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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% ***Judgment reserved on: 20.07.2026***
Judgment pronounced on: 20.08.2026
Judgment uploaded on: 20.08.2026

\# **CNR No. DLHC010448372023**
\+ CUSAA 82/2023, CM APPL. 57697/2023
PARVEEN KUMAR JAIN .....Appellant
Through: Mr Kamal Mehta Senior Advocate with Dr Sushil Kumar Gupta and Ms. Anshika Kumari Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) ICD, TKD, NEW DELHI .....Respondent
Through: Mr. Vikrant Nilesh Goyal, Mr. Inderpreet Singh, Mr. Kunal Dixit, Advs.
Mr. Gibran Naushad, SSC.

\# **CNR No. DLHC010448402023**
\+ CUSAA 83/2023, CM APPL. 57699/2023, CM APPL. 27569/2026
BIMAL PAPERS PVT. LTD. .....Appellant
Through: Mr Kamal Mehta Senior Advocate with Dr Sushil Kumar Gupta and Ms. Anshika Kumari Advs.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT .....Respondent
Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates

\# **CNR No. DLHC011028232025**
\+ CUSAA 177/2025, CM APPL. 79867/2025, CM APPL. 79870/2025, CM APPL. 16640/2026
MS MUKTA ENTERPRISES .....Appellant

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT .....Respondent

Through: Mr. Anurag Ojha, SSC, Mr. Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC011028242025**

\+ CUSAA 178/2025, CM APPL. 80092/2025, CM APPL. 80096/2025, CM APPL. 16648/2026

M/S RAJA RAM AND COMPANY .....Appellant

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT) .....Respondent

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advs.

\# **CNR No. DLHC011028252025**

\+ CUSAA 179/2025, CM APPL. 80160/2025, CM APPL. 80163/2025

RAJINDER KUMAR JAIN .....Appellant

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT .....Respondent

Through: Mr. Anurag Ojha, SSC, Mr.

Dipak Raj, Mr. Aryaman Singh Chouhan, Mr. Aditya Chaudhary, Advs.

\# **CNR No. DLHC011028262025**

\+ CUSAA 180/2025, CM APPL. 80234/2025, CM APPL. 80238/2025

JINENDER KUMAR JAIN .....Appellant

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

PRINCIPAL COMMISSIONER OF CUSTOMS IMPORT .....Respondent

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advs.

\# **CNR No. DLHC010552512019**

\+ W.P.(C) 12233/2019, CM APPL. 4168/2024, CM APPL. 16717/2026

M/S SUMAT PERSHAD AND SONS AND ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER CUSTOMS (EXPORT) AND ANR. .....Respondents

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010745652025**

\+ W.P.(C) 15114/2025, CM APPL. 62118/2025

MS KAPIL PAP MART PVT LTD .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents

Through: Mr. Raj Kumar, CGSC With Ms Vandana Sachdeva and Ms Vidushi Sah Advocates
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010287422020**

\+ W.P.(C) 8248/2020, CM APPL. 26724/2020, CM APPL. 32123/2021, CM APPL. 4160/2024, CM APPL. 16683/2026

MS SUMAT PERSHAD SONS & ORS. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Mr. Sushil kumar Pandey SPC, Mr. Aman Kumar Pandey, Mr Pradip Sharma Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010330042020**

\+ W.P.(C) 9868/2020, CM APPL. 31491/2020, CM APPL. 16695/2026

MS RAJA RAM & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Mr. Virender Pratap Singh Charak and Ms. Shubhra Parashar Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010330062020**

\+ W.P.(C) 9869/2020, CM APPL. 31493/2020, CM APPL. 16715/2026

M/S JUNEJA PAPERS PVT. LTD. & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR.
.....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010240232021**

\+ W.P.(C) 8039/2021, CM APPL. 25019/2021, CM APPL. 4163/2024, CM APPL. 16707/2026

M/S SUNEJA SONS & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010241442021**

\+ W.P.(C) 8122/2021, CM APPL. 25215/2021, CM APPL. 32144/2021, CM APPL. 16716/2026

M/S KRAFTLINE INTERNATIONAL & ORS.
.....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Mr. Harish Kumar Garg &. Ms. Nisha Advocates
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010022762022**

\+ W.P.(C) 232/2022, CM APPL. 4166/2024, CM APPL. 16691/2026

MS JUNEJA TRADE LINKS .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates.
Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advs.
Mr Nirvikar verma, SPC

\# **CNR No. DLHC010148662022**

\+ W.P.(C) 6209/2022, CM APPL. 4194/2024, CM APPL. 16689/2026

AJAY PAPER CORPORATION .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.
Ms. Nidhi Banga, Senior Panel Counsel for Respondent/UOI

\# **CNR No. DLHC010149152022**

\+ W.P.(C) 6239/2022, CM APPL. 4193/2024, CM APPL. 16706/2026

S D ENTERPRISES .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

CNR No. DLHC010151262022

\+ W.P.(C) 6299/2022, CM APPL. 4157/2024, CM APPL. 16705/2026

KHURANA PAPER HOUSE .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC CBIC, Ms. Arya Suresh Nair, advs. Ms. Uma Prasuna Bachu, SPC

CNR No. DLHC010218272022

\+ W.P.(C) 8763/2022, CM APPL. 26389/2022, CM APPL. 26390/2022, CM APPL. 4284/2024, CM APPL. 16710/2026

M/S SHREE PAPER CO. PVT. LTD. .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (EXPORT) & ORS. .....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates. Mr. Farman Ali CGSC, Ms. Usha jamnal Adv, Ms. Tanya Advs.

\# **CNR No. DLHC010330622020**

\+ W.P.(C) 9903/2020, CM APPL. 4191/2024, CM APPL. 16714/2026

M/S S. D. ENTERPRISES .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Ms. Shubhra Parashar and Mr Virender Pratap Singh Charak Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010242722023**

\+ W.P.(C) 9923/2020, CM APPL. 31611/2020, CM APPL. 4170/2024, CM APPL. 16704/2026

M/S RAJA RAM AND CO & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Mr. Virender Pratap Singh Charak and Ms.Shubhra Parashar Advocates
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010245642023**

\+ W.P.(C) 9924/2020, CM APPL. 31613/2020, CM APPL.

4195/2024, CM APPL. 28570/2026, CM APPL. 43133/2026
M/S KHURANA PAPER HOUSE .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC CBIC, Ms. Arya Suresh Nair, advs.
Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates.

\# **CNR No. DLHC010331332020**

\+ W.P.(C) 9925/2020, CM APPL. 31615/2020,CM APPL. 4278/2024, CM APPL. 28562/2026, CM APPL. 43357/2026
M/S SUMAT PERSHAD AND SONS & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Ms. Shubhra Parashar and Mr.Virender Pratap Singh Charak Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010114762021**

\+ W.P.(C) 2850/2021, CM APPL. 8591/2021, CM APPL. 32132/2021, CM APPL. 4182/2024, CM APPL. 28572/2026, CM APPL. 43137/2026

MS KHURANA PAPER HOUSE & ORS. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC CBIC, Ms. Arya Suresh Nair, advs.

\# **CNR No. DLHC010151402021**

\+ W.P.(C) 4386/2021, CM APPL. 13353/2021, CM APPL. 4286/2024, CM APPL. 28563/2026, CM APPL. 43107/2026

MS BIRDHI CHAND GIRDHARI LAL PAPERS PVT LTD & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010057342021**

\+ W.P.(C) 118/2021, CM APPL. 369/2021, CM APPL. 4285/2024, CM APPL. 16699/2026

MS SUMAT PERSHAD SONS & ORS. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

Mr. Harpreet Singh, Senior Standing Counsel with Mr.

Jatin Kumar Gaur, Advs.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Ms. Shubhra Parashar and Mr.Virender Pratap Singh Charak Advocates

\# **CNR No. DLHC010057632021**

\+ W.P.(C) 141/2021, CM APPL. 425/2021, CM APPL. 4177/2024

MS KRAFTILE INTERNATIONAL .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Harish Kumar Garg &. Ms. Nisha Advocates.

\# **CNR No. DLHC010114462021**

\+ W.P.(C) 2838/2021, CM APPL. 8529/2021, CM APPL. 32170/2021, CM APPL. 4158/2024, CM APPL. 16701/2026

MS SUMAT PERSHAD SONS & ORS. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates. Ms. Shubhra Parashar and Mr.Virender Pratap Singh Charak Advocates

\# **CNR No. DLHC010114602021**

\+ W.P.(C) 2842/2021, CM APPL. 8560/2021, CM APPL. 4202/2024, CM APPL. 16697/2026

M/S SUMAT PERSHAD & SONS AND ORS. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates Ms. Shubhra Parashar and Mr.Virender Pratap Singh Charak Advocates

\# **CNR No. DLHC010150462021**

\+ W.P.(C) 4345/2021, CM APPL. 4199/2024, CM APPL. 13262/2021, CM APPL. 16702/2026

MS BIRDHI CHAND GIRDHARI LAL PAPERS PVT LTD & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Harpreet Singh, Senior

Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

CNR No. DLHC010150852021
\+ W.P.(C) 4368/2021, CM APPL. 13302/2021, CM APPL. 32125/2021, CM APPL. 4178/2024, CM APPL. 16703/2026

M/S SHITAL PAPER IMPEX .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

CNR No. DLHC010151342021
\+ W.P.(C) 4380/2021, CM APPL. 13344/2021, CM APPL. 4283/2024, CM APPL. 16679/2026

M/S KALRA PAPER CONVERTER AND TRADER PVT. LTD. & ORS. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR. .....Respondents

Through: Mr. Jitesh Vikram Srivastava, Ms. Suramya Srivastava Advocates.
Mr. Gibran Naushad, SSC.

