order-in-Original No. 03/2022/SG/PR.Commr./ICD-Import/TKD dated 28.01.2022 confirming the show cause

notice whereby the self-assessed transaction value was rejected and re-determination of the value along with the order of recovery of differential

customs duty with penalty under section 112(a) (ii) and 114 (AA) of the Customs Act, 1962, the Act was passed.

2. The facts of the case are that on an intelligence, SIIB-Import ICD, TKD investigated a case of mis-declaration and undervaluation in imports of

Ã¢â‚¬Å“Automotive Safety GlassÃ¢â‚¬ shield of assorted sizes and PU Sealant. The office premises and the residential premises of the appellant were

searched on 12.10.2018. During investigation, incriminating documents like actual Commercial invoices of past imports was resumed vide Panchnama

dated 12.10.2018 from the office premises of M/s Combine Trading Company. It was noticed that the actual value of ""Automotive Safety Glass"" wind

shield were not correctly declared before the Customs at the time of Customs clearance. Documents in the form of parallel invoices (actual

transaction value) resumed vide Panchnama dated 12.10.2018 from the office premises of M/s Combine Trading Company related to past imports,

were also examined via-a-vis value declared and entered, by the said importer. Such examination indicated that the importer has also suppressed the

actual transaction value in respect of past import consignments of Automotive Wind Shield. The details of the imported consignments was :

i) Ã¢â‚¬Å“Automotive Safety GlassÃ¢â‚¬Â windshield through 27 bills of entry for the period from 09.06.2015 to 26.04.2018 the details, whereof are

given in Table B & C in the impugned order.

ii) Ã¢â‚¬Å“PU SealantÃ¢â‚¬Â through 11 bills of entry for the period from 30.0 5.2016 to 13.0 3.2018, the details of which are given in Table D in

the impugned order.

3. Statement of Shri Ranbir Singh, Import-Export Manager of the appellant company was recorded on 12.10.2018 under section 108 of the Act and

subsequently the statement of Shri Jagmohan Kaushal, Proprietor of the appellant company was recorded on 15.10.2018. From the statement of Shri

Jagmohan Kaushal, it was revealed that there was an arrangement with M/s. Chandok Glass House whereby all correspondences with the foreign

supplier M/s. Xinyi Automobile Glass, China was done by them and after the imported goods were cleared, they were sold to M/s. Chandok Glass

House. On the issue of undervaluation with reference to the two actual invoices recovered during the search he admitted that invoice with higher

value of USD 22137.43 was the actual value of the imported consignment and the invoice of value USD 11154.72 was shown in customs for

assessment purpose by them. The statement of Shri Jagmohan Kaushal necessitated the inquiry against Shri Jaspreet Singh, authorized signatory of

M/s. Chandok Glass House. Accordingly, statement of Shri Jaspreet Singh was recorded on 24.10.2018, where he admitted that all the work related to

import of automobile glass was being booked after by him as the authorized representative of M/s. Chandok Glass and he further admitted the mistake

in the undervaluation of the two parallel invoices recovered at the time of search and agreed to pay the duty thereon.

4. Documents resumed vide Panchnama dated 12.10.2018 from the office premises of M/s Combine Trading Company and email retrieved on

15.10.2018 from the g-mail account of Shri Jagmohan Kaushal, Proprietor M/s Combine Trading Company, revealed that the appellant was in

possession of actual invoices depicting correct transaction value of the goods, however they presented fabricated invoices for Customs clearances

having lower than the actual values, to evade Customs duty on the higher value of the said goods.

5. In respect of the two Bills of Entry, the actual value found from the parallel invoices recovered during the investigation was taken for the purpose of

assessment. In respect of the remaining goods that is 25 consignment of automotive windshield, the imports made by M/s. Gupta Glass Enterprises

from the same foreign supplier was relied upon. Similarly, in respect of 11 consignment of PU Sealant, similar cases of import were investigated

against M/s. Burberry International and M/s. Juneja Marketing Company where the importer admitted the actual price of PU Sealant of Chinese

origin as ascertained at USD1.00(CIF) per piece was relied upon. The assessable value was accordingly, re-determined in terms of Customs

Valuation (Determination of Value of Imported Goods) Rules, 2007, CVR, 2007.

