

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT No. III

**1. Customs Appeal No. 40309 of 2024**

(Arising out of Order-in-Original No. 32/2024-AIR dated 03.02.2024 passed by Principal Commissioner of Customs (Air Cargo), New Custom House, Meenambakkam, Chennai – 600 016)

**Mr. A. Mariappan**

No. 51/54, Gokulam Flats,  
State Bank Colony Main Road,  
Nanganallur,  
Chennai – 600 061.

**...Appellant**

**Versus**

**Commissioner of Customs**

Chennai VII Commissionerate,  
New Custom House,  
Meenambakkam,  
Chennai – 600 016.

**...Respondent**

**With**

2. Customs Appeal No. 40310 of 2024 (M/s. BSM Logistics)
3. Customs Appeal No. 40323 of 2024 (Commr. of Customs, Chennai VII)
4. Customs Appeal No. 40329 of 2024 (Commr. of Customs, Chennai VII)
5. Customs Appeal No. 40330 of 2024 (Commr. of Customs, Chennai VII)
6. Customs Appeal No. 40331 of 2024 (Commr. of Customs, Chennai VII)
7. Customs Appeal No. 40332 of 2024 (Commr. of Customs, Chennai VII)
8. Customs Appeal No. 40333 of 2024 (Commr. of Customs, Chennai VII)
9. Customs Appeal No. 40334 of 2024 (Commr. of Customs, Chennai VII)
10. Customs Appeal No. 40336 of 2024 (Mr. T. Sankara Kumar)
11. Customs Appeal No. 40365 of 2024 (Mr. Nerella Samueal Deepak Avinash)
12. Customs Appeal No. 40541 of 2024 (Mr. Ashok Jain)
13. Customs Appeal No. 40542 of 2024 (Mr. Narendra Sharma)
14. Customs Appeal No. 40543 of 2024 (Mr. Sunil Sharma)

**APPEARANCE:**

For the Assessee : Mr. A.K. Jayaraj, Advocate (Sl.Nos. 1,2,13)  
Mr. C. Mohan, Mr. M. Kumaresan, Ms. Dhillshath, Advocates (Sl.No. 3)  
Mr. A. Ganesh, Advocate (Sl.Nos. 8,11)  
Mr. Aliakbar Devjani, Advocate (Sl.Nos. 5,12,14)  
Mr. T. Sankara Kumar, Party in-person (Sl.No. 10)

For the Respondent : Mr. Anoop Singh, Authorised Representative

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER Nos. 40587-40600 / 2026**

DATE OF HEARING : 27.11.2025  
DATE OF DECISION : 08.05.2026

**Per Mr. VASA SESHAGIRI RAO**

The present appeals and cross-appeals arise out of Order-in-Original No. 32/2024-AIR dated 03.02.2024 passed by the Principal Commissioner of Customs (Air Cargo), Chennai-VII Commissionerate. Since all the appeals emanate from the same Order-in-Original, involve common facts, common evidence and overlapping issues of law, they are taken up together and disposed of by this common order in respect of the undermentioned Appeals as tabulated below: -

Sl. No.	Appeal No.	Appeal Filed By	Appellant Name / Authority S/Shri	Capacity / Description	Duty / Penalty Involved
1	C/40309/2024	Assessee	A. Mariappan	CEO, M/s BSM Logistics	Penalty under Customs Act (as per OIO)
2	C/40310/2024	Assessee	M/s BSM Logistics	Customs Broker Firm	Penalty under Section 114(iii)
3	C/40336/2024	Assessee	T. Sankara Kumar	Partner, M/s BSM Logistics	Penalty under Section 114(iii)
4	C/40365/2024	Assessee	Nerella Samuel Deepak Avinash	Appraiser of Customs	Penalty under Sections 112(ii) / 114(iii)
5	C/40541/2024	Assessee	Ashok Jain	Associated Person	Personal penalty
6	C/40542/2024	Assessee	Narendra Sharma	Associated Person	Personal penalty
7	C/40543/2024	Assessee	Sunil Sharma	Proprietor, M/s Shree Balaji Jewellers	Penalty / confiscation related
8	C/40323/2024	Department	Commissioner of Customs	HDFC Bank	Release / liability relating to seized goods
9	C/40332/2024	Department	Commissioner of Customs	Shri Zillur Mondal	Confiscation / redemption fine
10	C/40329/2024	Department	Commissioner	Shri Narendra	Challenge to dropping

			of Customs	Sharma	/ reduction of penalty
11	C/40330/2024	Department	Commissioner of Customs	Shri Ashok Jain	Challenge to dropping / reduction of penalty
12	C/40331/2024	Department	Commissioner of Customs	Departmental Appeal	Challenge to dropping / reduction of penalty
13	C/40333/2024	Department	Commissioner of Customs	Shri Nerella Samueal Deepak Avinash Appraiser	Challenge to exoneration under 114AA
14	C/40334/2024	Department	Commissioner of Customs	Departmental Appeal	Challenge to dropping of penalty

The appeals have been filed by exporters, their associated persons, Customs Broker, job workers and Customs officers, while the Department has filed appeals challenging non-imposition of penalty, incorrect invocation of statutory provisions and non-imposition of redemption fine. The facts being inter-connected, a consolidated narration is necessary.

2. The case originated from specific intelligence developed by the Directorate of Revenue Intelligence that certain exporters were fraudulently exporting gold-plated copper jewellery as 22 carat gold jewellery with the intent to divert duty-free gold procured under Notification No. 57/2000-Cus dated 08.05.2000. Acting on this intelligence, DRI intercepted and recalled an export consignment covered under Shipping Bill No. 7870940 dated 31.01.2022 filed by M/s. Shree Balaji Jewellers, declared as 22 carat gold jewellery. Examination of the consignment in the presence of independent witnesses, supported by XRF testing and assay at a BIS-recognised hallmarking centre, revealed that the goods were copper bangles coated with a thin layer of gold

containing only about 7.5% to 10.35% gold. Investigation further revealed that duty-free gold procured through HDFC Bank, a nominated agency, was diverted to the domestic market while fake jewellery was exported to falsely fulfil export obligations. The manufacturing chain was traced to M/s. Ashok Jewellers, whose proprietor admitted to producing gold-coated copper bangles using only a fraction of the declared gold, thereby establishing the modus operandi of diversion.

3. The investigation has clearly brought out the involvement of Customs official and intermediaries, especially examination of the consignment by a non-rostered Appraiser and use of another officer's seal, as well as the role of the Customs Broker in facilitating such an examination. Consequently, statements recorded under Section 108 corroborated these findings. Based on the above, a show cause notice was issued proposing confiscation of fake jewellery, demand of duty on diverted gold, and imposition of penalties under various provisions of the Customs Act. The Adjudicating Authority, after due process, confirmed confiscation and duty demand, imposed penalties on the Exporter, Customs Broker, the non-rostered Appraiser and associated persons while dropping penalties against HDFC Bank and certain other noticees.

4. Being aggrieved by the findings and conclusions recorded in the impugned Order-in-Original, the Department, HDFC, exporter, certain individuals, Customs Brokers and other noticees have preferred the present appeals before this Tribunal as detailed above.

5. The Ld. Advocate Shri A.K. Jayaraj appeared on behalf of the Assessee at Sl. Nos. 1, 2 and 6 of the Table. The Ld. Advocates Shri C. Mohan, Shri M. Kumaresan and Ms. Dhilshath, appeared for the Assessee at Sl. No. 8. The Ld. Advocate Shri A. Ganesh appeared for the Assessee at Sl. Nos. 4 and 13. The Ld. Advocate Shri Aliakbar Devjani appeared on behalf of the Assessee at Sl. Nos. 5, 7 and 11. Shri T. Sankara Kumar appeared in-person at Sl. No. 3. All the Ld. counsels advanced detailed submissions in support of their appeals and the cross-appeals filed by the Department. The Ld. Authorized Representative Shri Anoop Singh appeared for the Revenue and have ably defended the impugned order.

6. The Ld. Advocates appearing for the appellants in the respective appeals, including the importer/exporter, individuals, Customs Broker, and departmental officer, as well as the Ld. Authorized Representative appearing for the

Revenue in the cross-appeals, made detailed and elaborate submissions. Since the appeals and cross-appeals arise out of a common investigation, overlapping facts, and a composite Order-in-Original, their submissions are summarised in a consolidated manner as under.

6.1 The appellants, in substance, submitted that the impugned Order-in-Original suffers from serious infirmities in law and on facts, is largely non-speaking, and confirms grave civil and penal consequences without addressing the detailed replies filed to the Show Cause Notice. It was contended that the adjudicating authority has mechanically reproduced the allegations from the Show Cause Notices and has failed to analyse the defence submissions, documentary evidence, and binding judicial precedents cited. According to the appellants, such an approach violates the principles of natural justice and renders the order unsustainable on this ground alone.

6.2 In relation to the alleged export of fake gold jewellery, the appellants contended that the entire case of the Department is vitiated by serious procedural lapses, including lack of a proper and unbroken chain of custody of the recalled export consignment, absence of any confirmation from foreign authorities regarding recall and

integrity of the parcel, and material discrepancies between the description of goods in the Shipping Bill and the goods allegedly examined at a later stage. It was argued that the Shipping Bill has described the export goods as necklaces, malas and chains, whereas the re-examined parcel contained bangles, thereby creating a serious doubt as to whether the same goods were examined at all. The appellants asserted that in the absence of clear and unimpeachable evidence establishing identity of goods, confiscation and penalties cannot be sustained.

6.3 The appellants further submitted that the reliance placed on statements recorded under Section 108 of the Customs Act, 1962 is legally untenable and such statements were either retracted, contradictory, or recorded under coercive circumstances, and in any event were not corroborated by independent documentary or circumstantial evidence. It was emphasised that settled law requires corroboration of confessional statements, particularly when they are used to fasten serious penal liability on co-noticees. The appellants contended that statements of co-noticees cannot be used as substantive evidence against other noticees without independent corroboration.

6.4 Specific submissions were advanced on behalf of the Customs Broker, M/s. BSM Logistics, its CEO Shri A. Mariappan, and its partner Shri T. Sankara Kumar contending that no specific charge was framed against the Customs Broker as an entity in the Show Cause Notice, and that the allegations, even if assumed to be true, were confined to individuals. It was further contended that a Customs Broker has no authority to choose, direct, or control the posting or functioning of Customs officers, and that routine examination of cargo by an Appraiser or a Superintendent during peak workload cannot be construed as abetment. The appellants asserted that there is no evidence of *mens rea*, conspiracy, or intentional facilitation of export of fake jewellery, which is a sine qua non for imposition of penalty under Section 114 of the Customs Act.