CNR No. DLHC010151422021
\+ W.P.(C) 4388/2021, CM APPL. 13357/2021, CM APPL. 32169/2021, CM APPL. 4179/2024, CM APPL. 28573/2026,

CM APPL. 43119/2026
M/S KAPIL PAP MART PVT LTD & ANR. .....Petitioners
Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents
Through: Mr. Virender Pratap Singh Charak and Ms.Shubhra Parashar Advocates
Mr. Harpreet Singh, Senior Standing Counsel with Mr. Jatin Kumar Gaur, Advs.

\# **CNR No. DLHC010152192021**
\+ W.P.(C) 4409/2021, CM APPL. 13497/2021, CM APPL. 4171/2024, CM APPL. 16712/2026
MS KALRA PAPER PRODUCTS PVT LTD & ORS.
.....Petitioners
Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

1. COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents
Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates.

\# **CNR No. DLHC010239252021**
\+ W.P.(C) 7987/2021, CM APPL. 24822/2021, CM APPL. 4180/2024, CM APPL. 61266/2025, CM APPL. 16709/2026
MS DIAMOND COPY HOUSE & ANR. .....Petitioners
Through: Mr. Kamal Mehta, Sr. Counsel

with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates.

\# **CNR No. DLHC010239382021**

\+ W.P.(C) 8000/2021, CM APPL. 24843/2021, CM APPL. 4174/2024, CM APPL. 16663/2026

M/S SONA PAPERS PVT. LTD. & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (IMPORT) & ANR.
.....Respondents

Through: Mr. Ripu Daman Bhardwaj (CGSC) and Mr. Kushagra Kumar, Advs.

\# **CNR No. DLHC010240322021**

\+ W.P.(C) 8047/2021, CM APPL. 25031/2021, CM APPL. 32166/2021, CM APPL. 4165/2024, CM APPL. 28564/2026, CM APPL. 43143/2026

M/S JUNEJA PAPERS PVT LTD & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents

Through: Mr. Vijay Joshi, CGSC, Mr. Shubham Chaturvedi, Adv.

\# **CNR No. DLHC010151012022**

\+ W.P.(C) 6288/2022, CM APPL. 4203/2024, CM APPL. 28569/2026, CM APPL. 43136/2026

KRAFTILE INTERNATIONAL .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advs. Mr. Vedansh Anand (SPC), Mr. Shivam Kumar (GP) & Mr. kush Garg**,** Adv.

\# **CNR No. DLHC010151522022**

\+ W.P.(C) 6313/2022, CM APPL. 4279/2024, CM APPL. 43039/2026

RAJA RAM CO & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR. .....Respondents

Through: Mr. Gibran Naushad, SSC with Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates

\# **CNR No. DLHC010151852022**

\+ W.P.(C) 6331/2022, CM APPL. 4175/2024, CM APPL. 28565/2026

INDIRA OFFSET PRINTERS PVT LTD & ANR.
.....Petitioners
Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS IMPORT & ANR.
.....Respondents
Through: Mr. Tanveer Ahmed Ansari Senior Panel Counsel

\# **CNR No. DLHC010232302022**

\+ W.P.(C) 9334/2022, CM APPL. 4164/2024, CM APPL. 16711/2026

M/S ARUN AND CO. & ANR. .....Petitioners
Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS (EXPORT) & ANR.
.....Respondents
Through: Mr. Aditya Singla, SSC CBIC, Ms. Arya Suresh Nair, advs.

\# **CNR No. DLHC010281632022**

\+ W.P.(C) 11146/2022, CM APPL. 32756/2022, CM APPL. 4181/2024, CM APPL. 28566/2026

MS SUNEJA SONS AND ANR. .....Petitioners
Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents

Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav & Mr. Naman Choula, Advocates.

\# **CNR No. DLHC010374232022**

\+ W.P.(C) 14138/2022, CM APPL. 43180/2022, CM APPL. 4167/2024, CM APPL. 16676/2026

M/S JAIN ENTERPRISES .....Petitioner

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR. .....Respondents

Through: Ms.Anushree Narain (SCC), Mr.Apurv Yadav and Mr.Naman Choula, Advs.

\# **CNR No. DLHC010377872022**

\+ W.P.(C) 14263/2022, CM APPL. 43555/2022, CM APPL. 4173/2024, CM APPL. 4840/2025, CM APPL. 28571/2026

MS GUNSHIKA MARKETING CO & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ORS. .....Respondents

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates. Mr. Piyush Beriwal, Advocate.

\# **CNR No. DLHC010271712023**

\+ W.P.(C) 9480/2023, CM APPL. 36221/2023, CM APPL. 4172/2024, CM APPL. 28567/2026

JAYSON INTERNATIONAL & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents

Through: Sh. Atul Tripathi, SSC, CBIC, Mr. Shubham Mishra and Mr. Akshay Sagar, Advs.

\# **CNR No. DLHC010271942023**

\+ W.P.(C) 9500/2023, CM APPL. 36302/2023, CM APPL. 4176/2024, CM APPL. 16713/2026

BRIJBASI ART PRESS LTD & ANR. .....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents

Through: Mr. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh and Mr. Tushar Bhalla, Advocates

\# **CNR No. DLHC010272132023**

\+ W.P.(C) 9506/2023, CM APPL. 36338/2023, CM APPL. 4192/2024, CM APPL. 27910/2026, CM APPL. 43105/2026, CM APPL. 45432/2026

KALRA PAPER CONVERTOR TRADER PVT LTD & ORS.
.....Petitioners

Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents
Through: Mr. Vivek Goyal, CGSPC with Mr. Aryan Aggarwal, Advs.

CNR No. DLHC010332722023
+ W.P.(C) 11246/2023, CM APPL. 43800/2023, CM APPL. 4159/2024, CM APPL. 16708/2026
JUNEJA TRADE LINKS .....Petitioner
Through: Mr. Kamal Mehta, Sr. Counsel with Dr. Sushil Kumar Gupta, Ms. Sunita Gupta & Ms. Anshika Kumari, Advocates.

versus

COMMISSIONER OF CUSTOMS EXPORT & ANR.
.....Respondents
Through: Mr. Preet Pal Singh, Mrs. Tanupreet Kaur, Mr Gaurav Ms. Pooja and Ms Simran Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

ANIL KSHETARPAL, J.:

A. INTRODUCTION:

1. The present batch of 6 Appeals challenges the final Orders of Customs, Excise and Service Tax Appellate Tribunal[1], whereas, in the batch of 41 Writ Petitions, various Orders-in-Original issued by the Commissioner of Customs, Inland Container Depot, Tuglakabad, New Delhi[2] have been questioned.

2. The present batch arises out of a common substratum of facts

[1] hereinafter referred to as 'CESTAT'
[2] hereinafter referred to as ICD

concerning large-scale customs duty evasion through forged and manipulated licenses/duty credit scrips[3] by importers[4] of paper and paper articles at the ICD during the period 2011 to 2015. Since the questions of law and fact are substantially common, the matters were heard together and are being disposed of by this common judgment.

3. To maintain brevity and avoid repetition, CUSAA 178/2025 is being treated as the lead matter for deciding the batch of Customs Appeals, whereas W.P.(C) 12233/2019 is being treated as the lead matter, as and when required, for deciding the connected batch of Writ Petitions.

B. BRIEF BACKGROUND:

4. Pithily put, during the relevant period, Appellant imported paper and paper articles through ICD and discharged applicable customs duty by utilising transferable scrips issued under various export promotion schemes formulated under the Foreign Trade Policy (FTP), including the Duty Free Import Authorisation ('DFIA'), Focus Product Scheme ('FPS'), Focus Market Scheme ('FMS'), Vishesh Krishi and Gram Udyog Yojana ('VKGUY') and Duty Entitlement Pass Book ('DEPB') Scheme.

5. Notably, these scrips, once issued by the Directorate General of Foreign Trade ('DGFT'), are freely transferable in terms of the applicable FTP and are capable of being utilized for payment of customs duty upon registration with the Customs Authorities ('CA').

[3] hereinafter referred to as scrips
[4] Appellants/Petitioners

6. The present impugned proceedings find their genesis in the detection of large-scale irregularities in the Electronic Data Interchange ('EDI')/Indian Customs EDI System ('ICES') functioning at ICD. The investigation undertaken by the CA disclosed the involvement of M/s Kirti Cargo, a Customs Broker (earlier known as Customs House Agent), its G-Card holder Mr. Sharafat Hussain, and Mr. Vinod Kumar Pathror, in a systematic scheme for evasion of customs duty through the use of forged and manipulated scrips.

Modus Operandi adopted for manipulation/forgery of scrips:

7. The investigation revealed that Mr. Sharafat Hussain was engaged in sale/purchase of scrips originally issued by the DGFT in favour of exporters, through the front-end entities owned and controlled by him, including M/s Ganpati, M/s Zealous International, M/s Zealous Overseas Pvt. Ltd., and M/s Fibre Exim etc.

8. It further emerged that Mr. Vinod Kumar Pathror, while acting as an employee of M/s Kirti Cargo, illegally accessed the EDI system and manipulated the digital records of these scrips, by artificially enhancing their value (for instance, increasing a scrip of Rs. 100 to Rs. 10,000) or by reusing scrips whose entitlement had already been exhausted or by using scrips that were non-existent on the DGFT records.

Role of the Appellant:

9. The Appellant availed the services of Mr. Sharafat Hussain for customs clearance and discharged their statutory duty liability by

debiting these forged and manipulated scrips, resulting in unlawful availment of exemption and evasion of legitimate customs duty.

10. Consequently, a Show Cause Notices (SCN) came to be issued by the Commissioner, Customs, proposing recovery of customs duty under Section 28(4) of the Act of 1962, together with interest under Section 28AA, confiscation of the imported goods under Section 111(d) and 111(o), and imposition of penalties under Sections 112(b)(ii), 114A and 114AA thereof.

