

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 2**

CUSTOMS APPEAL NO. 128 OF 2008

[Arising out of Order-in-Original No.51/2007 dated 16.11.2007 passed by the Commissioner of Customs, ICD TKD, New Delhi]

Sh. Devinder Pramod

Appellant

408, Katyayani Apartment, Plot no.8,
Sector-6, Dwarka, New Delhi

Vs.

**Commissioner of Customs,
ICD TKD, New Delhi**

Respondent

Appearance:

Present for the Appellant : Shri Shubhankar Jha, Advocate

Present for the Respondent: Shri Anand Narayan, Authorised Representative

CORAM:

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Date of Hearing: **22/05/2026**

Date of Decision: **04/06/2026**

Final Order No.51028/2026

RAJEEV TANDON:

The present appeal emanates out of Order-in-Original No. 51/2007 dated 16.11.2007. The appellant is a commission agent who has been penalised along with co-noticee under section 114 of the Customs Act besides being subjected to a redemption fine of Rs.15 lakh jointly imposed alongwith the said co-noticee Mr. Mahesh Kumar Gupta. Aggrieved by the said order, the appellant has filed the present appeal.

2. Acting on a specific intelligence received from the Consulate General of India, Hong Kong, the authorities noted that one Vikas Overseas, Delhi (IEC-0592009335) had exported Ketamine to China in the guise of Alpha Olefin Sulphonate (AOS). The said quantity of 1010 kg of Ketamine found in the export consignment was seized by the authorities in China on 19.09.2005. Investigations carried out by the authorities reveal that the said consignment declared as 7500 kg of AOS was consigned to M/s. Yamtai High Link Import & Export Company Ltd., China and that Ms. Anju Jolly, Proprietor of Vikas Overseas had ceased to operate his business activity under that name in the year 2003. The investigations further revealed that the appellant Devinder Pramod alongwith co-noticee fabricated certain documents including export invoices and packaging list, mis-utilising the IEC and the firm's name Vikas Overseas. All this was done in a completely fraudulent manner.

3. The present appellant has, however, claimed that he was no more than a mere commission agent, arranging the sourcing of the goods for export. The authorities recorded the statement of the accused and noted that the appellant played a key role not only in the procurement of the goods but also organised logistic and coordination support to and with the freight forwarder and in effect, handed over the requisite documents to Shri Deepak Berry, Director of Direct Ocean Shipping P. Ltd., for customs clearance through M/s. Direct Ocean Shipping P. Ltd. The investigation further points out that the clearance of the export consignment was done through CHA M/s. Delta Air Freight Pvt. Ltd. and acted on the instructions of the M/s. Deepak Berry. It was also

confirmed by the CHA Officers that the documents were received pre-signed and they had never directly contacted the exporter.

4. In the present matter, a total of four suspicious items were identified vide shipping bill no.1435176 dated 02.12.2004, 1470670 dated 29.04.2005, 1491042 dated 25.07.2005 and 1494427 dated 06.08.2005. It was in this last shipment under cover of shipping bill no.1494427 that the Chinese Authorities intimated about the seizure of Ketamine therefrom. Investigations have also established that foreign remittance for the aforesaid shipment were received in advance in the fraudulently opened & operated bank account in the name of Vikas Overseas and the appellant alongwith the co-noticee had received a monetary compensation of Rs.1 lakh, for the same. As the present appeal concerns only the appellant, Devinder Pramod, the role of the other appellant is not being dwelt upon in the present order. Suffice to state that the appeal filed by Mahesh Kumar Gupta, as per records of the Tribunal since stands disposed vide Final Orders No.FO/C/A/50647-50648/2014 dated 21.02.2014 and the case history last indicates the matter as consigned to records as 09.09.2025.

5. The un-retracted testimony of Shri Deepak Berry recorded under section 108 of the Customs Act, confirms that the appellant Deepak Bery personally approached him for export services and handed over pre-signed documents, collected shipping papers after clearance and made payment in cash. The said statement also points out to the role of an employee of the appellant Shri Adish Bansal in the process. All this is a clear pointer to a much greater role of the appellant than being a commission agent simplicitor. The appellant in his testimony before the

authorities, though retracted later, had admitted to facilitating the export through Vikas Overseas, arranging export CHA services, hiring a godown at Siraspur, purchasing AOS and paints besides admitting receipt of the export proceeds in the bank account by name of Vikas Overseas, allegedly operated fraudulently. He had further admitted that certain drums were arranged by one Lakhvinder Singh, the contents of which he had doubtfully acknowledged.