6.5 On behalf of the individual appellants such as Shri Sunil Sharma, Shri Narendra Sharma and Shri Ashok Jain, it was contended that the findings against them are based on presumptions, conjectures, and guilt by association. It was argued that mere family relationship or business acquaintance cannot substitute for proof of active involvement, knowledge, or intentional participation in the alleged offence. It was further submitted that no incriminating material was recovered from their premises, no

money trail or hawala transaction was established, and no independent witness was examined to prove their alleged role in manufacture or export of fake jewellery.

6.6 With regard to HDFC Bank Ltd., appearing as a respondent in the Department's appeal, it was vehemently contended that the Bank, as a Nominated Agency under the Foreign Trade Policy and Notification No. 57/2000-Cus., had complied with every statutory obligation cast upon it. The Bank submitted that it had no role whatsoever in the manufacture, handling, or export of jewellery, and that its obligations were limited to supply of duty-free gold, maintenance of records, submission of export documents, and payment of duty in the event of non-export. It was argued that compliance with conditions of the Foreign Trade Policy is within the domain of DGFT and not Customs, and that no finding of violation has been recorded by DGFT. The Bank further submitted that duties in respect of non-exported quantities were already paid through TR-6 challans, bonds were cancelled by Customs, and therefore no further demand can survive. The attempt of the Department to impose vicarious liability on the Bank for the alleged criminal acts of the exporter and certain Customs officer was contended to be wholly impermissible in law.

7. The Ld. Authorized Representative Shri Anoop Singh, Joint Commissioner has argued for the Revenue and his submissions / arguments are as follows: -

7.1 That the impugned Order-in-Original is based on a detailed investigation conducted by the Directorate of Revenue Intelligence and is supported by scientific evidence, expert opinion, documentary records, and statements recorded under Section 108 of the Customs Act, 1962. It was contended that the adjudicating authority has correctly appreciated the evidence in confirming confiscation, duty demand and penalties against the principal offenders and that such findings call for no interference.

7.2 The Revenue submitted that the investigation clearly established a deliberate and well-planned scheme to fraudulently export copper/brass jewellery with superficial gold coating by misdeclaring the same as 22 carat gold jewellery with inflated value, solely to falsely discharge export obligation under Notification No. 57/2000-Cus. It was argued that misdeclaration stood conclusively proved through physical examination, XRF analysis and assay reports, which were not effectively rebutted by the exporter, thereby attracting confiscation under Sections 113(i) and 113(ja) of the Customs Act.

7.3 It was further contended that diversion of duty-free gold into the domestic market is evident from the mismatch between the quantity of gold procured and the gold actually found in the exported jewellery, which cannot be explained as normal process loss. The Revenue also relied upon the statements recorded under Section 108, submitting that such statements are admissible and retain evidentiary value unless proved to be obtained under coercion, and that mere retraction does not dilute their probative value when corroborated by documentary and scientific evidence.

7.4 The Ld. Authorized Representative has further argued that the role of various noticees, including the exporter, intermediaries and the Customs Broker, was clearly established through statements, records and conduct, showing active participation and facilitation of the fraudulent exports. It was submitted that the Customs Broker consciously deviated from prescribed procedures and coordinated examination through a particular officer, while departmental officers who permitted such deviation cannot escape liability merely on the ground of departmental proceedings, as statutory penalties under the Customs Act operate independently.

7.5 In respect of HDFC Bank Ltd., the Revenue contended that as a nominated agency importing duty-free gold, it was under a statutory obligation to ensure compliance with the conditions of the exemption notification, and that once diversion is established, duty liability arises under Section 28 irrespective of whether diversion was direct or through the exporter. It was further argued that subsequent payment of duty or cancellation of bond does not extinguish liability arising from fraud, and that procedural lapses, if any, cannot override substantive evidence. The Revenue therefore prayed for dismissal of the appeals filed by the appellants and for allowing its cross-appeals by levying / restoring penalties and liabilities dropped by the adjudicating authority.

8. We have carefully heard the submissions advanced by all sides, perused the appeal records in detail, examined the statutory provisions, considered the statements recorded under Section 108 of the Customs Act, 1962, the documentary and scientific evidence recovered during the course of investigation, as well as the written submissions filed by the parties and the case laws cited.

9. Upon such comprehensive consideration of the factual matrix and the applicable legal provisions, the following issues arise for our determination in these appeals, namely:-

- i. Whether exported goods were liable to confiscation.
- ii. Whether diversion of duty-free gold stands established.
- iii. Whether duty demand on HDFC Bank is sustainable.
- iv. Whether penalties imposed/dropped are legally correct.
- v. Whether Revenue Appeals in non -imposition of redemption fine on the Importer i.e., HDFC Bank merit acceptance

10. We now proceed to consider the issues seriatim, as they arise for determination, and record our findings thereon in the paragraphs that follow: -

**Issue No. (i) Whether exported goods were liable to confiscation**

11. The first and foremost issue that arises for our determination is whether the goods exported by M/s Shree Balaji Jewellers under Shipping Bill No. 7870940 dated 31.01.2022, declared as 22 CT plain gold jewellery, were liable to confiscation under the provisions of Section 113 of the Customs Act, 1962. This issue strikes at the very root of the controversy, as the consequential liabilities of confiscation, penalty, and allied proceedings flow from the determination of this foundational question.

12. The factual matrix relevant to this issue is largely undisputed. The consignment in question was initially assessed and allowed for export, thereafter recalled based on specific intelligence received by the Directorate of Revenue Intelligence. Upon recall, the consignment was subjected to detailed examination on 08.03.2022 in the presence of independent witnesses, departmental officers, and a Government-approved assayer. The examination process involved physical inspection, scraping of samples, XRF testing, and spectrometer analysis. The results of these scientific tests form the bedrock of the Department's case.

13. The examination categorically revealed that the consignment consisted of 375 bangles, whereas the Shipping Bill and export documents described the goods as necklaces, malas, and chains. This discrepancy in the very identity and form of the exported goods is not a minor clerical or interpretational difference but a fundamental variance going to the nature of the goods themselves. Such a mismatch by itself raises serious doubt about the veracity of the declaration made at the time of export.

14. More importantly, the scientific analysis established that the average gold content of the examined jewellery was approximately 8.74%, with the balance consisting

predominantly of copper/brass. This is in stark contrast to the declared purity of 22 carat gold (91.6%) of jewellery exported. The magnitude of this variation is so substantial that it cannot be attributed to trade tolerance, marginal deviation, or manufacturing imperfection. Instead, it clearly establishes that the goods were not gold jewellery of the declared purity but were, in substance, imitation jewellery with superficial gold plating and the fraud committed to evade customs duty involved on imported gold.

15. The declaration of the goods as 22 CT plain gold jewellery was therefore not merely inaccurate but demonstrably false. Such false declaration had a direct and immediate nexus with the availment of benefits under Notification No. 57/2000-Cus, which permits duty-free import of gold subject to strict conditions, including the requirement that the imported gold be used for manufacture and export of gold jewellery of corresponding purity. The mis-declaration was thus not accidental but was designed to create an illusion of compliance with the notification.

16. Section 113(i) of the Customs Act, 1962 provides that goods shall be liable to confiscation if they are attempted to be exported by means of mis-declaration in value or in any material particular relating to description. Further, Section

113(ja) covers cases where export goods are entered for export by means of any false or incorrect declaration or statement. In the present case, the mis-declaration pertains to description, composition, purity, and value, all of which are material particulars for the purposes of export and eligibility under the exemption notification.

17. The cumulative effect of the evidence on record leaves no manner of doubt that the present case squarely falls within the mischief contemplated under Sections 113(i) and 113(ja) of the Customs Act. The declaration was not only incorrect but fundamentally deceptive, rendering the goods liable to confiscation irrespective of whether the export ultimately succeeded or not.

18. The appellants have placed considerable emphasis on alleged procedural infirmities, such as the recall of the consignment, the sealing and resealing of packages, and the absence of correspondence with Dubai Customs authorities. We find these arguments to be devoid of any merit. It is well settled that procedural lapses, unless shown to cause prejudice or to vitiate the substantive evidence, cannot override clear and cogent material establishing mis-declaration.

19. In this regard, the law laid down by the Hon'ble Supreme Court in *Collector of Customs v. D. Bhoormull*, reported in 1983 (13) ELT 1546 (SC), is directly applicable. The Supreme Court held that proceedings under the Customs Act are civil in nature and that the Department is not required to prove its case with mathematical precision or proof beyond reasonable doubt. The test to be applied is one of preponderance of probability, and circumstantial evidence can be relied upon to establish smuggling or mis-declaration.

20. Applying the above principle, once the Department has established through scientific testing that the goods were not what they were declared to be, the burden shifts to the exporter to satisfactorily explain the discrepancies. In the present case, no credible explanation has been offered as to how goods declared as 22 CT gold jewellery were found to be largely composed of copper/brass. The deliberate and conspicuous silence of the exporter on this critical aspect further strengthens the Department's case.

21. The contention that absence of confirmation from Dubai Customs or foreign authorities vitiates the confiscation proceedings is also unsustainable. The recall of the consignment was admitted, the seals affixed by Customs were found intact on 07.02.2022, and there is no evidence

whatsoever to suggest that the consignment was tampered with while in the custody of Customs. Mere conjecture or hypothetical doubt cannot displace concrete scientific evidence.

22. It is also pertinent to note that confiscation under Section 113 does not depend upon the success or completion of export. The attempt to export goods by mis-declaration itself attracts confiscation. This position has been consistently upheld in a catena of decisions, wherein it has been held that once the attempt to export mis-declared goods is established, confiscation follows as a natural consequence.

23. The Exporter's reliance on the argument of lack of *mens rea* is misplaced at the stage of confiscation. *Mens rea* is not a prerequisite for ordering confiscation of goods under Section 113. The focus is on the nature of the goods and the correctness of the declaration made to Customs. The deliberate nature of mis-declaration, however, becomes relevant for the purpose of penalty, which is addressed in detail in succeeding paras of this order.

24. We also take note of the fact that the value of the goods was grossly inflated to align with the declared purity of

22 CT gold. Such inflation of value is intrinsically linked to the mis-declaration of purity and reinforces the conclusion that the declaration was not *bona fide*.

25. In view of the overwhelming evidence on record, the statutory provisions, and the settled legal position governing confiscation proceedings, we are of the considered opinion that the exported goods were correctly held to be liable to confiscation under Sections 113(i) and 113(ja) of the Customs Act, 1962.

26. We therefore uphold the findings of the Adjudicating Authority on this issue and hold that the confiscation of the goods covered under Shipping Bill No. 7870940 dated 31.01.2022 is legally valid, factually justified, and calls for no interference.