11. Following which, prior to the commencement of adjudication proceedings, the Appellant by way of multiple communications sought production of various departmental records, including copies of the scrips, Bills of Entry (BoE) and other documents relied upon in the SCN, besides seeking cross-examination of the concerned Customs officers.

12. At this stage, it is pertinent to highlight that the issue pertaining to production of documents has already seen the light of this Court at the behest of the Petitioner in W.P.(C) 12233/2019, who initially filed a petition bearing no. ***W.P.(C) 9680/2019*** captioned ***M/s Sumat Pershad and Sons and Anr. v. Commissioner of Customs (Export) and Anr.***, wherein this Court by way of its Order dated 06.09.2019, while disposing of the said Petition directed the Respondents to decide the Petitioner's representation dated 30.07.2019, seeking cross examination of witnesses and production of certain documents.

13. Thereafter, the Adjudicating Authority proceeded to pass an OIO dated 11.10.2019, which came to be the subject matter of

challenge in W.P.(C) 12233/2019, wherein the Petitioner, raised a ground that despite earlier directions of this Court, the request for supply of documents were not conceded. The said Petition, however, was disposed of by way of judgment dated 27.11.2019.

14. Aggrieved thereby, the Petitioner approached the Supreme Court by way of ***SLP(C) No. 30509 of 2019*** captioned ***M/s Sumat Pershad and Sons & Anr. v. Commissioner of Customs (Export) & Anr.***, wherein the Court by its Order dated 09.01.2020, granted liberty to the Petitioner to seek review of the judgment dated 27.11.2019, with the following observations:

> "***Learned counsel for the petitioners invited our attention to paragraph 39 of the Writ Petition to contend that the specific grievance of the petitioners was that the authority did not furnish copies of the relevant documents referred to in paragraph 7 of the communication dated 30.07.2019, despite the direction issued by the High Court and yet proceeded to pass Order-in-Original No. 06/2019/SUNIL TATED/COMR/EXP/ICD/TKD (DIGIT NO. 20180220161942-903 on 11.10.2019, that too without giving any opportunity of hearing to the petitioners. That grievance has been glossed over by the High Court.***
>
> *In that case, it will be open to the petitioners to resort to remedy of review before the High Court, which be filed within four weeks from today.*
>
> ***If the Review Petition is decided against the petitioners, it will be open to the petitioners to challenge the said decision as well as the impugned judgment by way of Special Leave petition before this Court.***"
>
> (emphasis supplied)

15. Pursuant to the liberty granted by the Supreme Court, a Review Petition was preferred before this Court and by Order dated 30.10.2023 the Review Petition bearing Rev. Pet. No.31/2020 was allowed, with a finding that the earlier judgment proceeded on an

incorrect premise that the representation dated 30.07.2019 had been adequately dealt with, consequently, W.P.(C) 12233/2019 was restored to its original number for fresh consideration.

16. In the interregnum, the Adjudicating Authority while dealing with the SCN issued against the Appellant, ultimately confirmed the demands of duty, interest and penalties, which came to be upheld by the CESTAT. Aggrieved thereby, the Order of the CESTAT along with connected writ proceedings arising from the same investigation, are before this Court seeking our indulgence.

C. SUBMISSIONS ON BEHALF OF THE PARTIES

17. Mr. Kamal Mehta, learned senior counsel representing the Importers, has made the following submissions:

17.1 At the outset, it has been contended that the Respondents proceeded in an arbitrary, irrational and premeditated manner against the importers by initiating these proceedings via issuance of the impugned SCN. Against this backdrop, it has been argued that their entire case, alleging forgery and manipulation of scrips, is based solely upon manipulated entries in the EDI system.

17.2 It is contended that the Respondents have completely ignored primary evidence, namely, original BoE, scrips, bank transfer certificates, and endorsements, which were physically presented, verified, and accepted as genuine by the CA between 2011 and 2015. Therefore, the presumption of forgery without comparing it against original documents is legally unsustainable, as a forgery must be proven against an original document, not a subsequent electronic copy.

17.3 Learned senior counsel, has argued that the Respondent's approach is glaringly contradictory to its own established statutory regulations and procedures, as well as its own RTI replies. It is his case that the import customs clearance process operates in two stages. At the first stage, the goods get cleared after physical verification; following which, at the second stage, the data is entered into the EDI system, both of which falls exclusive within the domain of the CA.

17.4 Reference has also been made to the statutory procedure involving a stringent seven-stage process, namely, *(i)* registration of Duty Free Licence on Customs Computer System after verification of Physical copy of Licence; *(ii.)* in-line verification of Licence; *(iii)* approval of Licence Registration by higher authority; *(iv)* debits on physical copy of Licence and on-line debits; *(v)* approval of Licence Debits by l:Iigher authority; *(vi)* Audit of Licence Debits; and *(vii)* verification that Customs Duty has been paid before Customs out of charge, to argue that these steps are carried out strictly by Customs Officers without any involvement of the importer. Further reliance has been placed on the RTI replies from the CA, to argue that the said replies, itself unequivocally confirm that no outsider can enter the Customs computer room, nor can they register, debit, audit or tamper with the licenses in the EDI system.

17.5 In regard to the aforestated, reliance has also been placed on the judgment dated 31.05.2018 passed by this Court in ***W.P.***

(Crl) 1338 of 2018 captioned ***Farha Hussain v. Union of India & Ors.***, to argue that EDI system is a completely secured system that can only be accessed by Customs officials through a unique Single Sign-On Identity (SSOID) and passwords that are mandatorily changed every 15 days. Therefore, it is practically impossible for an outsider or importer to hack the system or tamper with the entries after the goods have already been cleared, as the Petitioner had no motive or opportunity to do so.

17.6 Reliance is also placed on the Order dated 20.11.2025 passed by this Court in the present batch, to argue that inspection of the relevant documents was directed by this Court. In compliance thereof, the Inspection Report dated 18.12.2025 was submitted by the Department, which itself records that the essential documents, including the original scrips/licences, Transfer Letters, Debit Sheets and BoE, are "NOT AVAILABLE". This non-production of primary documents is argued to strike at the root of the SCN, rendering it a case of no evidence and acting as a tell-tale story in the importers' favour.

17.7 Moreover, it is his case that the Respondents have arbitrarily denied importers an opportunity to cross-examine the Customs Officers whose signatures and stamps authorized the clearance of the goods, reducing the adjudication process to an empty formality.

17.8 Additionally, it has also been argued that the Adjudicating Authority has exercised jurisdiction with material irregularity, constituting an error of law under the Wednesbury principle of unreasonableness. By assuming jurisdiction based on entirely irrelevant material (the tampered electronic EDI entries) and totally ignoring the relevant material (the physically verified original documents), the decision is manifestly erroneous.

17.9. Relying upon the comparative chart placed on record, it is contended that material discrepancies exist between the original BoE and the EDI records, including alterations in dates and registration numbers. For instance, dates and registration numbers were mysteriously and maliciously altered only in the electronic records, such as a license dated "22.02.2010" being manipulated to "02.02.2010" by simply removing the "2", while the original physical documents remained unchanged. Such discrepancies establish that any manipulation occurred within the Department-controlled EDI system and not in the documents submitted by the private parties.

17.10 While impugning the Order of the CESTAT, it has been argued that the reliance upon ***Munjal Showa Ltd. v. Commissioner of Customs and Central Excise***[5], is misplaced, as in that case forgery of the scrips was independently established, whereas in the present case the scrips were genuine, verified and accepted by CA at the time of clearance.

17.11 Lastly, it is contended that the cumulative effect of issuing the SCN and the subsequent adjudication are founded upon

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[5] (2022) 22 GSTR-OL 168

unreliable electronic entries, unsupported by primary documents admittedly unavailable with the Department; the adjudicating authority proceeded without the necessary jurisdictional facts; the principles of natural justice have been violated; and the case falls within the recognised exceptions warranting exercise of writ jurisdiction under Article 226 of the Constitution, as laid down in ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority***[6] and ***Whirlpool Corporation v. Registrar of Trade Marks***[7].

18. We deem it appropriate to place on record that, during the course of hearing, an opportunity was afforded to learned counsels appearing for the importers to advance any additional submissions, if so desired. However, no other counsel sought to make any further submissions, and the arguments on behalf of the importers were advanced solely by learned Senior Counsel, Mr. Kamal Mehta. However, at a later stage, on 07.08.2026, learned counsel appearing on behalf of the Appellant in CUSAA 83/2023, placed on record his submissions, in substance, covering the arguments already advanced by learned senior counsel.

19. *Per contra*, Mr. Harpreet Singh, learned Senior Standing Counsel representing the Respondents has made the following submissions:

19.1 It is argued that the original scrips issued by the DGFT were materially altered before registration in the customs system,

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[6] SCC OnLine SC 95
[7] (1998) 8 SCC 1

resulting in a difference between the genuine scrips and the registered scrips. Since the scrips were forged and manipulated, they were *void ab initio* and incapable of creating any legal entitlement. Accordingly, any duty debited through such invalid instruments cannot be treated as a lawful payment of customs duty and no statutory benefits can be claimed thereof, making the importers liable to pay the duty which remained short-paid.

19.2 The contention that the importer was unaware of the fraud and that liability rests solely on their agent or customs officials is stated to be legally untenable. In this regard, it is argued that the adjudicating authority's findings establish the importers negligence, lack of due diligence, and possible complicity. Although M/s Kirti Cargo was engaged for clearance, the importers were receiving invoices and making payments to Mr. Sharafat Hussain's front-end entities. Hence, the absence of direct documentation from M/s Kirti Cargo and billing by unrelated third parties should have prompted verification of the scrips and licenses by the importers.