6. Show cause notice dated 17.09.2020 was issued to the appellants demanding the differential duty of Rs.1,41,80,369/- after rejecting the self-

assessed transaction value of Rs.4,38,37,565/- and re-determined as Rs.9,01,60,898/- proposing confiscation under section 111 (m) and penalty under

section 114A and 114(AA) of the Act on the importer. The penalty under section 112(a)(ii)/ 112(b) (ii) and section 114AA was also proposed on Shri

Jaspreet Singh the authorized signatory of M/s. Chandok Glass House. On adjudication, the show cause notice was confirmed by the impugned order.

Hence, separate appeals have been filed by the company as well as by Shri Jaspreet Singh.

7. We have heard Shri N.K.Sharma and Shri Kapil Gautam learned Advocates for the Appellant (C/51526/2022) and Shri M.S. Arora, Advocate for

the appellant (C/52293/2022) and Shri Nagendra Yadav, Authorised Representative of the Department.

8. At the outset the Learned Counsel for the appellant submitted that no pre-show cause notice consultation was provided which is mandatory in terms

of the notification No. 29/2018 Cus(NT) dated 02.04.2018 and also the decisions in that regard. Neither Shri Ranbir Singh nor Shri Jagmohan Kaushal

has admitted of having resorted to undervaluation of goods or presentation of any fabricated documents before the customs. Further, Shri Jaspreet

Singh had stated that the goods imported were of second quality and hence could not be compared with the goods imported by M/s Gupta Glass

Enterprises. The two invoices retrieved cannot be relied upon in the absence of a Certificate under section 138C of the Act. The bills of entry filed by

M/s Gupta Glass Enterprises were not provided to them to examine whether the goods were of same quality and description, and therefore the

average value arrived at on that basis was arbitrary. The re-determination of the value has to be done by proceeding sequentially through rule 4 to 9 of

CVR, 2007, however, the valuation has been resorted to under rule 9 without supplying the contemporaneous import data. Similarly, with respect to

PU Sealant, it has not been established that the goods were identical in terms of quantity, quality, or the period of import. If the import price of M/s

Gupta Glass Enterprises or M/s Blueberry International are applied to the present imports, cross examination of these importers needs to be allowed.

The burden is on the revenue to establish that the declared transaction value is not genuine, which they failed to discharge. In the investigation, it has

nowhere been pointed out that the appellant remitted any amount over and above the transaction value.

9. The learned authorized representative referring to the statements recorded under section 108 of the Act, of Shri Ranbir Singh, Import Export

Manager of the appellant, Shri Jagmohan Kaushal, proprietor of the appellant and Shri Jaspreet Singh of M/s Chandok Glass House and also the

documents retrieved from their email IDs, submitted that the appellant had indulged in suppressing the actual invoice giving the correct transaction

value of the goods and presented fabricated invoices for customs clearance, having lower value, thereby violated the provisions of section 17 (1) and

section 46 of the Act as they failed to file the correct declaration in the bill of entry and proper self assessment. The declared value has, therefore

been rightly rejected under rule 12 and re-determined under rule 9 on the basis of import price for the same goods from the same foreign supplier. In

view of the mis-declaration in the transaction value the extended period had been rightly invoked for confiscating the goods under section 111 (m) of

the Act and the appellant is liable to pay the differential custom duty with applicable interest under section 28AA of the Act along with penalty under

section 114A of the Act.

10. Having heard both sides, we need to examine whether the impugned order has rightly decided the issue of mis-declaration of the transaction value

resulting in undervaluation of the goods and thereby holding the appellant liable to the consequences of confiscation, differential customs duty along

with interest and penalty.

