Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 01

Customs Appeal No. 240 of 2012
(Arising out of OIO-KDL-COMMR-08-2012-13 dated 25.07.2012 passed by the Commissioner of Customs -Kandla)

Dilip Dhakan **.....Appellant**
Rodex International, Shed No. 380,
AS-IV Type, Sector-IV
Kandla Special Economic Zone,
Gandhidham

VERSUS

Commissioner of Customs-Kandla **.....Respondent**
Customs House, Near Balaji Temple
Kandla 370 210

APPEARANCE:
Shri. Nirav P Shah, Advocate for the Appellant
Shri. Himanshu Nachane, Superintendent (AR) for the Respondent

CORAM: HON'BLE SH. S. S. GARG,MEMBER (JUDICIAL)

Final Order No. 10331/2026

DATE OF HEARING:07.05.2026
DATE OF DECISION:08.05.2026

S. S. GARG

The Present appeal is directed against the impugned order dated 25.07.2012 passed by the Commissioner of Customs, Kandla whereby the Learned Commissioner has imposed the penalty of Rs. 25 Lakh on the appellant under Section 112(A) of the Customs Act, 1962 and also penalty of Rs. 25 Lakh under Section 114AA of the Customs Act, 1962.

2. Briefly the facts of the present case are that M/s. Rodex International having importer-Exporter code Number 3710001358 was a partnership concern engaged in trading activities of various types of items for which Development Commissioner, Kandla Special Economic Zone, had issued Letter of approval No KASEZ.IA/1880/2002-03/1907, dated 08.05.2002. Intelligence was gathered by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (DRI) that certain goods were to be smuggled in a container bearing number GLDU-0279344 surreptitiously by

concealing them in the goods imported in the name of Rodex. Hence, the officers of DRI kept surveillance and found that Rodex had filed bill of Entry No.0001296 dated 02.02.2011 before the Customs authorities KASEZ, Gandhidham, for the import of 73 packages of Refrigerators, LCD/Plasma TVs in container number GLDU-0279344.

2.1 On reasonable belief that the consignment covered under the said earlier Bill of Entry might be containing smuggled/mis-declared goods, the same were subject to examination and the Officers of DRI carried out examination and found that the said container was stacked with packages of Panasonic Refrigerators, Sony LCD TVs & Panasonic Plasma Tvs. The Officers recovered four black coloured polyethylene bags which were concealed in the back side of four refrigerators and opened and found 28580 pieces of 'Micro' Brand SD Memory Cards of 2 GB. The said Memory Cards were not declared in the Bill of Entry filed by Rodex.

2.2 After the thorough investigation, a show cause notice dated 07.07.2011 was issued by the Commissioner of Customs, Kandla and after following the due process, the same was adjudicated and penalties on different persons as mentioned in the impugned order was imposed including a penalty of Rs. 1 Lakh on the present appellant which he has challenged by filing the present appeal.

3. Heard both sides and perused the material on record.

4. Learned Counsel appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and binding judicial proceedings. He further submits that the penalty on the appellant under Section 112(a) of the Customs Act, 1662 cannot be imposed once the penalty on the firm has been imposed. He further submits that the appellant is a partner in M/s. Rodex International which had lent his IEC Number to one Lilaram who are imported Tvs and Refrigerators. He further submits

that Lilaram had concealed Memory Cards and Refrigerators and it is a limited fact that the imported goods belongs to Lilaram . He further submits that the impugned order dated 25.07.2012 imposing penalty both on firm and on its partner under Section 112(a) and 114AA. He also submits that it is a settled law that penalty on both partnership and firm and partner is not imposable under Section 112(a) of the Customs Act and for this he relied upon the following decisions:-

- 2010 (258) ELT 204 (Guj.)
- 2010 (259) ELT 179 (Guj)
- 2014 (305) ELT 480 (Guj.)
- 2019 (369) ELT 1244 (Tri-Ahd.)
- 2014 (302) ELT 292 (Tri-Del.)
- 2020 (372) ELT 109 (Tri-Del.)

4.1 He further submits that the penalty imposed on Lilaram Asudani has already been set aside by this Tribunal vide its Final Order No. 12974-12975/2024 dated 03.12.2024. He further submits that this issue is no more *res integra* that once the penalty has been imposed on the firm then the penalty on partner cannot be imposed because firm is not a separate entity in law and firm and partners is one in the same thing. He further submits that this issue is no more *res integra* and has been settled by the Gujarat High Court in the case of COMMISSIONER OF CENTRAL EXCISE Vs. JAI PRAKASH MOTWANI reported in 2010 (258) ELT 204 (Guj.)