19.3 Learned counsel further relied upon the judgment of ***Commissioner of Customs (Preventive) v. M/s. Aafloat Textiles India Pvt Ltd & Ors.***[8] and the principle of *caveat emptor*, applying the rationale therein to the present matter. He argued that a buyer purchasing rights or licenses from another is bound in law to take requisite precautions regarding the title and genuineness of the purchase and the private parties having failed to undertake any

[8] (2009) 11 SCC 18

verification, must face the legal and financial consequences of the fraud.

19.4 It is contended that under Section 46(4) of the Act of 1962, the importers are statutorily required to subscribe to a declaration attesting the absolute truth and correctness of the contents of the BoE. However, by using BoE containing manipulated scrips the importers clearly misdeclared the facts, leading to the non-payment of legitimate duty. It is argued that even if it is presumed for the sake of argument that the importers were entirely ignorant of the forgery, the fraudulent acts and misstatements committed by their appointed agent squarely bind them under the law.

19.5 Reference is also made to Section 28 of the Act of 1962, to argue that the said provision prescribes a standard limitation period of five years for issuance of a SCN in cases involving fraud, collusion, wilful statement or suppression of facts. Hence, the Adjudicating Authority correctly held that the systematic forgery of the scrips, coupled with the importers misdeclarations, triggered this extended period.

19.6 Lastly, with respect to the writ petitions, it has been argued that the Adjudicating Authority passed a reasoned order based on undisputed factual findings of forgery. The Petitioners have bypassed the statutory remedy before CESTAT, the final fact-finding authority, and invoked the extraordinary writ jurisdiction of this Court despite the matter involving only questions of fact and no substantial question of law and as such interference by this

Court is unwarranted.

D. ANALYSIS:

20. Having heard learned counsel representing the parties at length and perused the material placed on record, the following issues arise for consideration:

I. Whether the Appellant as users/beneficiary of transferrable scrips (forged/fabricated/manipulated), can avoid liability arising therefrom, by claiming protection as *bona fide* purchaser?

II. Whether the non-availability of the original scrips and allied documents, coupled with the denial of cross-examination of Customs Officers, vitiates the impugned proceedings on the ground of violation of the principles of natural justice?

III. Whether given the plea that the private parties had no actual knowledge of forgery, the penalties imposed under Sections 112, and 114A of the Act of 1962 are legally sustainable?

OBSERVATION:

21. Before proceeding to examine the aforesaid issues, the nature of the fraud alleged, and the character of material relied upon is necessary to be noticed. The case set up by the Respondents is not one of an isolated lapse but of a systemic and continuing arrangement, spanning several years, whereby scrips genuinely issued by the DGFT to unrelated exporters were procured from the open market, routed through entities controlled by Mr. Sharafat Hussain, and thereafter

registered in the EDI system either at artificially inflated values or after their entitlement stood exhausted, or, in certain instances, on the basis of fictitious instruments.

22. It is against this factual backdrop, and more particularly in the light of the statements and admissions recorded under Section 108 of the Act of 1962, that the issues framed for consideration are required to be examined. The relevant statements of Mr. Jinender Kumar Jain, as well as the communication of Mr. Sharafat Hussain received in the Customs office on 19.07.2016, which forms a part of the analysis is reproduced hereunder:

> *"4. And whereas, the assessee was summoned under Section 108 of Customs Act, 1962 to tender their true and correct statement and bring all the documents related to their Bills of Entry for import vide summons dated 19.01.2016 (RUD-I). In response to the said summons, Sh. Jinender Kumar Jain, Partner in the assessee firm appeared before the Superintendent (SIIB) on 22.01.2016 and his statement was recorded under Section 108 of the Act (RUD-II), wherein, he interalia stated that the other partner in the assessee firm was his brother Sh. Devinder Kumar Jain and that he himself had been looking after the major affairs of the firm; that they had been availing the services of M/s Kirti Cargo for their import clearances; that Sh. Sharafat Hussain, 'G' card holder of M/s Kirti Cargo was mainly looking after their import clearance; that Sh. Sharafat Hussain used to raise his Bills for clearance to them through one of his various firms viz. M/s Zealous International, D-808, 3rd floor, New Friends Colony, New Delhi-110065, M/s Zealous Overseas Private Limited, 201, 2nd floor, Tribhuvan Complex, Mathura Road, New Delhi, M/s Fibertech Impex, M/s Zealous Exim and M/s Zealous Impex. On being asked as to how they were getting their import consignments cleared, he stated that they were giving import related documents to Sh. Sharafat Hussain of M/s Zealous International, who after processing with the Customs was declaring duty amount along with shipping company charges etc. After getting those figures, mostly they used to remit the Customs Import Duty directly to the Customs site. However, they used to remit the agency charges in respect of the Bills raised by Sh. Sharafat Hussain through any of his company/ firm in his account through RTGS or cheques; that they used to contact Sh.. Sharafat Hussain once the import containers reached Indian ports and thereafter they used to hand him the required import documents. On*

being asked as to what instruction or advice Sh. Sharafat Hussain used to give them in connection with the payment of import duty on the import consignment, he stated that after they used to hand over the import documents to Sh. Sharafat Hussain, they used to get an e-mail/telephonic information from his firm giving the details of Customs duties including the special additional duty and other charges and thereafter they used to remit the amounts billed to them. Sh. Jinender Kumar Jain, on being specifically asked as to whether they ever tried to ascertain from Sh. Sharafat Husssain as to how he was paying Customs duties on their behalf on their import consignments, he stated that Sh. Sharafat Hussain used to inform them the total amount of duty which they had to pay online. This amount they had been depositing online after verifying it at ICEGATE site. In respect of the balance amount of the duty, Sh. Sharafat Hussain used to utilize licenses. Again a specific question was put to Sh. Jinender Kumar Jain as to whether they ever tried to stop Sh. Sharafat Hussain from utilizing any license for payment of Customs duty on their behalf without their permission, to which he categorically stated once or twice they instructed Sh. Sharafat Hussain verbally not to use licence but nothing was given in writing. Thereafter, he was asked as to when Sh. Sharafat Hussain was not listening to their instructions, then why they still kept on availing his services, Sh. Jinender Kumar Jain stated that Sh. Sharafat Hussain's services were better to some extent when compared to other agents; that prompt collection of documents after receiving out telephonic call, filing of Bill of entry at the earliest, less demurrage charges etc. were main points in Sh. Sharafat Hussain's services. ***<u>On being specifically pointed as to whether defiance of their instructions by Sh. Sharafat Hussain did not alert them about Sh. Sharafat Hussain's mischievous activities, Sh. Jinender Kumar Jain stated that no they never got alerted as they did not doubt Sh. Sharafat Hussain's activities.</u> On being asked as to whether they were aware that rest of their Import duties were being paid through the use of licenses/ scrips/authorization before the goods were cleared from customs, he stated yes, during the time of payment of customs duty through ICEGATE, they used to come to know that license has been used in this bill of entry but actual amount of the license was informed by Sh. Sharafat Hussain after the clearance of their consignments. Sh. Sharafat Hussain used to issue them a debit note informing them the quantum of duty paid through the use of license/ scrips/ authorization; <u>that Sh. Sharafat Hussain never sought any permission from them before using any scrip/licence; that Sh. Sharafat Hussain used to sell the Focus Licenses @ about 98% of the value of the license i.e. 2% less than the value of the licence; that he exactly did not remember the rates on which DFIAs were sold to them, however, as far as he remembered, Sh. Sharafat Hussain used to sell them the DFIA licence at the rate of 15.5% to 16%.</u>*** *Thereafter, Sh. Jinender Kumar Jain stated that sometimes due* *to use of scrips, their consignments got delayed and they had to pay demurrage charges.* ***On being specifically pointing out that when scrips were utilized, they had to incur demurrage charges as per their statement, then why they did not strongly object to Sh. Sharafat Hussain's using scrips/licenses for payment of duty on their behalf, he stated that since Sh. Sharafat Hussain's services were found to be better, they did not object of usage of scrips. Thereafter, he was categorically asked as to whether they ever tried to verify the scrips that were used in payment of customs duties on their behalf, he stated that they never tried to verify the scrip but relied on the details in the bill of entry; that they were never in possession of those scrips which were used by Sh. Sharafat Hussain. However, they had the copies of the licenses which they had purchased directly from the open market and handed over to Sh. Sharafat Hussain for use against their bills of entry. On specifically being asked to explain as to why they did not verify or saw an instrument which was to be used for payment of duty on their behalf, in the answer, he stated that they relied on the particulars mentioned in the Bill of Entry which bears endorsement from the Customs officials at various stages, hence they never bothered to have any doubt on the authenticity of documents involved; that they never possessed the license hence they never ensured that the particulars filled in the Bill of entry were true and correct; that they always thought them to be correct since they were checked by the customs; that they do agree that such scrips are cash in kind. On being asked as to if at some stage, those scrip's were found to be tampered or fictitious, could they be utilized for payment of duty and what they had to say on such scrips, he stated that these scrips cannot be used for payment of duty; that in his opinion, it is the importer who is importing goods is responsible for payment of Customs duties; that CB works for the importer as a representative; that if CB has done any fraudulent activity after or before getting full duty amount or scrip premiums as mentioned in the Bill of Entry which was processed by the Customs, CB should only be responsible.*** *After explaining the provisions of section 12 of Customs Act, 1962, he was specifically asked as to who has to ensure as to correct duty has been paid into government's revenue on imports made, he stated that when the goods have been received in their godowns, it means all the duties have been paid and they as importer have paid the duty; that the duty paid by them at the ICEGATE was paid by them to the exchequer and balance duty was paid by them to Sh. Sharafat Hussain.* ***Thereafter he was specifically asked as to when they never verified the scrips/licences used by Sh. Sharafat Hussain for payment of customs duty on their behalf, did they ever try to ensure and verify from Sh. Sharafat Hussain as to the scrips/licenses intended to be used by him for payment of Customs duty were indeed genuine, Sh. Jinender Kumar Jain stated that they never inquired about the genuineness of the scrips intended to be***

used by Sh. Sharafat Hussain on their behalf since they relied on the Bill of entry endorsed by the Custom's officer; that it is the importer who import goods of whose particulars are filled in the Bill of Entry and not the Customs broker who is working for the importer. *On being asked as to if at some stage after an import, where goods have moved out of Customs area after Bill of Entry has been assessed, it is found that proper payment of duty was not made, then from whom the duty should be charged? Is it the importer or the Customs broker who is working for the importer? In the answer, he stated that if any duty has been short paid due to any calculation mistake or HSN code, it is the importer who will pay the duty short paid.*