11. The pre-liminary contention raised by the learned counsel for the appellant that no opportunity for the pre-show cause notice consultation was

provided, needs to be rejected out rightly as from the records of the case, we find that the appellant had been evading the investigation as despite

service of summons dated 09.04.2019, 16.05.2019, 24.10.2019 and 21.02.2020 seeking their appearance on the dates specified, the appellant failed to

appear. Once the appellant had chosen not to cooperate with the Department, the question of providing the pre-show cause notice consultation does

not arise. Even the notification dated 29/2018-CUS(NT) dated 02.04.2018, which provides for pre-show cause notice consultation, in the first Proviso

to Para-3 lays down that if no response is received from the person to whom the notice is proposed to be issued within the specified period the proper

officer shall proceed to issue the notice to the said person without any further communication. In view thereof, we do not find any violation of the

mandatory provisions of providing pre-show cause notice consultation to the appellant. The reliance placed on the decision of the Madras High Court

in Hitachi Power Europe GMBH vs. CBIC, 2019(27)G.S.T.L. 12(Mad.), on the principle of pre show cause notice consultation, we find that the same

is distinguishable on facts as the writ petitioner there has sought an opportunity of personal hearing which was not granted.

12. The first aspect to be considered is whether there was any mis-declaration in the valuation of the goods imported by the appellant. The

investigation was initiated on the basis of an intelligence that many Delhi based importers were engaged in suppression of actual transaction value and

resorted to gross undervaluation in import of Automotive Windshield (Automotive Safety Glass) of assorted sizes for various models of vehicles and

the appellant was one of such importers. Search of the office premises of the appellant company on 12.10.2018, resulted in recovery of a CPU,

printouts were taken from the email of certain documents including actual invoices under a Panchnama of the same date. It is an admitted position that

two sets of parallel invoices were recovered, the details whereof are:

i) Invoice bearing no. XY-AA Ã¢â‚¬" ANE1709 Ã¢â‚¬"N dated 05.02.2018 valued at USD 22137.43 and XY Ã¢â‚¬" AA Ã¢â‚¬" ANE1709 Ã¢â‚¬"N dated

050.02.2018 valued at USD 11154.72 in respect of BE No. 544 7962 dated 5.03.2018. The commercial invoice valuing USD 22137.43 was

the actual value of the imported consignment issued by M/s Xinyi Automobile Glass (Shenzhen) Co. Ltd., China of 1148 pieces of automobile

glasses and the other invoice valuing USD 11154.72 was for the purpose of assessment of customs duty.

ii). Other invoice no. XY Ã¢â‚¬" AA Ã¢â‚¬" ANE1710 Ã¢â‚¬" M dated 05.02.2018 bearing higher import value of USD 20094.44 from M/s Xinyi

Automobile Glass (Shenzhen) Co. Ltd., China of 1334 pieces of automobile glasses as against the declared value of USD13344.37.

From the aforesaid recovery of invoices, it is evident that two sets of parallel invoices were maintained, one was the actual invoice bearing higher

valuation and the other parallel set of invoice of lower valuation was for the purpose of presentation before the customs for assessment. The apparent

intent in resorting to such unlawful means was to suppress the actual transaction value so as to evade duty on the higher amount.

13. The other documents retrieved from the email IDs of Shri Ranbir Singh and Shri Jagmohan Kaushal contained the emails exchanged between the

parties, which has been admitted by them.

14. We may now consider the other material evidence collected in the form of statements recorded under section 108 of the Act:

i). Shri Ranbir Singh, Import-Export Manager in the appellant company, admitted that the company was engaged in the business of import

of Windshield glass of Automobiles, PU Sealant, etc. He submitted that the documents mentioned in the Panchnama and resumed

subsequently were retrieved from the email IDs of ranbir@logistics.in and jagmohan@logistics.in from the computers used by them and

accessed from the computer installed in the office premises in their presence. He confirmed the authenticity of the retrieved documents and

put his signatures on all the pages in token of certificate of genuineness of the same in terms of section 138C of the Act.

ii) Shri Jagmohan Kaushal, Proprietor in his statement recorded on 15.10.2018 admitted that the company was engaged in the import of

Windshield Glass Automobiles, PU Sealant, flap, disc machinery parts, keychain, and crystal paper weight, etc. from China and Hong

Kong. He also stated that the company had an arrangement with M/s. Chandok Glass House, according to which they agreed to import

automotive windshield glass and PU Sealant on their behalf. All correspondence with foreign supplier of goods, M/s. Xinyi Automobile

