

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Customs Appeal No. 85820 of 2025

[Arising out of Order-in-Appeal No. 43 (Gr.III)/2025 (JNCH)/Appeals dated 15.01.2025 passed by the Commissioner of Customs (Appeals), Mumbai II]

M/s Kumar Impex

4/5203, Krishna Nagar,
Karol Bagh, New Delhi

.....Appellant

VERSUS

Commissioner of Customs, Nhava Sheva

JNPT Custom House, Nhava Sheva

.....Respondent

APPEARANCE:

Shri H K Hirani, Consultant for the appellant
Shri Krishna Murari Azad, (AR) for the respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 85424/2026

DATE OF HEARING : 23.02.2026

DATE OF DECISION : 17.03.2026

Per: AJAY SHARMA

This appeal has been filed challenging the Order-in-Appeal dated 15.01.2025 passed by the Commissioner of Customs (Appeals), JNCH, Nhava Sheva, Mumbai II, whereby the learned Commissioner modified the Order-in-Original dated 13.12.2018 by setting aside the value re-determination and the confirmation of differential duty but upheld the confiscation of the goods

under Section 111(m) of the Customs Act, 1962. However the Redemption Fine was sustained but reduced to ₹4,00,000/- under Section 125(1) *ibid*. The penalties under Section 112(a)(ii) of ₹5000/- and of ₹2,00,000/- imposed under Section 114AA respectively of the Customs Act on M/s Kumar Impex were also sustained.

2. The brief facts leading to the filing of the instant appeal are as follows. The appellant imported '*PU coated fabric*' (*thickness 0.50 mm +/- 10%*) vide Bill of Entry dated 14.10.2016 and requested for first check examination. According to the department, certain discrepancies were noticed during examination regarding the description and also in the thickness of the imported goods, pursuant to which inquiry was initiated. During the pendency of proceedings the appellant sought provisional release of the goods and the same was allowed against execution of PD Bond and furnishing of a 100% bank guarantee covering differential duty and upon compliance, the goods were released provisionally.

3. Subsequently, the *declared transaction value* was rejected and proceedings were initiated to re-determine the value in accordance with the *Customs Valuation Rules, 2007*. Accordingly, a Show cause notice dated 25.1.2018 was issued proposing rejection of the declared assessable value/transactional value, re-determination of the same and final assessment of the Bill of Entry under the same heading in which

it was assessed provisionally and confiscation of the goods along with imposition of redemption fine and penalties under the provisions of Customs Act, 1962.

4. The Adjudicating Authority vide Order-in-Original dated 13.12.2018 confirmed the rejection of the declared value, re-determination of the value alongwith interest, penalty & redemption fine and also ordered for appropriation of the amount deposited by the appellant during the proceedings. On Appeal filed by the appellant, the learned Commissioner (Appeals) vide impugned order dated 17.6.2019 set aside the rejection of transaction value and the re-determination of value nevertheless upheld the appropriation of ₹11,03,907/- paid as duty by the appellant and also upheld the redemption fine and penalties imposed under various provisions of Customs Act, 1962.

5. The appellant thereafter challenged the said order before this Tribunal wherein this Tribunal vide order dated 13.06.2023 allowed the appeal by setting aside the order therein and remanded the matter to the Commissioner (Appeals) for fresh consideration in view of the fact brought to the notice of the Tribunal that the Bill of Entry had subsequently been finalised by the proper officer as per the value declared by the appellant. After remand, the impugned order has been passed by the learned Commissioner (Appeals).

6. I have heard the Learned Consultant appearing for the appellant and learned Authorised Representative for Revenue and have also perused the case records including the synopsis/written submissions placed on record.

7. The Adjudicating Authority vide Order-in-Original dated 13.12.2018 rejected the declared value and enhanced the same relying upon some another Bill of Entry no. 7776782 dated 10.12.2016 and held the goods liable for confiscation under Section 111(m) with imposition of penalties under Section 112(a) and 114AA respectively. The Adjudicating Authority had recorded a finding that the importer i.e. the appellant herein had resorted to mis-representation and suppression of facts with intention '*to defraud the government of its legitimate dues*' and that the importer was the sole beneficiary of reduced customs duty on the goods imported.

8. Thus, the entire foundation of the adjudication order including confiscation and imposition of penalties, was premised on the allegation that the appellant had undervalued the goods and thereby attempted to evade customs duty. However, in the order impugned herein, the learned Commissioner has categorically set aside the rejection of the transaction value and accepted the value declared by the appellant. Despite accepting the declared value and thereby negating the allegation of undervaluation, the learned Commissioner proceeded to uphold

the confiscation of the goods and the consequential Redemption Fine and penalties.

9. Since confiscation forms the the primary basis for imposition of Redemption Fine and penalties, so firstly it has to be examined whether in the given facts the confiscation of the goods under Section 111(m) is sustainable. Section 111 (m) provides for confiscation of '*any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.*' The said provision has been settled by various judicial precedents to mean that the discrepancy or mis-declaration must be material in nature. This provision is intended primarily to prevent evasion of customs duty and to safeguard government revenue. It is not meant to penalise the importers for minor, inconsequential or technical discrepancies which do not result in causing any loss of revenue to the exchequer or violation of import policy. Discrepancies that do not affect duty, import policy, compliance or assessment should not normally lead to the confiscation. In other words, misdeclaration if any, must relate to a material particular which affects assessment or results in the loss of revenue so as to justify confiscation. Every incorrect or imperfect declaration cannot automatically lead to confiscation under Section 111(m) that too when the Bill of Entry has been finalised at declared value and there is no differential duty demand. The department has miserably failed to establish any material mis-declaration regarding any material particular in the Bill of Entry in the facts

of this case. The difference, if any, is only about the thickness or the description without there being any dispute about its classification or declared value.

10. The learned Commissioner himself has accepted the transaction value declared by the Appellant and has set aside the re-determination of value. Once the declared value stand accepted, the very basis of the allegation about material mis-declaration or attempt to evade customs duty disappears. Consequently, it cannot be said that there is any loss of revenue to the exchequer or any attempt on the part of the appellant to defraud the government of its legitimate dues. In such circumstances, the essential ingredient necessary for invoking Section 111(m), namely a mis-declaration affecting revenue or assessment, is clearly absent.

11. Therefore, in my considered view, the confiscation of the goods, under Section 111(m) in the facts of instant matter, is not sustainable. Once the confiscation has been held to be unsustainable the consequential redemption fine and penalties imposed under Section 112(a) and 114AA *ibid* respectively cannot survive. The impugned order is therefore set aside by allowing the appeal.

(Pronounced in open Court on 17.03.2026)

(Ajay Sharma)
Member (Judicial)