CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Customs Appeal No. 52953 of 2019 [DB]

[Arising out of Order-in-Original No.28/2019/MKS/Pr.Commr./ICD-Import/TKD dated 27.09.2019 passed by the Commissioner of Customs, New Delhi]

M/s. AG Impex **...Appellant**
2770, 3rd Floor, New Qutub Road,
Sadar Bazar, Delhi - 110006

VERSUS

Commissioner of Customs, New Delhi (Import) **...Respondent**
Inland container Deport,
Tughlakabad, New Delhi - 110020

APPEARANCE:
Shri V.S. Negi, Advocate for the Appellant
Shri Munsi Ram Dhania, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 16.05.2024
DATE OF DECISION: **13.09.2024**

FINAL ORDER No. 58586/2024

DR. RACHNA GUPTA

The appellant is an importer importing goods like ladies hand wallets, caps, scarves, gloves etc. A Bill of Entry No. 3819893 dated 31.10.2017 was filed by the appellant through their authorized customs broker M/s. JAS Expeditors for the import of said goods. However, on the basis of a specific intelligence about appellant to have been indulging in evasion of customs duty by mis-declaring the goods in respect of value and quantity, that an alert was placed against the said Bill of Entry for further examination by SIIB Branch. The examination was conducted on 10.11.2017 in

presence of customs broker's representative. It was observed that all goods though were declared as 'unbranded', however branded caps of different non-popular as well as reputed brands like Puma, Nike, Adidas etc. were found. Observing it to be an act of infringement of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, the goods were seized vide seizure memo dated 16.11.2017 with Annexure-A thereof indicating the quantity of goods found during investigation. The appellant in his statement has admitted the mis-declaration of the goods as mentioned in Annexure-A. From the further scrutiny of e-mails, separate invoices/documents showing invoice number, invoice date, container number, description of items, quantity etc. against the previous imported consignments during the period 01.03.2013 to 05.02.2018 those were found reflecting the value of imported goods in Chinese currency (RMB) which appeared to be much higher as compared to the value declared in the respective Bill of Entry.

2. The invoices were issued by M/s. Sanyuan Group Holding Co. Ltd., China. The company is admitted by appellant to be its exporter. Comparing those documents revealed that invoices number, invoice date, container number, description of items, quantity etc. were almost same except for the value of the goods which was much lesser than Chinese Yuan (RMB) thereby reflecting that the importer had undervalued the goods with an intent to evade the payment of customs duty. It was also found that the consideration over and above the mentioned sale price was sent to the Chinese supplier through illegal means by the appellant. After conclusion of the investigation and recording the statements of

several others concerned and involved that the Show Cause Notice No. 30035 dated 01.10.2018 was served upon the appellant alleging that appellant has fraudulently imported goods on the basis of fake/forged invoices. Resultantly, the differential customs duty amounting to Rs.2,54,09,167/- on the basis of 23 Bill of Entries as mentioned in the show cause notice was proposed to be recovered from the appellant. Penal action was also proposed against the proprietor of the appellant under Section 112(a)(i) and (ii), 114A and 114AA of the Customs Act, 1962. The said proposal has been confirmed vide Order-in-Original No. 28/2019 dated 30.09.2019. Being aggrieved, the appellant is before this Tribunal.

3. We have heard Shri V.S. Negi, learned Advocate for the appellant and Shri Munsi Ram Dhania, Authorized Representative for the department.

4. Learned counsel for the appellant has submitted that it is the case of the department that during the course of investigation with respect to this Bill of Entry, Ashish Gidwani, proprietor was called in who voluntarily submitted print out from his mobile phone of e mail sent by e-mail id. Kaku112@yahoo.com to laxmi_cap_house @ymail.com, that the said excel sheets had been remitted to the notice by the forwarder in China filling in shipping details after shipments. The said excel sheets are neither the invoices nor issued by the supplier as commercial invoices and therefore, the reliance of the department on the same is totally misplaced, that there is nether any authenticity nor is there any probative value of the said excel sheets for the purpose of price of the individual items

of import in as much as no price had been mentioned for 66 CTNS (RUD IIIW), 43 CTNS (RUD III V), 91 CTNS (RUD IIIT) and so on in other relied upon documents. It is submitted that the alleged mail printout relied upon by the department are cloned data first remitted by the supplier to the forwarder who after interpolating the said data had remitted the same as excel sheets in email and therefore, the date contained in the said excel sheet is neither inspiring nor has any probative value, otherwise also, in terms of Section 138C of the Customs Act, 1962, computer printout are admissible in evidence only when the same are taken in accordance with the conditions stipulated therein. In the present case none of the conditions relating to admissibility of such electronic documents had been complied with and therefore, such printout cannot be pressed in evidence being non admissible documents. The data relied upon by the department in itself was not admissible in evidence as it did not satisfy the requirement of Section 138C of the Customs Act, 1962. The appellant has relied upon the following decision:

(i) Ambica Orgnics v/s Commissioner of C. Excise & Cus., Surat-2016 (334) ELT 97 (Tri Ahmd) as upheld by Hon'ble Gujarat High Court,

(ii). SHIVAM STEEL CORPORATION Versus COMMISSIONER OF C. EX. & CUS., BBSR-II-2016 (339) E.L.T. 310 (Tri. Kolkata) copy of which is annexed as Annexure A-3.

(iii) MAGNUM STEELS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, INDORE - 2017 (358) E.L.T. 529 (Tri. - Del.).

4.1 Learned counsel impressed upon that though the show cause notice proposes that the re determined value should be accepted as true transaction value under Rule 3 of CVR, 2007 read with Section 14(1) of the Customs Act, 1962 but that legislative mechanism as laid out in Section 14 ibid read with CVR, 2007 do not provide for such rejection and re determination. Section 14(1) as well as Rule 3 of CVR, 2007 mandate acceptance of transaction value if any of the exceptions stated therein are not attracted. In the event, the case falls under any of the exceptions stated therein, the declared value may be rejected and the value has to be re determined in accordance with the provisions of CVR, 2007 adopting first Rule first. Learned counsel has relied upon the decision of Hon'ble Supreme Court in the case of **Eicher Tractors Ltd. Vs. Commssioner of Customs, Mumbai – 2000 (122) ELT 321 (SC)**. There is no statutory provision which empower the proper officer to substitute the declared value without resorting to Valuation Rules that too on sequential basis. Therefore, the submission of the appellant is that firstly, the declared transaction value in itself has been rejected wrongly and secondly, if at all the declared transaction value was required to be rejected it was necessarily required to be retermined in terms of the Valuation Rules, 2007 more so when the so called e-mail recovered/alleged invoice is not an invoice but is only an excel sheet. The appellant relies upon the decision in the case of **GIRA Enterprises Vs.**

Commissioner of Customs, Ahmedabad reported as 2014 (307) ELT 209 (SC). With these submissions learned counsel for the appellant has prayed for the order under challenge to be set aside and appeal to be allowed.

5. While rebutting arguments raised on behalf of the appellant, Learned Departmental Representative has submitted that on going through the invoices recovered from email of the importer, It is clear that these are titled as invoice and are prepared on the suppliers letter head with Importer name on top and date, invoice number and destination are also properly indicated therein. The format of the invoice and remarks on those invoices clearly indicate that these are not simply some random excel sheets showing random values. These Invoices are depiction of total transaction, in continuity showing item wise details, deposits adjusted and also the actual cartons loaded compared with cartoons shown in Bill of Lading. All details of these invoices have been same in the invoices filed with Bills of Entry except for the value of goods and description of goods.

5.1 Shri. Ashish Gidwani has resorted to mis-declaration of value of imported goods using fake and manipulated invoices; He had knowingly or intentionally tendered false statements under Section 108 of the Customs Act, 1962 and suppressed the fact that he had submitted fake invoices for the clearance of the goods; He has also signed wrong declaration of value under Rule 11 of the Customs Valuation (Determination of value of imported goods) Rules 2007 read with Section 46 of the Customs Act 1962. Accordingly he is

liable for penal action under Section 114 AA. Accordingly the department rejected the declared transaction value of Rs. 1,89,83,726/- in respect of 23 Bills of Entry filed during the period from 16.09.2013 to 27.09.2017 under Rule 12 of the Customs valuation (determination of value of imported goods) Rules, 2007 Read with Section 14 (1) of the Customs Act, 1962 and re-determine the true transaction value as Rs.10,87,02,770 under Rule 3 of Customs Valuation Rules, 2007. Accordingly, the appeal is prayed to be dismissed.