Glass (Shenzhen), China was done by M/s Chandok Glass House and after import of said goods, they used to sell the goods to M/s

Chandok Glass House completely and the container after clearance was sent to their premises for unloading. He admitted that all

documents related to import like commercial invoices, packing list, etc. were received from M/s Chandok Glass House on the basis of which

they used to file the bill of entry. With reference to the two commercial invoices of the same number mentioning different valuation, he

admitted that CI with invoice value USD 202137.43 was the actual value of the consignment and CI with invoice value. USD 11154.72

appears to be shown in Customs for assessment purposes by the company. The relevant extract from his statement is quoted below:

Ã¢â‚¬Å“I state that in order to prove my account, I am voluntarily opening my mail id jagmohan@milaplogistics.in on the computer system

installed in the office of SIIB and I have tendered self certified printout of mail to which CI of value 11154.72 was attached. Similarly, I

have also called for the said mail to which invoice of value USD22137.43 was attached from our mail id, ranbir@milaplogistics.in on mail

id jagmohan@milaplogistics.in and have tendered self certified printout of mail along with CI of value 22137.43 and CI of value 20094.44 (

CI No. XY-AA - ANE 170-M dated 05.02.2018)Ã¢â‚¬â€‹

iii). Shri Jaspreet Singh of M/s Chandok Glass House in his statement recorded on 24.10.2018 admitted that all the work related to import

of Auto mobile Glass, sale purchase was being looked after by him as he was the authorised representative of the firm. He agreed with the

statement of Shri Jagmohan Kaushal and had put his signatures on it in token of having accepting the same. With reference to the two

parallel invoices of different amount, he admitted that the invoice showing the higher value is the actual value of the consignment and

invoice with lower value was prepared for assessment purposes in Customs and the relevant contents of his statement reads as,

Ã¢â‚¬Å“ I admit our mistake and we are ready to pay duty for said BE and I have put my dated signature on it in token of having seen and

understood the same.Ã¢â‚¬ On being asked about the lower valuation, he stated that the values declared by them in the BE filed, the goods

imported were of second quality which were rejected by the company however, no documentary proof was submitted.

15. The contents of the statements made by all the three, clearly establishes the mischievous modus operandi of adopting undervaluation to clear the

imported goods by means of fabricated invoices. Though the appellant company under the proprietorship of Jagmohan Kaushal was the importer and

on the basis of their IEC, goods were being imported but the entire transaction of import was being controlled by Jaspreet Singh. There is a clear

admission by Jagmohan Kaushal and also by Jaspreet Singh that there were two parallel set of invoices, the actual invoice of higher value issued by

the foreign supplier and the other one for assessment purposes before customs at lower value. Shri Jaspreet Singh being the main master mind

admitted the mistake and the liability to pay the duty for said BE. The allegation of mis-declaration and indulging in undervaluation, thus gets proved by

the documents recovered at the instance of Shri Ranbir Singh and Shri Jagmohan Kaushal from the CPU installed at their office by accessing to their

email ids and also from the statements recorded under section 108 of the Act.

16. The law on the validity of the statements recorded under section 108 of the Act has been well settled in catena of decisions. Firstly, such

statements made to the customs officers are admissible in evidence and not hit by section 24 of the Evidence Act as the customs officers are not

police officers. Reference is invited to the case law in Naresh J. Sukhwani vs. Union of India, 1996(83) ELT 258(S.C.), K.I. Pavunny vs. Assistant

Collector,, 1997(3) SCC 721 and Surjeet Singh Chhabra vs. Union of India, 1997(89) ELT 646 (S.C.). As a result, the statements made by Shri Ranbir

Singh, Jagmohan Kaushal and Jaspreet Singh which have not been retracted are authentic and binding on them. Secondly, the fact that the appellant

was merely a dummy importer and the entire import transaction was under the control of Shri Jaspreet Singh shows complicity between the two.