**Issue No. ii Whether diversion of duty-free gold stands established.**

27. The second issue for our determination is whether the duty-free gold imported under the benefit of Notification No. 57/2000-Cus dated 08.05.2000 was diverted instead of being utilised for the manufacture and export of gold jewellery, as mandated under the said notification and the Foreign Trade Policy. This issue is distinct from the question

of mis-declaration of export goods and relates to post-import utilisation of duty-free inputs.

28. The undisputed factual position emerging from the records is that M/s Shree Balaji Jewellers procured a total quantity of 9,364.86 grams of duty-free gold from HDFC Bank, a nominated agency, during January 2022. Against this procurement, the exporter claimed to have manufactured and exported jewellery weighing 10,172.53 grams under Shipping Bill No. 7870940 dated 31.01.2022. However, scientific examination of the recalled export consignment established that the actual gold content embedded in the jewellery was only 889.08 grams.

29. Thus, there is an admitted and glaring shortfall of 8,475.78 grams of duty-free gold, for which no plausible or verifiable explanation has been furnished. This quantitative mismatch is not marginal or technical but substantial and decisive, leading to a presumption of diversion unless convincingly rebutted by the exporter.

30. The primary explanation advanced by the exporter is that the duty-free gold was sent to Kolkata for job work through M/s Ashok Jewellers. However, this explanation remains entirely unsupported by documentary evidence. No

transport document such as lorry receipt or airway bill, courier records, delivery challan, e-way bill, invoice or any insurance document, or acknowledgment of receipt at the job worker's premises have been produced. In matters involving movement of high-value precious metal, such absence of documentary trail assumes critical significance.

31. The statements recorded from the alleged job workers themselves further weaken the exporter's version. The goldsmiths engaged at Kolkata have categorically stated that the jewellery manufactured by them contained negligible gold content and was largely composed of base metals. Their statements corroborate the scientific findings and negate the claim that duty-free gold bars were actually consumed in the manufacturing process.

32. It is also relevant that no stock register, manufacturing account, melting record, wastage statement, or reconciliation statement has been produced to demonstrate consumption of the duty-free gold. In schemes involving conditional exemption, maintenance of such records is not optional but mandatory. The absence of these records gives rise to a strong adverse inference against the exporter.

33. We find that the Notification No. 57/2000-Cus is a conditional exemption notification, permitting import of gold without payment of duty subject to strict compliance with specified post-import conditions, foremost among them being that the imported gold must be used for manufacture and export of gold jewellery within the prescribed period. It is settled law that exemption notifications of this nature must be construed strictly, and the burden of proving compliance squarely rests on the beneficiary.

34. The Hon'ble Supreme Court in *Commissioner of Customs v. Dilip Kumar & Co.*, reported in 2018 (361) ELT 577 (SC), has authoritatively held that when an assessee claims exemption under a notification, it is for the assessee to strictly satisfy all conditions, and any ambiguity must be resolved in favour of the Revenue. Applying this principle, once the Department has shown non-utilisation of duty-free gold for the intended purpose, the exemption is liable to be denied.

35. The appellants have argued that mere quantitative mismatch cannot automatically lead to a finding of diversion and that there must be direct evidence of sale in the domestic market. We find this argument to be legally untenable. Diversion, by its very nature, is often clandestine,

and direct evidence of sale is rarely available. The law does not require the Department to prove diversion with mathematical certainty or to trace the exact buyer in the domestic market. Rather, it is incumbent on the part of the exporter to properly account for the gold which was procured from M/s. HDFC.

36. Again, we are compelled to refer to the decision in *Collector of Customs v. D. Bhoormull*, 1983 (13) ELT 1546 (SC), wherein the Hon'ble Supreme Court held that in cases involving smuggling or clandestine activities, the Department can rely on circumstantial evidence and reasonable inferences drawn from proved facts. Applying the same principle, when duty-free gold is shown to be unaccounted for and not reflected in the exported product, diversion can be legitimately inferred.

37. The exporter's contention that the gold was not physically seized and therefore cannot be confiscated is also misconceived. Section 111(o) of the Customs Act provides for confiscation of goods imported subject to a condition, when such condition is violated. The violation in the present case is complete once the gold is not utilised for the prescribed export purpose.

38. The argument advanced on behalf of HDFC Bank that the diversion, if any, is attributable solely to the exporter and cannot be visited upon the nominated agency is addressed separately under Issue No. (iii) & (v). For the limited purpose of the present issue, the focus is on whether diversion occurred at all. On this aspect, the evidence overwhelmingly establishes that the duty-free gold did not form part of the exported jewellery and diversion of gold stands established.

39. The appellants have also contended that reconciliation based on purity analysis is flawed and that manufacturing loss and wastage must be factored in. We find this contention to be devoid of merit. Even allowing for reasonable wastage, the difference between 9,364.86 grams and 889.08 grams is far beyond any conceivable manufacturing loss. No industry standard or expert evidence has been produced to justify such an abnormal depletion.

40. The cumulative effect of the quantitative mismatch, absence of transport and manufacturing records, corroborative statements of job workers, and scientific analysis of the exported jewellery leaves no room for doubt that the imported duty-free gold was not utilised for the

intended export and was instead diverted in violation of the conditions of Notification No. 57/2000-Cus.

41. We therefore hold that the diversion of 8,475.78 grams of duty-free gold stands conclusively established. The denial of exemption, coupled with confiscation of the diverted quantity under Section 111(o) of the Customs Act, 1962, is legally sound and fully justified.

42. Accordingly, we affirm the findings of the Adjudicating Authority on this issue and uphold the order of confiscation of the diverted gold under Section 111(o), while sustaining the decision not to impose redemption fine due to non-availability of the goods.

**ISSUE No. (iii): Whether the Duty Demand on HDFC Bank Is Sustainable**

43. The present issue about the sustainability of the customs duty demand raised against HDFC Bank, a nominated agency importer under Notification No.57/2000-Cus, and the Department's challenge to the findings of the adjudicating authority insofar as the adjudicating authority held that the case would fall under Section 28(1) and not under Section 28(4) of the Customs Act, 1962. The Department has further challenged the non-imposition of penalties upon HDFC Bank on the ground that the duty-free

gold imported by the Bank ultimately stood diverted into the domestic market through fraudulent export transactions undertaken by M/s Shree Balaji Jewellers.

44. From the impugned Order-in-Original, it emerges that HDFC Bank had imported duty-free gold bullion under Notification No.57/2000-Cus under the "Export Against Supply by Nominated Agencies" Scheme and supplied the same to M/s Shree Balaji Jewellers against export-linked documentation and security mechanisms contemplated under the Foreign Trade Policy, Handbook of Procedures and Circular No.27/2016-Cus dated 10.06.2016. The allegation of the Department is that instead of manufacturing and exporting genuine gold jewellery, the exporter diverted the duty-free gold into the domestic market and fraudulently exported gold-plated copper/brass jewellery through fabricated shipping bills and false export documentation.

45. The adjudicating authority has specifically recorded that upon detection of non-fulfillment of export obligation and diversion of duty-free gold, HDFC Bank discharged the entire customs duty together with applicable interest even prior to issuance of the Show Cause Notice. The records establish that customs duty amounting to Rs.66,45,643/- together with interest of Rs.4,27,399/- stood paid through

TR-6 challans dated 08.06.2022 and 09.06.2022, whereas the Show Cause Notice came to be issued only subsequently on 04.02.2023. The adjudicating authority appropriated the said amounts and further recorded absence of collusion, wilful suppression or conscious involvement on the part of HDFC Bank in the fraudulent exports undertaken by the exporter.

46. The Departmental Appeal however proceeds on the footing that once export obligation stood fraudulently violated, the nominated agency importer automatically became liable not only for customs duty but also for invocation of Section 28(4) of the Customs Act, 1962. According to the Department, the expression "either by itself or through other exporters" occurring in Notification No.57/2000-Cus fastens ultimate responsibility upon the nominated agency importer for fulfillment of export obligation and consequently the fraud committed by the exporter becomes attributable to the importer itself.

47. We are unable to accept the aforesaid contention in the broad manner canvassed by the Department. Notification No.57/2000-Cus undoubtedly casts obligations upon the nominated agency importer and specifically requires execution of bonds, undertaking to export jewellery either by

itself or through exporters within the stipulated period. The notification further binds the importer to pay customs duty on the quantity representing the shortfall in export obligation. Circular No.27/2016-Cus correspondingly provides that where proof of export is not produced within the prescribed period, the nominated agency shall deposit the customs duty together with applicable interest. The FTP and Handbook of Procedures similarly contemplate recovery of customs duty from the nominated agency importer in the event of export default. Thus, the statutory framework clearly creates a recovery mechanism founded upon the exemption notification, FTP obligations and the bond executed before Customs authorities.

48. We find that the Coordinate Bench of the CESTAT, New Delhi in *M/s HDFC Bank Ltd. v. Commissioner of Customs (Adjudication), Delhi Zone, Final Order Nos.51571-51574/2025 dated 09.10.2025 [2025 (10) TMI 825 - CESTAT NEW DELHI]*, while dealing with an identical controversy arising under Notification No.57/2000-Cus, extensively examined the legal framework governing duty-free gold imports by nominated agencies. The Coordinate Bench relied upon the decisions of the Hon'ble Supreme Court in *Munjal Showa Ltd. v. Commissioner of Customs & Central Excise, 2009 (246) E.L.T. 18 (S.C.)* and *Afloat Textiles (India) Pvt.*

*Ltd. v. Union of India, 2009 (235) E.L.T. 587 (S.C.)* and reiterated the settled principle that exemption notifications operating through export obligation schemes create independent statutory obligations enforceable through bonds and undertakings executed before Customs authorities and that recovery of customs duty upon breach of export obligation fundamentally flows from the terms of the notification and the bond conditions themselves.

49. In *Munjal Showa Ltd., (Supra)* the Hon'ble Supreme Court recognized that where an exemption notification is conditional in nature and operates through execution of bonds securing export obligations, the liability to discharge customs duty upon breach of such conditions flows directly from the statutory undertaking executed by the importer and the exemption notification itself. Similarly, in *Afloat Textiles (India) Pvt. Ltd., (Supra)* the Hon'ble Supreme Court emphasized that export obligation schemes under the Foreign Trade Policy constitute a complete statutory framework and that obligations arising thereunder remain enforceable through the bonds and undertakings executed under the scheme. Relying upon the aforesaid principles, the Coordinate Bench held that the nominated agency importer under Notification No.57/2000-Cus remains liable to discharge customs duty through the statutory bond

mechanism once export obligations fail, irrespective of the subsequent conduct of the exporter.