6. For the sake of completeness of the factual premise, it may be necessary to point out that Mahesh Kumar Gupta, the co-noticee vide his confessional statement recorded by the authorities admitted that he had arranged IEC No.0592009335 of Vikas Overseas and opened a bank account in Andhra Bank, through his employee Lallan Kumar Thakur and prepared export documents on his computer. He has further admitted that in respect of services rendered by him he had received an amount of Rs.16 lakh from the appellant, beside acknowledging that both he and appellant were aware of the nature of the export item and the mis-declaration. The aforesaid chain of events is corroborated further not only by way of the factual premise of the case but also testimonies of various persons recorded like that of Lallan Kumar Thakur (employee of Mukesh Kumar Gupta), who confirmed the details relating to the opening of the bank account and usage of false and fabricated documents besides using M/s. King Trader (a firm linked with Mukesh Kumar Gupta) for the purpose of opening of the said fabricated account in the name of Vikas Overseas; Suresh Kumar Jain, the godown owner who confirmed that the said premises was hired for purpose of storage access to goods for Devinder Pramod through Mukesh Kumar Gupta, the co-noticee; Andhra

Bank records indicating receipt of remittances in respect of which the appellant claimed to be the commission agent thereby establishing his complete nexus with the receipt of the fraudulent export proceeds. The fact that numerous characters set out in the chain of events, not being produced by the notice, clearly further established falsification and imagination of such characters like Lakhwinder Singh, Manjit Singh or Bant Singh, suggesting usage of fictitious entities to mask the operation. The defence of the appellant that he was not more than a broker and that the entire operation were controlled by Mukesh Kumar Gupta is clearly unconvincing. The two viz. the appellant and Mahesh Kumar Gupta, have acted in cahoots and have shared the fruits of the spoils together. They have well planned and executed the supply of Ketamine to the country of export. As per the appellant's self-inculpation statement besides the evidence gathered, it is clear that he had purchased the goods for export in person or through Lakhvinder Singh, hired storage, managed the CHA and had clear knowledge of the entire scheme of operations. He had also before the authorities admitted to the uncertainty over the contents of certain drums thereby clearly establishing that he was in the know of the suspicious nature of the cargo and his complicity in the matter.

7. It is also a fact on record that the impugned shipment exported vide shipping bill no. 1494427 dated 06.08.2005 was not opened by the authorities for physical examination at the port of loading, thereby leaving no doubt to the enablement of the smuggling of Ketamine by way of mis-declaration. The retraction, taking denial of the noticee's involvement in the matter, is not borne out to be factually corrected. In

view of the plethora of large scale corroborated testimonies of multiple witnesses and other documentary evidence on record, their claims at refusal/ coercion are unsubstantiated and therefore deserve outright dismissal.

8. It is a fact that ketamine is an internationally controlled psychotropic substance; export thereto under the guise of AOS was only undertaken to circumvent the importing country's prohibition and to overcome the exporting country's export mechanisms.

9. The appellant has contended in the matter that the entire case is based on the alleged recovery of Ketamine in China, relying solely on the communication of the Consulate General. It has been submitted by them that no documentary evidence exists to establish that ketamine was actually exported in the consignment as AOS. They have also laid claim to the fact that the goods were allowed export by the customs which according to them would obviously lead to fulfilment of their obligation cast upon under section 50 and 51 of the Customs Act. The learned counsel for the appellant has further stated that at the relevant time Ketamine was not classified as a prohibited or a dutiable item under the Indian law and that the appellant had not laid claim to any incentives for export, thereby making out a case so as to rule out any intent to defraud the Indian Government. The learned advocate has strongly asserted that the appellant was only a commission agent and had no control on ownership of Vikas Overseas, limiting his clients role to coordination, logistic, etc., at the instance of the co-noticee, Mahesh Kumar Gupta. It is, therefore, his case that the amount received by him were towards the services rendered to Mahesh Kumar Gupta, the co-

noticee. The appellant has also sought to seek fault with the investigations carried out, pointing out that the authorities failed to produce any document or invoice connected to appellant with the export of ketamine.

10. From the factual narration it therefore emerges that the present matter is not merely one of mis-declaration but of deliberate and organised criminal conspiracy to smuggle ketamine under the false declaration of AOS. This fact has been the factual premise and has been reinforced by the physical seizure of 1010 kg of ketamine at the port of export in China. The fact that the shipment was not physically examined at the time of its export cannot absolve the appellant of their legal duty to comply with the provisions of section 50 and 51 of the Customs Act, ascribing to the veracity and the truthfulness of the contents wherein the exporter is duty bound in law for filing a correct declaration. It is further brought out on record that fictitious documents and stolen identities were used to bypass legal checks, knowing fully-well that export of Ketamine is prohibited and a regulated drug in many countries including China. The said mis-declaration was aimed to evade both detection and mislead the authorities. The fact of usage of forged documents, indeed is an aggravated factor, and is established by the manipulation of bank records for opening of the bank accounts for purposes of remittances of export proceeds through such fabricated and forged documentation. The IEC was misused, the bank account, opened with fictitious identities of persons and identity theft was committed as also was confirmed by the bank and testimony of the witnesses on record. The appellant's submissions that the co-noticee, Mahesh Kumar Gupta was solely

responsible for misdeeds, holds no ground in view of the testimonies rendered by multiple witnesses including that of the freight forwarder Mr. Deepak Berry and the employees of the CHA, who had directly identified Devinder Pramod as the mastermind and the go-getter and the executor on the ground. This is also corroborated with the circumstantial evidence and facts on ground. Even the self-inculcating retracted statement of the appellant further reinforce the fact of misdeclaration and export of Ketamine. It is also important to note that despite ample opportunities, the noticee failed to reveal the identity of various persons like Lakhwinder Singh, or produced them before the authorities, despite the fact that they were brought into the narration of events by the appellant for purpose of arranging of the export of the consignment. This, therefore, would confirm, that the entire operation, though not in accordance with law was planned, controlled and executed by the appellant/noticee.