Thirdly, all three have admitted the recovery of the parallel invoices which shows that the actual invoice is of higher value and the other copy of the

invoice reflecting lower valuation was for the purposes of assessment at the customs. The other documents retrieved from the CPU also reveals that

the declared value was on the lower side than what was reflected in the actual invoice by the foreign supplier. Lastly, we find that Shri Jaspreet Singh

has admitted the mistake and also the liability to make the payment of duty. In view of such admission of the actual importer, it is an open and shut

case and nothing further needs to be proved in view of the principle, what is admitted need not be proved, Commissioner of Central Excise, Madras V

Systems & Components Private Ltd, 2004 (165) ELT 136 (SC).

17. Once the goods imported are found to be mis-declared in valuation, the declared value needs to be rejected under rule 12 of CVR, 2007. Here the

appellant has indulged in manipulation of the invoices and fraudulently suppressed the actual transaction value of the goods imported by them so as to

evade the customs duty on higher valuation and therefore, the declared value has been rightly rejected in terms of rule 12. This leads to the

redetermination of the value as per section 14 of the Act read with CVR, 2007 and in accordance therewith the revenue in the show cause notice has

dealt in detail the sequential applicability of rule 4 to 8. Since the valuation could not be arrived at in terms of rule 4 to 8, the revenue determined the

value of the goods imported by resorting to the residual provisions of rule 9 which provides for determination of value using reasonable means

consistent with the principles and general provisions of these rules. Therefore, the actual price paid in respect of the goods as reflected in the parallel

invoices recovered from the emails was taken as a transaction value for the purpose of assessment of duty payable on the impugned goods. We do

not find any error in determining the value of the goods on the basis of the actual invoices. In fact, there can be no better evidence of correct

transaction value, as reflected in the original invoices issued by the foreign supplier and which has been admitted by the appellants and in fact, Jaspreet

Singh had admitted to make the payment of duty on that basis.

18. In so far as the remaining goods were concerned, 25 consignments of Automotive Windshield, and 11 consignments of PU Sealant where parallel

invoices were not recovered, the value was re-determined on the basis of the evidence recovered. M/s Gupta Glass Enterprises had imported same

goods from the same overseas supplier, M/s Xinyi Automobile Glass Shenzhen Co. Ltd., China during the same period, i.e., 2015Ã¢â‚¬"2018 and the total

weight of the imported consignments from the said supplier was approximately 28 MT in almost all cases by both the importers, i e., the appellant and

M/s Gupta Glass Enterprises. Taking the details of the year wise imports by M/s Gupta Glass House from M/s Xinyi Automobile Glass, China, the

average value per Kg was determined at USD 1.32 for the year 2015, USD 1.40 for the year 2016, USD 1.19 per KG for the year 2017 and USD

1.33 for the year 2018 in respect of the import of automotive windshield of assorted sizes for different models of vehicles. Similarly, the average price

derived from the actual invoices retrieved from the office premises of the appellant , the price determined for the period, 2018 was USD 1.36 as

against USD 0.78, which was declared before the Customs. In respect of the imported goods PU Sealant, the valuation was arrived at on the basis of

imports made by M/s. Burberry International and M/s Juneja Marketing Company, where the importer had admitted undervaluation. In their case also,

the supplier was the same, i e., M/s Qinghe Yongxing Industrial Co. Ltd China. As against the declared price of 0.38 to 0.45 USD per 310 ML bottle

imported during the period 2017Ã¢â‚¬"18, it was admitted by the importer there that the actual price was 1.15USD per 310 ML bottle of PU Sealant. In

that case also actual invoice was also retrieved from the email ids where the value shown was USD 1.15 per 310ML bottle. We do not find any error

in the findings of the adjudicating authority that the comparison of the goods have been made on the average value per Kg made from the same

supplier as that of the appellant on the basis of year wise and quantity wise imports of Automotive Windshield and also in respect of PU Sealant.