50. The Coordinate Bench however simultaneously drew a clear distinction between enforcement of statutory duty liability arising under the exemption notification and invocation of fraud-based proceedings under Section 28(4) and the penal provisions of the Customs Act. The Tribunal categorically held that while recovery of customs duty may independently arise under the notification, FTP framework and bond obligations, fraud, suppression or wilful misstatement cannot automatically be imputed to the nominated agency importer merely because the exporter subsequently committed fraud. The Tribunal specifically observed that once the nominated agency had deposited the customs duty together with applicable interest prior to issuance of the Show Cause Notice and the corresponding bond obligations stood discharged, "the matter should have ended there" insofar as substantive revenue recovery was concerned.

51. We find that the ratio of the aforesaid Coordinate Bench decision squarely applies to the facts of the present case. The records before us clearly establish that HDFC Bank imported the gold within the statutory framework

contemplated under Notification No.57/2000-Cus, Circular No.27/2016-Cus, FTP and HBP; executed the prescribed bonds; released bullion only against export-linked documentation; and upon detection of export default, discharged the entire customs duty together with applicable interest through the bond mechanism even prior to issuance of the Show Cause Notice. The adjudicating authority itself has categorically recorded that no evidence exists showing collusion, fabrication of documents, manipulation of export process, or conscious participation by HDFC Bank in diversion of duty-free gold.

52. It is also significant that Section 28(2) of the Customs Act, 1962, as applicable during the relevant period, specifically contemplated that where the person chargeable with duty voluntarily pays the duty together with applicable interest and informs the proper officer in writing, proceedings in respect of such duty and interest stand concluded to that extent. In the present case, the Department itself quantified the duty liability through the bond mechanism and accepted payment of the entire customs duty together with applicable interest prior to issuance of the Show Cause Notice. The substantive revenue liability arising under Notification No.57/2000-Cus, FTP, HBP, Circular No.27/2016-Cus and the executed bonds therefore

already stood fully discharged even before commencement of adjudicatory proceedings.

53. The Department's reliance upon Section 28(4) is therefore misconceived. The allegations against HDFC Bank at the highest relate to alleged failure to detect or prevent the subsequent fraud committed by the exporter. Such allegations, even if assumed, cannot by themselves satisfy the stringent jurisdictional ingredients of collusion, wilful suppression or intentional misstatement necessary for invocation of Section 28(4). The distinction between statutory recovery liability flowing from the exemption notification and quasi-criminal consequences flowing from fraud-based provisions cannot be obliterated in the manner suggested by the Department.

54. There is no dispute that the nominated agency importer remains liable to discharge customs duty where export obligation fails. In fact, HDFC Bank has already discharged the entire customs duty together with interest under the statutory mechanism contemplated by Notification No.57/2000-Cus, Circular No.27/2016-Cus and the executed bonds. Once the entire substantive duty liability together with applicable interest already stood discharged prior to issuance of the Show Cause Notice itself, no surviving

dispute regarding recovery of customs duty substantially remained for adjudication before us insofar as HDFC Bank is concerned. The question of penalties and other consequential liabilities are being separately dealt with in the later portion of this order.

55. Consequently, the findings recorded by the adjudicating authority treating the case as one falling under Section 28(1) and not under Section 28(4) call for no interference. The Departmental Appeal on this issue is therefore liable to be rejected.

**ISSUE No. (iv): Whether the Penalties Imposed, Dropped, or Not imposed upon the various noticees are legally Sustainable**

56. The fourth issue for determination concerns the correctness, legality, proportionality, and sustainability of the penalties imposed by the Adjudicating Authority upon various noticees as also the legality of dropping or non-imposition of penalties against certain noticees, which has been challenged by the Department. The issue requires an independent evaluation of the role, conduct, degree of involvement, and *mens rea* attributable to each category of noticee in the light of the statutory requirements under Sections 112, 114, 114AA and 117 of the Customs Act, 1962.

**(A) Penalties on Exporter – M/s. Shree Balaji Jewellers and Shri Sunil Sharma (Noticee Appeal No. C/40543/2024)**

57.1 At the outset, it is necessary to note that M/s Shree Balaji Jewellers is a proprietary concern of Shri Sunil Sharma and therefore the proprietary concern and the proprietor are not distinct legal entities for the purpose of adjudication under the Customs Act, 1962. Consequently, the acts, declarations, omissions, and liabilities attributable to Shri Sunil Sharma as proprietor are intrinsically attributable to M/s Shree Balaji Jewellers itself. Accordingly, the penalties imposed upon Shri Sunil Sharma are deemed to operate against the proprietary concern M/s Shree Balaji Jewellers as well, the proprietary concern having acted only through its sole proprietor Shri Sunil Sharma.

57.2 As regards M/s. Shree Balaji Jewellers and its proprietor Shri Sunil Sharma, the record clearly establishes deliberate misdeclaration, false representation of gold purity, and attempted export of goods fundamentally different from those declared in the export documents. The impugned Order-in-Original records that the consignments declared as “22 CT plain gold jewellery” including necklace and haram were, upon examination and scientific testing, found to be copper/brass articles with superficial gold coating. The export documents including shipping bills, invoices and declarations originated from M/s. Shree Balaji Jewellers under the control

and authority of Shri Sunil Sharma and the misdeclaration arose at the very source of export documentation. Penalties were accordingly imposed upon M/s. Shree Balaji Jewellers and Shri Sunil Sharma under Sections 114(iii), 114AA and 112(ii) of the Customs Act, 1962.

58. The misdeclaration in the present case is not confined to valuation or minor compositional variation but extends to the very identity and nature of the exported goods. The evidence on record establishes that Shri Sunil Sharma, being the proprietor and controlling person of the exporting entity, was directly responsible for procurement, presentation, declaration and attempted export of the impugned consignments. The role attributed to him is therefore central to the fraudulent scheme involving diversion of duty-free gold and attempted discharge of export obligations through export of fake jewellery.

59. Section 114(iii) applies where goods liable to confiscation are knowingly attempted to be exported improperly, while Section 114AA penalises knowing use of false declarations and documents. The shipping bills, invoices and declarations filed by the exporter contained demonstrably false particulars relating to purity, composition and nature of the exported goods. The evidence further

establishes nexus between export of fake jewellery and diversion of duty-free imported gold obtained under the exemption scheme. The cumulative circumstances therefore establish deliberate abuse of the export promotion scheme and conscious use of fabricated export declarations.

60. The Hon'ble Supreme Court in *Collector v. D. Bhoormull, 1983 (13) E.L.T. 1546 (S.C.)*, has held that in customs matters mens rea can legitimately be inferred from conduct and surrounding circumstances. Applying the said principle, the sustained pattern of misdeclaration and use of fabricated export declarations conclusively establish conscious involvement on the part of the exporter. We therefore find no reason to interfere with the findings or penalties imposed in the impugned Order-in-Original against M/s. Shree Balaji Jewellers and Shri Sunil Sharma and consequently Noticee Appeal No. C/40543/2024 is liable to be dismissed.

**(B) Penalties on Shri Narendra Sharma (Noticee Appeal No. C/40544/2024)**

61. Shri Narendra Sharma has contended that he neither physically handled the export consignments nor participated in preparation of export documents and that the allegations against him are founded merely on acquaintance with the exporter. We are unable to accept the said contention.

62. The impugned Order-in-Original records specific findings regarding the active involvement of Shri Narendra Sharma in coordinating operational aspects of the export activity undertaken through M/s. Shree Balaji Jewellers. The investigation revealed that he acted as a vital link between the exporter, intermediaries and persons connected with manufacture and movement of the impugned consignments. The statements recorded during investigation, call detail records and surrounding circumstances establish that he was actively involved in arranging and facilitating the export process and was not a peripheral participant.

63. The contention that penal liability under Section 114 requires physical handling of goods or direct filing of export documents is legally untenable. Section 114(iii) specifically covers acts of abetment, facilitation and intentional assistance rendering export goods liable to confiscation. In *Jeena & Co. v. Additional Collector, 1992 (58) E.L.T. 276 (Tri.)*, it was held that active facilitation or assistance in the offending transaction, even without direct execution of export formalities, is sufficient to sustain penalty. Applying the above principles, we are satisfied that the cumulative evidence on record clearly establishes conscious facilitation

and operational involvement on the part of Shri Narendra Sharma in the fraudulent export scheme.

64. We therefore find no infirmity in the findings recorded in the impugned Order-in-Original insofar as Shri Narendra Sharma is concerned. The penalty imposed upon him under Section 114(iii) of the Customs Act, 1962 is justified, proportionate and legally sustainable.

**(C) Departmental Appeal insofar as Shri Narendra Sharma is concerned (Appeal No. C/40542/2024)**

65. The grievance of the Revenue is that the adjudicating authority, despite recording findings that Shri Narendra Sharma orchestrated the offending transactions by roping in Shri Sunil Sharma of M/s. Shree Balaji Jewellers and Shri A. Mariappan of M/s. BSM Logistics, failed to impose penalties under Sections 114AA and 112(ii) of the Customs Act, 1962.

66. However, insofar as penalty under Section 112(ii) is concerned, we find that the evidence against Shri Narendra Sharma principally relates to facilitation and coordination of export activities and not to direct dealing with the imported duty-free gold alleged to have been diverted. No recovery of imported gold was effected from him and no material has been produced establishing that he physically dealt with, possessed, transported, concealed, or handled imported gold

liable to confiscation under Section 111 of the Customs Act, 1962. While the cumulative circumstances clearly justify penalties relating to the fraudulent export and use of false declarations, the evidentiary threshold necessary for sustaining penalty under Section 112(ii) is not satisfied. Accordingly, penalty under Section 112(ii) is held not invocable against Shri Narendra Sharma.

67. As regards, penalty under section 114AA of Customs Act, we have examined the contentions of the Department. The evidentiary record clearly establishes that Shri Narendra Sharma was not a peripheral participant but a key operational coordinator in the execution of the fraudulent export scheme involving diversion of duty-free gold and export of fake jewellery under cover of false export documentation. The materials on record, including the statements of co-noticees and the surrounding circumstances, demonstrate his active involvement in coordinating the exporter, intermediaries and customs clearance process. Though the export documents may have been physically filed through the exporter and Customs Broker, the cumulative evidence establishes that Shri Narendra Sharma consciously facilitated and caused the use of materially false declarations and export documents in the course of customs business. The export documents, invoices

and declarations describing gold-plated copper/brass jewellery as "22 CT plain gold jewellery" were knowingly used in customs proceedings for obtaining export clearance and fulfillment of obligations under Notification No.57/2000-Cus. Section 114AA is not confined only to the person who physically prepares or signs the false declaration, but extends to any person who knowingly uses or causes such false declarations or documents to be used. In the present case, the fraudulent exports and the use of false export declarations formed an integral part of the coordinated scheme in which Shri Narendra Sharma played a significant and conscious role. The cumulative evidence therefore establishes conscious and intentional use and facilitation of materially false declarations attracting Section 114AA of the Customs Act, 1962

We therefore hold that the ingredients necessary for invocation of Section 114AA stand satisfied against Shri Narendra Sharma. We therefore impose a penalty of Rs 20,00,000/- on Narendra Sharma under Section 114AA of Customs Act 1962 as imposed in the case of Shri Sunil Sharma.