5. And whereas, further statement of the assessee was recorded under Section 108 of the Act on 24.02.2016 (RUD-III) wherein, Sh. Jinender Kumar Jain, Partner in the assessee firm interalia stated that he agreed with the contents stated in the statement dated 22.01.2016. ***On being asked as to whether they knew any person by the name of Sh. Ramesh Chadha, he stated that he came to know about one Sh. Chadhaji, the owner of M/s Kirti Cargo once they started getting M/s Kirti Cargo's invoices in respect of charges for Customs documentation, packing repacking, conveyance and agency & attendance charges; that first invoice received from M/s Kirti Cargo dated to 28.06.2013; that they never met Sh. Ramesh Chadha in person neither they had any talk with him; that he met this person when this investigation commenced.*** *On being asked that before 28.06.2013 who was raising their firms the invoices in respect of the charges mentioned by him, he stated that before that M/s Zealous International used to raise them the bills/invoices. He was specifically asked as to after 28.06.2013, any company/firm of Sh. Sharafat Hussain raised them any bill/invoice? If yes, then on what account such documents were raised, he stated that company/firms of Sh. Sharafat Hussain used to raise their bills/invoices in respect of Custom entries, examination, transportation, sundry charges, labour charges agency charges and miscellaneous charges.* ***On being asked as to whom they had authorized for the services of Custom House Agent, whether, it was M/s Kirti Cargo or any company/firm of Sh. Sharafat Hussain, he stated that they had authorized M/s Zealous International for their Custom Clearance purpose and no authorization was given to M/s Kirti Cargo; that no written authorization was given to M/s Zealous International, they were verbally authorized to act as for their Custom clearance purposes On being asked as to who was giving them the bills of M/s Kirti Cargo after 28.06.2013, he stated that it was given by Sh. Sharafat Hussain or some of his employee. After reminding him that as per his statement M/s Zealous International was authorized by them verbally for the purpose of clearance of Custom clearance, he was specifically asked that did they raise any objection as part of custom***

clearance was being charged by M/s Kirti Cargo. In the answer, Sh. Jinender Kumar Jain replied that they had asked bills of M/s Kirti Cargo from Sh. Sharafat Hussain as on their Bills of Entry, M/s Kirti Cargo was appearing as the CHA, so as per their Chartered Accountant's advice, they asked Sh. Sharafat Hussain to give bills of M/s Kirti Cargo. Thereafter, his attention was brought to the fact that majority of the charges in respect of the Customs clearance i.e. 75% were raised to them by M/s Zealous International and the rest of the charges were raised in M/s Kirti Cargo's bills and he was asked as to did they ever raise this discrepancy with Sh. Sharafat Hussain as to why charges in respect of services of Custom House Agent were raised in bills of two different entities, he replied in negative and further stated that they never asked Sh. Sharafat Hussain about this discrepancy as they had authorized M/s Zealous International for Customs clearance purpose and as the imported goods used to reach them, they never bothered to think on this issue; that soft copy of the Bill of entry was provided to them by Sh. Sharafat Hussain during the process of clearance and hard copy within a span of 3-4 days to two weeks of clearance after they received the import consignment; that Sh. Sharafat Hussain used to send them the soft copy and he used to ask them to deposit the duty amount which used to appear on the screen; that if no duty was to be paid by utilization of any licence, they used to deposit the full amount and if some licence was to be used, they used to deposit that part of duty online that was to be paid in cash. *Sh. Jinender Kumar Jain was then specifically asked as to whether they ever checked the particulars mentioned in those Bill of entry before making or releasing payment to Sh. Sharafat Hussain. In the reply, he stated that they started getting the soft copies only one and half years back and before that they were not getting the soft copies; that they only checked the SAD amount in the soft copies as that was to be refunded to them and that too for their costing purpose.* ***On being asked as to whether they ever received any bill/invoice/debit note of M/s Kirti Cargo, he stated that they started receiving bills of M/s Kirti cargo after 28.06.2013 in respect of the 25% charges of Custom clearance charges and no debit note was received from M/s Kirti Cargo. After confronting him with the fact that Kirti Cargo's name always appeared on their Bills of entry which implies that the CHA was M/s Kirti Cargo and not any company or firm of Sh. Sharafat Hussain, he was asked as to whether they ever raised doubt or any query in this regard with Sh. Sharafat Hussain as to why major clearing charges were claimed by his company/firm and not the actual CHA i.e. M/s Kirti Cargo, he again replied in negative and stated that they never raised any query or doubt with Sh. Sharafat Hussain in this regard. On being asked as to who was providing them the services of Custom House Agent? Was it M/s Kirti Cargo or M/s Zealous Overseas Pvt Ltd/ M/s Zealous International or any other firm of Sh.***

<u>Sharafat Hussain, he stated that M/s Zealous International with proprietor as Sh. Sharafat Hussain was providing them the services of Custom House Agent; that he did not know as to whether M/s Zealous International was also holding any Custom House Agent license.</u> *Thereafter on being asked as to when they did not know as to whether M/s Zealous International was holding any Custom House agent license or not then did not they try to verify as to on what authority this firm was engaged in clearing their import consignment, he stated that as they had been receiving their imported goods after clearances, they never asked Sh. Sharafat Hussain on this count. He further stated that they were not registered with Central Excise department as such they cannot raise cenvatable invoices for their buyer to avail cenvat on them; that they made payments to their foreign suppliers through bank on presentation of documents. In some case, they had sent advance also to the suppliers against sales confirmation, as the case may be. After inviting his attention to the provision of section 46 (4) of Customs Act, 1962, Sh. Jinender Kumar Jain was asked to explain as to declaration in respect of the truth of contents of Bill of Entry was followed in their Bills of Entry.* ***<u>He replied that since all their Bills of Entry in question were out of charge by adopting the proper channel as per the Customs Act, they do not feel that anything lapsed on their side. He was specifically asked as to whether particulars of licenses in respect of its number, date, registration and its date were correctly filled in the Bill of entries filed by them, he stated that since they did not check these particulars, he could not say whether those particular were true and correct.</u>*** *As the goods reached them after custom clearances, he thought the particulars may be correct and true; that they used to purchase DFIA licenses between 15.5% to 16.5% of the assessable value time to time as per the market price. On being asked as to what percentage this purchase value used to be of the Customs duty foregone in the DFIA license, he stated that total duty used to be on paper and board imported by them varies time to time which is approximately between 20% to 22%, wherein, they are eligible to claim the SAD mentioned in the BOE, after sales made by them which comes to between 17 to 17.5% in all. Since the SAD was inclusive in the total duty foregone under DFIA scheme, they used to get benefit of 1.5 to 2 % on assessable value. In the case of focus licenses and DEPB books, they were getting the licence at the rate of 98% to 99% of the value in the licence, however, this is not fixed and it varies as per the market; that in case the licence was sold on to them on a taxable invoice, then the purchase value used to be at the rate of 94 to 96% of the value in the licence.*

6. And whereas, a statement of Sh. Ramesh Chadha, Proprietor of Customs broker firm M/s Kirti Cargo, F-110, First floor, Kirti Nagar, New Delhi-15 was recorded under section 108, of Customs Act, 1962, on 15/09/15 (RUD- IV), wherein, he interalia stated that he was *having CB licence No. R80/98 dated 27/10/98, renewed upto 31/12/2018; that there were 9 (nine) 'G' card holders of his firm; that Sh. Sharafat Hussain was one of them, holding 'G' Card No.484/99; that only 5 persons out of the 9 'G' card holders namely Sh. Sharafat Hussain, Sh. Manmohan, Sh. Roop Tanwar, Sh. Vishal Kohli and Sh. R.K.Tiwari were coming to ICD, TKD for clearance work; that Sh. Sharafat Hussain, Sh. Manmohan and Sh. Roop Tanwar were looking after clearance of paper consignments (Import) and Sh. Vishal Kohli and Sh. R.K.Tiwari were looking after general cargo. On specifically being asked, he stated that Sharafat Hussain was looking after the entire work related to clearance of paper consignments. He further stated that since last 5 or 6 years, due to old age, sickness and bad health, he was unable to supervise the whole business of M/s Kirti Cargo and Sh. Sharafat Hussain was looking after the business for his firm. On being asked about M/s Zealous International, he stated that this was may be Sh. Sharafat Hussain's partnership firm and as per his knowledge, it may be a paper trading firm. He further stated that Sh. Sharafat Hussain was his authorised 'G' card holder since 1999. A further statement of Sh. Ramesh Chadha, proprietor M/s Kirti Cargo was recorded under section 108 of Customs Act, 1962, on 23/01/2016 (RUD-V), wherein, he inter-alia stated that being an old person, he was not actively involved in the working of the firm and all the work related to clearance of paper consignments was sub-let to Sh. Sharafat Hussain and Sh. Sharafat Hussain used to pay him a fixed amount of Rs.25,000/- per month; that Sh. Sharafat Hussain was independently involved in the clearance of paper consignments and no supervision was done by him or instruction was passed to Sh. Sharafat Hussain in relation to import clearances; that he did not have any record in relation to the working of M/s Kirti Cargo. On being specifically asked he stated that he did not have any contact with Sh. Sharafat Hussain after 15/09/2015.*