6. Having heard the rival contentions, perusing the entire records, we observe and hold as follows:

6.1 The foremost technical ground taken by the appellant is that the entire document relied upon by the department was the electronic evidence retrieved from the appellant's e-mail. It being an electronic evidence compliance of Section 138C of the Customs Act was utmost necessary. In absence of the certificate as required under the said section, the entire document relied upon by the department becomes inadmissible into evidence. The confirmation of demand has been challenged on this ground. To adjudicate the said point, we foremost need to look into the Section 138C of the Act:

> ***138C. Admissibility of micro films, facsimile copies of documents and computer print outs asdocuments and as evidence****.—(1) Notwithstanding anything contained in any other law for the timebeing in force,—*
> *(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or*
>
> *(b) a facsimile copy of a document; or*

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a —computer print out‖), if the conditions mentioned in sub-section (2) and the other provisions contained in this section are satisfied in relation to thestatement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder andshall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:—
(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this

section, a certificate doing any of the following things, that is to say,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section,—

(a) —computer means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes; and

(b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

6.2 This provision is arising out of Section 65B of the Indian Evidence Act (the model provision for the admissibility of electronic evidence in judicial proceedings). This section has been dealt with by Hon'ble Apex Court in a recent decision in the case of **Arjun Panditrao Khotkar v. Kailash Kishanrao Goratyal reported as**

2020 SCC 1. The Hon'ble Supreme Court has clarified that the interpretation of Section 65B. Confusion arose over the scope and ambit of Section 65B as inconsistent views had been taken in three earlier decisions of the Supreme Court as follows

(i) In Anvar **P.V. v. P.K. Basheer (2014) 10 SCC 473** it is held:

> *That Section 65B is a complete code in itself for the admissibility of electronic evidence and shall not be affected by other provisions of the Evidence Act. It has also been held that – "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act."*

(ii) **Shahfi Mohd. v. State of Himachal Pradesh (2018) 2 SCC 801** it is held:

> *That Section 65B is merely a procedural provision, and the requirement of obtaining a certificate can bedispensed with when the electronic device storing the records is inaccessible to the person who needs to obtain the certificate.*

(ii) **Tomaso Bruno v. State of Uttar Pradesh (2015) 7 SCC 178** wherein it is concluded that Section 65B was not a complete code, without making any reference to the earlier decision in Anvar v. Basheer.

6.3 In **Arjun Vs. Kailash (supra)** the decision has in **Tomaso Bruno** (supra) been held per incuriam. Under Section 65A of the Evidence Act, the contents of electronic records have to be proved as evidence in accordance with the requirements of Section 65B. Both Sections 65A and 65B were inserted through the Indian Evidence (Amendment) Act, 2000, and form part of Chapter V of

the Evidence Act, which deals with documentary evidence. In Anvar v. Basheer, it was clarified that as Section 65B begins with a non-obstante clause, if forms a complete code for the admissibility of electronic evidence.

6.4 Under Section 65B(1), any information contained in an electronic record, which has been stored, recorded or copied as a computer output, shall also be deemed as a 'document' – and shall be admissible as evidence without further proof or production of the originals, if the conditions mentioned are satisfied. Section 65B(2) lays down the criteria that must be satisfied for the information to be categorized as a 'computer output.'

6.5 What gave rise to conflicting interpretations is the provision in Section 65B(4), which states that if the electronic evidence is to be used in any judicial proceeding, a certificate shall have to be produced which identifies the electronic record, and gives particulars of the device involved in the production of the electronic record . This certificate shall have to be signed by a person occupying a responsible official position in relation to the operation of the relevant device, or from a person who is in the management of the relevant activities involved. This signature shall be evidence of the authenticity of the certificate. Section 65B(4) also mandates that the contents of the certificate should be stated "to the best of the knowledge and belief of the person stating it."

6.6 In **Arjun Vs. Kailash (supra)**, the Court had to adjudicate on an election petition which challenged the election of Mr. Arjun Panditrao Khotkar from Jalna-101 Legislative Assembly

Constituency, on the ground that the nomination papers were filed after the stipulated deadline. The Respondents wished to rely on video camera recordings to prove that the candidate had filed his nomination after the stipulated deadline. The Election Commission produced CDs which contained a copy of the video camera recordings, in accordance with the direction given by the High Court. However, the necessary certificates were not produced in accordance with Section 65B(4) by the Election Commission, despite multiple requests made by the Petitioner. During the cross examination, an officer of the Election Commission testified that the video camera recordings were authentic. Based on this testimony, the High Court admitted the evidence of the video recordings even though the certificate in accordance with Section 65B (4) had not been produced. The High Court held that it was satisfied that there was "substantial compliance" with Section 65B, as a competent officer had testified that the video recordings were authentic.

6.7 In this scenario, the Supreme Court had to interpret Section 65B(4) for determining the following issues:

- Whether a certificate under Section 65B(4) must be produced even when an original record of the electronic evidence is available, or does it have to be given only when a secondary record of the electronic evidence is produced?
- Whether compliance with Section 65B(4) is mandatory even in a situation when it is not possible to obtain the certificate from the competent entity?