19. We do not dispute the contention raised by the appellant that the burden is on the revenue to prove the allegations made. Considering the

investigations made, including the statements recorded under section 108 of the Act along with the documents recovered from the office premises of

the appellant company, which stands admitted by the proprietor/importer as well as by Shri Jaspreet Singh, therefore in the light of the law laid down

by the various forums, we can safely conclude that the revenue has discharged the initial onus of proof beyond any doubt and the burden has now

shifted on the appellant to prove to the contrary which they failed to prove. On the contrary the bald statement made by Shri Jaspreet Singh that the

goods imported were of seconds quality which were rejected by the foreign supplier is unsustainable as no evidence has been placed on record in

support thereof. In this regard, reference is invited to the decision of the Apex Court in CC. V. D Bhoormull, 1983(13) ELT 1546 (SC) observing that,

Ã¢â‚¬Å“department is not required to prove its case with mathematical precision, but what is required is the establishment of such a degree of probability

that a prudent man may on its basis, believe in the existence of facts and the issueÃ¢â‚¬. Further, in the case of Carpanter Classic Exim Pvt Ltd, Vs.

Commissioner of Customs, Bangalore, 2006(200) ELT 593 (Tri.-Beng.), the observations made by the Tribunal and which has been affirmed by the

Apex Court, 2009 (235) ELT 201 (SC), needs to be referred, as under:-

Ã¢â‚¬Å“No doubt there are certain deficiencies in the investigations on account of the above facts. It should be borne in mind in the case of

undervaluation like this, it is extremely difficult to attain mathematical precision. DRI officers do not possess a magic wand which would

unfold the entire events which had taken place. On the basis of the available documents and the statements recorded during investigation,

they have to come to a conclusion. In a quasi-judicial like this, we are concerned more with a pre-ponderance of probability rather than

proof beyond reasonable doubt, as held by various judicial fora

20. In view of the legal principles relating to onus of proof on the revenue, we reject the contention raised by the appellant that the department has not

proved that the appellant remitted any amount over and above the transaction value declared in the Bills of Entry and therefore, the invoice of higher

value does not constitute any evidence unless there is corroborative evidence that the said invoice has been acted upon. Not only that there is

recovery of incriminating documents at the behest of the proprietor of the appellant company but also clarifying the distinction in the two sets of

parallel invoices. The department has adduced direct evidence of undervaluation. The modus operandi between Shri Jagmohan Kaushal and Shri

Jaspreet Singh clearly establishes a case of conspiracy and in view of the settled principle it is therefore, impossible for the department to unravel

every link of the transaction, many facts relating to these illicit transactions remain in the knowledge of the person concerned, CC, Madras vs.

D.Bhoormull. The department has sufficiently discharged the burden of proving the undervaluation, which is unrebutted by the appellant in the absence

of any substantial evidence.

21. The contention raised by the appellant that the two invoices retrieved cannot be used as evidence in the absence of a certificate under section

138C of the Act is unsustainable in view of the decision of the this Tribunal in the case of Shri T.N.Malhotra and M/s. S.R.Bristle Products Pvt. Ltd.

vs. Principal Commissioner of Customs, New Delhi, 2024(6)TMI 202-CESTAT New Delhi, where we have held that the documents recovered from

the e-mail id of the appellant and duly admitted cannot be rejected on the ground that requisite certificate has not been furnished. In the said case, we

have relied on the decision of the Gujrat High Court in the case of Principal Commissioner of Customs vs. Kishan Manjibhai Gadesriya, 2022(4)TMI

316 (Guj.) where similar contention that the computer printouts taken out from the computer cannot be considered as evidence unless certificate as

required under sub-section 2 of section 138C of the Act is issued, was rejected and it was observed as under:

Ã¢â‚¬Å“We do not find any merit in the above submission of Mr.Trivedi. The truth or the relevance of the documents has been admitted in no

uncertain terms by the respondents in their statements recorded under Section 108 of the Act 1962. In such circumstances, it is too much for

the respondents to say that the electronic evidence could not have been taken into consideration. In fact, the electronic evidence on record

fortifies what has been stated by the respondents in their statements recorded under Section 108 of the Act. In the aforesaid context, we may

refer to one order passed by the CESTAT Principal Bench, New Delhi, in the case of Laxmi Enterprises vs. Commissioner of Customs (Prev.),

New Delhi, reported in 2018 (361) E.L.T. 1054 (Tri.-Del.).