7. And whereas, in order to ascertain and determine the roles of Sh. Sharafat Hussain alias Sharafat Ali and Sh. Vinod Kumar Pathror, both were summoned under Section 108 of Customs Act, 1962 to tender their true and correct statement. For this purpose, Sh. Sharafat Hussain was summoned vide summons dated 15.09.15 (addressed at M/s Kirti Cargo address), 16.09.15 (addressed at M/s Kirti Cargo address), 21.09.15 (addressed at M/s Zealous Overseas Pvt. Ltd.), 29.09.15 (addressed at M/s Zealous Overseas Pvt. Ltd.), 07.10.15 (addressed at M/s Zealous Overseas Pvt. Ltd.), 15.10.15 (addressed at M/s Zealous Overseas Pvt. Ltd.) and 21.10.15 (addressed at M/s Zealous Overseas Pvt. Ltd.) (collectively RUD- VI). Sh. Vinod Kumar Pathror was summoned vide summons dated 17.09.15, 21.09.15, 29.09.15, 07.10.15, 15.10.15 and 21.10.15 addressed at F-632, behind IGNOU centre, Palam Extension, sector-7, Dwarka, New Delhi (collectively RUD-VII). Since, Sh. Sharafat Hussain alias Sharafat Ali and Sh. Vinod Kumar Pathror did not appear in response to the said *summons, therefore, complaint under Section 174 & 175 of Indian Penal Code read with Section 108 of the Customs Act, 1962 were filed in the Court of Learned Additional Chief Metropolitan Magistrate, Patiala House Courts, New Delhi through Special Public Prosecutor. Further, Directorate of Revenue Intelligence, New Delhi being the nodal agency of Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India was requested vide this Commissionerate's letter C. No. VIII/ICD/6/TKD/SIIB-Exp/Scrip/102/2015/Pt-1/27976 dated 21.12.2015 to get Look Out Circulars issued from Ministry of Home Affairs in respect of both these individuals. Further, Assistant Commissioner of Police, Cyber Crime Cell, New Delhi vide this Commisionerate's letter C.No. VIII/ICD/6/TKD/SIIB-Exp/Scrip/102/2015/ 3869-3870 dated 05/02/16 was also requested to register First Information Report and to initiate action under the provisions of Information Technology Act, 2008 read with applicable provisions of Indian Penal Code, 1860 (as amended). On the basis of complaint / information shared with EOW, the EOW has converted the complaint against Sh. Sharafat Hussain and Sh. Vinod Kumar Pathror into FIR No.0151 dated 19.09.2016.*

xxxx xxxx xxxx xxxx

10. And whereas, Sh Sharafat Hussain, vide letter dated NIL (RUD-XVIII) received in this office on 19.07.2016, inter-alia submitted that he was doing business of Custom clearing agent under the license of M/s Kirti Cargo for which he was paying a fixed amount per month to them; that his major clients were paper importers besides other importers of paper related products; that he was in license trade since last 7-8 years and purchasing licenses from various firms from Delhi, Mumbai and other parts of India; that he had visited custom house or ICD at rare occasions; that he purchased license from Sh Vinod Kumar Pathror through his firms namely HMR International, Mahi International, Mahi Impex and Rudransh International; that Sh Vinod used to raise debit note / sale bill for sale of license to his firm; that he was a bonafide purchaser of licenses purchasing from Mr Vinod Kumar Pathror.

11 To verify the authenticity of facts submitted by Sh Sharafat Hussain, vide his letter dated 19.07.2016, regarding purchase of license from various firms which were utilized for payment of Customs import duty and found to be tampered during the course of investigation, a statement of Sh Rajesh Kumar Jain, Accountant, of one exporter namely M/s KS Impex (RUD- XIX) some of whose licenses were used for imports through M/s Kirti Cargo, was recorded on 14.09.2016. On being specifically asked regarding license Nos.0519001934, 0519001935 and 0519001145 issued to M/s KS Impex by DGFT, he stated that all those 03 licenses were sold to M/s Zealous Overseas Pvt Ltd, i.e. Sh Sharafat Hussain's company, and licenses were handed over after receipt of payment. Sh Rajesh

<u>Kumar Jain submitted the copies of those 03 licenses and sale invoices.</u>

<u>11.2 On scrutiny, it was observed that license No. 0519001145, issued by DGFT to M/s K S Impex for value of Rs.5,53,848/-, was sold by them to M/s Zealous Overseas Pvt Ltd had been fraudulently registered with Customs EDI System for a value of Rs. 16,53,848/-. Similarly, license Nos.0519001934 and 0519001935 issued for a value of Rs.5,85,830/- and Rs.2,34,687/-respectively had been fraudulently registered with Customs EDI System for a value of Rs.11,65,830/- and Rs.6,34,687/- respectively. These licenses were found to be utilized for payment of Customs import duty by various importers. Hence, it indicated that Sh Sharafat Hussain was involved in sale and purchase of licenses / scrips and their subsequent tampering and registration in EDI System."</u>

(emphasis supplied)

<u>In re: Issue I</u>

23. The primary contention advanced by the Appellant is that the scrips were initially issued by the DGFT and were subsequently found to have been forged or manipulated due to tampering of the EDI system, without the Appellant having any knowledge or participation on their part. Accordingly, it is urged that they are entitled to protection as *bona fide* purchasers. However, the said submission, requires the examination by this Court under three distinct questions, which are as follows:

> *a. Whether, the Appellant can avoid liability for the actions taken by Mr. Sharafat Hussain on its behalf?*
>
> *b. Whether the Appellant is entitled to claim an equitable defence of a bona fide transferee as envisaged under Section 41 of the Transfer of Property Act, 1882[9]?*
>
> *c. Whether the Appellant can claim protection under principle of caveat emptor?*

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[9] hereinafter referred to as Act of 1882

In re: Sub Issue a

24. The plea of *bona fide* purchaser raised on account of the Appellant is to be examined in light of the settled principles governing the relationship of principal and agent. The attempt of the Appellant to compartmentalise the acts of Mr. Sharafat Hussain, as those of an independent intermediary is contrary to both the factual matrix on record and the settled legal position governing attribution of acts performed by an authorised representative.

25. It is an admitted position that Mr. Sharafat Hussain and one of his front-end entities, namely, M/s Zealous International, was engaged by the Appellant for handling its customs clearance operations. The Appellant entrusted him with import documents, authorised him to process BoE, communicate duty liabilities, coordinate customs formalities, and arrange utilisation of scrips for discharge of customs obligations. Accordingly, Mr. Sharafat Hussain was not an unknown third party facilitating an isolated commercial transaction but was acting under authority voluntarily conferred upon him by the Appellant.

26. Section 182 of the Indian Contract Act, 1872[10], defines agent as a person employed to do any act for the principal or to represent the principal in dealings with third persons. The legal consequence of such relationship is that acts performed by an agent within the authority conferred by the principal are legally attributable to the principal.

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[10] hereinafter referred to as 'Act of 1872'

27. Whereas, Sections 186 and 226 of the Act of 1872, when read together, further recognise that such authority may be express or implied and the acts performed by an authorised agent bind the principal in the same manner as if undertaken personally by the principal.

28. Similarly, Section 147(a) of the Act of 1962 permits an importer to transact customs business through an authorised agent. Whereas Section 147(b), provides that any act done by an agent of the importer of any goods, shall unless proved to the contrary, be deemed to have been done with the knowledge and consent of such importer, making such importer liable as having done such act by themselves.

29. In the present case, the procurement and utilisation of the scrips, including reliance upon the inflated values reflected in the EDI system, were undertaken by Mr. Sharafat Hussain, in the course of the activities explicitly authorised by the Appellant. As such, the subsequent discovery of rigged and manipulated EDI entries does not sever the relationship of agency or transform the acts of an authorised representation into those of an unrelated third party.

30. Having authorised Mr. Sharafat Hussain to undertake customs-related activities and having derived the benefit arising therefrom, the Appellant cannot selectively disown responsibility for the manner in which such benefit was obtained. The Appellant cannot be permitted to accept the advantages flowing from an agency relationship while avoiding the corresponding legal consequences arising from acts performed within the scope of such authority.

31. The aforesaid interpretation. if accepted, would defeat the very purpose of Section 147 of the Act of 1862, which permits an importer to transact business through an authorised representative, but does not create immunity from the consequences of acts performed by such representative in the course of the authorised so granted. Accordingly, in view of the aforesaid statutory provisions, the Appellant cannot evade liability arising from the acts of Mr. Sharafat Hussain, once it has expressly authorised him to act on its behalf.

In re: Sub Issue b

32. Section 41 of the Act of 1882, in its express terms, relates to transfer by an ostensible owner of immovable property, the principle underlying the provision is founded upon the doctrine of *estoppel* and operates as an exception to the general rule embodies in the maxim *nemo dat quod non habet,* namely, that no person can transfer a better title than that which he himself possesses. However, the protection provided under the aforesaid provision is not absolute, but conditional upon the transferee having acted in good faith and taken reasonable care to ascertain that the transferor possessed the requisite authority.