68. Accordingly, while we uphold the penalty imposed upon Shri Narendra Sharma under Section 114(iii), we also hold that penalty under Section 114AA of the Customs Act,

1962 is legally sustainable against him. However, penalty under Section 112(ii) is held not invocable. Consequently, the connected Departmental appeal is partly allowed to the above extent.

**(D) Penalties on Shri Ashok Jain (Noticee Appeal No. C/40545/2024)**

69. Shri Ashok Jain has contended that he was neither the exporter nor the importer and that his association with manufacture of jewellery does not establish conscious involvement in export fraud or diversion of duty-free gold.

70. On careful examination of the impugned Order-in-Original, we find that Shri Ashok Jain has been specifically identified as one of the principal operational persons involved in arranging manufacture and movement of fake jewellery ultimately exported in the guise of genuine 22-carat gold jewellery. The Order-in-Original records that the gold-plated copper jewellery was manufactured through job workers under his supervision and instructions and that he maintained continuous coordination with the exporter and associated persons involved in the export chain.

71. The plea that Shri Ashok Jain did not personally file shipping bills or physically present the goods before Customs does not absolve him from liability under Section 114(iii)

once active facilitation and intentional assistance stand established. The cumulative evidence discussed in the Order-in-Original, including statements of job workers, linkages with exporter entities and coordination in movement of consignments, sufficiently establishes conscious involvement on his part in the fraudulent export scheme.

72. The reliance placed upon decisions concerning absence of *mens rea* does not advance the appellant's case because the present matter involves sustained and coordinated activity relating to manufacture and export of fake jewellery under cover of export promotion benefits. Applying the ratio laid down in Collector v. D. Bhoormull and Jeena & Co. (*Supra*), we hold that the surrounding circumstances and cumulative evidence sufficiently establish intentional facilitation and abetment.

73. We therefore concur with the findings recorded in the impugned Order-in-Original regarding the role and involvement of Shri Ashok Jain and hold that the penalty imposed upon him under Section 114(iii) of the Customs Act, 1962 is legally sustainable and proportionate to the gravity of the offence.

**(E) Departmental Appeal insofar as Shri Ashok Jain is concerned (Appeal No. C/40541/2024)**

74. The grievance of the Revenue is that the adjudicating authority, despite recording findings regarding the active role played by Shri Ashok Jain in arranging manufacture and movement of fake jewellery, failed to impose penalty under Section 112(ii) of the Customs Act, 1962.

75. We have carefully examined the above contention. The materials on record clearly establish that Shri Ashok Jain played an important operational role in arranging manufacture of gold-plated fake jewellery and coordinating movement of such goods for export under the guise of genuine gold jewellery. However, the evidence principally relates to manufacture and movement of fake jewellery intended for export and not to direct handling, possession, concealment or disposal of imported duty-free gold bars.

76. No recovery of imported gold bars was effected from Shri Ashok Jain and no material has been produced establishing that he physically dealt with or possessed imported duty-free gold liable to confiscation under Section 111 of the Customs Act. The distinction between facilitation of fraudulent export and direct dealing with imported goods assumes significance in the context of Section 112(ii). While the evidence sufficiently establishes the former, it falls short of conclusively establishing the latter.

77. Accordingly, while we uphold the penalty imposed upon Shri Ashok Jain under Section 114(iii), we do not find sufficient legal or evidentiary basis to interfere with the adjudicating authority's decision insofar as non-imposition of penalty under Section 112(ii) is concerned. The connected Departmental appeal therefore stands rejected.

**(F) Penalties on Customs Broker: M/s. BSM Logistics, Shri A. Mariappan and Shri T. Sankara Kumar (Noticee Appeals Nos. C/40546/2024, C/40547/2024 and C/40548/2024)**

78. We shall now examine the appeals filed by M/s. BSM Logistics, licensed Customs Broker, Shri A. Mariappan, CEO of M/s. BSM Logistics, and Shri T. Sankara Kumar, Partner of the said Customs Broker firm, challenging the penalties imposed upon them under Section 114(iii) of the Customs Act, 1962 in terms of the impugned Order-in-Original No. 32/2024-AIR dated 03.02.2024 passed by the Principal Commissioner of Customs, Air Cargo, Chennai. The consistent contention advanced by the appellants is that they merely acted in the ordinary course of customs clearance activities as licensed Customs Brokers and that no evidence exists to establish conscious involvement, mens rea, or intentional facilitation of export of fake jewellery. It has further been contended that the appellants neither

manufactured the jewellery nor had any knowledge regarding the alleged substitution of gold jewellery with gold-plated copper articles.

79. We have carefully examined the findings recorded in the impugned Order-in-Original, the evidentiary materials relied upon by the Department, and the submissions advanced on behalf of the appellants. A Customs Broker licensed under the Customs Brokers Licensing Regulations occupies a position of trust within the customs clearance mechanism and functions as a crucial interface between importers/exporters and the Customs Department. Such a licensed intermediary is expected to maintain heightened standards of diligence, neutrality, and adherence to statutory safeguards, particularly in transactions involving export of sensitive commodities such as gold jewellery exported under duty exemption schemes.

80. The impugned Order-in-Original records specific findings that M/s. BSM Logistics and its key personnel consciously facilitated examination of the export consignments through a particular officer despite the existence of a roster system governing jewellery examination. The adjudicating authority has noted that the examination of the impugned consignments was repeatedly

routed through Shri N.S.D. Avinash, who was not rostered as the Jewellery Examiner on the relevant dates, and that such routing was facilitated through the active involvement and coordination of the Customs Broker firm and its personnel. The materials on record, including statements recorded under Section 108 of the Customs Act, reveal admissions regarding repeated routing of consignments and coordination of examination procedures outside the prescribed roster discipline.

81. The conduct attributed to the Customs Broker and its personnel cannot be brushed aside as mere procedural convenience or routine discharge of brokerage functions. The roster system governing examination of jewellery exports is not an empty formality but an institutional safeguard intended to ensure transparency and integrity in customs examination of sensitive export consignments involving precious metals. Conscious deviation from such safeguards by repeatedly routing consignments through a non-rostered officer directly facilitated the fraudulent export of mis-declared goods. The cumulative circumstances therefore establish active facilitation and conscious assistance in the process by which fake jewellery passed through customs control under the guise of genuine 22-carat gold jewellery.

82. The Ld. Counsel for the appellants has relied upon *Fast Cargo Movers v. Commissioner of Customs* [2018 (362) E.L.T. 184 (Tri.-Del.)], *Guru Ispat Ltd. v. CCE* [2003 (151) E.L.T. 384 (Tri.-Kol.) affirmed at 2003 (157) E.L.T. A87 (S.C.)], *Sawroop Shipping Services v. Commissioner of Customs* [2008 (227) E.L.T. 555 (Tri.-Chennai)], *Commissioner v. Vaz Forwarding Ltd.* [2011 (266) E.L.T. 39 (Guj.)], and *Jeena & Co. v. Additional Collector* [1992 (58) E.L.T. 276 (Tri.)] to contend absence of mens rea and to argue that intermediaries such as Customs Brokers cannot be penalised in the absence of direct evidence showing knowledge of the offending transaction. There can be no dispute regarding the legal proposition laid down in the aforesaid decisions that penalty cannot be imposed in cases involving mere routine discharge of statutory functions without evidence of conscious involvement or facilitation.

83. However, we find that the said decisions are clearly distinguishable on facts. In the present case, the evidence does not disclose passive or routine compliance with customs formalities but indicates conscious coordination of examination through a non-rostered officer and repeated facilitation of deviation from prescribed safeguards in relation to sensitive exports linked to duty-free gold. Even assuming reliance is placed on the decision of the Tribunal in *Fast*

*Cargo Movers v. Commissioner of Customs, 2018 (362) E.L.T. 184 (Tri.-Del.)*, the same does not advance the case of the appellants, as it neither lays down an absolute proposition that intermediaries can never be penalised nor does it override the binding law declared by the Hon'ble Supreme Court. In *Fast Cargo Movers*, the Tribunal specifically found absence of prior knowledge, conscious facilitation, or intentional aid and further recorded that there was no allegation regarding manipulation of examination procedure, selection of officers, or bypassing of institutional safeguards. The present case stands on an entirely different footing, where the evidence establishes positive acts facilitating circumvention of statutory controls through coordinated routing of consignments for examination outside the roster mechanism.

84. In the above factual and legal background, we are of the considered view that the findings recorded in the impugned Order-in-Original regarding the role and involvement of M/s. BSM Logistics, Shri A. Mariappan and Shri T. Sankara Kumar do not suffer from any infirmity warranting interference by this Tribunal. The cumulative evidence on record sufficiently establishes conscious facilitation and active assistance in the export of misdeclared goods rendering the consignments liable to confiscation

under Section 113 of the Customs Act, 1962. The penalties imposed upon M/s. BSM Logistics, Shri A. Mariappan and Shri T. Sankara Kumar under Section 114(iii) of the Customs Act, 1962 are therefore legally sustainable, proportionate to the gravity of the misconduct established on record, and liable to be confirmed. Consequently, Noticee Appeal Nos. C/40546/2024, C/40547/2024 and C/40548/2024 are liable to be dismissed and the penalties imposed in the impugned Order-in-Original No. 32/2024-AIR dated 03.02.2024 passed by the Principal Commissioner of Customs, Air Cargo, Chennai are upheld.

**(G) Penalties on Departmental Officer – Shri N.S.D. Avinash, Appraiser, (Noticee Appeal C/40365/2024)**

85. The next aspect requiring examination concerns the sustainability and extent of penalties imposed or proposed against departmental officers despite findings regarding procedural deviation and facilitative conduct in the export clearance process. It is settled law that public office does not confer immunity from penal consequences under the Customs Act where acts or omissions facilitate export of goods liable to confiscation. Sections 112 and 114 apply to “any person” and do not carve out any blanket exception in favour of departmental officers. At the same time, the degree of culpability necessary for invoking each penal

provision must independently satisfy the statutory ingredients prescribed therein.