5. On the other hand, Learned AR reiterated the finding of the impugned order.

6. I have considered the submissions of both the parties and perused the material on record. As far as imposition of penalty on the appellant under Section 112(b) of the Customs Act, 1962 is concerned, i find that even Learned Commissioner has also imposed the penalty on firm of which the appellant was the partner and it is a settled law that once the firm has been penalized, no separate penalty on the partner can be imposed, in view of the decisions cited supra. Further, in this regard, I may refer to the decision of Hon'ble Gujarat High Court in the case of COMMISSIONER OF CENTRAL

EXCISE Vs. JAI PRAKASH MOTWANI wherein the Hon'ble High Court in para 5 and 6 as held as under:-

> *"5. A perusal of the impugned order of the Tribunal as a whole, does not reveal that any specific role is attributed to the Respondent who is one of the partners in the firm, and there is no adjudication to this effect in the said order. The Tribunal has relied upon the Division Bench decision in the case of Jaybee Industries v. CCE, Gurgaon as reported in : 2004 (168) E.L.T. 316 (Tri.-Del.) to come to the conclusion that where a penalty is imposed on a partnership firm, no separate penalty can be imposed on any of its partners. It has been noticed by the Tribunal that the Respondent has been penalized and penalty has also been imposed upon the Assessee-firm for the outstanding duty, which is not permissible in law and, therefore the penalty imposed upon the Respondent, being a partner, is set aside.*
>
> *6. The learned Counsel for the Appellant could not point out any provision in the Central Excise law, which treats a partnership firm as a separate excisable entity from its partners. Admittedly, a partner is not a separate legal entity and cannot be equated with the employees of a firm. Once the firm has already been penalized, separate penalty cannot be imposed upon the partner. The impugned order of the Tribunal does not suffer from any legal infirmity so as to warrant interference. In the absence of any substantial question of law, the appeal is dismissed".*

6.1 Similarly, in the case of C.C.E & C.-Surat-II vs. MOHAMMED FAROOKH MOHAMMED GHANI reported in 2010 (259) ELT 179 (Guj.) wherein also Para 8-10 the Hon'ble High Court as held as under:

> *"8. Thus, under the law of partnership, a firm has no legal existence apart from its partners and is merely a compendious name to describe its partners as distinguished from a company which stands as a separate juristic entity distinct from its shareholders. Thus, once penalty is levied on the firm for contravention of any provision of the Act or the Rules framed thereunder, it amounts to levy of penalty on the partners, hence, there would be no question of penalizing the partners separately for the same contravention, unless the intention of the legislature to treat the firm and partners as distinct entities is borne out from the statute itself, as in the case of the Income-tax Act, 1961. Whenever the legislature intends to treat the partners and the firm as separate entities it expressly provides for the same. This is apparent when one sees Section 140 of the Act which makes provision for Offences by companies The Explanation below Section 140 which is is relevant for the present purpose reads thus*
>
> *Explanation - For the purposes of this section, -*

'company means a body corporate and includes a firm or other association of individuals, and director, in relation to a firm, means a partner of the firm.

9. Thus, for the purpose of liability in respect of commission of offences under the Act, a partnership firm is equated with a company, whereas there is no such corresponding provision in relation to imposition of penalties under the Act. In the circumstances, the Tribunal was justified in holding that no separate penalties were warranted on the partners in addition to the penalty on the partnership firm.

10. In the light of the aforesaid discussion, no infirmity can be found in the impugned order of the Tribunal so as to warrant interference. In absence of any question of law as proposed or otherwise, much less a substantial question of law, the appeals are dismissed."

6.2 Therefore by following the ratio of the decision cited supra, I hold that no separate penalty can be imposed on the appellant under Section 112(a) and accordingly I set aside the penalty on the appellant under Section 112(a).

6.3 As regard the penalty imposed on the appellant under Section 114AA is concerned. I find that the same penalty has not been imposed on the firm. This penalty has been imposed on the basis of his own statement recorded by the department wherein he has admitted that it was decided between him and Lilaram Asudani that the goods would be imported in the name of Rodex International and he would get Rs. 1 Lakh for Memory Cards and lumpsum profit on the refrigerator, LCD/Plasma TVs. He stated submits that the investment for the said goods were made by Lilaram who was the mastermind for import of the impugned goods. Further, I find that the appellant has not withdrawn his admission made before the Customs authorities and Learned DR submits that the appellant has confessed his guilt and once he has admitted the fact the same need not be proved.

6.4 Further, I find that no doubt the penalty on Lilaram has already been set aside but admission made by the present appellant wherein he has stated that he would get 1 lakh rupees for this Memory Card concealed in the refrigerator, for which he had filed the self Bill of Entry. After perusal of the provisions of Section 114A of the Customs Act, I find that there is a

sufficient evidence against the appellant for imposition of penalty under the said section but the penalty imposed by the Commissioner is on higher side because as per his statement he was to get only benefit of 1 Lakh in the entire transaction and therefore the imposition of penalty is disproportionate and therefore I reduced the penalty up to Rs. 2 Lakh under Section 114AA of the Customs Act, 1962.

7. In view of my discussion above, I hold that the appellant is not liable to pay penalty under Section 112(a) and same is set aside and further penalty under Section 114AA of the Customs Act is reduced to the extent of 2 Lakh only.

8. Accordingly, appeal is partly allowed in above terms.

(Pronounced in the open court on 08.05.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

Prachi