33. The Supreme Court in ***Hardev Singh v Gurmail Singh (D) by LRs***[11], while explaining the scope of Section 41 of the Act of 1882, identified the essential conditions for protection thereunder, which are as follows:

i. the transferor is the ostensible owner;

ii. he is so by the consent, express or implied, of the real owner;

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[11] (2007) 2 SCC 404

iii. the transfer is for consideration; and

iv. the transferee has acted in good faith, taking reasonable care to ascertain that the transferor had power to transfer.

34. The rationale behind this provision is that where the real owner has, by his conduct, allowed another person to represent himself as the owner, the real owner cannot subsequently defeat the rights of an innocent purchaser/transferee who relied upon such representation after exercising reasonable diligence.

35. Thus, the equitable protection rests upon the concurrence of two major elements, *firstly*, an appearance of title or authority attributable to the conduct of the person entitled to assert the contrary, and *secondly*, *bona fide* reliance upon such appearance by the transferee who exercises reasonable care. To put it succinctly, the equitable protection cannot be extended to a person who has failed to exercise the degree of care or diligence which the relevant circumstances reasonably required.

36. It is in this limited sense that the aforesaid principle governs the surrounding facts and circumstances of the present case. Although Section 41 of the Act of 1882 does not, in terms, govern the transfer or utilisation of scrips in question, yet the underlying principle of due diligence becomes relevant while examining the claim of protection as a *bona fide* purchaser, who while acting in good faith and for valuable consideration, is under an obligation to take reasonable care to ascertain that the ostensible owner possessed the authority which she/he purported to exercise. The aforesaid requirement finds further

force in the principle of *nemo dat quod non habet*.

37. In the present case, what also becomes relevant to highlight is that the application of *nemo dat quod non habet*, is not with reference to the validity of the scrips as instruments simpliciter, but to the extent of the entitlement that stood represented by them. Notably, the scrips having been originally issued by the DGFT, to that extent represented genuine entitlements. However, the enhanced value reflected in the EDI system, exceeded the entitlement actually granted by the competent authority, inasmuch as such enhanced entitlement was never lawfully possessed by the transferor/Mr. Sharafat Hussain, and consequently, could not have been transferred to or acquired by the Appellant merely by virtue of the manipulated EDI entries.

38. In the present case, the investigation revealed one of such circumstances, wherein, although the scrips had originally been issued by the DGFT in favour of M/s K S Impex and subsequently transferred to M/s Zealous Overseas Pvt. Ltd., the values registered in the EDI system were found to be substantially higher than the actual entitlement granted by the competent authority. Thus, the issue which falls for consideration is whether the enhanced entitlement reflected in the EDI system was ever validly granted by the competent authority, the answer to the same is in negative.

39. The investigation revealed the extent of the aforesaid manipulation, where it was discovered that Licence No. 0519001145, issued for Rs.5,53,848/-, was reflected in the EDI system at Rs.16,53,848/-. Likewise, Licence Nos. 0519001934 and 0519001935,

issued for Rs.5,85,830/- and Rs.2,34,687/-, were reflected at inflated values of Rs.11,65,830/- and Rs.6,34,687/- respectively. Thus, the inflated value of scrips administered in the EDI system had never been granted by the CA, consequently, the transfer of such scrips could not operate to confer upon the Appellant an entitlement greater than what had lawfully been granted by the DGFT.

40. The aforesaid position also assumes significance in assessing whether or not the Appellant had acted as a bona fide purchaser, thereby satisfying the requirements under Section 41 of the Act of 1882. The Appellant being the importer and ultimate beneficiary of scrips was required to exercise reasonable care before availing itself of the entitlement represented thereof. However, despite being aware of scrips being utilised towards payment of customs duty, the Appellant did not undertake any verification of their genuineness, validity or the extent of the entitlement reflected therein. On the contrary, it is an admitted position of the Appellant that, the particulars and values of such scrips were communicated to it only after customs clearance, and it never attempted to verify the genuineness of the scrips or the correctness of the particulars and values thereof.

41. Further, in this regard, the conduct of the Appellant in relation to the customs clearance authority vested upon Mr. Sharafat Hussain also assumes significance. Admittedly, the Appellant itself authorised M/s Zealous International, through its proprietor Mr. Sharafat Hussain, to undertake customs clearance operations on its behalf without ever verifying whether the said entity possessed a valid Customs Broker license. By entrusting customs clearance functions to

Mr. Sharafat Hussain and permitting him to act on its behalf before the CA, the Appellant clothed him with authority to undertake clearance activities in connection with its imports. To that extent, Mr. Sharafat Hussain occupied the position of a person having authority to undertake customs clearance activities for and on behalf of the Appellant.

42. Accordingly, the Appellant cannot escape responsibility for acts performed by Mr. Sharafat Hussain in the course of such agency, as discussed in the preceeding paragraphs under ***Sub-Issue a*** *(Supra)*. Since the fraudulent/forged/manipulated scrips were utilised for clearance of goods imported by the Appellant, the responsibility to verify the genuineness, validity and lawful entitlement of such scrips rested upon the Appellant, being the importer and the ultimate beneficiary of the duty benefit, which it failed to do.

43. Moreover, the Appellant admitted that, despite agency charges being raised in the names of two different entities, namely M/s Kirti Cargo (25%) and M/s Zealous International (75%), and despite the BoE reflecting the name of M/s Kirti Cargo, it never sought any clarification regarding these apparent inconsistencies. Likewise, the Appellant entrusted customs clearance work to M/s Zealous International without verifying whether it possessed the statutory licence required to undertake such functions. The aforesaid circumstances were not extraneous to the transaction, rather, they were matters directly bearing significance upon the manner in which the Appellant's customs clearance and duty benefits were being dealt with.

44. The aforesaid circumstances, viewed cumulatively, reveal that the Appellant did not act with the degree of good faith and reasonable care necessary to claim equitable protection. Additionally, the fact that the scrips originated from the DGFT cannot, by itself, confer validity upon an enhanced entitlement that was never granted by the CA. Equally, the Appellant's status as a purchaser cannot create, by operation of equity, an entitlement which was absent in the transferor. Therefore, the principle of *nemo dat quod non habet* remains applicable to the extent of the excess entitlement reflected in the manipulated EDI records.

45. Moreover, the equitable protection granted under Section 41 of the Act of 1882, intends to protect an innocent transferee who has reasonably relied upon an appearance of authority created or permitted by the true owner. It does not intend to enable a transferee, who has failed to undertake reasonable enquiries, to retain or enforce an entitlement beyond that which was lawfully granted in the first place. Thus, the Appellant having failed to make necessary enquiries cannot invoke *estoppel* to shift the consequences of its own negligence.

46. Additionally, the Appellant's claim to equitable relief is undermined by its own statutory defaults under Section 46(4) of the Act of 1962, which provides the importer to make a true, correct and complete declaration in the BoE. Having furnished declarations that have been found to be false or incorrect, the Appellant cannot simultaneously invoke equitable principles founded upon honesty, good faith and due diligence to avoid the consequences arising from those declarations. The statutory obligation to make a truthful

declaration is independent of, and reinforces, the requirement of due diligence that underlies the equitable protection claimed by the Appellant.

47. It is a settled principle that equity cannot be invoked by a party whose conduct is inconsistent with its statutory obligations. The equitable principle underlying Section 41 of the Act of 1882, or the doctrine of *estoppel*, cannot be used to enlarge an entitlement beyond that lawfully granted by the competent authority. In the present case, the scrips had a genuine underlying DGFT entitlement; however, the entitlement reflected in the EDI system had been inflated beyond the amount actually granted.

48. To that extent, Mr. Sharafat Hussain possessed no lawful entitlement capable of being transferred, therefore, the maxim *nemo dat quod non habet* operates against the Appellant. Having failed to exercise reasonable care to ascertain the genuineness and extent of the scrip entitlement, and having furnished incorrect declarations under the Act of 1962, the Appellant cannot claim protection as a *bona fide* purchaser or avoid the consequences arising from utilisation of the excess entitlement.

In re: Sub Issue c

49. The maxim of *caveat emptor*, which means 'let the buyer be aware', places an obligation upon the purchaser to make necessary enquiries and satisfy itself regarding the genuineness, validity and authority attached to the rights or instruments being acquired.

50. The Supreme Court in ***Aafloat Textiles*** *(Supra)*, applied this principle in the context of forged import license and held that a purchaser of transferable licences must establish that it had undertaken necessary enquiries and taken requisite precautions to ascertain their genuineness. The Court further held that where the purchaser fails to demonstrate such enquiry, the consequences must follow. The burden of establishing that reasonable precautions were taken lies upon the purchaser, as such knowledge and verification exercise are matters within its special knowledge.

51. The aforesaid principle squarely applies to the facts of the present case. The Appellant having been availed the benefit of transferable scrip cannot merely rely upon their apparent existence or representation by intermediaries but is required to exercise reasonable care to verify their authenticity and validity. The mere fact that an instrument is reflected in official records does not absolve the beneficiary (Appellant) from undertaking due diligence regarding the underlying entitlement, particularly when such benefit is being claimed for discharge of statutory liabilities.

52. In the present case, as elucidated in the preceeding paragraphs the Appellant has failed to establish any verification exercise undertaken by it before relying upon the disputed scrips. There is no material on record to demonstrate that the Appellant verified the genuineness of the scrips from the issuing authority, examined the underlying entitlement granted by the DGFT, or undertook any independent enquiry before availing the duty benefit.

53. The doctrine of *caveat emptor* does not protect a party that remains passive in the face of circumstances requiring verification. It is intended to impose responsibility upon the purchaser to exercise ordinary prudence and cannot be invoked as a shield against the consequences of failure to make necessary enquiries.

54. Accordingly, the Appellant cannot derive any benefit from the principle of *caveat emptor*. Rather, the said principle reinforces the obligation of the Appellant to have exercised due diligence before relying upon the scrips, and its failure to do so disentitles it from claiming protection against the consequences arising from such reliance.