86. The Ld. Counsel for Shri N.S.D. Avinash has relied upon *Boria Ram v. Commissioner of Customs* [2005 (190) E.L.T. 496 (Tri.-Del.)], *Ruchika International v. Commissioner of Customs* [2006 (198) E.L.T. 360 (Tri.-Del.)], *A.P. Sales v. Commissioner of Customs* [2007 (216) E.L.T. 161 (Tri.-Del.)], *Hargovind Exports v. Commissioner of Customs* [2010 (259) E.L.T. 362 (Tri.-Del.)], *Commissioner v. M. Vasi* [2015 (325) E.L.T. 255 (Mad.)], *Fast Cargo Movers v. Commissioner of Customs* [2018 (362) E.L.T. 184 (Tri.-Del.)], *Gobinda Das v. Commissioner of Customs* [2017 (352) E.L.T. 583 (Tri.-Kol.)] and *G-Tech Industries v. Union of India* [2016 (339) E.L.T. 209 (P&H)] to contend that negligence or procedural lapse cannot by itself amount to abetment. There can be no dispute regarding the legal proposition laid down in the aforesaid decisions. However, those cases arose in factual situations where officers acted within the scope of assigned duties without evidence of conscious procedural deviation, misuse of official authority, or facilitation of export contrary to statutory safeguards.

87. From the records, it is evident that Shri N.S.D. Avinash examined the export consignment covered under

Shipping Bill No. 7870940 dated 31.01.2022 despite not being rostered as the Jewellery Examiner on the relevant date. The examination was conducted in clear deviation from prescribed roster instructions and established examination protocol. The goods physically presented for examination were gold-coated copper bangles whereas the export documents described the goods as "22 CT plain gold jewellery" including necklace and haram. The discrepancy was apparent even on ordinary visual inspection. Despite such discrepancy, the consignment was facilitated for export by use of official endorsement and examination seal. Conscious deviation from prescribed safeguards by a non-rostered officer undertaking examination through use of official authority cannot be brushed aside as a mere procedural lapse or innocent error of judgment.

88. The appellant Shri N.S.D. Avinash has further relied upon *Commissioner of Customs, New Delhi v. M.I. Khan* reported in 2000 (120) E.L.T. 542 and the judgment of the Hon'ble Supreme Court in *Costao Fernandes v. State* reported in 1996 (84) E.L.T. 577 (S.C.) to contend that protection under Section 155 of the Customs Act extends to officers discharging official functions. We are unable to accept the said contention in the factual context of the present case. The decisions in M.I. Khan and Costao

Fernandes arose in situations where the acts attributed to the officers were intrinsically connected with bona fide discharge of official functions and where no evidence existed of conscious facilitation or deliberate procedural deviation. In the present matter, however, the evidence specifically discloses examination of export consignments by a non-rostered officer, use of official endorsement contrary to roster discipline, and facilitation of export clearance despite obvious discrepancy between declared description and physical nature of goods. The controversy therefore extends beyond mere erroneous discharge of official duty and enters the realm of conscious procedural deviation facilitating export of misdeclared goods. Consequently, the statutory protection under Section 155 of the Customs Act cannot, in the facts of the present case, be extended to exclude examination of penal liability under the Customs Act where conscious procedural deviation facilitating export of misdeclared goods is prima facie established. This is particularly so when the very manner of discharge of official functions forms part of the facilitative conduct alleged by the Department

89. In the above factual background, we are of the considered view that the cumulative circumstances on record establish conscious disregard of statutory safeguards and

active facilitation of export of mis-declared goods rendering the export consignments liable to confiscation. The conduct of Shri N.S.D. Avinash therefore squarely attracts penalty under Section 114(iii) of the Customs Act, 1962 and the same calls for no interference. However, insofar as penalty under Section 112(ii) is concerned, we find no evidence showing that the said officer dealt with, handled, transported, concealed, possessed, or otherwise abetted diversion of imported gold bars liable to confiscation under Section 111 of the Customs Act. Invocation of Section 112(ii) against him is therefore not legally sustainable.

**(H) Departmental Appeal against Shri N.S.D. Avinash Appraiser (Appeal No. C/40333/2024):**

90. We shall now examine the Department's grievance insofar as non-imposition of penalty under Section 114AA of the Customs Act, 1962 upon Shri N.S.D. Avinash is concerned. The materials on record establish that Shri Avinash, though not rostered as Jewellery Appraiser on the relevant date, undertook examination of the export consignments, applied official endorsement and facilitated export clearance despite apparent discrepancy between the declared description of goods and the physical nature of the articles presented for export.

91. The evidence discussed hereinbefore demonstrates that the export goods declared as "22 CT plain gold jewellery" were in fact gold-coated copper/brass bangles with very low gold purity. The discrepancy was not technical or microscopic in nature but was sufficiently apparent to attract immediate suspicion during examination. The nature of discrepancy between the declared description and the physical goods presented for examination was such that endorsement and clearance could not reasonably have occurred without conscious acceptance of materially false declarations used in the customs process. Despite this, Shri Avinash proceeded to facilitate export clearance by using official endorsements in the customs process. The conscious deviation from roster protocol coupled with authentication of export examination materially contributed to the use of false declarations and documents in customs proceedings. The cumulative circumstances therefore sufficiently establish the ingredients necessary for invocation of Section 114AA of the Customs Act, 1962.

92. Accordingly, apart from penalty under Section 114(iii), we hold that penalty under Section 114AA of the Customs Act, 1962 is also legally sustainable against Shri N.S.D. Avinash. A penalty of Rs 20,00,000/- is imposed on Shri N.S.D. Avinash Appraiser under Section 114AA of Customs

Act 1962. Consequently, the Departmental appeal against Shri N.S.D. Avinash is partly allowed to the above extent.

**(I) Departmental Appeal against SHRI P. Thulasi Ram, Superintendent (Appeal No. C/40334/2024):**

93. We have carefully considered the submissions of the Department as well as the defence taken by Shri P. Thulasi Ram Superintendent in light of the findings recorded in the Order-in-Original. The adjudicating authority itself has noted that the actual examination of the impugned consignments was carried out by Shri N.S.D. Avinash, Appraiser, and not by Shri Thulasi Ram, though the latter's name/seal appeared in the system records. It is also on record that due to heavy workload and administrative constraints in the export shed, Shri Thulasi Ram had permitted use of his brass seal by a fellow officer who was also functioning as a jewellery appraiser. The Order-in-Original, while discussing the role of various noticees, does not bring out any independent or corroborative evidence to establish that Shri Thulasi Ram had physically examined the goods or had any role in certifying the nature of the consignment. Thus, the foundational fact emerging from the record is that the alleged lapse is not one of active involvement, but at best one of procedural irregularity arising in the course of official functioning by allowing the use of his official seal and signing

the documents for a fellow officer in good faith being rostered officer.

94. The Departmental Appeal seeks to attribute abetment to Shri Thulasi Ram on the ground that he signed documents without examination. However, this contention does not withstand legal scrutiny. The very evidence relied upon by the Department, including statements of the Customs Broker and the Appraiser, indicates that the examination and processing of the consignment, including XRF testing and grant of Let Export Order, were handled by Mr. Nerella Samueal Deepak Avinash, Appraiser. In such a situation, the primary responsibility for verification of goods rests with the officer who actually undertook examination and clearance. The mere fact that Shri Thulasi Ram's credentials were used, cannot by itself establish knowledge of misdeclaration or conscious facilitation of fraud. The Order-in-Original also records that there is no evidence of collusion, no evidence of any pecuniary benefit, and no material indicating any nexus between Shri Thulasi Ram and the exporter or other co-noticees. In the absence of these essential elements, the statutory requirement of *mens rea* for invoking penalty under Section 114(iii) is clearly not satisfied.

95. In view of the above, we find that the attempt of the Department to elevate a procedural lapse into an act of abetment is legally unsustainable. The facts on record, as also appreciated in the Order-in-Original, only indicate that Shri Thulasi Ram, faced with administrative exigencies, permitted use of his seal in good faith without any knowledge of the fraudulent export. There is no evidence of conscious involvement, intentional omission, or active facilitation on his part so as to render him liable to penalty under the Customs Act. It is well settled that negligence or error in discharge of official duties, without accompanying mens rea, cannot attract quasi-criminal liability. Accordingly, we hold that Shri P. Thulasi Ram is eligible to be fully absolved of penal proceedings under the Customs Act, 1962.

96. In view of the foregoing findings, we hold that the exoneration of Shri P. Thulasi Ram, Superintendent of Customs, in the impugned Order-in-Original is legally proper and sustainable, inasmuch as the material available on record does not establish any conscious involvement, mens rea, collusion, or active facilitation on his part in the fraudulent export of mis-declared jewellery. The acts attributed to him, even if accepted in entirety, are in the nature of procedural or administrative lapses arising in the course of discharge of official duties and do not satisfy the

essential statutory ingredients necessary for imposition of penalty under Sections 114(iii) or 112(ii) of the Customs Act, 1962. We therefore find no infirmity in the conclusion reached by the adjudicating authority in declining to impose penalties upon Shri P. Thulasi Ram. Consequently, Departmental Appeal No. C/40334/2024 filed by the Revenue against Shri P. Thulasi Ram is liable to be rejected and accordingly stands dismissed.

**(J) Penalties on Goldsmiths / Job Workers (Departmental Appeal No. C/40331/2024)**

97. We shall now examine Departmental Appeal No. C/40331/2024 whereby the Revenue has challenged the decision of the adjudicating authority dropping penal proceedings against Shri Zillur Rehman Mondal and Shri Mainuddin Rehman Mondal. The impugned Order-in-Original records that both the said noticees were engaged as goldsmiths/job workers in relation to manufacture of gold-plated imitation jewellery and that the Department alleged their involvement in the larger fraudulent export scheme concerning export of fake jewellery in the guise of 22-carat gold jewellery. The adjudicating authority, however, after analysing the evidentiary material available on record, came to the conclusion that the role attributable to the said noticees was confined to labour-oriented manufacturing activity undertaken on job-work basis and that no material

existed establishing their conscious participation in diversion of duty-free gold or fraudulent export of misdeclared jewellery. Consequently, the adjudicating authority declined to impose penalties upon them under the provisions of the Customs Act, 1962.

98. The Department in its Appeal has contended in the present appeal that the adjudicating authority failed to appreciate that the said goldsmiths actively participated in manufacture of fake jewellery which ultimately formed part of the export consignments and therefore ought to have been visited with penalties under Section 117 of the Customs Act, 1962. According to the Revenue, the very fact that the goldsmiths manufactured gold-plated imitation jewellery subsequently exported in place of genuine gold jewellery is sufficient to establish conscious involvement in the offending transaction.