6.8 The lead opinion was delivered by Justice Nariman and a concurring opinion was delivered by Justice V Ramasubramanian. Justice Nariman noted that Section 65B(1) differentiates between the 'original' electronic record, which is contained in the computer in which the information is first stored – and the secondary copies that are made from the primary electronic record. For instance, in the present case, the original electronic record would be the computer of the Election Commission in which the video footage is first stored. The CDs where the content of the video recording is copied shall constitute the secondary copies of the electronic record. It was held that a certificate under Section 65B(4) shall have to be obtained only when the secondary copies of the electronic record are produced before the Court. Production of a certificate shall not be necessary when the original electronic record is produced. The original electronic record can be adduced directly as evidence if the owner of the computer/tablet/mobile phone steps into the witness box and establishes that the device where the information is first stored is owned/operated by him. If the "computer" where the electronic record was first stored happens to be part of a "computer network" or "computer system" (as defined under the Information Technology Act, 2000), and it is not possible to bring such a network/system physically to the Court, then secondary copies can be produced along with the certificate stipulated by Section 65B(4).

6.9 Justice Nariman also agreed with the view taken in Anvar v. Basheer – which held that Section 65B is a complete code in itself for the admissibility of electronic evidence and shall not be affected

by other provisions of the Evidence Act. The Hon'ble Apex Court in **Anvar v. Basheer (supra)** also held that – "…if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65 B of the Evidence Act." Justice Nariman clarified that this dictum should be read by omitting the words "under Section 62 of the Evidence Act." This is because Section 65B is a complete code for electronic evidence and shall supersede other provisions such as Section 62.

6.10 Justice Nariman implies here that it is not necessary to refer to Section 62, as Section 65B(1) itself distinguishes between the original electronic record and the secondary copies of the electronic record. It has been concluded in **Arjun Vs. Kailash (supra)** case that: If the competent person/entity refuses to grant the certificate, the party who wishes to rely on the electronic record can apply to the Court for an order to produce the requisite certificates. Based on this premise, the Court concluded that the obligation placed by Section 65B(4) was mandatory, and not voluntary, and is a condition precedent before secondary copies of an electronic record can be admitted. It was held that the electronic evidence should be presented before the trial begins, and at any stage prior to the completion of the trial, the Court can direct the production of the certificate under Section 65B(4). **The judgment clarifies that requirement of certificate under Section 65B (iv) of the Evidence Act is unnecessary if the original document itself is produced.**

6.11 At this juncture, it is also important to refer to Section 62 and 63 of the Evidence Act. Section 62 defines the term "primary evidence" which means the document itself i.e. produced before the court. Under Section 63, "secondary evidence "includes copies made from the original, certified copies, oral accounts of the contents of a document etc. The Hon'ble Apex Court while applying those provisions vis-à-vis electronic record has held that the production of certificate shall not be necessary when the original electronic record is produced which can directly by adduced as evidence if the owner of the computer/tablet/mobile phone steps into the witness box and establishes that the device where the information is first stored is owned and operated by him. If the 'computer' where the electronic record was first stored happens to be a part of "computer network" or "computer system" (as defined under Information Technology Act, 2000) and it is not possible to bring such a network/system physically to the court than secondary copies can be produced along with the certificate stipulated by Section 65B(iv) of the Evidence Act. In its earlier decision in the case of **Anwar Vs. Bashir** (supra), the Hon'ble Apex Court has held that if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence without compliance with the conditions in Section 65B of the Evidence Act. Thes Hon'ble Apex Court in the case of **Arjun Pandit Rao Potkar Vs. Kailash Kiranrao Bore** (supra) has upheld the said earlier findings, however, clarified that the said dictum should be read by omitting the words "under Section 62 of the Evidence Act". For the reason that Section 65B is a complete

code for electronic evidence and shall supersede other provisions such as Section 62.

6.12 Reverting to the facts of present case in the light of above discussion, we observe that the allegations against the appellant as made out in the show cause notice is that the importer had suppressed/under declared the value of the goods pertaining to 22 past Bill of Entry and the basis of the said allegation is retrieval of some excel sheets from the email of the appellant through his mobile phone. The said excel sheets have been alleged as parallel invoices showing much higher value of the imported goods than what has been declared by the appellant in the Bills of Entry filed during the period from 16.09.2013 to 27.09.2017. Differential duty demand has been confirmed based on re-determinate of value by the department. This entire investigation got initiated based on the live consignment of Bills of Entry No. 3819893 dated 31.10.2017 being intercepted by SIIB and 1009 examined noticing undervaluation, mis-declaratiion and even violation of Intellectual Property Rights (IPR). Though a separate Show Cause Notice was issued about said Bills of Entry.