We quote the relevant observations made by the Principal Bench of the

Tribunal as under :

11. The appellant has raised objections to the admissibility of the documents recovered from the laptop. They have cited the provisions of

Section 138C of the Customs Act. We find such objections without basis in as much as the truth of the documents printed-out from the laptop

has been admitted by Shri Sumit Chawla son of the proprietor in clear terms.

Further, their clear admission by him that these invoices recovered, reflect the correct valuation at which the transaction was concluded

with the valuation supplier. Further the appellant was given an opportunity to prove the correct transaction value of the goods imported

under 32 bills of entry by providing bank attested genuine invoices but Shri Sumit Chawla did not make same available. On the other hand,

in his statement dated 19.01.2016, that the prices indicated in the invoices/commercial invoices could be taken for assessment of all past

imports as the rate of product did not change much during period of imports. We are of the view that there is no infirmity on the part of the

adjudicating authority in re-determining the value of the past imported goods on the basis of such invoices. In the peculiar facts and

circumstances of the present case, there is no need for the Revenue to collect evidence in the form of contemporaneous imports.

21.1 In the present case, the invoices were retrieved from the e-mail ids by Shri Ranbir Singh as well as Shri Jagmohan Kaushal. They have admitted

and self-certified them. Therefore, the objection raised in terms of section 138C of the Act does not survive. The revenue with the assistance of the

appellant had co-related the Bills of Entry and the invoices retrieved by the appellant themselves from their e-mail-id reflecting the actual transaction

value. The allegation of mis-declaration and under valuation has been established both by oral evidence as well as by the documentary evidence

corroborating the same.

22. The learned counsel for the appellant has also challenged the applicability of the extended period of limitation invoked under section 28(4) of the

Act. We find that the appellant has deliberately evaded the investigation as despite service of couple of summons they failed to appear. The failure on

the part of the appellant to appear before the authorities and furnish the required information/ documents have been held to be deliberate violation of

law and charge of suppression of facts is clearly made out, by the High Court of Bombay in Rizwan Travels v. Commissioner of Central Excise,

Raigad, 2017(7)GSTL 404(Bom.). As discussed above, there is a deliberate mis-declaration on the part of the appellant in intentionally suppressing the

actual invoices reflecting true transaction value so as to evade the payment of higher customs duty. The importer has thus violated the provisions of

section 17(1) and section 46 of the Act as they failed to make the correct declaration in Bills of Entry and proper self assessment. The settled position

of law is that once the suppression of facts is established, the extended period of limitation can be invoked and hence the department has rightly

issued, the show cause notice dated 17.09.2020 within the extended period of five years, from the date of the knowledge of the suppression of facts.

23. Since it is an established case of mis-declaration, under valuation and suppression of actual invoices, the goods are liable for confiscation as per

section 111(m) of the Act.

24. In view of the reasoning for invocation of the extended period of limitation and the findings recorded by the adjudicating authority we affirm the

penalty imposed on the appellant under section 114(A) and 114(AA). No interference is called for even on the quantum of penalty in view of the

discussion on merits.

25. We do not find any good reason to interfere with the findings in the impugned order and hence the same are affirmed. The appeal is, accordingly

dismissed.

Custom Appeal No.52293 of 2022:

26. Shri Jaspreet Singh, has challenged the imposition of penalty of Rs.10 lakh each under section 112(a)(ii)/ 112(b)(ii) and section 114 (AA) of the

Act. In the appeal filed by M/s. Combine Trading Co., we have discussed in detail the involvement of Shri Jaspreet Singh, being the main mastermind

behind the entire undervaluation of invoices which has been admitted by him. The importer in connection with Shri Jaspreet Singh suppressed the

actual transaction value by indulging in willful undervaluation of the imported goods manipulating through parallel invoices with intent to evade payment

of appropriate customs duty. Hence, no interference is called for in the imposition of penalty under the provisions of the Act by the Adjudicating

Authority. The quantum of penalty is proportionate to the re-determined valuation of the goods at Rs.91,01,60,891/-. The appeal is accordingly

dismissed.

(Order pronounced on 6th January, 2025)