<u>In re: Issue II</u>

55. The principle of natural justice is intended to secure fairness in the decision-making process and not to elevate procedural requirements into ends in themselves. Unless the alleged procedural lapse demonstrably occasions actual prejudice, the proceedings cannot be invalidated on that ground alone.

56. The contention of the Appellant regarding non-production of the original scrips proceeds on the assumption that the Respondents' case rests solely upon proving the physical forgery of the said instrument. However, as already discussed in the preceeding paragraphs the foundation of the present controversy lies in the revelations made during the investigation by CA.

57. The investigation unequivocally established that the scrips

reflected in the EDI system had either been artificially enhanced, repeatedly utilised beyond the entitlement originally granted by the DGFT, or did not correspond with any lawful entitlement whatsoever. Consequently, the evidentiary foundation of the proceedings rests not merely upon the physical scrips but upon the DGFT entitlement records, Customs registration data, ICES/EDI transaction trails, system-generated electronic records and the statements recorded during investigation.

58. In these circumstances, the mere non-production of the original scrips cannot, by itself, undermine the proceedings. The law pertaining to non-production of documents is governed by the principles embodied under Section 119 of the Bharatiya Sakshya Adhiniyam, 2023. The aforesaid provision empowers the Court to draw appropriate presumptions having regard to the common course of natural events, human conduct, and the circumstances of a particular case.

59. However, such presumptions are discretionary in nature and cannot be invoked mechanically. An adverse inference can arise only where the document withheld is shown to be material, is within the exclusive possession or control of the party concerned, and where the circumstances reasonably justify an inference that its production would have operated adversely against such party.

60. In this regard, the principle of adverse inference as enunciated by the Supreme Court in ***Pandurang Jivaji Apte v. Ramchandra***

Gangadhar Ashtekar (D) by LRs & Ors.[12], is required to be noticed. The Court in the said case held that, an adverse inference for non-production of a document is neither automatic nor invariable but depends upon the nature of the controversy and the availability of independent evidence. Where the relevant fact otherwise stands satisfactorily established, no adverse inference is liable to be drawn.

61. Applying the aforesaid principle, this Court finds that the Respondents have independently established its case through contemporaneous electronic records, DGFT entitlement data, investigation into the *modus operandi* of the fraud, and the statements recorded under Section 108 of the Act of 1962. Consequently, the absence of the original scrips is by no means fatal to the adjudication.

62. Significantly, as already noticed under ***Issue I*** *(Supra)*, Mr. Jain unequivocally admitted that the Appellant was never in possession of the original scrips, never undertook any independent verification thereof, and relied exclusively upon the particulars reflected in the BoE. He further admitted that neither the source, nor the validity, nor the available balance of the scrips was ever verified by them.

63. The aforesaid admissions made by Mr. Jain negates the plea of prejudice being argued by the Appellant, since its case was never founded upon verification of the original instruments but solely upon their assumption that every entry processed through the Customs system was necessarily valid. Consequently, the absence of the original scrips could not have deprived them of an opportunity to

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[12] (1981) 4 SCC 569

establish a fact which they admittedly never attempted to verify.

64. Equally devoid of merit is the grievance regarding denial of cross-examination of the Customs officers inasmuch as the Appellant has failed to demonstrate what material fact could have been elicited through such cross-examination or how the absence thereof has caused any adverse consequence to their defence. A mere assertion that cross-examination was denied, unaccompanied by any demonstrable prejudice, is manifestly insufficient to invalidate the proceedings.

65. Furthermore, it is to be noticed that during the course of investigation repeated summons under Section 108 of the Act of 1962 were issued to Mr. Sharafat Hussain at the addresses of M/s Kirti Cargo as well as M/s Zealous Overseas Pvt. Ltd. requiring him to tender his statement. Despite repeated opportunities, he deliberately failed to appear before the investigating authorities. Thereafter, searches were conducted on more than one occasion at his registered addresses; however, he could not be traced. Following which, lookout circulars came to be issued against him culminating into registration of an FIR.

66. Thereafter, Mr. Sharafat Hussan, in a written communication addressed to the CA, claimed to be a *bona fide* purchaser having purchased the scrips from Mr. Vinod Kumar Pathror through his various entities. However, upon further investigation against the claims made by Sharafat Hussain, the CA approached one of the original exporters, namely M/s K S Impex, whereupon it was revealed that scrips purchased by M/s Zealous Overseas Pvt. Ltd. had been

fraudulently enhanced and registered in the EDI system for values substantially exceeding those originally issued by the DGFT.

67. Further, Mr. Sharafat Hussain, in his voluntary statements dated 15.11.2017 and 16.11.2017, stated that he possessed either the physical licences or their particulars and had purchased licences already registered in the EDI system. However, when confronted with the purchase invoice and utilisation details of Licence No. 0510389153, purchased for Rs.7,18,837/- against a credit value of Rs.7,29,688/- but utilised for payment of customs duty amounting to Rs.20,85,111/- in four Bills of Entry, he furnished only evasive explanations.

68. Furthermore, his claim that the purchase documents had been seized during searches was found to be false, as no such documents or physical licences were recovered. Likewise, although he asserted that the Customs registration numbers were reflected on the purchase invoices, invoices obtained from M/s R.S. Enterprises revealed otherwise.

69. Additionally, the investigation also exposed material inconsistencies in the explanations furnished by Mr. Sharafat Hussain, his failure to produce any purchase records despite repeated assertions to the contrary, his admitted omission to verify the authenticity of the licences from the DGFT, and the statements of the importers confirming that the disputed licences had been utilised by him without their instructions.

70. Put succinctly, the aforesaid material demonstrates that the CA

conducted a comprehensive investigation and collected independent documentary, electronic and oral evidence. The aforesaid circumstances when viewed cumulatively, constitute independent and compelling evidence establishing the fraudulent *modus operandi* and the misuse of the scrips.

71. Consequently, the evidentiary foundation of the proceedings remains wholly unimpaired, and no adverse inference can be drawn in favour of the Appellant merely on account of the non-production of the original scrips or allied documents along with denial of cross-examination being sought by the Appellant.

In re: Issue III

72. The present issue is borne out of separate questions framed by this Court in its Order dated 03.09.2024 in CUSAA 82/2023 and CUSAA 83/2023, concerning penalties under Sections 112(b) and 114A of the Act of 1962. However, since the both the provisions pertain to imposition of penalty arising from similar transaction, they are being dealt with together.

73. Section 114A of the Act of 1962, is attracted where duty has not been levied or has been short levied by reason of fraud, collusion, wilful misstatement or suppression of facts with an intention to evade payment of duty. The last proviso to Section 114A further manifests the legislative intent that where penalty is imposed under the said provision, no separate penalty shall be leviable under Section 112 or Section 114 of the Act of 1962.

74. In view thereof, the issue framed with respect to Section 112 of the Act of 1962, loses its significance and does not survive for determination by this Court. However, we shall proceed to examine whether the acts of Appellant, attracts the penalty prescribed under Section 114A of the Act of 1962.

75. The plea of absence of direct knowledge regarding the actual manipulation of the EDI records, at the highest, may have relevant while examining the degree of culpability. However, penalty under Section 114A of the Act of 1962 does not require that the importer must personally execute such fraudulent act. Where the duty benefit has been obtained by suppression of material facts, wilful misstatement or fraudulent reliance upon an invalid entitlement, the statutory consequences necessarily follow.

76. In the present case, the Appellant consciously sought to discharge their liability to pay customs duty by filing BoE containing declarations regarding utilisation of scrips, despite admittedly failing to verify the existence, validity or availability of such credits. Therefore, its conduct cannot be characterised as a mere innocent reliance upon an external fraud. They derived the direct benefit of the manipulated scrips and, by their own admissions, failed to exercise even the minimum diligence expected while dealing with instruments capable of extinguishing substantial statutory liability.

77. Hence, the penalty imposed under Section 114A of the Act of 1962 sustains, whereas no separate penalty under Section 112(b) is levy able.

78. Before parting, we deem it appropriate to observe that the findings and conclusions recorded by this Court in the aforesaid batch of Customs Appeals shall govern present writ petitions as well, since the Petitions are founded on identical facts and involve substantially similar questions of law.

79. It is for the reason that the records pertaining to the present Petitions have already been placed before this Court, and the issues arising for consideration stand squarely covered and answered by the judgment rendered in the aforesaid Appeals. In such circumstances, we are of the considered view that relegating the Petitioners to the alternative remedy would serve no meaningful purpose and would only result in an inefficacious exercise, culminating in the Petitioners once again approaching this Court in appellate jurisdiction on the very same issues.

80. Although such course may ordinarily have been warranted, in the peculiar facts and circumstances of the present matters, and with a view to prevent multiplicity of proceedings and ensure expeditious resolution of the controversy, we dispose of these Writ Petitions in terms of the judgment rendered in the aforesaid batch of Customs Appeals.

E. <u>CONCLUSION:</u>

81. For all the foregoing reasons, the present Appeals and Writ Petitions are disposed in the following terms:

a. the Appellant is not a *bona fide* purchaser in light of Section 41 of the Act of 1882 and cannot claim protection under the principle of *caveat emptor*;

b. the proceedings rest upon overwhelming independent documentary, electronic and oral evidence, and the Appellant has failed to demonstrate any prejudice warranting interference;

c. the Impugned Orders, to the extent they impose penalties under 114A of the Act of 1962, is upheld, while the imposition of penalty under Section 112 of the Act of 1962 is set-aside; and

d. Since the writ petitions arise from the same investigation and adjudication proceedings as the connected Customs Appeals, the findings and directions issued therein shall apply mutatis mutandis to these proceedings.

82. All the pending applications also stand closed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 20, 2026
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