99. We are unable to accept the above contention in the broad manner canvassed by the Department. The evidence on record establishes that Shri Zillur Rehman Mondal and Shri Mainuddin Rehman Mondal functioned only as job workers carrying out labour-oriented activities such as melting, moulding, soldering, polishing and preparation of jewellery items under the instructions of Shri Ashok Jain

using locally arranged material. The materials available on record do not establish that they were importers, exporters, financiers, beneficiaries, or persons exercising any operational control over procurement of duty-free gold, filing of shipping bills, preparation of export declarations, valuation, purity declaration, customs clearance formalities, or movement of export consignments through Customs. Nor is there evidence to show that they had any interaction with Customs authorities or participated in export documentation.

100. The distinction between participation in manufacturing activity and conscious involvement in customs fraud assumes considerable significance in the present case. Mere manufacture of imitation jewellery, by itself, cannot automatically lead to the inference that the goldsmiths were aware of diversion of imported duty-free gold or of the subsequent fraudulent export of such imitation jewellery under the guise of genuine gold jewellery. The evidentiary record does not disclose any pecuniary benefit linked to export incentives, any financial flow-back, any recovery of diverted imported gold from them, or any material showing that they knowingly participated in the export fraud. The Department has also not produced any evidence establishing that the said noticees were aware that the goods

manufactured by them would ultimately be exported by mis-declaring them as genuine 22-carat gold jewellery.

101. It is well settled that penal liability under Sections 117 of the Customs Act, 1962, being quasi-criminal in nature, necessarily requires existence of conscious knowledge, intentional involvement, collusion, or active abetment. Mere labour-oriented participation in a manufacturing process, absent evidence of *mens rea* or conscious facilitation of customs fraud, cannot by itself justify imposition of penalties under the Customs Act. The adjudicating authority has therefore correctly distinguished between the principal conspirators who orchestrated the export fraud and the job workers who merely carried out manufacturing activities without evidence of conscious participation in the larger scheme.

102. In the above factual and legal background, we find no infirmity in the findings recorded in the impugned Order-in-Original insofar as Shri Zillur Rehman Mondal and Shri Mainuddin Rehman Mondal are concerned. The material available on record does not establish conscious involvement, collusion, *mens rea*, or active abetment on their part so as to attract penal liability under Section 117 of the Customs Act, 1962. Consequently, the decision of the

adjudicating authority dropping penalties against the said noticees is upheld and Departmental Appeal No. C/40331/2024 is liable to be rejected.

**(K) HDFC Bank Ltd. – Penalties Correctly Dropped?  
(Departmental Appeal C/40323/2024)**

103. The position of HDFC Bank Ltd. stands on an entirely distinct footing. As already discussed, while deciding Issue No. (iii), the liability of the Bank arose only within the framework of Notification No.57/2000-Cus, the Foreign Trade Policy, Handbook of Procedures, Circular No.27/2016-Cus and the bond obligations executed by it as a nominated agency importer. The records clearly establish that upon detection of non-fulfillment of export obligation and diversion of duty-free gold by M/s Shree Balaji Jewellers, HDFC Bank discharged the entire customs duty together with applicable interest even prior to issuance of the Show Cause Notice. The adjudicating authority specifically appropriated the amounts so paid and further recorded absence of collusion, wilful suppression, conscious misstatement or intentional involvement on the part of HDFC Bank in the fraudulent export transactions undertaken by the exporter.

104. The Show Cause Notice had proposed penalties upon HDFC Bank under Sections 112, 114(iii) and 114A of the Customs Act, 1962 principally on the ground that the duty-

free gold imported by the Bank ultimately stood diverted into the domestic market through fraudulent exports of fake jewellery. The Departmental Appeal specifically challenges the findings of the adjudicating authority insofar as penalty under Section 114A came to be dropped and the case was held to fall under Section 28(1) and not under Section 28(4) of the Customs Act. However, we find no statutory basis, factual foundation, or evidentiary material to attribute mens rea, abetment, conscious omission, collusion, or knowing facilitation to HDFC Bank. Penal provisions under Sections 112, 114 and 114A necessarily require conscious involvement, intentional facilitation, wilful suppression, or knowing participation in the offending acts. None of these essential ingredients stand established against the Bank.

105. The Department has contended that being the importer and nominated agency under Notification No.57/2000-Cus, HDFC Bank remained absolutely liable for all consequences arising from export of fake jewellery and diversion of duty-free gold. We are unable to accept the said contention in the broad manner canvassed by the Revenue. While a nominated agency may remain answerable for discharge of customs duty flowing from the exemption notification and the executed bond obligations, the Customs Act does not create automatic penal or vicarious liability

upon a nominated agency for every subsequent fraudulent act independently committed by exporters, job workers, intermediaries, or examining personnel unless knowledge, collusion, wilful suppression, or conscious failure of statutory obligations is established against the nominated agency itself. To hold otherwise would effectively convert a regulated intermediary functioning under statutory supervision into an insurer against all downstream criminal acts, a consequence neither contemplated under Notification No.57/2000-Cus nor supported by any express statutory provision.

106. It is also significant that the adjudicating authority specifically recorded that none of the persons whose statements were recorded during investigation implicated any official of HDFC Bank in the fraudulent export activity and further held that there existed no evidence establishing collusion between the Bank and the exporter in commission of the fraud. The adjudicating authority therefore rightly concluded that the fraud had been perpetrated by M/s Shree Balaji Jewellers without the knowledge of HDFC Bank and consequently held that the demand, if any, would fall under Section 28(1) and not under Section 28(4) of the Customs Act, 1962. Once the substantive customs duty liability together with applicable interest already stood discharged prior to issuance of the Show Cause Notice itself, the

foundational jurisdictional requirements necessary for invoking Section 114A also remained wholly absent in view of the provisions of Section 28(2) of Customs Act . It is also significant that Section 28(2) of the Customs Act, 1962, as applicable during the relevant period, contemplated conclusion of proceedings where the person chargeable with duty voluntarily pays the customs duty together with applicable interest prior to issuance of the Show Cause Notice. In the present case, HDFC Bank discharged the entire customs duty liability along with applicable interest through the statutory bond mechanism even before issuance of the SCN and the said payments were accepted and appropriated by the Department. Once the adjudicating authority itself recorded absence of collusion, wilful suppression, or conscious involvement on the part of HDFC Bank and further held that the case would fall under Section 28(1) and not Section 28(4), the foundational requirement for sustaining penalty under Section 114A also ceased to survive

107. We also find considerable force in the reliance placed upon the decision of the Coordinate Bench of this Tribunal in *HDFC Bank Ltd. v. Commissioner of Customs (Adjudication), Delhi Zone, 2025 (10) TMI 825 (CESTAT-New Delhi)*, wherein it was held that a nominated agency cannot be penalised for fraudulent acts independently committed by

exporters in the absence of evidence establishing knowledge, connivance, or conscious involvement of the importer. The factual matrix in the present case stands materially similar. The Bank had no role in manufacture of jewellery, export processing, or diversion of gold and no evidence of collusion or wilful breach of statutory obligation has been brought on record. Accordingly, we hold that no penalty is imposable upon HDFC Bank Ltd. under Sections 112, 114 or 114AA of the Customs Act, 1962 and the Departmental appeal seeking imposition of penalty upon the Bank is rejected.

**Conclusion on Issue No.(iv) Penalties**

108. We also find that the adjudicating authority has correctly distinguished between principal participants in the fraudulent scheme and those against whom the evidence merely establishes procedural lapse, labour-oriented activity, or absence of conscious involvement. Accordingly, the exoneration/dropping of penalties in respect of Shri P. Thulasi Ram, Shri Zillur Rehman Mondal, Shri Mainuddin Rehman Mondal and HDFC Bank Ltd. is found to be legally proper and supported by the evidentiary record, there being no material establishing the requisite mens rea, conscious abetment, collusion, wilful suppression, or direct nexus necessary for invocation of penal provisions under Sections 112, 114, 114A ,114AA or 117 of the Customs Act, 1962.

Consequently, the respective Departmental appeals challenging such exoneration or seeking imposition of additional penalties against the aforesaid noticees stand rejected.

109. In view of the foregoing discussion and upon comprehensive consideration of the respective roles, degree of involvement, evidentiary materials, and statutory requirements governing penal liability under the Customs Act, 1962, we hold that the penalties imposed upon the principal noticees directly connected with orchestration, facilitation, and execution of the fraudulent export of fake jewellery are legally sustainable and warrant confirmation. The evidence on record clearly establishes conscious involvement, active facilitation, deliberate misdeclaration, diversion of duty-free gold, knowing use of false export documentation, and intentional circumvention of statutory safeguards on the part of M/s Shree Balaji Jewellers, Shri Sunil Sharma, Shri Narendra Sharma, Shri Ashok Jain, M/s BSM Logistics, Shri A. Mariappan, Shri T. Sankara Kumar and Shri N.S.D. Avinash to the extent discussed hereinabove. Accordingly, the penalties imposed upon the aforesaid noticees under the respective provisions of the Customs Act, 1962 call for no interference except to the limited extent specifically modified hereinabove insofar as non-applicability

of penalty under Section 112(ii) against Shri N.S.D. Avinash and non-applicability of penalty under Section 112(ii) against Shri Narendra Sharma and Shri Ashok Jain are concerned. Further, for the reasons separately recorded hereinabove, penalty under Section 114AA against Shri Narendra Sharma and Shri N.S.D. Avinash stands upheld. Consequently, the respective noticee appeals challenging the confirmed penalties stand dismissed except to the limited extent indicated hereinabove, and the connected Departmental appeals stand disposed of in terms of the findings recorded hereinabove.

**(v). Whether Revenue Appeals on non-imposition of redemption fine on the Importer i.e., HDFC Bank merit acceptance C/40323/2024 : -**

110. We have carefully examined whether redemption fine under Section 125 of the Customs Act, 1962 can be sustained in respect of goods which are admittedly not available for physical confiscation, having already been cleared and utilised. We find merit in the appellants' contention that redemption fine is not legally leviable in such circumstances. Section 125 contemplates an option to redeem confiscated goods in lieu of confiscation. The statutory precondition for exercise of such option is the physical availability of goods which can either be confiscated or released on payment of fine. Where confiscation itself is

incapable of execution due to non-availability of goods, the legal foundation for offering redemption necessarily fails.

111. The Department has placed reliance on the decisions in *Weston Components Ltd. v. Commissioner of Customs* (Supreme Court), *Visteon Automotive Systems India Ltd. v. CESTAT* (Madras High Court) to contend that, even though the goods are not physically available, confiscation and consequential proceedings are sustainable.