6.13 We observe that there is no denial to the following facts:

(a) All the imports in the present case are from one supplier in China, as also confirmed by Shri Ashish Gidwani, proprietor of M/s. A.G. Impex.

(b) E-mail ID laxmi cap house@ymail.com has been used by appellant for correspondence.

(c) Excel sheets issued by the same supplier have been retrieved in appellant's presence from the proprietor's own mobile phone who signed the also.

(d) Excel sheets contain details (consignment wise) about invoice number, invoice date, container no., description of items, quantity and value of imported goods in Chinese currency RMB.

(e) These excel sheets have the word "invoice" duly mentioned on top of all documents.

(f) Entire above description is found same as declared in the Bills of Entry filed by the appellant.

(g) The emails consisting of these documents were received through China.

(h) The said excel sheets, also mention (i) total cartons loaded and (ii) total cartons shown on BL.

6.14 Despite these admitted facts, we find no proof from appellant to falsify invoices retrieved showing item details, deposits adjusted and also the actual cartons loaded compared with cartons shown in BL and to prove that there invoices have no relation to the invoices filed by the appellant-importer with Bills of Entry. It has already been observed as admitted fact that details of both set of invoices (retrieved and those filed with Bills of Entry) have absolute similarity vis-à-vis all details of the impugned imported goods except the values have been reduced and goods are declared as unbranded. The documents of comparison based whereupon the demand has been raised and confirmed as retrieved from proprietor

of appellant's own mobile phone in his presence only. Thus to our opinion the retrieved documents/invoices are original/primary documents. In the light of above discussion about Section 65 of the Indian Evidence Act, to which Section 138C of the Customs Act is parameteria, we hold that the excel sheets/invoices retrieved to not need certificate of authenticity. Hence the argument of appellant for setting aside the demand for want of said certificate is not sustainable.

6.15 These excel sheets/invoices are received from the Chinese supplier, intentionally routed through the forwarder, and are preserved for all these years, the sanctity and importance of the documents. The invoices had remarks such as 'customer paid deposit', which have been shown adjusted to the total amount payable thus it also prove that there was other mode of payment also than the banking channels. In view of the above observed admissions and failures on part of the appellant to prove to the contraryand the above discussed legal proposition, we do not find any infirmity with the findings of authorities below.

6.16 Above all, we also find that it cannot be a mere coincidence that the invoice number, date, container number, description of goods, number of carton and quantity of goods mentioned in the invoices/documents recovered through e-mail matches with the invoices attached by the importer with Bills of Entry filed for customs clearance. Hence, we hold that there is sufficient evidence against appellant that the actual invoices have been altered by the appellant to undervalue and mis-declared the imported goods. The

act amounts to committing fraud and fraud vitiates everything. Resultantly there is no infirmity in the findings to this effect in order under challenge.

6.17 Regarding invoking of extended period, it is established that the importer has manipulated the invoice presented for clearance of goods and mis declared the value in the Bill of entry by suppressing the actual invoice, which could only be unearthed during investigation. The mis-declaration of value of imported goods is thus apparent and has been done with clear intent to evade customs duty. The importer has violated provisions of Section 17(1) and Section 46 of the Customs Act, 1962 by not filing truthful declarations in Bills of Entry and proper self-assessment. Therefore, for the aforesaid acts of suppression of facts and mis-statement, the extended period of five years for demand of customs duty under sub-section 4 of Section 28 of the Customs Act, 1962 is invokable in this case. Therefore, importer is liable to pay differential duty of Rs.2,54,09,167/- under Section 28(4) along with applicable interest under section 28AA of the Customs Act, 1962. The contention of importer that BEs once assessed cannot be re-assessed is not tenable as demand of duty short paid can always be made under section 28 within the period of limitation prescribed therein.

6.18 This contention is not acceptable even in view of Section 149 of the Customs Act, 1962 which talks about amendment of documents and reads as follows:

149. Amendment of documents.

- Save as otherwise provided in sections 30 and 41, the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended:Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be.

The proviso clarifies that if any documentary evidence which was in existence at the time of clearance it found later the Bills Entry can be amended.

7. In view of entire above discussion, we hold that the data retrieved from the appellant's proprietor's own mobile is the document admissible into evidence. The requirement of certificate under Section 138C, as is impressed upon by the appellant, is held not applicable in the given set of circumstances as already explained above. No infirmity has been found in the manner of redetermining the value and the quantum thereof. With these observations, the order under challenge is hereby upheld. Consequent thereto, the appeal is dismissed.

[Order pronounced in the open court on **13.09.2024**]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

HK