11. Learned advocate for the appellant had also taken the plea that no physical testing or seizure of export goods was done in India, and therefore, the entire case is misconceived and legally unsustainable. It may, therefore, be pointed out that once a consignment is exported and seized abroad, the fact of it being mis-declared and prohibited would relate back to its export and is sufficient to invoke the consequential provisions of the law of Customs. The fact of the report of China customs, received through Indian Consulate, to this effect of seizure of 1010 kg ketamine cannot be simply brushed aside. It carries an inherent intrinsic evidentiary value and is the part of the systematic process of international cooperation, in such legal matters concerning

narcotics and psychotropic substances and related matters. This process is well recognised under various conventions, treaties and diplomatic protocols and procedures. Also it is a settled law that in case of smuggling and concealment, direct evidence of proof is rarely available and circumstantial evidence, corroborative statement and conduct of the accused are sufficient to establish the charge (**Collector of Customs, Madras and Ors. v. D. Bhoormal¹**).

12. It is noted from records that the adjudicating authority has confiscated the said seized goods and has however, imposed a fine of Rs.15 lakh jointly on the two noticees. However, in this regard goods no longer are available for confiscation and were not cleared on bond. The fact of imposition of fine is, therefore, not borne out in law. Section 113 (d) of the Customs Act seeks confiscation of goods admitted to be improperly exported. The word admitted is of significance as in the impugned case, the goods indeed have been exported which in terms of section 2 (18) of the act *ibid* means taking out of India to place outside India. The fact remains that the goods landed on the shores of the importing country, it is therefore, not a case of attempting export but actual exports. Nonetheless, the goods were regulated by international regulations and are liable for seizure and confiscation for breach thereof. The fact that they are not being available for confiscation is, therefore, imperative. To this extent, the fine imposed would not be sustainable in the first place. The appellant has relied upon several cases to contend that confiscation cannot be maintained once goods are not available for confiscation. As there is no dispute with this legal premise there is no

1. 1974 AIR 59 SC

warrant to dwell on those case laws. The fact that export incentives have not been claimed by the appellant, would also hold no support in defence of the appellant. It is clear that the item seized in the importing country, China and export herefrom in the present matter was of a controlled substance which otherwise cannot be exported but by way of lengthy legal processes and export certification. The lack of incentives claims would not, therefore, mitigate the nature of the offence.

13. The challenge to the statement recorded by the authorities is, at its best, clearly on afterthought and is not supported by any material evidence on record. The appellant has admitted to facilitate export of multiple export consignments in the name of Vikas Overseas, hiring the godown at Siraspur for storage of the goods, procuring and handling the chemicals and plastic dana, personally arranging documentation and export logistic via CHA and freight forwarders, receiving export remittances in fictitiously opened bank accounts, use of false and incorrect material for export, are but key elements of the claims, amongst, in other manner assisting/ carrying out the aforesaid export. These are therefore, the material basis of evidence establishing *mens rea* as the onus to prove the legality of export and the nature of the shipment is squarely upon the exporter. Having failed to produce any procurement record or third party confirmations, the charge of illegal export is clearly established. The fraudulent conduct and ill-designs of the appellant is also borne out by way of utilizing fake IEC's, opening of bank accounts fraudulently and maliciously, absence of other documentary and key records, clearly establishing the complexity. The active orchestration of the deliberate fraud. He has made undue

pecuniary gains. The contumacious conduct of the appellant is established beyond doubt. Export of narcotics/ psychotropic substances deserves no leniency in law and cannot be countenanced. The imposition of penalty on the appellant is, therefore, justifiable.

14. The appellant's submission that he did not commit any offence in law is already unacceptable, he had filed misdeclared Bill of Entry masterminding export of Ketamine illegally. Willful act and *mens rea* is thus established. Considering the entire facts of the matter and the large time lag, since the time of committing of the offence, the lengthy legal process, it is felt appropriate that the ends of justice would be met by subjecting the appellant to a penalty of Rs.5 lakh, (Rs. Five lakh only).

15. In view of the aforesaid discussions, the impugned Order-in-Original qua the appellant is modified to the extent above and the appeal is disposed as thus.

(Order pronounced on **04/06/2026**)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

Archana