112. The learned counsel for the appellants has relied upon the decisions in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc.* [2009 (248) E.L.T. 122 (Bom)] as affirmed by the Hon'ble Supreme Court [2010 (255) E.L.T. A120 (S.C.)], and *Union of India v. Raj Grow Impex LLP* [2021 (377) E.L.T. 145 (S.C.)], to contend that confiscation is not sustainable where the goods are not physically available.

113. In the present case, we find that HDFC Bank Ltd. stands on a fundamentally different footing. It is not the user of the gold, not the manufacturer, not the exporter, and not the beneficiary of the diversion. The Bank functioned as a nominated agency operating under a statutory framework, releasing gold to exporters against margin money and

documentary safeguards. Crucially, the Adjudicating Authority has recorded a categorical finding that there is no evidence of collusion, wilful misstatement, or suppression attributable to HDFC Bank especially where the importer is demonstrably not complicit.

114. Further, applying the binding ratio of the Coordinate Bench in *M/s. HDFC Bank Limited v. Commissioner of Customs (Adjudication), Delhi Zone, 2025 (10) TMI 825 (CESTAT-New Delhi)*, we hold that redemption fine under Section 125 of the Customs Act is wholly inapplicable to HDFC Bank Ltd., as the Bank neither had physical custody nor control over the export goods, nor any culpable role in the fraudulent export by the jeweller. Redemption fine being purely consequential to confiscation, and confiscation itself being unsustainable against the Bank in the absence of knowledge, mens rea, or dominion over the goods, the Revenue's attempt to impose redemption fine amounts to penalising a non-offending nominated agency for third-party criminality. Accordingly, the Revenue's appeal seeking imposition of redemption fine on HDFC Bank Ltd. is rejected in toto.

115. In view of the above, we hold that while the goods may be held liable to confiscation under Section 111(o) for

violation of Notification No. 57/2000-Cus., no redemption fine under Section 125 can be imposed in respect of past clearances where the goods are admittedly not available for confiscation. The reliance placed by the Department on the above case laws is therefore misplaced, and the Adjudicating Authority's decision not to impose redemption fine calls for affirmation, the impugned order to that extent is sustainable and is so, upheld.

### **CONCLUSION**

116. At the same time, while deciding Issue Nos. (iii) and (iv), we have drawn a clear distinction between the liability arising under Notification No.57/2000-Cus and the bond obligations executed by HDFC Bank Ltd. on the one hand and the fraud-based allegations raised by the Department on the other. The records clearly establish that HDFC Bank Ltd., functioning as the nominated agency importer, discharged the entire customs duty together with applicable interest prior to issuance of the Show Cause Notice and the adjudicating authority itself recorded absence of collusion, conscious involvement, or wilful suppression on the part of the Bank in the fraudulent export transactions undertaken by M/s Shree Balaji Jewellers. We have therefore upheld the findings of the adjudicating authority insofar as HDFC Bank

Ltd. is concerned and found no justification to interfere with the dropping of further proceedings against the Bank.

117. With regard to penalties, we have undertaken a role-specific analysis of the conduct attributable to each noticee and have confirmed penalties only where the evidence establishes conscious involvement, active facilitation, deliberate procedural deviation, intentional misdeclaration, or knowing use of false documentation satisfying the statutory requirements of the Customs Act, 1962. The materials on record clearly establish deliberate misdeclaration, fraudulent intent, diversion of duty-free gold, and active facilitation on the part of the principal exporter entities and key operational participants connected with the offending transactions.

118. The evidence further establishes that certain intermediaries, including the Customs Broker M/s BSM Logistics and its key personnel, consciously facilitated circumvention of prescribed safeguards by coordinating examination of export consignments outside the roster mechanism and thereby enabled export of mis-declared goods. In customs jurisprudence, abetment is not confined to physical handling of goods and extends to conscious facilitation or intentional omission enabling commission of

the offending act. The plea of absence of *mens rea* cannot therefore be accepted where the cumulative conduct and surrounding circumstances themselves establish conscious facilitation.

119. Insofar as departmental officers are concerned, we find that the case against Shri N.S.D. Avinash, Appraiser, is supported by material establishing active involvement in examination and clearance of the impugned consignments and consequently the penalty imposed upon him under Section 114(iii) stands affirmed. We have also partly allowed the connected Departmental Appeal and imposed penalty under Section 114AA upon Shri N.S.D. Avinash to the extent recorded hereinabove. However, insofar as penalty under Section 112(ii) is concerned, we have found no evidence establishing his involvement on the import side or any dealing with imported duty-free gold liable to confiscation under Section 111 of the Customs Act, 1962 and consequently the penalty under Section 112(ii) against Shri N.S.D. Avinash stands set aside. Similarly, the evidence on record establishes that Shri Narendra Sharma played a significant operational and coordinating role in the fraudulent export scheme and consciously facilitated use of false export documentation. Accordingly, while the penalty imposed upon him under Section 114(iii) stands affirmed, we have also

upheld imposition of penalty under Section 114AA against Shri Narendra Sharma to the extent recorded hereinabove. In the case of Shri P. Thulasi Ram, the evidentiary record does not establish conscious involvement, collusion, or intentional facilitation and therefore the adjudicating authority was justified in declining to impose penalties upon him. Likewise, in the case of the goldsmiths/job workers and HDFC Bank Ltd., the evidence falls short of establishing the statutory threshold necessary for imposition of penal consequences under the Customs Act, 1962.

120. We have also remained conscious of the settled principle that penal provisions under fiscal statutes, being quasi-criminal in nature, require strict construction and cannot be invoked merely on the basis of suspicion, institutional association, or retrospective inference unsupported by legally sustainable evidence. The conclusions recorded herein therefore represent a careful balance between enforcement of fiscal discipline and protection against unwarranted penalisation.

121. Taken as a whole, the present case reveals a carefully orchestrated attempt to misuse a beneficial export promotion scheme intended for genuine exports, resulting in loss to the exchequer and erosion of regulatory trust. Such conduct

warrants firm action under the Customs Act, 1962 both to neutralise the economic advantage derived through misuse of the scheme and to deter recurrence of similar fraudulent practices. At the same time, entities against whom the evidence does not establish conscious involvement or facilitation cannot be subjected to penal consequences merely because they formed part of the broader commercial or institutional framework within which the fraud occurred.

122. In conclusion, we hold that the impugned Order-in-Original substantially merits affirmation subject only to the limited modifications and clarifications specifically recorded hereinabove. The findings recorded in the present Final Order reflect a comprehensive appreciation of facts, evidence, statutory provisions, exemption notification conditions, FTP obligations, CBEC Circular framework, and binding judicial precedents including the Coordinate Bench decision in *M/s HDFC Bank Ltd. v. Commissioner of Customs (Adjudication), Delhi Zone*. All judgments relied upon by the respective parties have been considered in the context of the issues framed and have either been applied or distinguished depending upon their applicability to the factual matrix of the present case.

**ORDER**

123. In view of the foregoing discussion, findings and conclusions recorded hereinabove, the following order is passed: -

- i. The confiscation of the exported goods weighing 10,172.53 grams covered under Shipping Bill No.7870940 dated 31.01.2022 under Sections 113(i) and 113(ja) of the Customs Act, 1962, together with the option of redemption on payment of fine as ordered in the impugned Order-in-Original, is affirmed.
- ii. The finding regarding diversion of 8,475.78 grams of duty-free gold imported under Notification No.57/2000-Cus rendering the same liable to confiscation under Section 111(o) of the Customs Act, 1962 is upheld. Inasmuch as the said gold is not physically available for confiscation, the decision of the adjudicating authority refraining from imposing redemption fine in respect thereof is also upheld.
- iii. The penalties imposed upon Shri Sunil Sharma proprietor of M/s Shree Balaji Jewellers under Sections 114(iii), 114AA and 112(ii) of the Customs Act, 1962 are upheld and consequently Noticee Appeal No. C/40543/2024 stands dismissed.

- iv. The penalty imposed upon Shri Narendra Sharma under Section 114(iii) of the Customs Act, 1962 is upheld. Further, the Departmental Appeal seeking imposition of penalty under Section 114AA is allowed and penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) is imposed upon Shri Narendra Sharma under Section 114AA of the Customs Act, 1962. However, the Departmental Appeal seeking imposition of penalty under Section 112(ii) against Shri Narendra Sharma is rejected. Consequently, Noticee Appeal No. C/40544/2024 stands dismissed and the connected Departmental Appeal stands partly allowed to the above extent.
- v. The penalty imposed upon Shri Ashok Jain under Section 114(iii) of the Customs Act, 1962 is upheld. However, the Departmental Appeal seeking imposition of penalty under Section 112(ii) against Shri Ashok Jain is rejected. Consequently, Noticee Appeal No. C/40545/2024 stands dismissed and the connected Departmental Appeal stands rejected.
- vi. The penalties imposed upon M/s BSM Logistics, Shri A. Mariappan and Shri T. Sankara Kumar under Section 114(iii) of the Customs Act, 1962 are upheld and

consequently Noticee Appeal Nos. C/40546/2024, C/40547/2024 and C/40548/2024 stand dismissed.

- vii. The penalty imposed upon Shri N.S.D. Avinash under Section 114(iii) of the Customs Act, 1962 is upheld. However, the penalty imposed upon him under Section 112(ii) is set aside and consequently his Noticee Appeal stands partly allowed to the said limited extent. Further, the Departmental Appeal seeking imposition of penalty under Section 114AA against Shri N.S.D. Avinash is allowed and penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) is imposed upon Shri N.S.D. Avinash under Section 114AA of the Customs Act, 1962.
- viii. The dropping of penalties against Shri P. Thulasi Ram is upheld and consequently Departmental Appeal No. C/40334/2024 stands rejected.
- ix. The dropping of penalties against Shri Zillur Rehman Mondal and Shri Mainuddin Rehman Mondal is upheld and consequently Departmental Appeal No. C/40331/2024 stands rejected.

- x. The findings of the adjudicating authority holding that the customs duty liability together with applicable interest stood discharged prior to issuance of the Show Cause Notice in terms of Notification No.57/2000-Cus, Circular No.27/2016-Cus, FTP/HBP provisions and the executed bond obligations is also upheld. Consequently, the dropping of proceedings relating to further duty demand, interest, redemption fine, and penalties against HDFC Bank Ltd. is affirmed and Departmental Appeal No. C/40323/2024 stands rejected in toto.
- xi. The impugned Order-in-Original No.32/2024-AIR dated 03.02.2024 passed by the Principal Commissioner of Customs, Air Cargo, Chennai is accordingly upheld subject to the limited modifications and clarifications recorded hereinabove.

124. All appeals and connected Departmental appeals stand disposed of in the above terms.

(Order pronounced in open court on 08.05.2026)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)